

Transforming Customary, Contractual and Administrative Land Rights to Real Property Titles in the Urban Benin, Evaluating the Results (2001-2016)

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Summary and conclusions

In October 2011, the US Millennium Challenge Corporation closed a five-year Compact with the government of Benin, which was supporting systematic urban land titling in 20 cities and small urban centers. Benin was using a method of zone-by zone *immatriculation* to transform land rights with origins in customary, administrative and contract law, into civil law proprietorship. The MCC-funded activity was the third in a series of four government urban titling initiatives, which began as a pilot project in 2001-2003, involving 1,453 parcels in seven zones. In 2004-2007, the activity expanded into 17 zones. Then, with MCC, the government set a target of 30,000 new titles in 28 zones for the period of 2006-2011. This project made improvements to the procedures, instruments and methods of titling, but in five years was able to complete and register only 105 new titles out of 13,823 landholder applications. Thus, in 2011 the Benin government continued the work into a fourth stage and, by the end of 2015, completed a total of 9,511 titles from the same group of applications.

The objective of the Benin government in all four stages was to establish an efficient and sustainable method of titling, which could encompass all urban land (estimated at 500,000 parcels) in a reasonable period of years. For MCC, the urban titling was one component of a multi-activity Access to Land program, intended to remove obstacles to investment, stimulate development and market activity and, thereby, reduce poverty.

Measured by the quantitative results, the achievements of 15 years of systematic urban titling have been modest. However, the lessons learned have been used by Benin's legislators, policy-makers and administrators in advancing the broad program of land reform, in particular, in drafting the Code of Land Tenure and the Domain of 2013 and re-organizing the national and communal services that formalize and register land rights and assist landholders to protect and transfer their rights. By revealing the difficulties of legal substance and practical application of titling, the project experiences have guided the legislators, administrators, advocates and citizens to devise practical and incremental solutions. The main lessons learned have been the following:

- The government of Benin undertook the activities of systematic urban titling with the intent of formalizing and regularizing all urban landholdings under modern civil law, planning and administration.

- At the outset, the government recognized that, in the past, urban land rights had been acquired by and allocated to individuals, families and entities in a variety of forms of tenure. These were drawn from separate regimes of custom, administrative law, contract law and French-style civil law and, over time, they were applied in changing economic, social and political conditions. The projects revealed that in most zones, the rights to individual parcels were highly variable. Neighboring landholders often held different types of legal forms as proof of their rights and, these records usually contained gaps, mistake and irregularities.
- The goal set by the government was to transform these variable and irregular rights into the status of modern civil law proprietorship. In accordance with the fundamental law on property, this would mean that every parcel would have its tenure right defined as absolute and would have a title document that would be recognized as un-attackable proof of the rights in court and in all other process. In order to achieve this high standard of legal status, the particular rights of each landholder would have to be re-defined and corrected in order to show: (i) its legitimate origin in one of the regimes of law; (ii) an unbroken chain of succession and transfer from the originating act to the present claimant without errors and gaps; and (iii) the completion of any contemporary acts, needed to perfect the right of exclusive possession by disposing of contrary claims and limitations.
- The key problem for the titling projects, therefore, was the following: How to create a process of that could begin in a zone with land rights of multiple origins and multiple problems and then provide all of the actions of verification, correction and perfection to reach the high standard of clarification and documentation to substantiate an absolute right and un-attackable title? How could this process use a systematic and mass approach to achieve speed and volume, anticipating the coverage of 500,000 urban parcels in a reasonable period of years?
- The titling projects have shown that the methods of systematic, mass titling cannot be applied effectively, with both speed and accuracy, in the conditions of variability and complexity of Benin's urban zones. Systematic mass titling assumes that parcels can be treated in categories as standard units and they can be corrected and perfected by over-riding decisions or actions, applicable immediately to all the units. In Benin the law did not authorize and the practical process could not provide and sustain categorical and generally applicable decision-making.
- The urban titling projects were successful mapping and surveying thousands of parcels with appropriate accuracy, quickly and uniformly. With well-designed and well-implemented public participation, large numbers of landholders submitted their applications. But ultimately, the essential tasks of review of proofs, verification of rights, correction of missing elements and disposition of contrary claims, could only be done, parcel by parcel. A unique set of actions and corrections was required for every landholding. With skill and persistence, the project managers enlisted the cooperation of mayors, communal officers and state entities, who assisted the landholders in correcting

and clarifying the origins of their rights. But the work was necessarily slow and deliberate.

Having learned from this experience, Benin's government has undertaken a more profound reform of land tenure law, by adopting the Code of Land Tenure and the Domain (Law no. 2013-01 of 14 August 2013). This law has retained the policy that, ultimately, all urban land will be brought into the regime of civil real property law, but it anticipates procedures and new administrative entities, which will allow the process of transformation to take place gradually, incrementally and voluntarily. Most important, the law and administrative systems will now provide the instruments and government services to protect and strengthen the lesser rights of tenure during the interim years while the landholders are gradually correcting and strengthening their rights.

Under the Code, the government is re-structuring both the state and communal land services in order to provide convenient local offices with a base land information system (*cadastre*), which will record an accumulating set of documentation for every landholding. As actions are taken by the landholder and by the state and communal agencies, new documents and information will be added to each parcel record, gradually strengthen the clarity and proofs of the landholding rights. The landholder will be able to complete, by *immatriculation*, the full possessory title – giving him/her the opportunity to benefit from an investment or development opportunity. At any interim point, the landholder can rely on the accumulated information to verify and protect his/her rights in a court, mediation or administrative proceedings. The proofs will not be un-attackable, but they will offer probative and presumptive evidence, able to withstand the typical challenges of conflicting claims.

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Table of Abbreviations

AIF – *Association des Interesses Fonciers*
ANDF – *Agence Nationale du Domaine et du Foncier*
BIM – *Bureau d'Ingenierie et Management*
CDI – *Commissions Departmentales d'Immatriculation*
CLEF – *Commissions Locales d'Enquêtes Foncières*
CNAO-TF – *Commission Nationale d'Appui a l'Obtention des Titres Fonciers*
Commission Ph/TF – *Commission Nationale de Transformation de Permis d'Habiter en Titre Foncier*
C/SAD – *Commune – Services des Affaires Domaniales*
DDET – *Direction des Domaines, Enregistrement et Timbres* (Ministry of Economy and Finance)
DGID – *Direction Generale des Impots et Domaines* (Ministry of Economy and Finance)
IEA – *Implementing Entity Agreement*
IGN – *Institut Geographique National*
MUHRFLEC – *Ministere d'Urbanisme, de l'Habitat, de la Reforme Fonciere et de la Lutte contre l'Erosion Cotiere (2007—2016)*
PCASF – *Programme de la Soutien a la Croissance Economique et Perennisation des Acquis de MCA-Benin* (Netherlands-Benin cooperation)
PFR – *plans fonciers ruraux*
Ph – *permis d'habiter*
Ph/TF – *transformation de permis d'habiter en titre foncier*
RFU – *register foncier urbain*
UCF – *Unite de Coordination de la Formulation de la 2eme Programmeet du Suivi des Reformes de MCA-Benin*

Introduction

In October 2011, the US Millennium Challenge Corporation closed a five-year project of assistance to the government of Benin, which included the activity of systematic titling for urban lands. The activity was called *Transformation des permis d'habiter en titres fonciers* [“Ph/TF”] and it was intended to provide state-registered civil law property titles to landholders, who had acquired their parcels both by the specific administrative right of *permis d'habiter* or by other customary, administrative and contract law rights.

The MCC-assisted activity was the third in a series of four stages of Ph/TF projects, which the government of Benin began as a pilot project (2001-2003), expanded (2004-2007) and merged into the MCC-assisted project (2006-2011). It then continued post-Compact (2011-2016).

Through these stages, Benin sought to establish and improve the method of titling with a long-term goal of covering all urban land (about 500,000 parcels) in a reasonable period of years. For MCC, urban land titling has been considered a key activity of governance reform that, in theory, would remove obstacles to investment, stimulate development and real property markets, offer equitable access to land and, thereby, reduce poverty. (MCC 2012) A successful project in Benin could demonstrate the effectiveness of “mass titling” and validate the underlying theory.

During each of the four stages, the operations of Ph/TF added titles into the state land registry: 1,453 titles during the pilot project (2001-2004) and 9,511 titles under the MCC Compact and post-Compact stages (2006-2016). The numbers fell short of the target of 30,000 titles, anticipated in the MCC Compact, but by establishing a steady rate of production, the Ph/TF operations enabled the land registry to grow incrementally from 15,000 registered land parcels in 2000 to 32,900 at the end of 2016.

In February 2016, the newly created *Agence Nationale du Domain et du Foncier* [“ANDF”] took control of land registration and land management responsibilities, ending the CNAO-TF and DDET. Subsequently in April 2016, a new president took office. This transfer of authority and policy has provided an appropriate point at which to review the work accomplished, update the results, and evaluate the impacts of Ph/TF.

Chapter 1. The origins, design and implementation of Ph/TF

The Ph/TF activity was part of a broad land reform program, which the government of Benin launched in 2000 with the intention of encouraging and assisting landholders to strengthen

their rights.¹ The initiative followed Benin's accession to the OHADA Treaty of 1998 and a series of studies that found tenure insecurity and opaque and speculative land transactions to be obstacles to development, investment and the availability of credit. (Comby 1998; Gbaguidi 1997) The full reform program sought to improve spatial planning, subdivision and urbanization; to de-concentrate the state land registry with new regional offices; to improve municipal ["communal"] land management services; and to organize an urban land information system [*registre foncier urbain* – RFU]. Together with Ph/TF, these activities were expected to increase the number of titled landholders and property taxpayers and encourage investments and transparent land dealings. (Benin PRSP 2002) In order to understand the concept and design of Ph/TF, it is helpful to recall how it responded to earlier attempts at reform.

1.1 Origins of titling in colonial and post-independence law

The colonial administration of French West Africa first created the land registry for Dahomey in 1906 as the way to bring tracts of land into the regimes of modern civil and administrative law.² Subsequent legislative acts defined *immatriculation* as the procedure by which a person, in possession of a land parcel, could become recognized and protected by law as its proprietor. The process required multiple actions of surveying, review of documentary proof of the landholder's possession, notice to third parties to disclose and settle counter-claims, and settlement of any rights of the state.³ Once proven and certified, the landholding rights were inscribed in the registry books and a title document [*titre foncier*] was issued. The state could also undertake *immatriculation* to create state titles in its own name.

During the colonial era, titles were created for industrial and trade facilities and in a few "European" residential zones. State titles were created for the administrative centers and zones were designated, where migrant laborers from rural areas were allowed to reside. The working families received revocable *permis d'habiter* to occupy small house plots during the period of their employment.⁴ In this manner, the urban centers took form – with core zones of state and private titled land, adjacent zones for worker housing, and peripheral zones of customary and administrative law [*domaine*] status. Reflecting the limited urbanization and development of Dahomey at independence in 1960, fewer than 5,000 titles had been created. About 600 were State Titles for government facilities and 100 were State Titles for zones in which laborers received *permis d'habiter*. (Bergepo, 2009)

¹ *Relevé* no. 38/SGG/REL of 21 September 2000. This administrative notice is referenced as the originating policy document in the Final Report of Closure of the Pilot Operations for Transformation Ph/TF (Government of Benin 2004).

² Decree of 24 July 1906, authorizing the creation of land registries in the colonies of French West Africa.

³ Decree of 26 July 1932, organizing the Regime of Landholding in French West Africa.

⁴ Strictly, by the text of law no. 60-20 of 13 July 1960, the *permis d'habiter* was a subordinate right under a State title, but in some zones the *permis* were given even though the State title for the zone was never initiated or finished.

After independence, Benin law preserved both the *titre foncier* and the *permis d'habiter*; however, the rationale and use of these instruments changed. (Law no. 65-25 of 14 August 1965 and Law no. 60-20 of 13 July 1960) Since the *apartheid*-style limitations on labor and settlement would no longer apply, the *permis d'habiter* was re-defined as an inheritable right and, in theory, it was susceptible to pledge for housing credit.⁵ Under the *permis d'habiter*, the rights in land were not otherwise alienable, but because the occupant could own the house and sell it to a third party, the municipal authorities would accommodate the transaction by withdrawing the *permis* from the seller and re-issuing it to the purchaser, after payment of a fee. The law did allow the landholder to transform the *permis d'habiter* into a title of proprietorship by asking for its transformation. This procedure required giving proof to the registrar of (i) peaceful possession, (ii) completion of improvement of the land, and (iii) payment of a land price along with the surveying and administrative costs.⁶

After independence, neither citizens nor the state made much use of the registry and only 1,024 titles were added between 1960 and 1992. (Gbaguidi, 1995) Landholders avoided *immatriculation* because it was complex and expensive. Individuals, who had *permis d'habiter*, considered it a sufficient instrument for routine land dealings. The socialist-style governments did not create titles for new urban zones because of ideology and because they lacked the capacity to properly plan and carry out *immatriculation* and they lacked the resources to compensate previous customary landholders.

This failure to plan, subdivide and formalize tenure led to anarchic city growth in the 1980's. Customary landholders in peripheral urban areas were helped by speculative developers, surveyors and notaries to subdivide and sell parcels to settlers with simple contracts – *conventions de vente* – or other irregular acts. (Lassissi 2006) The communal authorities tolerated these settlements and devised quasi-legal forms of proof and official recognition of the occupancy rights. These included a mayoral signature as witness of a *convention de vente* and a form called the *attestation de non-litige*, in which a municipal officer affirmed that there was no evidence in the city records of a dispute involving the land. Some cities made efforts to retroactively survey, install streets and services, and re-organize the landholdings – a process called *lotissement*. In these zones the mayors issued documents called *attestations* or *certificats de recasement*. Landholders could use these communal forms, as well as other notary forms to prove their rights in subsequent dealings. At the end of the period, the situation of urban land tenure in urban areas was a patchwork of zones of different legal status in which parcels could be held by a variety of civil law, administrative, contractual or customary rights, evidenced by a variety of documents of proof:

⁵ Law no. 60-20 of 13 July 1960, Articles 14 and 16

⁶ Law no. 60-20 of 13 July 1960, Article 19. Details of the procedure of transformation are contained in Decree no. 64-276 of 2 December 1964, Articles 12-16.

Table 1.1: Varieties of legal status of urban zones and landholdings

| Zone status | Status of individual landholdings with the zone |
|--|--|
| State-title zone with proper urbanization plan and subdivision | Individual civil law title – <i>titre foncier</i> Usufruct and long or short term leasehold subordinate to the state <i>Permis d'habiter</i> Decisions of the court |
| Properly planned/subdivided state or communal domain zone | <i>Permis d'habiter</i> Decisions of the court |
| Retroactively planned communal domain zone | <i>Certificat de recasement</i> <i>Attestation de recasement</i> Decisions of the court |
| Unplanned zones on state or communal domain lands | <i>Conventions de vente</i> with mayoral witness Customary rights evidenced by notary acts, <i>certificats de non-litige</i> or decisions of the court resolving intra-family rights or inheritance |

Only the civil law title and leasehold under it could be recognized by the courts as un-attackable and definitive proof of civil law rights. The *permis d'habiter* could be recognized as presumptive proof of administrative rights if a clear chain of documents of inheritance and transfer could be shown from the original grant. By contrast, the contractual, municipal administrative and notary forms held only contestable evidentiary status in the courts and were susceptible to counter-claims by inheritors of ancient customary rights or by other claimants with conflicting documentation. These forms of tenure and their quasi-legal documents provided only weak protection against speculation, fraud or abuses and they could not be used for credit or investment security.

1.1.1 Inadequacy of the procedures of individual *immatriculation*

When Benin undertook its National Renewal and adopted the Constitution in 1990, these actions gave rise to a renewed interest in land titles. Subsequently, in the process of West African regional economic integration and in response to the influence of international donors and lenders, more people began to advocate for property as a basic human right and tenure security as essential for development.⁷ (World Bank 1992) The promotion of land titling in this period resulted in an increase in the number of units in the land registry, reaching a total of 15,000 by 2002.⁸ However, given the cost and complexity of *immatriculation*, only properties and projects of high value could justify pursuing an application for a title.

The essence of *immatriculation* was the inherent notion that state authority had to intervene in order to clear away past rights or claims under customary and domain law before a

⁷ Constitution of Benin of 1990, Article 22; Council of Ministers of Economic Community of West African States – ECOWAS, law of 17 April 1997, entered into force on 1 January 1998. See Lassissi 2006 at pg. 34.

Council of Ministers of Economic Community of West African States – ECOWAS, law of 17 April 1997, entered into force on 1 January 1998. See Lassissi 2006 at pg. 34.

⁸ The Government proposal to MCC, October 2005, cited 14,996 as the existing number of titles prior to the addition of the first Ph/TF titles in 2003.

parcel of land could move into the regime of civil property law. To initiate the process, the landholder applied to the Registrar at the *Direction des Domaines, Enregistrement et Timbres* – [DDET] and gained the status of applicant and presumed proprietor. The Registrar was then responsible for organizing the surveys and notary verification of the claim of rights, publishing the claim in order to allow third parties to assert any counter-claims, and determining (after the publicity and contest) that there were no unsatisfied counter-claims or state interests. When these procedures were complete, DDET would validate the legal rights by inscribing the facts and landholder's name in the registry and issuing the title – *titre foncier*. Only after this rigorous process could the title carry the status of un-attackable proof of property rights. (Lassissi 2006)

DDET had the responsibility of making every determination of rights without mistake or harm to any third parties; therefore, the procedure was deliberately redundant, complex and slow. On average, an application for *immatriculation* took 24 months. (BIM 2009; DDET 2008) The costs were substantial in order to insure the precision and completeness of the surveys, inquest and notices, and to dispose of or compensate all contrary and limiting claimants, including the state. DDET would estimate at the beginning the total fees and costs and the applicant would place this amount in an account, which DDET would draw down as costs were incurred. At the end, the applicant would pay any shortfall or receive back any surplus. Fees for *immatriculation* ranged in recent years from 400,000 CFA (\$800) for a simple square house lot to several million CFA for a large tract. An average of 700,000 CFA (\$1,400) was used in the studies and policy reports. (See Chapter 5 below)

This level of costs and the complexity of the process were beyond the capability of the average citizen/landholder. Therefore, over the years only the highest value projects gave rise to applications for titles and landholders lived with the risks and uncertainties of their weak and irregular forms of tenure.

1.1.2 Transformation of a *permis d'habiter* and subdivision of State Titles

Two simpler procedures were provided for (i) transformation of an existing *permis d'habiter* into a title and (ii) subdivision of a parcel without a *permis* from a State Title [*morcellement*]. These were similar in that both would remove a parcel from a larger tract already cleared of previous customary rights. Therefore, the application could begin with surveying and fixing the parcel boundaries, after which DDET would issue the notices, review and verify the proofs of rights, and determine that there were no contrary claims. With fewer steps, these applications ran between seven and 19 months and the fees averaged \$940, with the main component being the payment to buy out the state/communal domain or proprietary interest. (BIM 2010; DDET 2008) The numbers of applications for transforming *permis d'habiter* and subdivision from a State Title were much smaller than for *immatriculation*:

Table 1: Numbers of applications at DDET

Source: BIM (2010)

| Year | Immatriculation | Transform Ph | Subdivision |
|------|-----------------|--------------|-------------|
| 2006 | 971 | 71 | 346 |
| 2007 | | | |
| 2008 | 974 | 54 | 173 |

1.2 The design of systematic urban titling

In 2000, when the Government of Benin decided to undertake systematic urban titling, it recognized that the activity would be a substitute for the procedures of *immatriculation*, subdivision and transformation of *permis d'habiter*. Thus it would have to insure that all parcels (whatever their originating legal status and existing documents of proof) would pass through all the stages of process, required by law.⁹ But the government assumed, by adjusting the technical tasks and sequence, it could cover multiple parcels simultaneously and gain economies of scale. The Council of Ministers placed the responsibility for designing and implementing the process with the National Commission on Transformation of *Permis d'Habiter* into Titles [“Commission Ph/TF”] by Decree no. 2001-291 of 8 August 2001. A budget was provided, sufficient for work in seven zones in the three cities of Cotonou, Parakou and Porto Novo.

This pilot project encouraged participation by changing the financial relation between DDET and the landholder/applicants. DDET would not require an up-front payment and the state budget would carry the costs to the end [“pre-financing”]. Then, each landholder would make a single payment when receiving the title. The fee would be the same for all recipients and would only cover the operational costs; the state would forego payment for the value of the land.

The Commission Ph/TF organized the project to take into account two different situations of the urban zones. Zones with State Titles could move directly to the stage of individual parcel survey and verification. Other zones were still in the regime of custom or domain and would require a dual process: (i) *immatriculation* to create a “global title” and (ii) subdivision of the individual parcel titles. The Commission Ph/TF, therefore, organized the project as a series of tasks, grouped in the following order:

- (1) Selection of the zones by assessing: (i) the availability and condition of the existing zone plans and legal documentation, (ii) the level of citizen interest, (iii) the anticipated cooperation of the communal officers; and (iv) the budget.

⁹ Naming the Commission and the process “Transformation of *permis d'habiter* into landholding titles” was somewhat misleading, because the intent was to ultimately transform all of the different original rights into civil law.

- (2) Preparation of each zone: (i) either by reconstitution of its plans and documentation as a State Title or (ii) by creating an Association of Interested Landholders (*Association des Interesses Fonciers* –AIF) to apply for and control the global title.
- (3) Surveying and gaining agreement of neighboring landholders [*bornage*] to fix the boundary lines of the AIF zones and then surveying and gaining agreements for the individual parcels within the zone.
- (4) Collecting from all the participating landholders their documents of proof of possession and verification of these documents by notaries, municipal officers, and the AIF.
- (5) Joining together the parcel survey plans and completed dossiers of proofs to send to DDET for registration and issuance of the titles. Citizens could then pick up a copy of their finished title at the registry office, paying the fee.

1.3 The chronology of actions in pilot project and expansion stages of Ph/TF

Using the multi-stage method, the Commission Ph/TF completed 1,453 titles in seven zones in Cotonou, Parakou and Porto Novo during 2001-2003. As described in the project's Final Report, some savings in time and complexity were achieved. (Commission Ph/TF 2004) For example, in the AIF zone Agboku in Porto Novo, with 533 parcels in 29 hectares, the zone perimeter survey was done in just three days, while the parcel surveys and boundary line markings took one month. The time saved in these technical tasks was offset by delays in organizing the AIF, mobilizing communal and state agencies to find and transfer the zone plans and documents, setting-up the Commission Ph/TF and waiting for its budgeted funds. The work took 23 months, from February 2002 to December 2003, similar to the average *immatriculation*.

It was unclear whether cost savings were realized. By pre-financing, the government had accepted the risks that it would not recover all costs if the per parcel cost exceeded the 100,000 CFA (\$200) fee, and if citizens at the end did not come forward to pay the fees and take their titles. The Final Report calculated operational costs of 150,000 CFA (\$300) per parcel, much lower than the \$1,400 and \$940 averages for individual applications (but without the land value payments). The government also failed to recover its costs because only 111 landholders came at the end to take their copies of the 1,453 titles completed.

Despite these limitations and ambiguities, the government declared the pilot project a success and authorized the Commission Ph/TF to expand into more zones in the three cities and in 17 smaller urban centers. (Commission Ph/TF 2004) Work began in 2005 to select zones with 4,875 parcels and the same procedures and pre-financing were anticipated. (Stewart Title 2008) At the same time, the government was negotiating with MCC to fund the larger project.

1.4 Expected improvements by MCA-Benin in the third stage

With MCC assistance, the Benin government hoped to reach a critical mass of registered parcels, sufficient to enable a regular real property market and allow new regional registry offices to become cost effective. Future proprietors would engage in transparent and market-based transactions, using the registry and paying fees for its services. (Commission Ph/TF 2004)

There was some evidence that the goals could be fulfilled. The pace of individual applications was increasing. From 2000 to 2005, DDET was receiving about 500 applications per year for *immatriculation*, subdivision and transformation of *permis d'habiter*. This activity had lifted the total of registered parcels to over 21,000. (Lassissi 2006) Therefore, when the government of Benin made its proposal for assistance to Millennium Challenge Corporation, it described the past experience in positive terms. (Government of Benin 2005)

MCC looked critically at the pilot project, its delays and the fact that so few citizens had come forward to take their titles. MCC expected to put titles into the hands of every landholder and its economic model predicted that they then would then feel more secure, make investments, take entrepreneurial risk, seek credit and improve the land, all leading to improved incomes.

The Compact, therefore, created a project with aggressive public education and new technologies of survey and information management. As a pre-condition for funding, it required an audit of the procedures and methods of Ph/TF in order to identify “specific bottlenecks to an accelerated, quality implementation ...”¹⁰ The audit report was published as MCA-Benin Land Study no. 7 of 2009, and it was followed by lively debate among the experts, state agencies, communal authorities and interested parties. The participatory process led to the Decree no. 2009-30 of 26 February 2009, which made four key changes to Ph/TF:

First, the 16-member Commission Ph/TF was abolished to be replaced with the 9-member *Commission Nationale d'Appui a l'Obtention de Titres Fonciers* [CNAO-TF]. Second, a Permanent Secretariat with five professionals was to have responsibility for day-to-day operations. Third, six regional Commissions for *Immatriculation* [CDI] were to be created to carry out public education and assist the citizens in assembling their documents of proof. Fourth, Article 25 of the Decree stated clearly the list of documents, which would be accepted as proofs.

The CNAO-TF was installed in March 2009, members of the Permanent Secretariat were hired and began work in August 2009, a new Manual of Procedure was validated and adopted by the CNAO-TF in October 2009, and the CNAO-TF was then ready to select and prepare the

¹⁰ MCC/Benin Compact, Schedule 1 to Annex 1, Section 2(a) paragraph (i) (1) and (2); and Section 2(b) paragraph (v); www.MCC.gov.

zones. At this stage, however, there remained only a two-year period for implementation with the target of 30,000 titles in 20 communes. Two years was the same time period in which the pilot project completed only 1,435 titles in three communes, but the MCA-Benin project had the advantages of funding already committed, experienced personnel, established procedures for procurement and contracting, and clearly defined Rules of Procedure. Given the volume and complexity of the tasks, the target was lowered to 15,000 titles.

By the project end date of 15 October 2011, the CNAO-TF had surveyed 31,000 parcels in 26 zones, brought in 12,900 applications from landholders, and moved large numbers of dossiers along in the process of review. With DDET, it was able to complete, register and issue only 105 new urban titles of which 8 were taken by the landholders. (See Chapter 2, below)

1.5 Government commitment to continue Ph/TF in the fourth, post-Compact stage

Despite the limited numerical outcome, MCA-Benin and the independent evaluators found that the project had established an effective institutional structure and methods, and was justified in continuing. (GFA Consulting Group 2012, MCA-Benin 2012) A survey of urban landholders also found that public interest in titling remained high and additional landholders were coming forward, asking the CNAO-TF to accept their applications. (BIM 2011) More important, several thousand landholder applications were moving along in the process and could be finished. The government of Benin, therefore, made a commitment to keep the CNAO-TF in place and MCA-Benin provided some un-spent Compact funds, to be administered by the successor agency to MCA-Benin, called the *Unite de Coordination et Suivi* (“UCF”).

By December 2011, 491 titles were completed and registered. The government adopted Decree no. 2012-008 of 2 February 2012, re-authorizing the CNAO-TF. State budget funding was made available and a Protocol was signed with the UCF for additional MCC funds. This UCF agreement called on the CNAO-TF and DDET to produce titles at the rate of 500 a month. (UCF Trimester Report 2012) They did not achieve this robust pace, but did continue to complete surveys, review dossiers and issue titles with gradually accelerating momentum.

From February 2012 until February 2016, the CNAO-TF carried on in all 26 zones, gradually working through the dossiers that it had collected in 2011. CNAO-TF employed 65 technical and support personnel, who supplemented the regular staff of DDET. Funding continued from the state budget and the UCF, and Netherlands Assistance provided additional funds through the *Programme de la Soutien à la Croissance Economique et Perennisation des Acquis de MCA-Benin* [“PCASF”]. The CNAO-TF thus carried the work forward until February 2016, when it and the registry units of DDET were absorbed into the new ANDF.

Chapter 2: Quantitative results of the Ph/TF operations

The problem of how to measure the outcomes of Ph/TF operations was a concern of the project designers and managers from the start. The pilot project was the subject of a detailed Final Report. (Commission Ph/TF, April 2004) The expansion activities were reviewed in the MCA-Benin audit. (Stewart International 2009) The MCC/Benin Compact required both independent evaluations and Monitoring and Evaluation. (MCC/Benin Compact 2006) These studies provided for quantitative analysis by pre-defining project outcomes and desired performance as numerical targets and then selecting statistical indicators to be tracked over time.¹¹ The goal was to evaluate progress during the project period by comparison of “milestone” results with the targets and then to continue tracking the indicators, post-project, as measurements of impacts and sustainability. In general, the involved agencies have followed the model of quantitative analysis, but despite their adherence to the general categories and indicators, set by the studies and M&E Plan, various inconsistencies have occurred in the collection, aggregation and reporting of data. Thus, the numbers, presented below, do not follow a strict and fully logical sequence. They provide a roughly accurate picture of the activity and results.

2.1 Overall quantitative results of Ph/TF operations 2001-2016

During the four stages of Ph/TF activity, Benin completed a total of 10,964 signed and registered titles and approximately 4,200 citizens have come forward to take their title documents. The numbers reported for each stage were the following:

Table 2.1(a) Titles Created by Ph/TF Operations

| | Target | Applications | Titles finalized | Titles taken | Source of data |
|--|--------|--------------|------------------|--------------|--|
| Commission Ph/TF in pilot project | | | | | |
| 04/2004 | | | 1,453 | 111 | <i>Commission Ph/TF, Rapport Final 2004</i> |
| Commission Ph/TF in expansion project | | | | | |
| 02/2009 | 5,560 | | 1,857 | -- | <i>Commission Ph/TF, Point du Niveau des Dossiers AIF 2009</i> |
| CNAO-TF in MCA-Benin project and post-Compact (cumulative) | | | | | |
| 10/2011 | 15,000 | 12,560 | 107 | 8 | <i>MCA-Benin, Final Report 2011</i> |
| 12/2011 | 15,000 | 12,969 | 508 | -- | <i>UCF, Trimester Report, 1st Quarter 2012</i> |
| 10/2015 | 15,000 | 12,969 | 6,810 | 4,016 | <i>UCF, Trimester Report, 3d Quarter 2015</i> |
| DDET Ph/TF applications from other zones and individuals | | | | | |
| 10/2015 | | | 844 | -- | <i>UCF, 2017</i> |
| TOTAL | | | 10,964 | | |

In context of the long-term goal to bring all urban landholdings under civil law property rights, these numbers show some modest progress in stimulating landholder interest and building the capacity to process applications. As noted above in Chapter 1, between 1990 and 2000,

¹¹ The method of Monitoring and Evaluation was created by MCC and the government of Benin, following the guidelines of the Paris Declaration on Aid Effectiveness,

DDET was receiving and completing a few hundred titles a year from individual applications. In 2001, the numbers began to accelerate:

Table 2.1(b): Total Titles in the Registry Books (2001-2016)

Source: Lassissi, S.A. (2006), *Comprendre le Foncier Beninois* at page 194; Benin Council of Ministers (25 January 2017), www.gouv.bj

| Data source | Lassissi 2006 | | | | | | ... | ANDF |
|------------------------------|---------------|-------|---------|--------|-------|--------|-----|-----------|
| Year | 2001 | 2002 | 2003 | 2004 | 2005 | 7/2006 | | 12/2016** |
| Titles added per year | 837 | 1,215 | 1,144 | 2,784* | 1,874 | | | |
| --Ph/TF titles | | | | 1,453 | | | | |
| TOTAL titles in the registry | | | 16,483* | | | 21,713 | | 32,947 |

*Note: The 2004 output includes the pilot project titles. The Total titles in the registry was cited as 16,483(2004) in the Benin Proposal to MCC, October 2005, and cited at 21,713 as of 31 July 2006 by Professor Lassissi. The update total on December 31, 2016 was cited in the Bi-weekly Report of the Benin Council of Ministers, 25 January 2017

Before the start of the MCA-Benin project in October 2006, the land registry contained 21,713 titled property units, including the titles produced by the first stage pilot project. (Lassissi 2006) Ten years later, when the registry books were transferred by DDET to ANDF in April/May 2016, another 10,000 new titles had been added by the combination of Ph/TF activities and individual applications. Subsequently on 31 December 2016, the ANDF reported that it was working on 12,471 unfinished dossiers from DDET and on 1,103 new individual applications. It reported the total of titled landholdings in the registry books at 32,947. (Kougblenou 2017) The data did not provide separate calculation of urban and rural titles within the total; but it has been generally understood that very few titles have been issued for rural land.¹²

Looking at the numbers of titles produced year by year, the following Tables show a gradually accelerating trend during the years of Ph/TF operations. The numbers were compiled in different categories by different entities, so the sequence is not exact.

Table 2.1(c): Output of DDET operations 2006-2015

| Data source | BIM 2010 | | | BIM 2014 | | UCF Trimester Reports | | |
|--|----------|------|-------|----------|-------|-----------------------|--------|--------|
| Year | 2006 | 2007 | 2008 | 2011 | 2012 | 2013 | 2014/1 | 2015/3 |
| Individual titles <i>immatriculees</i> | 616 | 335 | 973 | 684 | 624 | -?- | 472 | 432 |
| Subdivide/consolidate titles | 63 | 110 | 346 | 112 | 96 | | 209 | |
| PhTF titles | | 71 | 54 | 434 | 445 | | 62 | |
| TOTAL YEAR titles | 679 | 536 | 1,373 | 1,230 | 1,165 | | | |

The PhTF category in 2011 and 2012 includes the first 368 dossiers sent to DDET by CNAO-TF

Table 2.1(d): Titles registered by DDET based on Ph/TF operations

Source: UCF-MCA, 2016

| Pilot | Cumulative totals during the Compact and post-Compact years (October anniversary dates) | | | | | | | | |
|------------------|---|--------|--------|--------|--------|--------|--------|--------|--------|
| Commission Ph/TF | CNAO-TF | | | | | | | | |
| 2003 | 9/2007 | 9/2008 | 9/2009 | 9/2010 | 9/2011 | 9/2012 | 9/2013 | 9/2014 | 9/2015 |

¹² For example, in the inventory of State Titles completed in 2009, only 27 out of 513 were classified as rural tracts; see Section 4.2 below.

| | | | | | | | | | | | |
|-------|--|-----|-------|-------|-------|-------|--|-------|-------|-------|-------|
| 1,453 | | 813 | 1,857 | 1,971 | 2,148 | 2,550 | | 3,118 | 4,967 | 7,235 | 9,511 |
|-------|--|-----|-------|-------|-------|-------|--|-------|-------|-------|-------|

*Note: the figures appear to encompass both individual and project-zone Ph/TF titles

Taken together the data in these four tables show the patterns of progress. By 2002, DDET had reached the capacity to sign and register about 1,200 titles per year. In 2004 when the pilot zone Ph/TF titles were added a higher result was achieved. In 2006 and 2007, the volume was lower, reflecting both poor economic conditions and uncertainty during the parliamentary debate over the Rural Land Tenure law and the presidential election campaign. In 2008 as the economy improved and the government clarified its land policy, application volumes began to increase and came back to the level of 1,200 per year in 2011 and 2012. However, by this time, the categorical balance between individual applications and Ph/TF shifted, reflecting the CNAO-TF operations. Complete data for individual applications in 2013, 2014, and 2015 has not been made available. The partial numbers for these years suggest that the combination of individual applications and Ph/TF dossiers moving through process has been in the range of 2,000-2,500 titles per year. This estimate is consistent with the cumulative total of 32,947 registered titles in the land books, reported by ANDF for December 2016. The explanation for the doubling of annual output would be the extra staff, which CNAO-TF added to the titling operations.

2.2 MCA-Benin project performance 2006-2011

The overall numbers of titles do not present the full picture of project impacts on performance and sustainability because the process has been dynamic and because Ph/TF has become part of routine land administration. It is useful to study the detailed figures of the MCA-Benin project to determine whether they confirm trends of stronger citizen interest in titling and improved capacity at the registry agencies.

On the final date of the MCC/Benin Compact in October 2011, the CNAO-TF was working in 26 zones in 20 communes and was processing the plans of parcel subdivision and the dossiers of citizen proofs, as shown in the following table:

Table 2.2 Urban Titling Files in Process compared to Targets, October 2011

Source: CNAO-TF

| Stages and tasks | Targets set | Achieved | Comment |
|---|---------------------|------------|--|
| Stage 1. Zone preparation and selection | | | |
| Inventory of state titles in 20 communes by Bergepo | No specified target | 515 titles | |
| State titles reconstituted by Bergepo | | 77 titles | |
| AIF already titles prepared by Bergepo | | 13 zones | |
| Total zones selected by CNAO-TF | No specified target | 26 zones | Some reports identify 28 or 31 zones, but adjacent small zones were combined |
| - State title zones selected | | 5 zones | |
| - AIF already titled selected | | 12 zones | |
| - New AIF zones | | 9 zones | |
| Zones with State title and fully registered global titles | | 10 zones | 18 AIF zones unfinished |
| Stage 2. Subdivision survey | | | |
| Zones with completed subdivision plans | All | 26 zones | |

| | | | |
|---|--------|--------|--|
| Parcel subdivision survey files delivered by Bergepo | 30,000 | 31,105 | Target set in M&E Plan |
| Stage 3. Collection of citizen documents of proof | | | |
| Total dossiers of citizen proofs under CNAO-TF control | | 15,226 | Included 1,403 incomplete dossiers from Commission Ph/TF |
| Dossiers submitted to CNAO-TF by citizens and transferred to notaries for review | 20,000 | 13,823 | Target was set in the Notary Protocol |
| Dossiers returned by notaries with validation of proofs | | 11,253 | Notaries returned without validation 2,570 dossiers |
| Stage 4. Formalities and issuance of titles | | | |
| Dossiers of citizen proofs and parcel survey files successfully combined by CNAO-TF | | 1,689 | |
| Combined files with completed formalities ready for transmission to DDET for registration and issuance of titles dossiers transmitted to DDET | | 245 | 1,454 files finished but waiting in 18 zones pending global titles |
| Titles completed and registered | 15,000 | 105 | Revised target – CNAO-TF |
| Titles documents taken by citizens | 15,000 | 8 | |

The significance of these numbers can be recognized by comparing the achieved units with the M&E targets and with the goals and policies of landholding reform.

At Stage 1, the goal of speeding the process for creating the global titles was not achieved – 18 AIF zones were not complete after 20 months and 1,454 parcel files, otherwise ready for titling, were blocked from registration. (See Section 4.4 below)

In Stage 2, the delivery by the surveyors, Bergepo Consortium, of 31,105 subdivided parcel plans showed that a large volume of field survey work and technical controls could be done in a short time frame with good management and appropriate contracting and partnership arrangements. (See Sections 4.5 and 3.5 below) The work was not complete, however, because DDET still had to assign each parcel a unique code number and create its “page” in the land books. In the pilot projects, DDET did these tasks manually and chronologically as each parcel file was completed. MCA-Benin had expected that DDET would create the code numbers and pages systematically with a computer program, but the project was unable to design and implement the IT system. (See Section 4.8 below)

In Stage 3, the collection of documents of proof reached 65% of the anticipated volume of 20,000 and 80% of the output target of 15,000. This relative success showed that the process of collection could be effective when accompanied by a strong campaign of public education and enthusiastic support by the mayors and their Services of Domain Affairs [C/SAD]. (See Section 4.6 below)

In Stage 4, the failure to move verified files through the final formalities and inscription in the land books appeared to be the result of delays in the earlier stages. It was assumed that, once the CNAO-TF and DDET staffs gained experience, these tasks would move quickly and

routinely. This proved not to be the case, and it was later recognized that the blockages were the result of substantive problems. (See Section 4.8 below)

2.3 CNAO-TF performance post-Compact (2011-2016)

After the Compact ended in October 2011, the CNAO-TF continued to process the landholder applications, completing reviews of documentary proofs and then joining together the dossiers and parcel plans for transmission to DDET. By December 2011, 491 additional titles were signed and registered and, subsequently, the pace of title production increased.

Table 2.3(a): Ph/TF applications collected and treated by CNAO-TF (2011-2016)

Sources: CNAO-TF (February 2016) *Rapport Global*; UCF/MCA, *Trimester Performance Reports*; www.ucf.bj.

| | Landholder application dossiers and surveys in process | | | | Titles (cumulative totals) | |
|-----------|--|-----------------------------|----------------|---------------------|----------------------------|----------------------|
| | Dossiers collected | Initial control by notaries | CNAO-TF review | DDET in preparation | Signed and registered | Taken by landholders |
| Oct. 2011 | 12,560 | | 1,689 | 245 | 105 | 5 |
| Dec. 2011 | | 10,568 | | 491 | 507 | |
| Feb. 2012 | 12,939 | | 10,835 | | | |
| --- | | | | | | |
| Feb. 2016 | | | 3,484 | 1,345 | 6,810 | 4,016 |

*Note: The CNAO-TF also had 1,403 additional dossiers that were incomplete from the expansion project

This Table shows the beginning and the end of the post-Compact stage. The work of the CNAO-TF, over four and a half years, resulted in 6,810 signed and registered titles of which citizens took 4,016 title documents by February 2016. The remaining 4,829 applications in process at CNAO-TF and DDET were then transferred along to the ANDF.

The CNAO-TF has reported the following numbers of titles, completed each year from the 12,900 applications:

Table 2.3(b): Titles completed from CNAO-TF applications

Source: CNAO-TF (2015), *Rapport Final* at pg. 36

| End of year | Titles signed and registered | Titles taken by landholders |
|--------------|------------------------------|-----------------------------|
| 2011 | 507 | -- |
| 2012/2013* | 2,011 | 1,133 |
| 2014 | 2,715 | 1,479 |
| 2015 | 1,578 | 1,404 |
| TOTAL | 6,810 | 4,016 |

*Note: the Annual Reports of the UCF/MCA show 568 signed and registered titles in 2012 and 1,225 titles in 2013

These numbers show a slow start in 2011, reflecting the difficulties in organizing the AIF zones and coordinating the reviews of documents. The momentum accelerated in 2012 and 2013 and reached a high level in 2014, when all the AIF were in operation. It slowed in 2015, as the reviewers reached the dossiers with more problems and the staff began winding down in anticipation of the transfer of authority to the ANDF. These annual CNAO-TF numbers can be compared to the previous pilot and expansion zone numbers and DDET individual applications:

Table 2.3(c): Titles created by Ph/TF from all applications

Sources: Commission Ph/TF (2004) Final Report; Bureau Ingenierie et Management –BIM (2010), Study of DDET; CNAO-TF (2016), Rapport Global.

| Year | 2003/04 | 2005 | 2006 | 2007 | 2008 | 2011 | 2012/13 | 2014 | 2015 |
|------------------------------|---------|------|------|------|------|------|---------|-------|-------|
| Pilot, expansion, individual | 1,438 | -- | -- | 71 | 54 | 434 | 445 | 62* | |
| CNAO-TF | | | | | | 507 | 2,011 | 2,715 | 1,578 |

*Note: First trimester quarterly figure reported by UCF.

Although incomplete, the chart shows the same pattern of increasing capacity seen in the DDET data (Tables 2.1 above). They appear to confirm the observation that as the staff of CNAO-TF gained experience working with DDET, the volume of production increased. Since the ANDF has retained and consolidated both staffs, their capacity should be sustained.

2.4 Zone-by-zone production of titles

One final analysis of the title numbers, which gives insight to the methodology and project performance, involves a categorical breakdown of the titles produced – zone-by-zone and year-by-year:

Table 2.4: CNAO-TF Titles produced in each zone, year by year

| Communes and Zones | Total parcels in Zone | Pilot projects 2004/07 | MCA Quota 2010 ¹³ | CNAO-TF Operations | | | | | % dossiers |
|------------------------------------|--------------------------|---------------------------|------------------------------------|--------------------|-----------------|------|------|-------|------------|
| | | | | Dossier 2011 | Titles produced | | | | |
| | | | | 2011 | 2011/13 | 2014 | 2015 | TOTAL | |
| STATE TITLE ZONES | | | | | | | | | |
| Cotonou Gbeganmey, TF 438) | 12,772 | 1,211 | 10,772 | 3,378 | 1,580 | 580 | 262 | 2,422 | 71% |
| Cotonou (Ayelewadje, AIF 8235) | 1,953 | | | | | | | | |
| Seme-Kpodji (PK 10, TF 661) | 2,666 | 220 | 769 | 361 | 152 | 54 | 52 | 258 | 71% |
| Porto Novo (TF 661 and P) | 1,700 | 1,161 | -- | | | | | | |
| AIF ZONES | | | | | | | | | |
| Porto Novo Agbokou | | -- | 3,621 | 724 | 0 | 32 | 193 | 225 | 31% |
| Porto Novo les Palmiers | | -- | | | | | | | |
| Abomey-Calavi (Godomey) | 1,010 | -- | 3,694 | 1,355 | 90 | 430 | 137 | 657 | 48% |
| Abomey-Calavi (ZOCA) | 1,922 | | | | | | | | |
| Abomey (Goho, tr.1) | 2,154 | 170 | 966 | 625 | 273 | 90 | 17 | 380 | 61% |
| Adjarra (Agata-Yevie) | 1,805 | 162 | 263 | 246 | 5 | 2 | 75 | 82 | 34% |
| Aplahoue (Zohoudji) | 484 | 164 | 347 | 245 | 0 | 83 | 3 | 86 | 35% |
| Bohicon (Honmehou, tr. A) | 1,864 | -- | 1,068 | 449 | 0 | 233 | 38 | 271 | 60% |
| Dassa-Zoume (Zone Carrefour B) | 544 | 165 | 374 | 345 | 54 | 72 | 116 | 242 | 70% |
| Djougou | 660 | 160 | 1,030 | 262 | 0 | 4 | 1 | 5 | 02% |
| Dogbo (Tota) | 1,209 | 159 | 504 | 512 | 182 | 173 | 20 | 375 | 73% |
| Grand-Popo (N. Ville, Hillacondji) | 1,461 | -- | 164 | 173 | 0 | 55 | 20 | 75 | 43% |
| Kandi (Kandi, tr. 1 and 2) | 707 | 202 | 441 | 284 | 34 | 129 | 40 | 203 | 71% |
| Lokossa (Agnivedji) | 1,701 | 182 | 598 | 629 | 52 | 132 | 117 | 301 | 48% |
| Natitingou (Yimporima, tr. C) | 446 | 221 | 655 | 353 | 0 | 25 | 6 | 31 | 09% |
| Nikki (Gah Moro) | 1,165 | 117 | 738 | 661 | 68 | 137 | 69 | 274 | 41% |
| Ouidah (Ganloncodji) | 2,384 | 179 | 610 | 177 | 0 | 85 | 65 | 150 | 84% |
| Parakou (Ladiifarani, Zongo Nord) | 2,277 | 157 | 2,426 | 1,095 | 0 | 323 | 204 | 527 | 48% |

¹³ Provisory Report of the CANO-TF, Evaluation des Sites en Vue de la Selection des Perimetres d'Intervention de la CNAO-TF, prepared for MCC Access to Land Project, May 2010

| | | | | | | | | | |
|----------------------------------|-----|-----|-----|-----|-------|-------|-------|-------|-----|
| Pobe (Ossoumou, Zone Residences) | 628 | -- | 538 | 318 | 3 | 12 | 104 | 119 | 37% |
| Sakete (Odanyogoun, Ondanregoun) | 354 | 179 | 422 | 378 | 25 | 63 | 39 | 127 | 33% |
| TOTAL | | | | | 2,518 | 2,814 | 1,578 | 6,810 | |

These numbers show the situation of each zone that was selected for the MCA-Benin project, with the estimated total number of parcels in the zone and the target quota, assigned to each. Most of the zones had been included in the prior pilot and expansion projects, so they had some titles issued earlier. The number of landholder dossiers actually collected by the CNAO-TF by end of 2011 are given and can be compared to the quotas. The subsequent results of the review of proofs and completion of titles are shown in the years 2011-2015, when the CNAO-TF completed its work.

The most key factor, revealed by the numbers, is how the status of each zone as a State Title or AIF zone impacted the speed by which the CNAO-TF could review landholder application files and produce titles. In the zones that already existed as State Titles (Cotonou and Semi-Kpodji/Parakou) the work of dossier review and titling began quickly in 2011, while in a few of the previously created AIF zones (Abomey, Dogbo, Lokossa, Nikki) dossier review and processing was underway in 2012. But in the zones where the AIF were not already created, there were significant delays and landholders in these zones had to wait until 2013 and 2014 for processing to get underway. (See Section 4.4 below) Significantly, this numerical Table does not suggest any correlation between zone status and the volume of dossiers that received titles by the end date. The question requires qualitative analysis. (See Section 4.8 below)

2.5 Conclusions from the quantitative analysis

Overall, the data has shown that CNAO-TF and DDET increased the momentum of production of titles, using both methods of individual applications and systematic Ph/TF. The highest level of production was achieved in 2014, when all the AIF were finally organized. That year, an average of 234 titles per month were signed and registered. If these dossiers had been flowing into the CNAO-TF gradually (similar to DDET individual applications) this level of output would be measured as a significant improvement. However, the CNAO-TF had collected the 12,900 applications at the start and most landholders waited years before their titles were signed and registered. This was the fundamental failure of the concept and method of Ph/TF.

Considering sustainability, it is necessary to remember that the CNAO-TF was working in the zones with the fewest problems as a result of its selection process. Future activity will have to expand to zones with more problems and encompass parcels with more errors and weaker proofs of rights. It will be a slower process. Benin's goal has been to bring all urban lands – 500,000 parcels – into the system of civil property law. (Decree 2009-639 of 31 December 2009; *Commission Nationale/PhTF* 2004) But at the rate of 2,000 to 3,000 titles per year, this could only be achieved in 150 - 250 years.

More important than the goal of long-term universal coverage, however, Benin has sought to provide secure tenure rights for lands in the zones, which have the best opportunities for development of housing, commercial, trade and industrial projects. Measuring success toward this goal would accept a lower volume of titles, but would seek to know whether landholders and investors will receive efficient service and accurate information, when they initiate projects and transactions. The following qualitative analysis offers mixed findings in response to the question.

Chapter 3: Qualitative analysis of the structure and instruments of Ph/TF

During all the stages of Ph/TF activity, changes were made in the legal and institutional structure and instruments of Ph/TF, while maintaining the fundamental concepts of the land tenure and real property law. The changes were intended to streamline the procedures, achieve cost savings, and insure more accurate recording of rights. As each adjustment was tested in practical application, its results, in turn, guided the revisions of the laws, regulations and policies. Finally, with the adoption of the Code of Land Tenure and the Domain of 2013, a fully re-structured system of legal rules and instruments was defined. Therefore, a careful review of how Ph/TF has functioned and changed over the years is helpful to explain its performance and results, impacts on the concepts and structure of the new system, and likely sustainability.

3.1 Evolution of the Ph/TF legal and institutional structure

Ph/TF activity required the coordinated involvement of multiple administrative units, professional services, and citizens. Each of its three authorizing decrees (2001, 2009 and 2015) defined a somewhat different balance of authorities and the agencies used a variety of instruments to fix their mutual relationships.

3.1.1 Structure of the Commission Ph/TF

The Commission Ph/TF for the pilot project was an inter-agency coordinating body with 16 members, representing ministries, communal administrations and the professions of surveyors and notaries. Decree no. 2001-291 of 8 August 2001 defined its mission and tasks in general language as if the Commission itself would carry out the tasks of citizen education, organization of AIF, field work, inquest and processing of titles. But no provision was made for a staff and the Decree did not clarify any substantive powers of the Commission to accept or reject citizens' proofs of landholding rights. There was no requirement that the Commission Ph/TF draft and publish rules of procedure or technical standards. Thus the Commission relied on its constituent agencies to each carry out the tasks under their own powers and mandates and no interagency agreements or contractual documents appeared necessary.

3.1.2 Re-structuring to create the CNAO-TF

The MCA-Benin audit found that the Commission Ph/TF had performed inefficiently. (MCA-Benin Study no. 7, 2009) As a group that met sporadically and had no substantive authority, it could not routinely manage the operations. Yet certain of its members meddled in the day-to-day decisions, while other members ignored the work and never attended meetings. The membership of surveyors and notaries on the Commission created potential conflicts of interest in procurement. Without written procedures and with limited outreach, citizens did not understand the process, and could not track their applications or question the actions of the agencies. Land Study no. 7, therefore, proposed a new Decree, which would re-structure the Commission and make it a more accountable body.

The proposal departed from past practice in Benin. Decrees of the Council of Ministers typically followed a standard form, granting authority to administrative units and stating their tasks and responsibilities in non-specific terms. The units received broad discretion to decide issues of substance and they were not required to pre-define technical standards or methods of interaction with citizens. Often the same tasks were given to a hierarchy of national, regional and local units and they were told to “coordinate.” Decrees, therefore, seldom allocated responsibilities clearly; they blurred accountability; they left agencies to argue over resources and control; and they avoided stating corresponding rights of citizens.

At the validation workshops for Study no. 7, there was strong opposition to several of the recommendations.¹⁴ Some participants argued that the government should not put into a Decree the list of documentary proofs since this was subject matter touching citizen rights, not agency powers. The surveyors and notaries resisted their removal from the CNAO-TF. Finally, there was heated debate over the fee that landholders would pay for their titles. MCC proposed that no fee be required. The state agencies argued that, if no fee were collected, the government would be unable to sustain the activity and citizens would not regard their titles as something of value.

The workshop participants decided to retain the fee, but reduced it from 100,000 CFA to 25,000 CFA. This was acceptable to MCC. They left it to the discretion of the new CNAO-TF whether to adopt a Manual of Procedure; they kept the surveyor and notary members on the CNAO-TF; and they removed the provision in the draft Decree, listing the acceptable documents of citizen proof. For these reasons, MCC notified the government that the outcome of the validation workshop was unacceptable and that it would not fund titling unless the recommended changes were made.

¹⁴ Proces verbal National validation workshop 24 July 2008

There was additional discussion within the government and Decree 2009-30 of 16 February 2009 was adopted with more of the recommended changes. It provided for:

- The National Commission for the Support of Operations of Urban Landholding Titles, [CNAO-TF] -- nine members, representatives of state-agencies and mayors only;
- The Permanent Secretariat of the CNAO-TF – six professionals to work full time, leading support and technical staff;
- Six regional Departmental Commissions on *Immatriculation* [CDI];
- Optional Local Commissions on Landholding Inquest [CLEF]; and
- Associations of Interested Landholders [AIF] for the zones without existing state titles.¹⁵

The Decree clearly stated the tasks of the CNAO-TF as policy-making, rule-making and oversight, while the Secretariat had the responsibility for day-to-day management. For the regional CDI it stated distinct tasks of public information and supporting citizen participation. Article 25 of the Decree presented the list of documents, which the landholders could submit as proof of their rights of possession.

3.2 The Manual of Procedure and technical standards

The draft Manual of Procedure for the CNAO-TF first appeared as an appendix to Land Study no. 7 and its outline and content were validated at the national workshop of July 2008. Revisions were made after the adoption of the Decree no. 2009-30 and the final text of the Manual was validated at another workshop in October 2009. The Manual had three parts.

First, the Manual of Administrative Procedures contained all material pertinent to the operations of the CNAO-TF and its subordinate Secretariat, CDI, CLI and AIF. Its assumed readers were the members of these units and its articles covered the details of commission organization, responsibilities of members, rules for quorum, votes and record keeping. It also clarified the tasks of each unit, their interaction and required reporting, oversight and tutelage.

Second, the Manual of Technical Procedures was written for the state and municipal officers and for the landholders and citizens, helping them to understand the steps of the process, their own responsibilities, and those of the CNAO-TF and subordinate units. The Manual was chronological, allowing an applicant to track where his/her dossier would be at each stage and thus inquire of the pertinent agency if there were a delay or blockage.

Third, the technical guide was written in the form of a Ministerial Instruction for the surveyors and cartographers, spelling out methods and standards for measurement and mapping.

¹⁵ Reference was made in Article 24 of the Decree to the Associations of Interested Landholders [AIF], however, since these are defined and given authority in another law, it was unnecessary to repeat their authority or tasks.

This document was intended to insure that work in all the zones was done uniformly and to allow IGN to carry out quality control. It was adopted as a Ministerial Order for IGN by its superior Ministry of Housing, Urbanism, Land Reform and Coastal Erosion Control [MUHRFLEC].

The three documents achieved the important purposes of public information and accountability. However, they did not fully eliminate redundant and obsolete elements in the process. Although the experts and agency representatives understood that urban conditions and technical methods had changed over the years, they took the position that, until the law no.65-25 was replaced, no one had the authority to re-interpret or adjust its specific requirements. For example, the law specified publication of the notice of *immatriculation* in the Official Journal for each global title. This was an expensive and slow process and the Official Journal did not reach many citizens, public officers or professionals. Local newspaper advertisement would be faster, cheaper and more likely to be read. But since it was a mandate of the law, no change was made.

Similar redundancy and delays were inherent in the sequence of surveys, which were described as follows:

- Review of the base subdivision plans (retrieved from the municipal planning archive, IGN or private surveyor firms) with “reconstitution” of the existing titles;
- Survey of the new zone perimeter boundaries by a DDET requisitioned survey firm;
- Fixing agreements with all landholders sharing the zone boundary lines [*bornage*] by a survey firm independent of the base perimeter surveyor and notary;
- Survey of the internal parcels for subdivision;
- Fixing agreements [*bornage*] with neighboring landholders for the individual parcels.

If each of these consecutive steps would require its own competitive procurement, the activities would stretch for years. CNAO-TF, DDET and MCA-Benin did not write a changed procedure but, in practice, they authorized a single surveyor group –Bergepo Consortium – to carry out several tasks, using consolidated field operations.

3.3 The CDI and CLEF

Decree 2009-30 authorized the CNAO-TF to create six Departmental Commissions on *Immatriculation* [CDI] in each urban center where there was a court of First Instance, up to 20 Local Commission on Inquest [CLEF] for each commune. This structure was more elaborate than the pilot project, which had three Local Commissions on *Immatriculation* – CLI.

The CDI were to be composed of representatives of the regional offices of the state agencies, headed by the Chief of Domain Services. (Decree 2009-30, Article 18; CNAO-TF Manual of Procedures, Sec. 3.3) Because their agencies held the archives of urban and

subdivision plans and land tenure documents, the CDI were expected to be the primary points of control in collecting, reviewing and verifying landholder documents of proof. (CNO-TF Guide of Interventions October 2010) They were also expected to support and oversee the organization and functioning of the AIF.

The CLEF (*Commissions Locales d'Enquêtes Foncières*) were to be composed of municipal officers and representatives of the AIF. (Decree 2009-03, Article 23; Manual of Procedures, Sec. 3.4) They would assist in providing notice and public education for citizens, participate in the process of selecting the zones, initiate and assist the organization and operations of the AIF, and accompany the field teams collecting the citizen documents of proof.

In practice, the CDI played a formal role and no CLEF were set up. The actual work was done by mayors, C/SAD, AIF officers and specific agency officers, interacting directly with the CNAO-TF staff and with the contracted notaries, surveyors and IGN. The reasons for the inability of CDI and CLEF to participate effectively were the number of their members and their role as committees that did not meet regularly. In total the CDI involved over 60 people, who had to be selected, mobilized, trained, and given direction. They received funds for equipment and office furnishing but not for the time and effort of members or for field visits. Many individuals and units of the regional state agencies and the municipal agencies did perform skillfully and effectively.

3.4 Structure and legal status of the Associations of Interested Landholders [AIF]

The AIF was the legal instrument, designed to control the transformation of each zone, which was already divided and settled but lacked a previously-existing State Title. The AIF make it possible to re-consolidate the parcels into a perimeter but avoid expropriation of the parcels by the state. The AIF also was expected to minimize the need for the Commission Ph/TF or CNAO-TF to deal directly with the hundreds of individual landholders. The Commission Ph/TF devised the mechanism of AIF by adapting the instrument of a voluntary association, defined in the colonial law of 1 July 1901. The Association would act in the capacity of administrator of the real estate assets of its constituent landholders and make the applications for *immatriculation* of the global title and subdivision of the individual titles. (Manual of Procedures, Sec. 4.2.1.5) Creating each AIF required multiple stages of process, described below in Chapter 4.

In 2001/2003, the Commission Ph/TF helped to create four AIF zones, during a period of 24 months. In the expansion project, 2005/2007, the Commission Ph/TF identified 30 more zones in 20 urban centers. Of these zones, 17 organized their AIF and registered as voluntary associations, but only 9 received their global titles after three years. The nine zones appeared to succeed because they involved land with pre-existing State Titles that were revived.

When the CNAO-TF selected its zones in 2010, it chose the 17 zones from the expansion project, as well as nine more without AIF. (See Appendix 1, below) Some of the existing zones moved forward more quickly because their previous AIF committee, past plans and pre-existing State Titles could be revived. By the end of 2011, five of 23 AIF zones had global titles. (MCA-Benin M&E Plan -- 2011) The remaining 18 zones reached their global titles sporadically during 2012 and 2013.

From the standpoint of rule of law, the AIF was an effective instrument. It insured that actions were taken openly and systematically, creating a full record. By adding redundant verifications and subjecting the process of document collection to local review, the AIF helped to insure that errors and irregularities were avoided. In one respect, however, the status of the AIF remained undefined. That is, what would be its role in the future, if some landholders in the zone would fail to obtain their titles? If the AIF was the legal, registered “collective owner” of the land, what demands could it impose on these subordinate parcel-holders, who would still have only weak administrative or contractual tenure? In particular, when there would be a transaction, inheritance or new investment, what right or obligation would the AIF have to intervene or sign-off on the change? This question has never been answered.

3.5 Implementing entity agreements (protocols) and contracts

Written agreements between the participating administrative units were not used by the Commission Ph/TF in the pilot and expansion projects. They were introduced by MCA-Benin, which required an implementing entity agreement [IEA] with any governmental unit that would be receiving funds, assets or technical assistance, and competitively procured contracts with non-governmental goods or service providers. (MCC/MEF/MCA Procurement Agreement 2006) These instruments were expected to serve four purposes: (i) to achieve effective performance; (ii) to protect against misuse of donated assets and funds; (iii) to build the capacity of the governmental and non-governmental entities in using methods of open competition and “management for results;” and (iv) to require the agencies and entities to commit to certain policy requirements (such as gender equality).

3.5.1 Protocols and contracts for the Ph/TF operations

The protocols and contracts were important because the Benin state agencies and project team managed all operations, with MCC providing sporadic due diligence. (See Appendix 2 for the full list, below) In order to insure timely and quality performance, they defined the tasks, “deliverables,” and standards for performance, set targets and deadline dates, and provided procedures for resolution of conflicting interpretations. MCC also preferred to define grant monies as payments for performance, rather than as pre-financing or coverage of time and effort,

payable whatever the results. This approach was in contrast to the typical forms of Beninese administrative practice, which used simpler, framework-style agreements.¹⁶

When procuring professional services, a Beninese contract would often state a commitment and the good faith of the parties to work together to accomplish objectives and broadly-stated tasks. The partners then expected on-going interactions to fill in the details and adjust the performance and timing, as conditions would evolve. When defining inter-agency cooperation, Benin typically used a ministerial order or decree, signed by the participating units and approved by a higher authority with jurisdiction over the signatory units. A budget appropriation, sufficient to cover staff time, effort and projected expenses would be provided by a parallel act. When dealing with an international entity, the Benin government used a Protocol, which set forth mutual responsibilities in the style of a treaty. Its statements of tasks and commitments were less precise, respecting the status and prerogatives of the signatory units and refraining from limiting their discretion or ability to give priority to their other legal mandates.

Reconciling the inconsistencies between these approaches, MCA-Benin devised hybrid forms. For the implementing entity agreements it used the Protocol as the base structure but grafted onto it contract-style clauses from the MCC models. For the contracts, it followed both MCC rules and standards and the Government of Benin Procurement Rules and Procedures.¹⁷ Using the forms, MCA-Benin negotiated and signed Protocols with three state agencies: (i) the Ministry of Economy and Finance for CNAO-TF and DDET; (ii) the National Geographic Survey Institute (IGN), and (iii) the Chamber of Notaries. It also signed Protocols with the Mayors of 20 communes. It used two contracts for survey work and for training and public outreach services. (See Annex 2, below)

In the post-Compact period, the UCF took the place of MCA-Benin and signed the Protocol for funding with CNAO-TF. CNAO-TF also received its budget funding through the regular appropriation process. In turn, CNAO-TF renewed and extended the two Protocols for notary services and survey controls, and the surveyor firm contract. One new Protocol was added when Netherlands Assistance added funding in December 2014. One additional contract was let after competitive bidding for a small job of surveying 53 parcels that were found to have been erroneously registered in the past.

3.5.2 Issues in negotiating and drafting

Delays occurred in procurement because the MCA-Benin staff, the CNAO-TF and partner governmental units were using unfamiliar forms and procedures, and questions of

¹⁶ As a simple comparison, the requisition contract, created by the Commission Ph/TF in 2003 for the zone and parcel surveys had eight pages of text arranged in 17 paragraphs. The MCA-Benin contract for zone surveying had 50 pages and over 100 articles and appendices; and it later had a 21 page amendment for the parcel surveys.

¹⁷ MCC/Benin Compact of 22 February 2006, Section 3.6 at pg. 13.

administrative authority and status had to be resolved. For example, before signing their Protocols, both DGID and IGN had to determine whether, as quasi-state agencies, they could pre-commit the time and effort of their employees and whether this might mean giving priority to project tasks ahead of other applicants and state agency orders. There also arose the question of who, within the ministerial hierarchy, had the power to sign.

When dealing with the Chamber of Notaries and the Guild of Surveyors (*Ordre des Geometres-Experts*), the question arose whether a single agreement with each professional association would be permissible, allowing the associations to divide the work among their members – all charging a uniform fee? This was the typical arrangement for *immatriculation* applications in the past. The Commission Ph/TF used contract forms with surveyor firms, recruited through the Guild for work in the pilot and expansion zones. (Commission Ph/TF 2007) MCA-Benin and CNAO-TF signed a Protocol with the Chamber of Notaries, but used competitive bidding for the work of zone survey and parcel surveys. Also, a Protocol with IGN – a quasi-state institution – provided for the services of quality control for the survey plans, prepared by the contracted surveyors. In the post-Compact period, the CNAO-TF extended both the Chamber of Notaries and IGN Protocols, after obtaining letters of exemption from competition from the National Procurement Control agency.¹⁸ The revised IGN Protocol covered not only the quality control activities, but added tasks of field work for parcels in the zones that were not yet complete.

Related to these administrative issues was the practical problem of whether the agencies had adequate staff to carry out the tasks to which they were committing and whether the grant monies would adequately supplement their capacities. MCC preferred offering in kind assets, technical assistance and training to build up capacity, rather than providing temporary personnel and salary supplements. This reflected the idea that the agencies should develop a level of staff that would be sustainable after the project's end. However, because limited personnel hindered operations, it was necessary for MCA-Benin to fund some extra staff.

3.5.3 Time needed for procurement

The time period between the first drafting of terms of reference or protocol proposals and the agreement and signatures revealed the difficulties of comprehension and negotiation. The MCC Procurement Plan set the goal of six months for each contract. However, the primary contract that was required for the field operations of surveying and *bornage* took 18 months from first draft of its Terms of Reference until final signature. A review of the chronology illuminates the difficulties of procurement:

¹⁸ For the Chamber of Notaries: Letter no. 063/12/PR/MEF/CNAO-TF/PrCOM/SP of 26 March 2012, and Letter no. 0029/13/PR/MEF/CNAO-TF/PrCOM/SP of 6 February 2013. For IGN: Letter no. 073/PR/MEF/CNAO-TF/PrCOM/SP of 30 April 2012. CNAO-TF final Rapport General (April 2016)

Table 3.5 Time Periods to Procure and Contract Surveyor Services*Source: MCA-Benin files (2011)*

| | |
|--|--------------|
| First draft Terms of Reference ATL-002 | 8 Nov 2007 |
| MCC sign off of Terms of Reference | 19 Feb 2008 |
| Publication of Invitation to Bid | 14 Mar 2008 |
| Receipt of contractor proposals | 9 May 2008 |
| Evaluation of proposals | 3-5 Jun 2008 |
| Evaluation report submitted | 17 July 2008 |
| MCC clearance of evaluation report | 19 Aug 2008 |
| Contract signed | 4 May 2009 |

At the start in 2007, MCA-Benin anticipated that it would competitively bid the contracts for: (i) inventory and “restitution” of the existing State Titles; (ii) perimeter survey of the AIF zones; (iii) *bornage* of the AIF zones; and (iv) subdivision survey and *bornage* of the parcels. This approach drew opposition from the Guild, which represented the 39 licensed surveyors (15 firms) in Benin. In the past, surveying for *immatriculation* was not the subject of negotiated contracts between landholder/clients and the survey firms. Instead, the surveyors were assigned to the jobs by administrative requisition from DDET in consultation with the Guild. A ministerial order defined the contract terms and set a standard price, based on the number of “points” to be measured for each parcel. Payments were made by DDET, drawing down on the accounts that the landholders had set up at the start of each application.

The decision to follow competitive bidding was made in early 2008 but, with time passing, MCA and CNAO-TF decided to avoid multiple procurements. They combined into one Request for Proposals, the State Title and AIF zone surveying work. This was published in March and the bids were received and evaluated in June/July 2008. The bids revealed an important limitation – because of the small number of survey firms and their limited regional coverage, all bidders were “consortia” of firms. Whoever won the bid would be a lead contractor and would apportion out the jobs in the same manner as the Guild had initially expected.

The contract award was not made immediately after bid review in July because the workshops for validation of the draft Decree and Manual of Procedures were still underway. The bidders were asked to extend their bids until these documents were adopted. The delay stretched until February 2009. The award was made to the Consortium Bergepo and, after final negotiation, the contract was signed in May 2009. In 2010, MCA-Benin amended the contract without competition, adding the work of perimeter surveys for the nine new AIF zones and subdivision surveys of all parcels in all the zones. This allowed Bergepo to send into the field up to 42 teams of junior technicians supervised by 21 senior technicians and it avoided multiple deployments of teams to the same zones. The process did not achieve true competition but it did

gain a considerable price discount – \$40 per parcel compared to previous requisition price of \$130 per parcel.¹⁹

3.5.4 Performance in protocol and contract compliance

To what extent did the use of specific language, targets and deadlines, and funding linked to the output titles and deliverables impact the performance of the agencies and contractors? A comparison of the results of Ph/TF operations with the targets and deadlines set in the Protocols illustrates the limitations:

Table 3.5: Targets and deadlines for production of titles

| Authorizing act or funding instrument | Target of completed titles as stated in the Protocol | Monthly average | <i>UCF Trimester Report</i> |
|---------------------------------------|--|-----------------|-----------------------------|
| Protocol UCF/CNAO-TF, 7/16/ 2012 | 1,500 from July to Oct 2012 | 350 | <i>2012 Q3</i> |
| Convention SNV/Benin, 12/13 | 3,000 by 9/30/14 | 330 | <i>2013 Q4</i> |
| Protocol UCF/CNAO-TF, 2/2014 | 3,500 to August 2014 | 430 | <i>2014 Q1</i> |
| Protocol UCF/CNAO-TF, 12/2014 | 600/month | 600 | <i>2014 Q2</i> |
| | | | |
| CNAO-TF Action Plan, 5/11/2012 | 1,002 from Nov 12 to Feb 13 | 250 | <i>2012 Q4</i> |

*Note: the monthly average is calculated from the target and the funding agreement timetable

On the Table, the production targets, stated in the Protocols, have been re-calculated as average monthly production rates, allowing comparisons to the actual performance of CNAO-TF and DDET, which reached the highest rate of 243 titles per month in 2014. This actual rate is close to the 250 per month that CNAO-TF set in its own action plan, but it is far below the Protocol targets. Thus, it appears that the negotiators over-estimated capacity and the statements of ambitious targets did not induce the CNAO-TF to work beyond its self-defined pace.

Similarly, under the surveyor contract, the stages of work, timelines and due dates for deliverables were not strictly followed because of the different situations of the 28 zones. To get the job done, the contractor had survey and technical teams doing different tasks simultaneously and the completed work was not delivered in the sequence that had been anticipated. MCC and MCA-Benin were limited in their ability to mobilize experts for due diligence and the CNAO-TF and IGN faced complex logistics to carry out oversight. Ultimately, the contract was applied with practical, flexible adjustments of its key terms on timing (but not price). This result should be interpreted positively as a success of “country ownership” and effective management, not as a failure of the Benin agencies to absorb properly the lessons of modern contract management.

¹⁹ The figure of \$130 was found in the Ministry of Finance estimate of costs to create 5,650 titles for the year 2004, presented in Annex 2 of the General Report on the Closure of the Pilot Project of Transformation Ph/TF (2004).

Bergepo Consortium achieved its high quality performance, in part, as a result of the contractual method but, more importantly, by the mutually honest and businesslike dealings. Significantly, at an early stage, Bergepo submitted its invoice for the first “deliverable” – an organizational report and work plan that was, in essence, an advance to support the mobilization of the field teams. MCA-Benin personnel did not stall or bicker over the amount; they did not withhold a percentage of the payment or solicit small gifts from Bergepo. News of this prompt and business-like financial transaction circulated quickly through the community of surveyors and it secured their enthusiastic cooperation in all further dealings with MCA-Benin.

It must be noted that the MCA-Benin acted inconsistently during the final weeks of the Compact in September 2011, when it was determined that the 18 unfinished AIF zones would require independent *bornage* of their perimeters. In order to rush this procurement before the project close-out, DDET reverted to its former method and issued seven “requisitions” to survey firms at a fixed price. The transfer of funds was made under the DGID Protocol as a reimbursement of CNAO-TF expenses. Justification of the action on the basis of urgency had a false connotation, because the need had been recognized much earlier and failure to start procurement in anticipation of the need was poor management.²⁰

In the post-Compact stage, CNAO-TF did follow competitive bidding for a small contract to re-survey and correct 53 parcels that were discovered to have erroneous titles, issued in the past. But it also expanded the existing Bergepo contract to deal with a group of 1,836 parcels in the zone of Cotonou State Title 438 zone that required reconciliation of the zone boundary coordinates with two past, inconsistent base zone surveys. In this case, however, Bergepo itself had done the individual parcel surveys for these zones, so it had the best ability to do the correction work. (Rapport General April 2016)

Chapter 4: Qualitative analysis of the methodology of Ph/TF

When reviewing the multiple elements of the Ph/TF method of global titling followed by parcel subdivision, it is important to remember that they were intended to substitute for the legal requirements of *immatriculation*. That is, they must clear away all past errors, deficiencies and residual claims and allow the transition of the zone into civil law, and then allow each landholder to establish his/her right of possession without ambiguity or contest. At the completion of the pilot project, the Commission Ph/TF was satisfied that it had created a method of mass titling, sufficient to fulfill the law, and that it could be expanded to more zones and parcels to achieve the efficiencies of scale. MCC and MCA-Benin assumed that the organizational and technical

²⁰ Another part of the explanation for the failure to plan the procurement was that, until August 2011, the survey firms were engaged in the rural titling operations, another component of the MCA-Benin Compact. Completion of the rural work gave a one month window of opportunity in September to engage these firms on the urban side.

aspects of the method: surveying, data handling, management and procurement, could be further adjusted and improved in order to streamline the process and reduce costs.

4.1 Organization and start-up of the CNAO-TF

According to the initial timetable, MCA-Benin expected that the CNAO-TF and its subordinate units would be organized in six months and field operations would be underway in 10 months, improving on the 12-month timeline of the pilot project. The goal was not achieved and it took 14 months. (See Appendix 3, below)

The appointment of the CNAO-TF members was accomplished on schedule. The hiring of the CNAO-TF Secretariat staff required authorizations under civil service rules, drafting and publication of the job offers, receipt of resumes and interviews – all of which took five months. Simultaneously, the CNAO-TF held its organizational meetings, prepared draft work plans and budgets, and began discussions with prefects, mayors and local officers.

Set up of the six regional CDI took place with only nine days of formal activities – including the signing of orders by the prefects, naming the committee members, initial meetings, and training sessions. This activity occurred in September 2009, one month after the installation of the Secretariat staff. The speedy process was achieved because the preparatory discussions had resolved political issues and had allowed the paperwork to be done in advance.

Delays were encountered in finding office space for the CNAO-TF staff and in procuring equipment and furnishings. Although the Permanent Secretariat staff was on the job in September 2009, they were located in inadequate space and without full equipment. This situation did not delay the survey work in the State Title zones but it did hinder the selection and preparation of the AIF zones. Decisions about the deployment of survey field teams were slow and there were many instances where commune and state administrators were unable to find and furnish plans and other documents. This problem of missing and disorganized documents in communal archives persisted through all stages of Ph/TF.

4.2 Inventory of existing zones and reconstitution of State Titles

Under its contract and following the Technical Manuals, the Consortium Bergepo sent researchers into the archive of the land registry at DDET to inventory the urban State Titles, recorded in the land books. It was known that many of these titles dated back to the colonial era and their substantiating plans and files had been neglected or badly used over the years. Documents were missing or illegible and information no longer corresponded to conditions on the ground. Given the less accurate methods of measurement and boundary description in the past, the title surveys did not accurately tie into the national grid.

The CNAO-TF and DDET received the inventory report in June 2009. (Bergepo 2009) It listed 513 state titles divided into three categories: (i) parcels on which there were public facilities or infrastructure; (ii) tracts or parcels classified as rural (27 titles); and (iii) tracts [zones] already subdivided into urban lots or with planning approval for subdivision (80 titles). It was from the third category that eligible zones could be drawn, and the Bergepo teams concentrated on these in the subsequent tasks for zone selection. (See Annex 4, below)

The pertinent State Titles were varied in size and in their past planning, settlement and development. They were concentrated in the older urban centers. Thus it was recognized that, in order to find suitable zones in communes that had urbanized more recently, a number of AIF would be needed. Bergepo researched the status of 34 urban zones without State Titles, including those that had AIF from the expansion project. In February 2010, DDET, IGN and the CNAO-TF received the corrected survey plans and files of 77 State Titles and 13 already-created AIF zones. (Bergepo 2010)

4.3 Selection of communes and zones

The activity of selecting the communes and zones for the project was complex and time-consuming because MCA-Benin and the CNAO-TF tried to accommodate multiple purposes and apply multiple criteria in making the choices.

4.3.1 The process and criteria for selection

In selecting the pilot zones in 2001, the Commission Ph/TF considered only technical and programmatic requirements. This was sufficient because the project was experimental and its goal was to devise a workable method in zones of limited size. In 2004, the goal was to determine whether the method could expand to zones in communes of smaller size and varied urban character. There had not yet been a systematic inventory of State Titles and subdivided zones, therefore, the Commission Ph/TF worked with the commune authorities to identify zones with existing plans and documents, minimal problems of irregularity, and a high probability of citizen interest.

MCA-Benin initiated the commune selection process by joining with the Commission Ph/TF to hold a series of workshops in December 2006 and January 2007. They brought together a group of experts, who proposed draft criteria in two lists. First they provided 11 obligatory criteria, based on the language of the Compact and the project implementation plans. These criteria required that: the participating communes would sign implementing entity agreements; the zones would be susceptible to a statistical evaluation model with “treatment” and “control” zones; the zones would be ready with existing documentation and they would

characteristics, indicating development potential. The second list contained 11 discretionary criteria, including a priority for zones with higher levels of tenure insecurity (evidenced by conflicts) and for zones with evidence of dynamic activity, including recent land transactions.

At the national workshop, the participants accepted the two lists and they debated the addition of one more obligatory criterion – that each chosen zone would have a “closed” subdivision plan. They wanted to avoid the problem, found in many communes, where disputes had arisen between the commune administrations and survey contractors over fees or survey quality. In these cases, the surveyors had refused to sign and seal the plans, leaving the zones without approved status and the mayors without power to issue the certificates of *recasement* to the landholders.

With this last criterion, the workshop participants voted their approval. MCA-Benin published the criteria and noted the sources in census data, agency archives, or research where data to fulfill each criterion could be found. (MCA-Benin 2007B)

MCA-Benin and the Commission Ph/TF collected data and evaluated the candidate communes, working with the mayors and Commune Domain Services (C/SAD). Of the 77 communes in total in Benin, only those with urban centers were eligible. The Compact had fixed the number at 20 communes, including the three large cities – Cotonou, Parakou and Porto Novo – leaving 17 to be chosen. A workshop was convened in May 2007 at which the participants applied the criteria to select 14 communes, which had been part of the expansion group in 2004/2005, plus three communes, not included earlier. These last three – Abomey-Calavi, Seme-Podji and Grand Popo – were communes with significant recent population growth, lively land markets and a high level of economic activity.

The activities of zone selection did not get underway until the CNAO-TF and its Permanent Secretariat were operating in September 2009. The staff began by obtaining from Bergepo the inventory list of 78 eligible State Titles and 34 subdivided zones (some with and some without AIF).

An important preliminary question was how the target number of 30,000 parcels could be allocated fairly and feasibly among the communes and zones. The zones in the inventory ranged from small tracts with a few dozen parcels to the largest State Title no. 483 in Cotonou with over 10,000 parcels. The Permanent Secretariat proposed five alternative methods to set quotas: (i) equal number of parcels in all 20 communes (unfeasible because several urban centers were too small); (ii) weighting by total commune population, (iii) weighting by urban population in the commune, or (iv) weighting by number of hectares of existing State Titles in the commune. The workshop participants chose the method of weighting by urban population per commune; this appeared to best correlate with the sizes of the zones and to be most fair.

When the CNAO-TF calculated the quotas, this determined almost automatically the suitable zones in many of the communes. For example, Cotonou received a quota of over 11,000 units so the large State Title no. 483 was an obvious choice. The zone choices in the first 15 zones were announced in October 2009. (See Annex 1, below) Further work was needed in five communes, in particular in Abomey-Calavi. This fast-growing city had the second highest quota – 3,964 parcels – but had no existing State Titles and no previous AIF. Almost all its neighborhoods were irregular and there had been fraud and corrupt practices in their past subdivisions and settlement. (Balogoun 2009, Djankaki 2007) The smallest urban center – Grand Popo – had a quota of only 146 units, so a new small AIF zone had to be defined by separation from a larger zone. Along with Pobe, Sakete and Dassa-Zoume, the zones in Abomey-Calavi and Grand Popo were announced in February 2010.

4.3.2 Evaluation of the zone selection process

Was the process of zone selection effective and fair? Did it achieve the goals of MCA-Benin and provide a basis for sustainable activity in the future?

From the standpoint of efficiency and timeliness, the process was more complex than anticipated. Selection of the communes required six months (from December 2006 to May 2007) but this took place at the stage when the audit study of the Commission Ph/TF was underway, so no delay resulted. The zone choice also required six months (from September 2009 to February 2010) but it occurred at a more critical period and delayed the start-up of survey and landholder census operations. (See Appendix 3, below)

From the standpoint of transparency, participation and legitimacy, the process was successful. There was no public criticism of the zone choices and the only expression of mild dissatisfaction was from the Mayor of Ouidah. He said that in his city more citizens were eager to have titles than the quota would allow; thus they would gladly take any unused quota from other places.

The priority of choosing zones, based on the availability of existing plans and legal documentation, was a strong factor in achieving efficiency. The Bergepo inventory allowed for publication of the list of alternatives and explained the favorable elements in the zones. (CNAO-TF 2009) The judgments of the mayors about the willingness of their citizens to participate were also important and the mayors screened the eligible zones with an understanding of their histories of settlement and past irregularities. Zones with problems were avoided.

The CNAO-TF did not make specific findings to define zones with higher investment potential. This would have required more elaborate modeling and research. However, use of

this criteria helped in the configuration of some AIF zones, when they were carved out of larger, settled neighborhoods. In Abomey-Calavi, the perimeter lines were drawn around blocks that were closer to major streets and markets and, in Grand Popo, a group of beachfront parcels with high investment potential were included in the new zone.

Unfortunately, the goal of having clearly matched “treatment” and “control” zones was not achieved. Initially, it was assumed that there would be a good opportunity to match zones in the areas where the selected zone was carved out of a larger subdivision. The blocks not chosen, outside the AIF perimeter but in the same subdivision, would be the “control” zones. But later, in implementation, the CNAO-TF did not adhere to the zone boundaries and accepted citizen applications from the non-selected blocks.

Considering sustainability, it will be difficult to follow the experience of the Commission Ph/TF and the CNAO-TF in the future. Their criteria identified the best zones with well-organized plans and settlement and motivated landholders. Future Ph/TF titling will reach zones that are badly planned, economically weak, and dealing with irregularities and illegalities of the past.

4.4 Organizing and start-up of the AIF

The selected zones fell into the following categories: (i) four State Title zones; (ii) four zones which already had AIF global titles; (iii) 11 zones that had previous AIF but unfinished global titles; and (iv) seven zones that had no AIF and would start global titling from the beginning. (See Annex 1)

The steps, necessary to create and register the 18 new AIF as legal entities were the following:

- Consultation with the commune administration to determine the precise location of the zone (if part of a larger neighborhood) and assess the interest of the landholders;
- A campaign of public education to insure the landholders’ understanding of the procedures;
- Creating a list of the “presumed proprietors” in the zone and giving to each landholder notice of the time and place for the AIF General Assembly;
- Holding the General Assembly and taking the votes to create the association and elect its officers;
- Receiving the signature of each landholder, authorizing the AIF officers to act on his/her behalf, and placing the individual land rights into a form of temporary co-proprietorship;
- Drafting and voting on the Association Statute and submitting it for approval by Order [Arrêté] of the Mayor;

- Completing documents and formalities with notary certification and publishing the notice of creation of the Association in the Official Journal;
- Registration of the AIF as a legal entity, authorized by the state;
- Preparation and signature by the AIF officers of the application to DDET for *immatriculation* of the global title.

For the four AIF pilot zones, it had taken about six months to complete these tasks. For the CNAO-TF it took seven months (December 2009 to July 2010) to set up and register the seven new and 11 revived AIF.

The perimeter surveys of the four pilot AIF zones each took three or four days of field work during a period of one month in April 2003. For the CNAO-TF the same work for 22 zones stretched over seven months because the measurements of the perimeters was combined with other tasks while the surveyor teams were in the field.

In the four pilot zones, the subsequent actions to formalize and register the global titles were done simultaneously with the preparation of the parcel subdivision plans during a period of five months to October 2003. For CNAO-TF, 18 AIF zone global titles were still incomplete 15 months after their legal registration, when the MCA-Benin project ended. These AIF zones eventually received their global titles, one-by-one, during 2012 and 2013.

4.5 Surveys and *bornage*

The Manual of Procedures of the CNAO-TF described the tasks of surveying and recording the agreements of neighboring landholders on boundary lines [*bornage*] as a sequence of actions, allowing a cross-check of measurements to insure accuracy. However, with GPS technology, greater precision was available and re-check of previous points was easily done. In addition, the selected zones all had been surveyed in the past for various purposes. Thus, the tasks were combined and Bergepo Consortium was able to adjust the work plans and schedules of its field teams to the situation of each zone.

In the new AIF zones, they had to start with the base perimeter surveys and *bornage*, then proceed to the individual parcel measurements and *bornage*. In the existing AIF zones they could re-check the perimeter measurements and calibrate to the National Grid, check individual parcel measurements against earlier subdivision plans, and only go to the field for individual *bornage* conferences – neighbors agreeing on the boundary line -- for parcels with particular problems.

The zone and parcel plans, when signed and sealed by the licensed surveyors, were sent to the National Geographic Institute [IGN], which performed quality control by re-checking a

small sample of measurements for each area. They could order re-survey and corrections if errors were found that exceeded a minimal level. This was a significant adjustment of the procedure from past practice. In the pilot and expansion projects, the surveyors submitted their topographic and parcel plans to the *Ordre des Geometres* before their transmission to the Commission Ph/TF. This provided a form of peer review with interpretation of quality by conformance with practice. By contrast, the CNAO-TF and MCA-Benin received the plans from Bergepo (as the “clients”) and, in turn, transmitted them to IGN, which conducted quality control by checking each plan against a specific list of technical standards, pre-defined in the MCA-Benin/IGN Protocol and the Ministerial Technical Instruction on surveying.²¹

The surveying operations ran efficiently and the CNAO-TF received the plans and *bornage* agreements for the seven new AIF zones, the verified and corrected plans of the other 12 AIF, and four reconstituted State Title zones, plus 31,105 individual parcel survey plans within a time period of 16 months.

MCC and its international consultants had expected cost savings and efficiencies to result from the introduction of the GPS technology. In fact, the field teams made only limited use of the new machinery. In most zones, the GPS was used only by the senior technicians to make precise the few “points” necessary to fix the zone perimeter plan within the national grid. The junior technicians, who measured and checked the parcel subdivision points and lines, were equipped with old machinery and measuring tapes. In general, each junior team measured about 25 parcels per day.

The only major issue, which required mediation by DDET, the CNAO-TF, IGN and MCA-Benin, was whether the surveyor teams could certify the *bornage* agreements of neighbors during their routine field work, or whether this was a job that only notaries could do. From an efficiency and cost standpoint, requiring the notaries to be routinely in the field would have caused delays, required schedule reorganizations, and significantly increased costs. Since the zones were already developed and most parcels were divided by fences, walls or other clear physical elements, notary verification for all parcels was unnecessary. The notary could be called to the scene only when the surveyors would discover a dispute or other irregularity. This happened rarely and there were no reported instances of unresolved boundary disputes.

In the post- Compact period, the CNAO-TF continued to engage the surveyors to make corrections when a parcel plan was joined with a landholding dossier, revealing errors or inconsistencies with the documents of proof.

²¹ Ministry of Urbanism, Land Tenure Reform and Coastal Erosion Protection (MUHRFLEC), (12 October 2009) *Arrete des Normes et Specifications Techniques applicables aux travaux topographiques et cartographiques en Republique du Benin*.

4.6 Collection of landholder documents of proof

The Final Report of the pilot project did not give a clear explanation of the process of collecting and reviewing the documents, submitted by the citizens. It simply made reference to a preliminary public education campaign followed by (i) parcel inquest, (ii) public posting of the parcel subdivision plans in each zone, and (iii) establishment of the agreements among neighbors to the boundary line plans. These actions were accomplished during a one month period in each zone. (Commission Ph/TF 2004) As so described, it appeared that the documents for all the parcels in each zone were reviewed collectively at meetings of the AIF and the CLI (the local state agencies, municipal officers, notary and surveyor). The decisions and certifications of proofs were made in response to citizens raising objections and reaching agreements among themselves, and the agreements were then embodied in the collective legal acts of the AIF. This was an appropriate and efficient method for a project that was limited to seven modest-sized zones.

By contrast, when the CNAO-TF sought to expand Ph/TF nationwide and make the process one of routine administration, the volume of zones and parcels and the complexity of dealing with their diverse characteristics led to a different dynamic.

4.6.1 The acceptable documents of proof

During the pilot project, neither the authorizing decree nor any rules of procedure described which documents a landholder could submit as proof of his/her eligibility for a title, and it was not clear from the record how substantive determinations were made. When drafting Decree 2009-30 and the Manual of Procedure, MCA-Benin proposed and MCC insisted that the acceptable documents of proof be stated. Article 25 of Decree 2009-30 contained the list:

- *Permis d'habiter* [state-issued use and occupancy permit];
- *Convention de vente* [purchase/sale contract, legalized by a notary and affirmed by the mayor or another communal officer];
- Certificate or *attestation de recasement* [issued in conformity with a state or commune sponsored plan of spatial arrangement and subdivision];
- Final order of a court or tribunal;
- Any other document tending to offer proof.

Except for the final category, all of the forms mentioned required the signature of a state, communal or judicial officer, attesting that the named landholder had acquired the land parcel in a customary, contractual, administrative or urban planning action. A landholder without any such document could assert a lineage customary claim and supplement it with documents – such as paid electric utility or tax bills – that were indicators of his/her occupancy and use.

In November 2010, the CNAO-TF issued a Guide to the Process of Mass Delivery of Titles, which gave more detailed instructions about the procedure for collection of proofs. It called for original copies of each of the four specific items – *permis d’habiter*, purchase/sale contract, *attestation de recasement*, and court order – and it required each landholder to submit a photocopy of his/her identity card or birth certificate.

4.6.2 Collecting the documents of proof

Once the CNAO-TF had issued the list of State Title and AIF zones in February 2010, the Permanent Secretariat began to organize the campaign for collecting the documents of proof. This preparatory work took six months and involved five actions. First, CNAO-TF signed the Protocol with the Chamber of Notaries, which defined how the notaries would receive, review and verify the citizen proofs. Second, they set up the six CDI and conducted training for their members, the C/SAD staffs and AIF. Third, they organized the activities of public notice and public education, including the general assembly meetings of the AIF, events to alert the citizens and encourage participation, and radio, television and internet announcements.

Finally, members of the CNAO-TF, the Permanent Secretariat and MCA-Benin held meetings with the mayors and chiefs of the C/SAD to work out the strategy and logistics. For example, would the mayor convene a mass meeting in the evening? Or would a team go house-to-house during day-time hours or on a week-end? Would letter notices be sent or newspaper ads placed to reach absent landholders? Each zone had a specific plan, based on the character of the zone and the types of persons who lived and worked there.

The first campaign of collection began in all the zones on 15 August 2010 and ended three weeks later on 3 September 2010. (See Annex 5, below) The results were disappointing: only 4,701 landholders turned in documents. CNAO-TF and MCA-Benin analyzed the shortcomings and identified five problems: (i) insufficient publicity and notice, (ii) insufficient time in the field to assist citizens, (iii) insufficient engagement of the municipal administrations in mobilizing the citizens and helping them to assemble and correct their documents, (iv) confusion among the citizens about the location of their parcels within or outside the zones, and (v) lack of clarity about which documents of proof citizens could submit.²² In response, the CNAO-TF took remedial actions:

- It expanded the Communications Plan to buy more media and use new tools, such as “pop up” advertisements on cell phones.

²² These findings were presented by the CNAO-TF in a Technical Report of October 2010, “Collection of Acts of Presumption of Proprietorship Rights in the Framework of Creation of 30,000 Individual Land Titles.”

- It prepared detailed maps of all the zones, showing the subdivision and archival code numbers for the land parcels. The maps were posted in prominent locations in the neighborhoods and public meetings were held with specialists on hand to help citizens.
- It called together the CDI, AIF managers, surveyors and notaries to discuss ways to improve and harmonize their procedures. In particular, they tried to coordinate the deployment of surveyors with members of the CDI and AIF who knew the neighborhoods.
- Finally, both the CNAO-TF and MCA-Benin made strong appeals to the mayors and the C/SAD to assist the citizens to update and correct their documents.

On 5 December, a second campaign of collection began with the increased publicity. The CNAO-TF reviewed the results on 5 January 2011 and found that only 886 more dossiers had been received, bringing the total to 5,587. (See Annex 5, below) They increased publicity and by 20 January another 1,703 citizens came forward, bringing the total to 7,209 dossiers. The CNAO-TF then paused again to review the results.

The most noticeable trend was a low level of participation in the large cities compared to more robust participation in the smaller urban centers. The reasons for low outcomes appeared to substantive, rather than the problem of citizens being uninformed or confused. The CNAO-TF and MCA-Benin held a workshop on 18 February with the mayors and C/SAD, which focused on the following problems:

- Many landholders had *conventions de vente*, created prior to re-subdivision (*lotissement*) planning. These *conventions* were supposed to be replaced by *certificats de recasement* but, in many cases, citizens had neglected to collect the new documents. In other cases the mayors never issued the *certificats* because the subdivision plans were not completed or officially adopted due to technical errors or disputes with the surveyors.
- Some landholders had *conventions de vente* that were not witnessed by a communal officer or registered. Often these were documents from the “revolutionary” period of the 1960’s. The notaries could not verify such contracts because no corresponding copies or notations existed in the archives.
- For parcels in collective family possession, the head of the family often lacked proof of his/her representative status.
- Many heirs failed to update the *permis d’habiter* or *certificats de recasement*, or register the judicial orders of succession. Many landholders who inherited under customary lineage had no documents.
- When a land parcel was pledged for a mortgage, the bank would be holding the original of the *permis d’habiter*.
- Many citizens had not yet received identity cards and, therefore, were unable to supply the proof that they were the person named on the landholding document.

The remedy for most of these problems rested within communal authority. The C/SAD could receive and verify the changes and updates to the *permis d'habiter*, *conventions* or *certificats de recasement* upon the presentation of proof of inheritance, marriage, or acts of sale or transfer. The mayor had power to witness and swear to the identity of citizens and he/she could sign a substitute *attestation* for a citizen whose documents were missing. Mayors could finalize unfinished subdivision plans and then distribute the *certificats de recasement* to the pertinent landholders.

Thus, the “blockage” of citizen participation did not lie in the limitations of law but in a failure to agree on the methods of intervention by the commune administrations. Some of the smaller urban centers had strong results because their mayors and C/SAD were working closely with citizens to fix the various problems. In larger communes, the mayors and C/SAD were too busy or unwilling to accommodate their citizens because they did know them personally. The CNAO-TF and MCA-Benin received anecdotal reports of some problems:

- In Cotonou, citizens who had gone to the C/SAD for corrected documents were told to pay back taxes before the municipal administration would issue updated *permis* or *certificats*.
- Similarly, the C/SAD in some communes were demanding high fees, appropriate for land transactions rather than for corrected or replacement documents. For example, in Cotonou, a corrected *attestation de recasement* was 80,000 CFA (\$160).

The Mayors and C/SAD officers decided by consensus that they would waive the fees for replacement and corrected documents.²³ They also agreed to issue two new standard documents, for which CNAO-TF provided the forms:

- *Certificat de mutation* – verifying that the present landholder was the successor in interest to an earlier party named in the contract or municipal administrative act;
- *Attestation de recasement* – verifying that the landholder occupied and controlled a subdivided parcel openly and peaceably. This document served for landholders, whose rights arose in custom, who had lost original documents or who were in zones where the *certificats de recasement* had not been issued.

After making these arrangements, the CNAO-TF re-opened the campaign of collection at the end of February 2011 and kept active through August 2011 with supporting public notices and advertisements. In some communes, local non-governmental groups created teams to go house-to-house to assist citizens. By 15 September 2011, the CDI had received 12,560 citizen dossiers and on the final date of 6 October 2011, CNAO-TF reported a total of 13,823 dossiers

²³ The issue of back taxes was not resolved.

received. This final number was adjusted after initial review deleted duplicate files and parcels that already had titles. The breakdown by commune of the dossiers submitted showed uneven results among the zones:

Table 4.6: Dossiers received from landholders compared to the quotas

Source: CNAO-TF, Final Report (December 2011)

| Commune | Quota | Submitted | Percent |
|---------------|--------|-----------|---------|
| Cotonou | 10 772 | 3 574 | 33% |
| Abomey-Calavi | 3 694 | 1 293 | 45% |
| Porto Novo | 3 621 | 730 | 20% |
| Parakou | 2 426 | 1 012 | 41% |
| Bohicon | 1 068 | 450 | 42% |
| Djougou | 1 030 | 248 | 24% |

| | | | |
|-------------|-----|-----|------|
| Abomey | 966 | 590 | 61% |
| Seme-Podji | 769 | 333 | 43% |
| Nikki | 734 | 670 | 91% |
| Natitingou | 655 | 353 | 54% |
| Ouidah | 610 | 209 | 34% |
| Lokossa | 598 | 624 | 104% |
| Pobe | 538 | 180 | 33% |
| Dogbo | 504 | 509 | 105% |
| Kandi | 441 | 248 | 56% |
| Sakete | 422 | 357 | 84% |
| Dassa Zoume | 374 | 337 | 90% |
| Aplahoue | 347 | 245 | 70% |
| Adjarra | 263 | 246 | 93% |
| Grand Popo | 164 | 168 | 105% |

The explanation for the different levels of landholder participation involved a combination of practical and substantive factors. In the zones of Cotonou, Parakou and Porto Novo, which had been in the pilot and expansion projects, some citizens already had their titles. In these and other larger zones, the logistics of providing information to everyone was more complex and more land parcels were held by absentee landholders and occupied by leaseholders. Further, given the history of irregular settlements in the larger cities, many citizens anticipated problems in trying to prove possession and did not come forward.

4.7 Review and verification of the landholder documents

The Guide for the Treatment of Dossiers of Applicants for Titles, issued in July 2010, stated that, upon receipt of documents of proof, the CDI would make preliminary determinations on their sufficiency and prepare two lists: (i) landholders, whose claims appeared to be in conformity with records and easily verifiable, and (ii) files with irregularities, likely to require more work. The lists would be transmitted to the notaries along with the dossiers, allowing them to quickly process the first group. This procedure was not followed and, in practice, the dossiers

were transmitted immediately to the CNAO-TF Permanent Secretariat, which noted them all in one index of applications and sent them directly to the pertinent notaries.

4.7.1 Process of review

The Protocol agreement with the notaries specified that they would review each dossier and deliver them back within a period of 30 to 80 days. The deadline was not met. The CNAO-TF sent the first group of 4,107 dossiers to the notaries on 5 November 2010 but received back no verified dossiers during 90 days. Upon inquiry, the CNAO-TF found that the notaries were blocked because certain municipal C/SAD were insisting that the notaries pay fees to access the archives. This issue was resolved at the workshop of the mayors on 18 February 2011 and no fees were charged. The notaries then moved forward and delivered the first 1,000 dossiers on 15 May 2011. By 6 October 2011, 10,568 dossiers were returned to the CNAO-TF with initial verifications of eligibility out of the 13,823 dossiers submitted in total. (See Annex 6, below)

4.7.2 Substantive content of the review

The substantive determinations on the documents of proof varied somewhat from commune to commune, depending on the complexities of the zones and the capabilities of the regional state and municipal agencies, and the notaries assigned.

First, the identity of the person claiming possession had to be verified. This required a check of the landholders' identity card as well as inheritance or transaction documents, when the name of the current landholder was not identical to that on the act of land acquisition. Second, the form and content of each document was reviewed to determine its authenticity. The notary could take into account the age and quality of the paper, the writing, the paragraph structure and language content of the form. Third, the consistency and sequence of the documents were checked to see whether they formed an unbroken "chain." Fourth, the notary and/or state and municipal officers would cross-check the landholders' documents with corresponding copies in the archives or corroborating notations in the indexes or registries. If necessary documents were missing or if there were apparent errors, then the applicant would be instructed to obtain corrected or supplementary proofs from the mayor, the C/SAD or the courts. Finally, the notaries could use oral witness methods, such as bringing together neighbors or community leaders to give testimony to facts corroborating a landholders' claim.

This process of specific investigation of each dossier continued through the post-Compact period 2012 – 2015. With few exceptions, every dossier had errors and deficiencies or documents that originated in the context of irregularities. The authorizing decree did not give the CNAO-TF, the CDI or AIF, or the notary any powers to make corrections or draw an inference of legitimacy. Even the most obvious errors of misspelled names or erroneously transcribed

numbers required a return to the originating agency for a corrected or re-issued document. Therefore, at each step in the review, dossiers moved back and forth and the citizen/applicants had to press the responsible officers for remedial actions.

This process of substantive review differed from the original concept of Ph/TF as mass titling. In 2002/2003 it was expected that the parcels in each zone would be reviewed together or in groups with the AIF and CLI playing the major role of interpreting deficiencies and making corrections, based on their knowledge of the zones and the landholders. The work of the AIF was, therefore, structured with a series of formal actions, which would ultimately substantiate the landholders' new civil law property rights:

Table 4.7: AIF records

| | |
|---|---|
| AIF Statute | Legal formative document, which provided evidence that the procedure of organizing the Association had been fulfilled with proper notice and citizen participation. It defined the legal relationship – that the individual landholders were ceding to the AIF the authority to act on their behalf in taking the actions to transform their rights to civil law. |
| Mayoral Order | The official certification that the AIF had been properly created in accordance with law. It assigned to the AIF certain authority and responsibilities derived from Communal power to control the domain and oversee the surveying and dossier verifications. |
| <i>Proces verbal</i> of the AIF | This document was the record of meeting minutes for the organization of the AIF. It contained assertions of the necessary findings of fact – that all landholders asserted their rights to possess the land under customary or administrative law. It also contained the AIF approval of the subdivision plan and surveyor plans, and the assertion by the landholders that the operations of subdivision had not placed new burdens or limiting claims on their property rights. |
| Return of rights – <i>reprise des apports</i> | This document consisted of a certification and chart on which was listed all of the constituent landholdings in the zone, with notation of each parcel's status at the time of transfer of control into the collective global title. As each parcel received its final completion and assignment of a registry code number and page, and then its title, these data would be filled in. The notary and the AIF officers verified these notations. |
| <i>Cahier des charges</i> | An appendix to the <i>proces verbal</i> , this document recounted the votes of the AIF General Assembly and contained the series of obligations and requirements of use and development of the land parcels, including requirements of fencing the property and construction limitations. |
| <i>Expose de la reprise des apports</i> | This document, signed by the notary, attested that all stages of the actions of the AIF had been done according to law. It listed the dates of completion of all required actions, and a conclusion by the notary that the listed land parcels had all been properly transformed into civil law, free of contested claims and un-registered limitations or burdens. |

This series was intended to carry the process through a full cycle. At the start, the AIF Statute and *proces verbal* recorded the voluntary consolidation of all the individual landholder rights. In the middle the AIF tracked the review of landholder claims and verification of rights. At the end, the *reprise des apports* certified the withdrawal of each parcel from the global title and the fulfillment of all required actions, ultimately allowing the AIF to dissolve.

Under the CNAO-TF, the cycle did not run in sequence and the AIF and CDI did not function as the decision-makers. Dossiers were not reviewed in groups with the AIF providing interpretations and corrections. Instead, each dossier moved individually and it rested on the initiative of the notary, the applicant, the CNAO-TF staff to engage the particular agencies –

mayor, C/SAD, prefecture, etc. – to provide the required corrections, substitute proofs or certifications. The AIF was simply the keeper of a formal record.

The CNAO-TF controlled the thousands of dossiers, each moving independently, with agencies or officers making corrections to the documentary record, but with no agency – AIF, CDI or CNAO-TF -- able to make a final determination that all proofs were satisfactory and the landholder was eligible for the title. Therefore, in July 2012, CNAO-TF made a practical adjustment: when each completed dossier was received from the notary and joined together with its parcel plan, the CNAO-TF would call on all the parties, who had been involved in the review, to sign a form on which each one attested that he/she had no objection to the substance of the documentation or to the citizen's claim of rights. The signatory parties included the notary, surveyor, landholder, AIF officer, C/SAD director, and the ward officer (*chef du quartier*) in the large cities. (Rapport Global 2016)

This sign off form was a substitute for the meetings held by the AIF and CLI in 2003 for the pilot zones. Once received, the notary would make a change on the AIF form of *reprise des apports*, noting that the particular parcel could be released from the global title. The procedural change had three practical consequences.

First, the CNAO-TF staff had to hold groups of dossiers and organize field missions out to the zones to collect the signatures on the forms. This required delay, complexity of scheduling and costs for logistics, time and effort.

Second, because the CNAO-TF was now holding dossiers for long periods of time, the staff began to receive requests from third parties, who were engaged in transactions involving the parcels. (Rapport Global 2016) For example, if a landholder had the opportunity to get a mortgage, the bank representative would come to the CNAO-TF to place the mortgage documents in the dossier, in order to insure that they later would be inscribed when the title was registered. Similarly, inheritance documents and purchase/sale contracts were received. In essence, the CNAO-TF staff evolved as a parallel registry office to DDET.

Third, the CNAO-TF began to help the municipalities to improve their management of landholding data and plans, in order to speed along the certifications and corrections. In Lokossa, in 2015, the CNAO-TF installed a computerized system of landholding information for the AIF zone Agnivedji. This system allowed the C/SAD to easily retrieve and automatically update the parcel-specific data. (Rapport Global at page 33)

Ultimately, the sign off form could not remedy the fundamental substantive problem, resulting from the fragmentation of the review process. Because some dossiers could not be corrected or were not pursued by their applicants, the AIF were unable to complete the cycle,

issue the final *reprise des apports* and close-out the legal status of all the parcels making up the global title. As of April 2016, there remained over 4,000 unfinished dossiers -- some in each of the 26 zones. The AIF could not close out their operations and the unfinished parcels remained in the temporary status of collective proprietorship.

4.8 Formalities of registration and title preparation

After verification of the documents of proof and completion of the sign off form, the CNAO-TF sent each dossier and attached parcel plan to DDET. The subsequent formalities took place in three stages:

First, DDET assigned a unique code number to the land parcel, identifying its geographic location, indicating its status as a subdivided parcel from the global title, and allowing its proper placement in the land books and registry indices.

Second, CNAO-TF staff would assemble the final package of documents, which made clear the origin of the right of proprietorship in the name of the landholder. In the case of a parcel, subdivided from a State Title, these documents included:

- The administrative act of subdivision of the parcel from the global title, signed by the Registrar in his administrative capacity;
- A contract of sale transferring the land parcel from the proprietorship of the state to the landholder, signed by both the landholder as purchaser and the Registrar in the capacity of property agent for the state and the Minister of Finance;
- The contract of sale could contain a series of charges and conditions of use, as necessary, including reservation of servitudes on behalf of the public or the state.

In the case of a parcel, subdivided from the global title of an AIF, the pertinent documents were:

- A copy of the *proces verbal* of the General Assembly of the AIF, which approved the subdivision;
- The *reprise des apports*, signed by the AIF president and the landholder, authorizing withdrawal of the parcel from the collective title of the AIF and back into possession of the individual; and
- The *cahier des charges*, containing any conditions on use of the land and any servitudes or other limitations in favor of the public or the state.

Third, the DDET staff would conduct a final control of each dossier, cross check the parcel information in the registry of oppositions, record the title information into the land books on an appropriate page with analytic border sheet, and transcribe the information onto a copy of

the title for delivery to the landholder. (CNAO-TF Guide for Intervention of Actors, 2010) DDET would then notify the landholder to come to the registry office to pick up the title copy, paying the fee of 25,000 CFA (\$50).

The multiple actions of the third stage fulfilled the requirements of publication of the landholding rights under law no. 65-25 and insured that the details were consistent on all documents. These formalities were not exclusive to the process of Ph/TF; they were the routine actions that the managers and clerks at DDET carried out for all applications. But the project imposed on the staff the responsibility of handling a much larger volume of files and it exposed two significant handicaps.

First, assignment of the code numbers for the subdivided land parcels required a change in the design and technology of parcel and title identification. In the past, DDET gave each new individual title the next number, in chronological sequence, and added one new registry page to the communal Land Book. Benin's registry officers now understood the need to create a modern system of cadastral numbers, which would fix a multi-digit code for every parcel. Parcels derived from the same state or global title would carry common digits in a sequence to indicate their geographic location and origin.

The MCA-Benin Land Study no. 5 of 2009 had discussed this problem and Bergepo Consortium raised the question on numerous occasions, but the CNAO-TF and DDET assumed that the solution was a technical issue for the information technology consultants. However, the parallel project of DDET computerization was long delayed and ran into system design problems. The land information system was not finished before the final date of the Compact and later the CNAO-TF and DDET again fell behind because funding was limited and the simultaneous de-centralization of DDET added another level of complexity to system design.²⁴

Chapter 5: Financial analysis and sustainability

In order to analyze the costs of Ph/TF, it is necessary to distinguish two separate categories: (i) the costs of the technical and administrative operations, which have been carried by the state and the donor funding in the Ph/TF projects; and (ii) the fees that the citizens have paid, when claiming their titles, along with other costs to correct their documents of proof.

5.1 Pre-financing

²⁴ Decentralization required the DDET to divide and delegate the powers of the Registrar to the chiefs of the regional offices – a legal transfer that had to be carefully done, given the possibility that irregularities and petty corruption could creep into the system. The computerized data system was to be designed with security and oversight elements, allowing the central office to monitor and supervise the local offices in real time.

As noted above, the Commission Ph/TF in the pilot project changed the burden of “pre-financing” from the landholder/applicant to the state. This switch was expected to have four positive impacts. First, it would remove a substantial obstacle to citizen participation by not requiring the citizen to pay up-front. Second, it relieved the agencies of responsibility for handling hundreds of accounts as dossiers awaited authorizations, vouchers and receipts. Third, it gave the Beninese professionals experience in using international contractual forms, rules of procurement and accounting. In particular, MCA-Benin was able to transfer money steadily and the CNAO-TF was spared delays, interruptions and disputes that were common in state budgeting and disbursement. (Stewart Study no. 7 2009, Commission Ph/TF 2004)

Finally, the payment of a fee at the end was a profound shift in the relationship of the state agencies to the citizens. In the past, land tenure applications had been viewed as revenue-raising actions and DDET had the primary mission to realize income from the state’s property assets. *Immatriculation* allowed the state to levy a transaction tax, while *morcellement* imposed a sales price for transfer of proprietorship to the individual. By contrast, Ph/TF carried only a standard fee, intended to amortize the agency’s costs of administration and technical operations. In essence, the government forewent revenue from a small number of applicants, able to pay high fees, in order to bring into the registry a large number of landholders, who would support the system with a future flow of small fees for transactions and tax payments.

5.2 Baseline indicators and targets for costs and fees

During the pilot stage, the Commission Ph/TF calculated an average amount of 150,000 CFA (\$270) per title as its operational costs and set the amount of 100,000 CFA as the fee for each landholder. The average cost was calculated by a simple division of the project budget of 187.7 million CFA by the 1,450 titles. (See Annex 7, below) The same cost/fee equation was used to estimate the budget for the expansion phase and to project a long-term titling activity cost. (Commission Ph/TF 2004)

In its proposal for MCC funding in 2006, the Benin government estimated the cost of an individual *immatriculation* application to be in the range of 692,000-700,000 CFA (\$1,270) and an individual Ph/TF application to be 520,000 CFA (\$939), and it projected that these could be reduced to 150,000 (\$270), based on the pilot project costs. Later, MCA-Benin received consultant studies of the costs and fees at DDET in 2006/2007 for the three types of individual applications – *immatriculation*, subdivision (*morcellement*) and Ph transformation. (BIM 2008) Based on these studies, the M&E Plan of 2009 declared its baseline and target figures:

Table 5.1 Baseline indicators and targets (MCA-Benin M&E 2009)

| Indicator | Baseline | Target | Year1 | Year2 | Year3 |
|--|-----------------------|--------------------|-------|-------|-------|
| Outcome Indicator: Average cost to obtain a new land title through an on-demand process | 584,127 CFA (\$1,096) | 81,887 CFA (\$164) | ... | ... | ... |

| | | | | | |
|--|---------------------|-------------------|--|--|--|
| Outcome Indicator: Average cost to convert occupancy permit to title under systematic procedure | 150,000 CFA (\$300) | 22,500 CFA (\$45) | | | |
|--|---------------------|-------------------|--|--|--|

In setting the targets, MCC and MCA-Benin expected to reach cost savings beyond what was achieved in the pilot project.

5.3 The components of operational costs

The first method for evaluation of costs is to add up the total expenditures of the pilot and expansion projects, and similarly total the MCA-Benin Compact and post-Compact costs, divide each by the number of titles created, and then compare average per title cost.

Table 5.2 Comparison of per Title Costs

| Stage of operations | Budget (CFA) | \$ equivalent | Titles | Per title | Budget data source |
|----------------------------|--------------|---------------|--------|-----------|--|
| Pilot project (2001-2003) | 196,748,900 | \$393,496 | 1,453 | \$270 | <i>Commission Ph/TF, Rapport Cloture, April 2004 pp. 30 and 43</i> |
| Expansion project estimate | | | | \$300 | |
| MCA-Benin budget/target | | \$5,400,000 | 30,000 | \$180 | <i>MCA-Benin Budget Forecast 2007</i> |
| MCA-Benin (2009-2011) | | \$3,700,000 | 9,511 | \$453 | <i>MCA-Benin Final Account 2011</i> |
| CNAO-TF (2011-2015) | 308,730,000 | \$ 617,460 | | | <i>CNAO-TF Rapport Global April 2016</i> |

This calculation shows that the MCA-Benin and post-Compact stages produced titles at a far higher cost than the pilot stage, rather than reaching the goal of substantial cost savings.

A more detailed analysis reveals that for some elements MCA-Benin and CNAO-TF did achieve significant savings. (See Annex 7, below) For example, the contracts with survey firm Bergepo bought 31,500 parcel plans for \$923,000. This per-parcel cost of \$29 can be compared with the \$135 price for a “four-point” survey of a typical house lot under the DDET standard requisition order. Similarly, MCA-Benin and the CNAO-TF paid the notaries at the rate of 25,000 CFA (\$50) per landholder dossier, a significant discount from the standard price of 45,000 (\$90).

By contrast, other elements of the Ph/TF operations greatly exceeded the original cost estimates. In particular, the budgets anticipated that CNAO-TF would carry costs of office administration, rent, staff time and effort, logistics, etc. for a three to four year period to reach 15,000 titles. It actually took seven years to reach the results of 9,500 titles. In addition, the costs of outreach and field activities were more expensive because the CNAO-TF staff made more field visits to support the AIF and communal officers and deliver finished dossiers to the decentralized registry offices.

5.4 Fees charged to the landholders

In the pilot and expansion projects, the Commission Ph/TF assumed that the operational cost savings would pass along to the landholders along with a subsidy, when they paid the single

fee of 100,000 CFA (\$200). (See Annex 8) The fee would fall below the government's initial cost of 150,000 CFA per title but future savings would be found as the process improved, bringing the fee and the costs into balance. (Commission Ph/TF 2004)

MCA-Benin and the CNAO-TF reduced the landholder's fee to 25,000 CFA (\$50) in order to encourage participation and to emphasize that the donor grant was a gift to the citizens rather than a reimbursement and supplement for the government agencies. Again, the project was optimistic that further efficiencies would bring the costs and fee into closer balance. Post-Compact, the CNAO-TF and DDET did not change the 25,000 CFA fee.

The MCA-Benin also expected that some of the Ph/TF project cost savings would impact other Compact components, in particular, the improvements to land management and information systems. Taken together, all the improved processes would reduce the costs of the regular operations of DDET and allow individual applications to benefit. The indicator and target shown in the M&E Plan hoped for a reduction from over \$1,000 per individual title to \$164. Until 2016, however, there was no evidence of a trend of savings for individual applications. The reasons lay in the structure of the fee calculation, which by law and various decrees, were based on several variable factors:

Table 5.3: Fees for Individual *Immatriculation*

Source: BIM (2010) *Etude sur l'amélioration de l'environnement et des données d'indicateurs de la DDET*.

| Fee components | Basis for calculating the fee | Percent of total for average application |
|--|---|--|
| Registration of the land purchase/sale contract | 7.5% of the land contract value (<i>valeur venale</i>) | 57.0% |
| Fee of the surveyor for parcel survey and neighbor agreements [<i>bornage</i>] | Fixed fee per number of "points" depending on shape of the parcel | 35.7% |
| Fee for publication of notice in the Officiel Journal | Fixed fee | 02.6% |
| Payment to court officer for posting of notice at the tribunal | Fixed fee | 0.04% |
| DDET fee for land book inscription and title | | 4.2% |

As shown, the main component of the fee for *immatriculation* was the contract registration fee, which was calculated as a percentage of the actual sales price in a private transaction, or based on an administrative-calculated value in a state or municipal transaction. The second largest component was the survey fee, based on the size and shape of the parcel. Actual fees, therefore, have ranged from 400,000 CFA (\$800) for simple square urban house lots to several million CFA for large development tracts with complicated shapes.

In contrast to the high contract prices, used to calculate *immatriculation* applications, other routine state and municipal land transactions, such as subdivisions of single parcels from a State Title, have used a standard "reference price for cession of a real property object," defined in a Council of Ministers Decree of 1964. This Decree divided the cities and smaller urban centers into zones and fixed a per square meter price for land in each zone. Since the Decree was

not revised over the years, the fixed values became tiny in relation to actual land values. For example, the reference price for the highest value zones of Cotonou was 3,000 CFA, compared to actual prices of 300,000 CFA per square meter in 2015/2016.

Thus, some citizens and investors were required to pay high fees, when their applications were based on market transactions, while other persons received the benefit of significant subsidies if their land dealings could be classified as state or municipal acts to which the reference price applied. Reforms, undertaken by the ANDF and the new presidential administration in 2016 have begun to change this disparity.

The final aspect of landholder fees has involved the need for citizens to pay the municipal C/SAD and other officers, when they asked for updated and corrected documents of proof to submit in their applications for titles. As discussed above, the CNAO-TF brought together the mayors and Domain Services chiefs in February 2011, in an effort to achieve uniform practice. Several of the cities did waive or lower the fees and most refrained from demanding that citizens pay back taxes. But clear and uniform criteria have not been stated in laws or decrees.

5.5 Sustainability

In 2004, in its final report for the pilot project, the Commission Ph/TF predicted that it would cost 9 billion CFA (\$18 million) to sustain the effort for ten more years and transform 150,000 urban land parcels to civil law titles during that period. (Commission Ph/TF 2004)

The MCA-Benin cost projections of 80-100,000 CFA per parcel (\$160-200) and a reimbursement by the citizens of 25,000 CFA per parcel, translated into a 55-75,000 CFA (\$140) per title. This would calculate to \$55-75 million to complete 500,000 urban parcels over 20-30 years. However, in reality, the 9,500 titles, produced over seven years, cost an average of \$453 per title, which would mean a long-term cost of \$226 million, unlikely to be sustainable for Benin.

Chapter 6: Impact of the Ph/TF experience on legislation, policy and practice

The four stages of Ph/TF operations have run parallel with the other programs of legislation, policy formation and institutional reform. Now that the broad reforms are reaching implementation and fulfillment, it is appropriate consider the extent to which the lessons learned from Ph/TF have been incorporated into the new laws, decrees, policies and institutional changes. There appear to be five major elements that have been influenced by the Ph/TF activity: (i) the Code of Land Tenure and the Domain and its implementing decrees, (ii) the *Agence Nationale du Domain et du Foncier*, (iii) initiatives for titling begun by the new presidential administration in 2016, and (iv) start-up of work on the national cadastre.

6.1 The Code of Land Tenure and the Domain

The *Code Foncier et Domanial*, law no. 2013-01 of 14 August 2013, was drafted and prepared for adoption with support from MCA-Benin, the UCF and Netherlands Assistance. It incorporated several fundamental principles of law and instruments, which were recommended in the MCA-Benin White Paper of 2009 and the Ministry of Urbanism *Lettre de Cadrage* (approved by Decree 2009-693 of 31 December 2009). Following the vote of the National Assembly in January 2013, and promulgation of the Code by presidential signature in August 2013, the government moved forward to draft, validate and adopt 13 implementing decrees. (See Annex 1, below)

In substance, the Code provides that both customary and modern civil law are to continue as equivalent regimes under which rights in land are defined. Urban land will be transformed over time into civil law property, while rural land can continue under custom with rights defined in the *plan foncier rural*. Both urban and rural land rights will be registered and protected by the state after undergoing a process of *confirmation* that replaces *immatriculation*. The registry officers in the ANDF will issue the title documents, now called *certificats de propriété foncière*.

The new process of *confirmation* of land rights follows the same series of actions of public notice, contest, verification and state certification as *immatriculation*, but these have been adjusted to allow modern methods of communication and administration. In addition, the Code now provides for collective proprietorship [*propriété collective*], which can be initiated by the state or an AIF. (Law no. 2013-01, Articles 142, 143 and 144). These provisions enable the creation of global titles that may be subdivided. (Josse 2014)

Elsewhere in the Code there are changes that may resolve the fundamental problem of how landholders can prove their rights of possession in the absence of sufficient documents and in conditions of irregularity in the origin of their rights. First, the Code includes a list of acts and documents of proof, in addition to the new certificates, which are to be accepted by the courts to resolve disputes over land. These include the *permis d'habiter* and other forms that were accepted by the Commission Ph/TF and CNAO-TF (Law no 2013-01, Title VII, Chapter 1, Article 375). Second, the law now adds to this list a category of presumptive acquisition of rights by long-term, exclusive occupancy and control. (Law 2013-01, Article 9, Articles 30-39 and Article 379) Third, the Code makes provision for the creation of a national *cadastre* that will contain all pertinent information about the status of every land parcel. (Law no. 2013-01, Title VII, Chapter 4, Articles 452-475)

Taken in combination, these provisions allow the ANDF to create the uniquely numbered “pages” for every land parcel (as part of the *cadastre*) and then allow each page to be filled with

all pertinent information about the acts and documents, proving of possession, even when the parcel has not yet undergone the procedure of *certification*. Thus, implementation of the Code should change the system in a profound way.

In the past, the state registry books have contained and protected only the recorded information about land parcels with the status of civil law proprietorship and the title document has held the status of “un-attackable” proof. Information about the rights in all other land parcels (not yet *immatriculés*) has been kept, haphazardly in other lists and archives. It has been difficult to assemble and has had uncertain status as proof of the rights in the courts, mediation, administration and transactions.

In the future, the *cadastre* is expected to be the unified source of information about all land parcels and, in the pertinent “page” for each parcel, information about all acts and transactions will accumulate over time. This will gradually reinforce the landholder’s status as presumed proprietor and ultimately allow him/her to claim the title of proprietorship through prescriptive acquisition. (Djossinou 2014)

In this way the Code now appears to provide three methods by which urban landholders can gain tenure security. First, if the landholder has need for immediate confirmation of proprietorship rights to carry out a project or investment, he/she can undertake the process of *certification*, individually or as part of a collective titling. Second, if the landholder does not have immediate need, he/she can build up the proofs of exclusive possession by carefully recording all pertinent acts and documentation over time and when needed in the future, acquire the full title by *certification* or by the prescription. Third, if during the interim period the landholder unexpectedly must defend his/her rights, he/she can benefit from the status of presumed proprietorship and the accumulated proofs in the *cadastre*, even though these have not yet been fully certified and become un-attackable proof.

In essence, therefore, the *cadastre* and the new legal institutes of presumed proprietorship and prescriptive acquisition will relieve the government of Benin from the costly and difficult burden of continuing Ph/TF operations over 100 to 200 years.

6.2 The ANDF

In February 2016, the ANDF began functioning, following the transfer into its jurisdiction of the former DDET. (Akpinfo 2015) The CNAO-TF also ceased to function and its staff was added along with other units of land management and land information. This brought the ANDF to a level of about 230 agents. (Bagana 2017)

In the transfer of authority, the institutional structure has become more complex, because the new agency has multiple missions. It joins together the functions of land registration

(DDET) and the Ph/TF operations (CNAO-TF). It includes the activities of management, including sale or leasing of state domain lands and oversight of municipal domain activities. These responsibilities are divided among 14 local offices – called the Communal Bureaus of Domains and Land Tenure. The agency also is charged with the task of creating the national *cadastre*, which will combine the urban land registries (RFU), rural plans (PFR), other municipal tax lists with the state land registry.

Decree no. 2015-010 of 29 January 2015 has defined the ANDF as a quasi-independent public agency, subject to the tutelage of the Ministry of Finance. Its unit for policy and oversight is the Council of Administration, which has 13 members, representing eight ministries; four non-governmental groups (the Chamber of Notaries, the Order of Surveyors, the National Association of Communes [ANCB], and an organization of agricultural producers); and a representative of the ANDF staff. By bringing back into the Council the notaries and surveyors, questions about potential conflicts in procurement may arise again. Presumably, they will provide professional expertise along with the agricultural representative. However, the board has no corresponding representatives of landholders, financial institutions, or real estate professionals, who are also important interests.

6.4 Presidential initiatives on titling and fees

In April 2016, President Patrice Talon was sworn in and his administration issued its first policy statements. These included the outline of a program of reforms to stimulate real property markets and improve citizens' access to land for investment and housing. (Ribouis 2016) The first practical measures under this program were brought before the Council of Ministers on 15 June 2016. The government proposal consisted of three actions:

(1) Campaign to deliver title documents to citizens

First, the ANDF was directed to organize a campaign to deliver to citizens in the urban zones outside of Cotonou the 2,513 title documents, which had been signed and registered by DDET in as part of the Ph/TF program up to 2013. The fee of 25,000 CFA would be waived and the ANDF staff would assist any landholder, who did not yet have a national Identity Card. (Council of Ministers, 17 June 2016)

(2) Reference prices for Cotonou land sales and leases

Second, the Council of Ministers was asked to approve an amendment to the Tax Code, which would re-define the reference price for parcels of state and city private domain lands, when they are leased or sold in the City of Cotonou. This action was the first step in re-defining all reference values, following the mandate of the Land Tenure Code, Article 313. For the Cotonou zones, the previous 3,000 CFA per square foot prices were up-dated to a range of 37,000 CFA to 299,000 CFA per square meter, with variation based on specific factors, such as

proximity to the coastline or frontage on a street with full pavement and drainage.²⁵ The Council of Ministers also required the ANDF to define a zone system for all the other communes and to re-set the reference prices every three years, following actual market trends. Any sale or lease, which will in future be based on a reference price more than three years old, will be null and void. (Council of Ministers, 25 June 2016)

(3) Removal of fees for small, routine land registry transactions

On June 15, 2016, the Council of Ministers approved amendments to the Tax Code that reduce or remove the registry fees for three categories of property transactions. First, individuals or families that inherit or receive land by *inter vivos* gift could now inscribe their names in the land book without a fee. Second, a bank or landholder, recording or removing a mortgage from the title, would no longer pay a fee. Third, the fee for entry of the title into the land books and issuance of the certificate was reduced to a flat 2,500 CFA. Fourth, the fee for registration of the underlying contract of sale or lease, as part of the procedure of *immatriculation*, was temporarily removed. This fee was previously set at 8% of the value of the property and its high cost has been one reason why many landholders have avoided the formalization of their properties. The fee was re-set in January 2017 at 4.5%. (Council of Ministers, 25 January 2017)

It is not yet possible to measure the impact of these changes in the reference values and the fee calculations on the cost of titling for an average urban landholder. However, it is likely that the average fee for an individual application will decrease substantially in the direction of the target anticipated in the MCA-Benin M&E Plan. (See Annex 6, below) The lower fees should serve as an incentive for landholders to use the registry system for protection of their rights and transactions, and with the reference price adjustments, there should end the disparity of treatment between landholders, whose actions are calculated on the basis of the reference price and those that pay fees based on full contract prices.

6.4 Unresolved problems of irregular and illegal subdivision

Despite the progress of land legislation and policy, Benin's national and local leadership continues to struggle with the fundamental problem of un-planned and uncontrolled land subdivision and settlement in peripheral zones of the cities. (Benin National Assembly 2014) Customary landholders, speculators and real estate promoters – known in Benin as the “land mafia” -- continue to divide and sell parcels with the weakest contractual rights of tenure and often with accompanying fraudulent practices. (Segla 2011)

The new presidential administration has taken two enforcement actions. First, on 25 May 2016, it gained approval of the Council of Ministers of an order nullifying the sale of a group of

²⁵ The specific provisions appear in the 2017 Law on Budget Adjustment

land parcels on the State Title 113 in Cotonou by simple sales contract. The action instigated by city officers was unlawful under the provisions of the Land Tenure Code, law no. 2013-01. (Council of Ministers May 2016) Second, on 12 October,

The ANDF now has the mandate to organize the *cadaastre* and, using this new system, to require the processes of *lotissement* to conform with domain management laws. In anticipation of the start of this work by the ANDF, the presidential administration has ordered a halt to all operations of *lotissement* in the cities and urban centers. (Council of Ministers October 2016; Glessogbe 2016)

6.5 The National Cadastre

On January 11, 2017, the Director General of the ANDF announced that the agency had begun the process of accrediting the surveyors, who would be given the tasks of preparing the base maps for the National Cadastre. (Kougblenou 2017) This is a preliminary stage in what will be a multi-year effort to create a full and functioning land tenure information system. As noted above, the *cadaastre* can become the instrument by which all landholders can gradually strengthen their tenure.

The main lesson learned from the Ph/TF experience, therefore, appears to be that the effort to bring all urban landholdings into civil law proprietorship by “mass titling” will not be an efficient and sustainable method. Instead, by using the *cadaastre*, a gradual and incremental strengthening of landholder rights can be accomplished over time, consistent with the needs and resources of urban landholders. Larger investments and more important transactions can be put through the processes of full *certification* of rights; while small and routine landholders can gradually build up their proofs of rights and gain protection, when needed, as presumed proprietors.

Conclusion

The four stages of Ph/TF activity did not achieve the quantity of new land titles that were expected by the government of Benin, MCC and the project managers and it did not put into place a sustainable method for transforming the great volume of urban landholdings, with their variety of forms of tenure, into titled landholdings. As shown above, some technical difficulties and structural deficiencies contributed to this failure. However, the primary problem lay in the mis-match between the goal of bringing all urban landholdings into the status of civil law proprietorship with an un-attackable title and the reality of individual landholdings with separate legal origins in custom, administration and contract law, and with multiple deficiencies and irregularities. Correcting each landholding and bringing its record of proofs of rights to the

standard necessary to substantiate a title could not be done, using systematic, mass titling method.

Therefore, Benin has embarked on a new long-term strategy of urban land tenure reform, which will allow the incremental strengthening of urban landholding rights. The state will provide the cadastre as a unified system in which every land parcel will have a “page” that can gradually be filled in with accumulating actions, corrections and clarifying data. Each landholder can then choose the pace of formalization of his/her rights – accelerating the actions when economic opportunities arise. When it becomes necessary for a landholder to prove his/her rights against a contrary claim or challenge or to enter a transaction, the registry will be able to issue a document of proof at a level of evidentiary status that corresponds to the content of the accumulated data on the parcel “page.” Even without a title that is fully *immatriculé*, the law and the cadastre system will give a landholder presumptive or prescriptive status.

Annex 1. Urban zones selected for systematic tilting

Table 1A.1 Zones selected for the pilot project (2001-2003)

Source: Government of Benin, *General Report on Closure of the Pilot Operation of Transformation Permis d'Habiter into Titles*, April 2004

| | Zone name (<i>lotissement</i>) | Global title number | Parcels |
|------------|----------------------------------|---------------------|---------|
| Cotonou | Ayelawadje I | AIF TF 6816 | 275 |
| | Gbgamey 1 | State TF 438 | 199 |
| Porto Novo | Agboku | AIF TF 1795 | 533 |
| Parakou | Tranza | State TF 133 | 90 |
| | Tranza (zone résidentielle) | AIF TF 261 | 374 |
| | Tranza (zone résidentielle) | AIF TF 262 | 9 |
| | Tranza | State TF 103 | 3 |
| Total | | | 1 483 |

Table 1A.2 Zones selected and created for the expansion project (2005-2007)

Source: Commission Ph/TF, *Point du Niveau des Dossiers AIF au 13/01/2009* with information (*) from MCA-Benin summary sheet *Signalement des perimeters evalues*, December 2009

| Commune | AIF name | Date of creation | Title number | Status description | Size of zone* | Parcels in process* |
|-------------|---------------|------------------|--------------|---|---------------|---------------------|
| Cotonou | Gbgamey | 29 Dec 2006 | 438 | Stage of individual parcel subdivision underway | | |
| | Ayelawadje | 29 Dec 2006 | 8235 | | 140 ha | |
| Ouidah | Ganlononcodji | 11 Oct 2005 | 1218 | | 154 ha | 179 |
| Porto Novo | Agbokou | 2 Apr 2007 | 2412 | | 95 ha | |
| Sakete | Odanyongoun | 2 Apr 2007 | 113 | | 27 ha | 176 |
| Dogbo | Tota | 24 Aug 2005 | 14 | | 97 ha | 159 |
| Lokossa | Agnivedji 1 | 7 Aug 2006 | 35 | | 53 ha | |
| Aplahoue | Zohoundji | 20 Apr 2006 | 81 | | 445 ha | 167 |
| Glazoue | Glazoue | 27 Mar 2006 | 11 | Waiting creation of CLI for inquest | | |
| Save | Save Nouveau | | 136 | | 148 ha | |
| Adjarra | Agata-Yevie | 9 Jan 2006 | 68 | Waiting creation of CLI and closure of the <i>lotissement</i> | 160 ha | |
| Avrankou | Male | 30 May 2007 | 46 | | | |
| Adja-Ouere | Oke-Odan | 2 Apr 2007 | 29 | | | |
| Bembereke | Guere | 29 Sep 2005 | 5 | Waiting CLI order | | |
| Parakou | Ladjifarani | 14 Dec 2005 | | Global title notices posted at Tribunals | | |
| | Zongo-Nord | 14 Dec 2005 | | | 257 ha | 157 |
| Bohicon | Honmeho A | 2 Apr 2007 | | | 123 ha | |
| | Honmeho B | 2 Apr 2007 | | | | |
| | Zakpo Adame | 2 Apr 2007 | | Plans unavailable | | |
| Abomey | GOHO | | | Global title notices posted at Tribunals | | |
| Djougou | Sassirou | 28 Nov 2005 | | | | |
| Tanguieta | Yarika | | | | | |
| Natitingou | Yimporima | | | | 45 ha | 221 |
| Kandi | Kandi 1 and 2 | 14 Sep 2005 | | | 116 ha | |
| Nikki | Gah-Marou | 4 Oct 2005 | | Official Journal notice | 169 ha | 117 |
| Come | Segbe/Honve | | | Problem site choice | | |
| Misserete | Abogomey | | | No AIF created | | |
| Seme-Kpodji | | | | | | |
| Dassa-Zoume | | | | | | |

| | | | | | | |
|---------|--|--|--|--|--|--|
| Savalou | | | | | | |
| Dangbo | | | | | | |
| Ketou | | | | | | |
| Pobe | | | | | | |

Table 1A.3 Zones selected by the CNAO-TF

Category 1: Zones with existing state titles (5)

| Commune | Zone name | Title no. | Size | Parcel quota |
|-------------|--------------|-----------|------|--------------------------------|
| Cotonou | State title | 438 | | 10,772 |
| Seme-Kpodji | Zone PK 10 | 661 | | 769 |
| Natitingou | State titles | 8 | | 655 (with AIF Yimporima) |
| | | 10 | | |
| | | 13 | | |

Category 2: Zones with existing AIF and title numbers (from pilot and expansion projects) (9)

| | | | | |
|------------|-------------|---------|--------|-------|
| Avrankou | | TF 46 | 68 ha | |
| Adjarra | Agata-Yevie | TF 68 | 168 ha | 284 |
| Aplahoue | Zohoundji | TF 81 | 44 ha | 320 |
| Cotonou | Ayelawadje | TF 8235 | 140 ha | 1,032 |
| Dogbo | Tota | TF 14 | 97 ha | 504 |
| Lokossa | Agnivedji | TF 35 | 160 ha | |
| Ouidah | Ganloncodji | TF 1281 | | 601 |
| Porto Novo | Agbokou | TF 2412 | | 420 |
| Sakete | Odanyogoun | TF 113 | 27 ha | 169 |

Category 3: Zones with AIF begun but not completed in pilot and expansion projects (8)

| | | | | |
|------------|----------------------------|--|--------|-------|
| Abomey | GOHO tranche 1 | | 224 ha | 966 |
| Bohicon | Honmeno | | 123 ha | 1,068 |
| Djougu | Sasserou | | 55 ha | 580 |
| Kandi | Kandi tranche 1 and 2 | | 116 ha | 441 |
| Natitingou | Yamporima tranche C | | 29 ha | 300 |
| Nikki | Gah Maro | | 169 ha | 738 |
| Parakou | Ladjifarani and Zongo-Nord | | | 2,426 |
| Sakete | Odanregoun B | | 142 ha | 284 |

Category 4: Zones requiring the organization of new AIF (7)

| | | | | |
|----------------|--------------------------|--|---------|-------|
| Abomey- Calavi | ZOCA | | 229 ha* | 1,711 |
| | Godomey | | 101 ha* | 788 |
| Dassa-Zoume | Carrefour B, tranche 1 | | 63 ha* | 463 |
| Grand Popo | Nouvelle ville | | 9 ha | 162 |
| | Hilla Condji | | | |
| Natitingou | Yimporima extension | | 21 ha | 191 |
| Pobe | Zone residentielle A and | | | 384 |
| | Ossomou | | 9 ha* | 177 |
| Porto Novo | Les Palmiers Ouando | | 154 ha* | 1,530 |

Annex 2. Legal and contractual structure of Ph/TF

Fundamental Laws and Decrees (2001-2015)

| | |
|--------------------------------------|---|
| Constitution of Benin 1990 | Article 22 declares rights of <i>propriété</i> |
| Law no. 60-20 of 13 July 1960 | defines the <i>permis d'habiter</i> |
| Law no. 65-25 of 14 August 1965 | defines the procedures for <i>immatriculation</i> |
| Decree no. 64-276 of 2 December 1964 | defines the procedure for transforming <i>permis d'habiter</i> into a title |
| OHADA Uniform Act of 10 April 1998 | Land title as collateral for mortgage credit and transactions |

Stages 1 and 2 Pilot and Expansion Projects (2001-2007)

| | |
|---|---|
| Decree no. 2001-291 of 8 August 2001 | Creates Commission Ph/TF and authorizes pilot project |
| Benin Government Action Program 2001-2006 | Project for support of land tenure and urbanism reform -- PARFU |

Stage 3 MCC/Benin Compact Access to Land (2008-2011)

| | |
|---|--|
| Decree no. 2009-30 of 16 February 2009 | Creates CNAO-TF and authorizes Ph/TF operations |
| Decree 2009-693 of 31 December 2009 | Approves policy <i>Lettre de Cadrage de Reforme Fonciere</i> |
| Decree 2010-329 of 19 July 2010 | Approves Declaration of Land Tenure and Domain Policy |
| Manual of Procedures of CNAO-TF, Oct. 2009 | Procedures and normative standards for Ph/TF operations |
| Protocol MCA/IGN, August 2007 and Oct. 2009 | Regulation and quality control of surveyors -- \$268,100 |
| Protocol MCA/DGID, November 2008 | DDET tasks of dossier review and title registration -- \$1.6 million |
| Protocol CNAO-TF/Chamber of Notaries (approved MCA), May 2010 | Requisition notaries for AIF set-up and dossier reviews -- \$434,000 |
| Protocols MCA/20 Communes | Mayors and Domain Services (C-SAD) to supply maps, documents and assist citizens in assembling proofs -- in kind contributions |
| Contract MCA/Bergepo, ATL-002, 4 May 2009 | Survey firm to rehabilitate State Titles, boundary surveys for AIF and parcel subdivision surveys -- \$723,900 |
| Contract MCA/Bergepo, ATL-423, 30 June 2011 | Extension and added parcel surveys -- \$465,500 |
| Contract MCA/forum manager, 10 October 2010 | Training and public event coordinator for CNAO-TF -- |

Stage 4: Post-Compact (2011-2015)

| | |
|---|---|
| Decree 2009-30 of 16 February 2009 | Continues in force CNAO-TF |
| Decree 2012-008 of 2 February 2012 | Creates UCF/MCA |
| Decree 2011-396 of 28 May 2012 | <i>Programme de Soutien a la Croissance Economique et Perennisation des Acquis de MCA-Benin (PCASF)</i> -- continues CNAO-TF, authorizes budget funding |
| Convention Netherlands Assistance/Benin, December 2013 | Funding for Ph/TF and other reform activities through PCASF -- 3,000 titles target to 9/14; |
| Protocol UCF/CNAO-TF, 16 July 2012 | Funding for Ph/TF operations -- 1,500 titles target to 9/12; \$ |
| No. 603/MEF/CAB/SGM/DGB/DEB/SDCNR/DDD, 5 August 2013 -- | Budget Funding provided through Ministry of Economy and Finance |
| Protocol UCF/CNAO-TF, 5 September 2013 | |
| Protocol UCF/CNAO-TF, February 2014 | Funding for Ph/TF operations -- 3,500 titles target to 8/14; |
| Protocol UCF/CNAO-TF, December 2014 | Funding for Ph/TF operations -- 600 titles per month target -- |
| Protocol CNAO-TF/Chamber of Notaries, 8 November 2013 | Review of citizen dossiers of proofs @ 40,000 CFA per dossier |
| Protocol CNAO-TF/IGN, 16 May 2013 | Control of parcel surveys @ 45,000 CFA per parcel plan |
| Contract CNAO-TF/firm Topo Star and Elan | Re-survey of 53 parcels with previously erroneous titles |

Stage 5: Future ANDF (2016---)

| | |
|--|---|
| STAGE 5: ANDF | |
| Law no. 2013-01 of 14 August 2013 | Code of Land Tenure and the Domain |
| Decree no. 2015-010 of 29 January 2015 | Repealed Decree 2009-30 and incorporates the authority and functions of the CNAO-TF and DDET land registry into the new ANDF, along with other powers |

Table 2.2: Decrees, implementing the Code of Land Tenure and the Domain

| | |
|----------|---|
| 2015-007 | Defining the attributions organization and functioning of the Landholding Consultative Council (CCF) |
| 2015-008 | Defining the attributions, organization and functions of the Fund of Landholding Displacement |
| 2015-009 | Fixing the methods of exercise of the right of preemption and of lease/sale of properties taken by preemption or expropriation |
| 2015-010 | Defining the attributions, organization and functions of the Agence Nationale du Domaine et du Foncier (ANDF) |
| 2015-012 | Concessions of state and municipal private domain lands in rural areas |
| 2015-013 | Procedures for the composition and functioning of the Commissions <i>Commodo et Incommodo</i> (which determine public need and set the value of compensation) in cases of expropriation or preemption |
| 2015-014 | Defining conditions and methods of <i>mise en valeur</i> of rural lands |
| 2015-015 | Fixing the methods of division and consolidation of titles of landholding proprietorship |
| 2015-016 | Use and occupation of the public domain |
| 2015-017 | Defining the attributions, organization and functions of the Commission on Landholding Management of the Commune and the Village Section of Landholding Management |
| 2015-018 | Fixing the methods for establishment of Plan Foncier Rural and confirmation of land tenure rights based on the PFR |
| 2015-029 | Fixing the methods of acquisition of rural lands |
| 2015 ... | Co-proprietorship |

Annex 3. Chronology and timetables for Ph/TF

Table 3A.1 Comparison of timetables: pilot zones and MCA-Benin project

Sources: Commission Ph/TF (April 2004), *Rapport Final* ; MCA-Benin (December 2011) Final Report??
CNAO-TF(April 2016) *Rapport Global*

| Category | Pilot zones | CNAO-TF | |
|---|--|---------------------------------|--|
| Organization and start up of Commission /TF | 31 Dec 01 | 20 Mar 09 26 Nov 09 | Organization and start up of CNAO-TF |
| | | 2 months | -installation and first meeting |
| -adopt work plan | 2 months | 8 months | -adopt work plan and budget |
| -adopt budget | 6 months | | |
| | | 5 months | -hire Secretariat staff |
| -procure and install equipment | 11 months | 13 months | -procure and install equipment |
| -receive delivery of vehicles | 12 months | 13 months | -procure vehicle |
| Preliminary activity for survey and mapping | | 24 Aug 09 31 Aug 10 | Inventory and reconstitute state titles and lotissements |
| -densify network of survey points | 7 months | | |
| -reconstitute the state titles (3 zones) | 13 months | 12 months | -reconstitute state titles (86 zones) |
| | | 5 months | -preliminary delivery of inventory for zone selection |
| | | 9 months | -delivery of project state titles (9) |
| -assemble base maps and documents | 13 months | 11 months | -delivery of reconstituted <i>lotissement</i> and other plans for selected AIF (22 zones) |
| Selection of zones | | 24 Aug 09 5 Feb 10 | Selection of zones |
| | | 4 months | -define criteria and communal quotas |
| -choice of zones | 4 months | 4 months | -first choice of state title and existing AIF zones |
| | | 6 months | -second choice of new AIF zones |
| Set up of AIF (4 zones) | | 5 Feb 10 14 July 10 | Set up of new AIF (9 zones) |
| -citizen information and general assembly meeting | 6 months | 4 months | -citizen information and general assembly meetings |
| -legal documents for AIF prepared and approved | 5 months | 5 months | -legal documents prepared and approved |
| Installation of CDI | | | |
| Preparation for survey in zones | | 7 Jan 08 4 May 09 | Preparation for survey in zones |
| -contract with surveyors | 2 months | 14 months | -initial contract with surveyor |
| Survey operations for global titles | | 21 June 10 18 Apr 11 | Survey operations for global titles |
| | | 5 days | -requisition for perimeter survey of AIF zones |
| | | 6 months | -complete surveys and controls |
| | | 3 months | -publish and register global titles |
| Subdivision survey and parcel bornage | 2 Apr 03 30 Oct 03 | 31 May10 30 Jun 11 | Subdivision survey and parcel bornage |
| -perimeters surveys of 4 AIF zones and bornage | One month: 3-5 days per zone | 13 months | -combined field work for state titles, existing AIF (25,000 parcels) and new AIF (5,000 parcels) |
| -subdivision surveys and parcel bornage for 7 zones (1,483 parcels) | Two months: One month per each zone | | |
| Preparation for landholder census in zones | | | |
| -contract with notaries | 2 months | | |
| Collection of landholder documents of proof | | 29 July 10 30 June 11 | Collection of landholder documents of proof |

| | | | |
|--|------------|---------------------|---|
| | | 1 month | -first campaign of collection (4,700 dossiers) |
| | | 4 months | -contract for notary services and delivery of first group of dossiers |
| | | 7 months | -notary delivery of first group of dossiers (1,100 dossiers) |
| | | 4 months | -second and third campaigns of collection (6,300 dossiers) |
| CNAO-TF delivery of dossiers to DDET | -- | 3 months (extended) | -prior to end of Compact (245 dossiers completed out of 11,253) |
| DDET entry of parcel document into land registry | Open ended | Open ended | |
| DDET inscription of proprietors and issuance of titles | Open ended | Open ended | |

Table 3A.2 Timetable for Creating Seven New AIF Zones and Their Global Titles

Source: MCA-Benin Access to Land tracking sheet (2011)

| Tasks | Date begun | Date ended | Comment |
|---|--------------|--------------------------|---|
| CNAO-TF selection of zones | 18 Dec 2009 | Feb 2010 | |
| <i>Start up phase to organize zones</i> | | | |
| Notification and consultation with mayors | 20 Dec 2009 | 10 Jun 2010 | The CNAO-TF staff worked with the mayors to prepare the formative documents and organize the AIF and to find and assemble the base documents – existing spatial and subdivision plans, lists of landholders, etc. |
| Drafting of the formative documents | 5 Feb 2010 | 4 Mar 2010 | |
| Organization of assemblies general | 13 May 2010 | 2 Jun 2010 | |
| Adoption of the AIF statutes | | 10 Jun 2010 | |
| Publication of statutes in Official Journal | | 28 Jun 2010 | |
| Mayors sign the Orders approving the AIF | 1 July 2010 | 14 July 2010 | |
| Preparation of the applications for <i>immatriculation</i> of the global titles | 29 July 2010 | 17 Nov 2010 | |
| <i>Phase of perimeter survey and bornage</i> | | | |
| Requisition order to the surveyor by DDET | 21 Jun 2010 | 25 Jun 2010 | This work was done simultaneously with the work of preparation of the <i>immatriculation</i> applications. |
| Perimeter surveys underway | 25 Jun 2010 | 22 Dec 2010 | |
| Perimeter surveys sent to IGN for controls | 13 Jan 2011 | | |
| Perimeter surveys received by CNAO-TF, DDET | | 14 Jan 2011 | |
| <i>Phase of publication and immatriculation of global titles</i> | | | |
| Official receipt of applications from AIF by DDET | 4 Jan 2011 | 17 Jan 2011 | These formalities followed the requirements of law no. 65-25, except that the time period for posting of placards was 30 days, not 90 days. |
| Publication of notices of <i>immatriculation</i> in the Official Journal | | 1 Feb 2011 | |
| Extracts of notices sent to Tribunal for advertisement | | 21 Feb 2011 | |
| Posting of placards at the courts | | 2 Mar 2011 | |
| Compilation of the global title dossiers by DDET | | 18 Apr 2011 | |
| Final formalities and inscription of the global titles | | Incomplete on 6 Oct 2011 | |

Annex 4: Reconstitution of State Titles

Table 4A: Inventory of State Titles compiled by Consortium Bergépo, 2009

| Urban center | Total | 100 + | 30-100 | 10-30 | 10 less | Rural | Commentary |
|---------------|-------|-------|--------|-------|---------|-------|--|
| Kandi | 35 | 2* | 4 | 21 | 8 | 1 | Colonial-era titles. The rural parcel is 200 ha. and one urban title has 106 ha. |
| Nattatingou | 17 | 0 | 3 | 7 | 5 | 2 | Colonial-era titles. One rural parcel 90 ha. |
| Abomey-Cal. | 2 | 0 | 0 | 0 | 1 | 1 | Very small parcels (1 ha.) with old titles. |
| Ouidah | 31 | 0 | 5 | 14 | 7 | 7 | Later colonial era titles. |
| Pahou | 4 | 0 | 1 | 2 | 0 | 1 | |
| Parakou | 48 | 0 | 11 | 11 | 23 | 3 | Mid-era to late colonial titles. |
| Nikki | 8 | 0 | 1 | 5 | 2 | 0 | |
| Dassa-Zoume | 4 | 1 | 0 | 2 | 1 | 0 | |
| Aplahoue | 6 | 0 | 5 | 1 | 0 | 0 | |
| Dogbo | 2 | 0 | 0 | 1 | 0 | 1 | |
| Djougon | 13 | 0 | 6 | 2 | 5 | 0 | |
| Cotonou | 161 | 2 | 50 | 33 | 71 | 0 | Mid and late-era colonial titles with about 30 titles after independence. Title no. 438 exceeds 1000 ha. Three have unreadable sizes. |
| Grand-Popo | 9 | 0 | 2 | 3 | 4 | 0 | |
| Lokossa | 17 | 0 | 2 | 11 | 4 | 0 | A series of 11 titles are fixed at 24 ha. plus two more at 48 ha. |
| Adjarra | 3 | 0 | 0 | 3 | 0 | 0 | |
| Porto Novo | 75 | 2* | 12 | 9 | 24 | 2* | Mid-era colonial titles. No post-independence titles. The two rural titles are very large, at 1,390 ha. and 2,540 ha. |
| Seme-Podji | 4 | 0 | 1 | 0 | 1 | 0 | Two titles are made unreadable for size. One title post-independence. |
| Pobe | 10 | 1* | 2 | 2 | 5 | 1* | Early colonial titles. The rural title is large, at 794 ha. |
| Sakete | 5 | 1* | 1 | 1 | 2 | 1* | The rural title is large at 725 ha. |
| Abomey | 24 | 2* | 6 | 6 | 8 | 2* | Colonial-era titles. The rural titles are large, at 1,018 ha. and 112 ha. |
| Bohicon | 16 | 2 | 0 | 7 | 6 | 0 | |
| Totals | 464* | 12 | 112 | 141 | 177 | 22 | |

*Sub-category totals do not add up to the full 513 because some parcels, with illegible documents, were left out of the categorical chart.

Annex 5: Collection of landholder documents

Table 5A: Campaigns for collection of landholder proofs

Source: CNAO-TF

| 30Commune | Quota total | Dossiers collected as of: | | | | Percent (30 Sept) |
|------------------------|-------------|---------------------------|----------|-----------|-----------|-------------------|
| | | 30 Sep 10 | 5 Jan 11 | 20 Jan 11 | 15 Sep 11 | |
| Cotonou | 10 772 | 358 | 548 | | 3 378 | 31.3% |
| Abomey Calavi | 3 694 | 696 | 794 | | 1 355 | 36.6% |
| Porto Novo | 3 621 | 542 | 579 | | 724 | 19.9% |
| Parakou | 2 426 | 550 | 693 | | 1 095 | 45.1% |
| Total four cities | 20 513 | | 2 614 | | 6 552 | 31.9% |
| | | | | | | |
| Bohicon | 1 068 | 196 | | | 449 | 42.0% |
| Djougou | 1 030 | 175 | | | 262 | 24.5% |
| Abomey | 966 | 318 | | | 625 | 64.7% |
| Semi Podji | 769 | 294 | | | 361 | 46.9% |
| Natitingou | 655 | 163 | | | 353 | 53.9% |
| Nikki | 738 | 365 | | | 661 | 89.5% |
| Ouidah | 610 | 52 | | | 177 | 29.0% |
| Lokossa | 598 | 103 | | | 629 | 105.1% |
| Pobe | 538 | 82 | | | 318 | 59.1% |
| Dogbo | 504 | 263 | | | 512 | 101.6% |
| Kandi | 441 | 134 | | | 284 | 69.4% |
| Sakete | 422 | 35 | | | 378 | 89.5% |
| Dassa Zoume | 372 | 171 | | | 345 | 92.2% |
| Aplahoue | 347 | 130 | | | 245 | 70.6% |
| Adjarra | 263 | 10 | | | 246 | 93.5% |
| Grand Popo | 164 | 64 | | | 173 | 105.5% |
| Total 16 urban centers | 9 487 | | 2 973 | | 6 018 | 63.4% |
| TOTAL | 30 000 | 4 701 | 5 587 | 7 209 | 12 560 | 41.8% |

Annex 6: Documents of proof submitted by citizens

In an effort to gain insight about the difficulties of proving rights, based on the different forms of customary, administrative and contractual documents, the CNAO-TF reported the data about landholder submissions by category and zone.

Table 6A.1 Categorical and zone breakdown of documents of proof

Source: CNAO-TF, October 2011

| Commune/zone | <i>Permis d'habiter</i> | <i>Attestation recasement</i> | <i>Convention de vente</i> | <i>Decision justice</i> | <i>Acte notaire</i> | <i>Acte donation</i> | Other | Total |
|-------------------------|-------------------------|-------------------------------|----------------------------|-------------------------|---------------------|----------------------|------------|---------------|
| Cotonou | 610 | 184 | 252 | 0 | 11 | 0 | 24 | 1 081 |
| Cotonou | 99 | 52 | 35 | 0 | 0 | 3 | 1 | 190 |
| Cotonou | 64 | 5 | 11 | 0 | 0 | 2 | 3 | 85 |
| Cotonou | 4 | 0 | 3 | 0 | 0 | 0 | 0 | 7 |
| Cotonou | 387 | 71 | 167 | 35 | 2 | 6 | 143 | 811 |
| Cotonou | 140 | 83 | 87 | 2 | 0 | 0 | 23 | 355 |
| Cotonou | 68 | 61 | 25 | 0 | 0 | 3 | 17 | 174 |
| Cotonou | 145 | 58 | 53 | 2 | 1 | 5 | 6 | 450 |
| Cotonou | 148 | 32 | 165 | 3 | 3 | 22 | 48 | 421 |
| Cotonou Total | 1 665 | 584 | 798 | 42 | 15 | 41 | 265 | 3 574 |
| Abomey-Calavi | 135 | 175 | 559 | 0 | 43 | 0 | 13 | 905 |
| A-C Godomey | 39 | 189 | 72 | 0 | 3 | 1 | 86 | 388 |
| Seme-Podji | 187 | 40 | 64 | 0 | 0 | 2 | 40 | 333 |
| Cotonou & Oueme Plateau | 122 | 29 | 48 | 0 | 0 | 3 | 20 | 222 |
| Porto Novo /Palmiers | 89 | 97 | 320 | 4 | 1 | 2 | 23 | 536 |
| PortoNovo/Agboku | 24 | 76 | 66 | 0 | 0 | 0 | 6 | 172 |
| Adjarra | 47 | 134 | 58 | 0 | 1 | 0 | 6 | 246 |
| Sakete | 13 | 233 | 2 | 0 | 0 | 0 | 2 | 250 |
| Sakete | 3 | 99 | 4 | 0 | 0 | 0 | 1 | 107 |
| Pobe | 28 | 35 | 17 | 0 | 0 | 0 | 0 | 80 |
| Parakou | 733 | 209 | 58 | 0 | 9 | 0 | 3 | 1 012 |
| Kandi | 92 | 150 | 17 | 0 | 2 | 0 | 23 | 248 |
| Nikki | 81 | 543 | 2 | 0 | 1 | 0 | 43 | 670 |
| Natitingou | 24 | 262 | 49 | 0 | 7 | 0 | 11 | 353 |
| Djougou | 119 | 108 | 20 | 1 | 0 | 0 | 0 | 248 |
| Borgou-Alibori | 7 | 1 | 1 | 0 | 0 | 0 | 1 | 10 |
| Abomey | 138 | 172 | 253 | 5 | 12 | 1 | 9 | 590 |
| Bohicon | 11 | 26 | 398 | 7 | 0 | 2 | 6 | 450 |
| Aplahoue | 0 | 127 | 93 | 0 | 1 | 0 | 24 | 245 |
| Dassa-Zoume | 0 | 180 | 146 | 0 | 0 | 0 | 11 | 337 |
| Lokossa | 18 | 459 | 142 | 1 | 0 | 0 | 4 | 624 |
| Dogbo | 2 | 405 | 100 | 0 | 0 | 0 | 0 | 509 |
| Grand Popo | 40 | 58 | 70 | 0 | 0 | 0 | 0 | 168 |
| Ouidah | 1 | 6 | 72 | 0 | 0 | 0 | 130 | 209 |
| TOTAL | 3 667 | 4 428 | 3 542 | 60 | 77 | 52 | 734 | 12 560 |

As anticipated, this data shows that in most cities and zones, one or another category was predominant, reflecting the historical period when the land was urbanized, and the regular or irregular circumstances of its planning and settlement. However, when the numbers are analyzed in relation to the quotas and the final results of titles, there does not appear to be any correlation of these categories of proofs with the outcomes of dossier submission or final titles.

Table 6A.2 Comparison of collected dossiers with the quotas

| Commune | Quota | Dossiers | Percent | | Titles | %Dossier | %Quota | Predominant proof |
|---------------|--------|----------|---------|--|--------|----------|--------|------------------------------|
| Cotonou | 10 772 | 3 574 | 33% | | 2,422 | 71% | 22% | <i>Permis d'habiter</i> |
| Abomey-Calavi | 3 694 | 1 293 | 45% | | 657 | 48% | 17% | <i>Convention</i> |
| Porto Novo | 3 621 | 730 | 20% | | 225 | 21% | 06% | <i>Convention</i> |
| Parakou | 2 426 | 1 012 | 41% | | 527 | 48% | 22% | <i>Permis d'habiter</i> |
| Bohicon | 1 068 | 450 | 42% | | 271 | 60% | 25% | <i>Convention</i> |
| Djougou | 1 030 | 248 | 24% | | 5 | 02% | 01% | <i>Permis/Recasement</i> |
| Abomey | 966 | 590 | 61% | | 380 | 61% | 40% | <i>Convention/recasement</i> |
| Seme-Podji | 769 | 333 | 43% | | 258 | 71% | 33% | <i>Permis d'habiter</i> |
| Nikki | 734 | 670 | 91% | | 274 | 41% | 37% | <i>Recasement</i> |
| Natitingou | 655 | 353 | 54% | | 31 | 09% | 04% | <i>Recasement</i> |
| Ouidah | 610 | 209 | 34% | | 150 | 84% | 24% | Other –customary law |
| Lokossa | 598 | 624 | 104% | | 301 | 48% | 50% | <i>Recasement</i> |
| Pobe | 538 | 80 | 15% | | 119 | ? | ? | mixed |
| Dogbo | 504 | 509 | 101% | | 375 | 73% | 75% | <i>Recasement</i> |
| Kandi | 441 | 248 | 56% | | 203 | 71% | 45% | <i>Recasement/Permis</i> |
| Sakete | 422 | 357 | 84% | | 127 | 33% | 30% | <i>Recasement</i> |
| Dassa-Zoume | 374 | 337 | 90% | | 242 | 70% | 66% | <i>Recasement/Convention</i> |
| Aplahoue | 347 | 245 | 70% | | 86 | 35% | 24% | <i>Recasement</i> |
| Adjarra | 263 | 246 | 93% | | 82 | 34% | 31% | <i>Recasement</i> |
| Grand Popo | 164 | 168 | 103% | | 75 | 43% | 47% | <i>Convention/recasement</i> |

In theory, citizens holding *permis d'habiter* and certificates of *recasement* should have been more motivated and more easily able to prove their possession and get titles because these were the documents issued in regularly planned and legally subdivided or re-arranged zones. The zones, where these categories of proofs were predominant were expected to have the higher results. Instead, the data shows no consistent correlations.

The only readily apparent consistent pattern is among the smaller urban centers where certificates of *recasement* were the main documents of proof submitted by citizens. These zones had the highest levels of collection of dossiers, in two cases exceeding 100% and in three cases exceeding 90%. The likely explanation is that the communes had completed re-arrangement plans for these zones in order to issue the *recasement* documents; thus they had good documentation in the archives to identify and mobilize the landholders and move along the dossier collection process smoothly. This consistent pattern did not carry through to final titles.

Annex 7: Funding for the Ph/TF projects

Table 7A.1 Overall funding for Ph/TF

| Dates | Funding source | Amount (FCFA) | Amount (\$) | |
|----------------|------------------------------|---------------|-------------|--|
| 2002 | State budget – pilot project | 176,972,203 | | <i>Commission Ph/TF, Final Report, April 2004, at pg. 30</i> |
| 2004-2007 | | 19,776,750 | | |
| 2008-9/2011 | MCA-Benin | | 3,700,000 | |
| 9/2011-12/2011 | State budget | 57,885,000 | | CNAO-TF, April 2016, Rapport Global at page 12, |
| 2012 | State budget and MCA grant | 250,845,000 | | |
| 2011-2014 | --UCF grant | 129,988,000 | | |
| | ---DDET portion of UCF grant | 8,368,000 | | |

Table 7A.2 State Budget funding for CNAO-TF

Source: Rapport Global April 2016 at page 44

| | | Appropriated | Spent | |
|------|--|--------------|-------------|--|
| 2012 | | 250,845,000 | 138,739,758 | |
| 2013 | | 280,268,000 | 237,456,391 | |
| 2014 | | 284,383,000 | 247,300,095 | |
| 2015 | | 350,921,000 | 336,594,116 | |
| 2016 | | 165,991,000 | -- | |

Table 7A.3 Expenditures of MCA-Benin for Ph/TF

| Category of expenditures | MCA-Benin (2008-2011) | CNAO-TF (2011-2016) | |
|---|-----------------------|---------------------|--|
| Set up and operation of CNAO-TF, CDI and AIF | \$1,300,000 | | Includes: Permanent secretariat salaries, benefits and logistics; three vehicles, office furniture and equipment, office operation expenses and supplies |
| Reconstitution of state titles and perimeter survey and registration of AIF zones | 725,000 | | |
| <i>Bornage</i> surveys for AIF zones | 225,000 | | Bergepo contract |
| Subdivision surveys | 458,000 465,500 | | Bergepo contract and extensions |
| IGN controls | 265,000 | | |
| Publicity and events to encourage citizen participation | 368,000 | | |
| Notary verification of citizen proofs | 320,000 | | The notary fee was \$25 per dossier, with about 12,000 dossiers completed. |
| Formalities and administration of applications and dossiers | 206,000 | | |
| Continuation of CNAO-TF operations after project end | 150,000 | | Government of Benin funding for last quarter of 2011. |
| TOTAL Operational costs for project | \$4,000,000 | | |
| Project management and oversight | 600,000 | | Estimate at 15% of total operations |
| TOTAL | \$4,600,000 | | |
| Extension of operations of CNAO-TF in 2012 | 600,000 | | Government of Benin proposed 2012 budget |

Annex 8: Comparison of Fee Calculations

Table 8.1: Structure of Fees for *Immatriculation* of a Land Parcel of Average Value, 2008

Source: *Bureau Ingenierie et Management – BIM* (February 2010), Study of DDET, at page 29

| | Method of calculation |
|---|--|
| TOTAL payments required | |
| *Registration of the underlying contract of purchase/sale or cession of state/city rights | Fee of 8% total property value |
| Penalty for late filing | % increases with each month delay |
| Publication in the Official Journal | Fixed fee |
| Payment to sheriff for posting of notice at site | Fixed fee |
| Ground survey and neighbors' agreement to lines | Price per survey point set by Order of Surveyors and IGN |
| *Fee for entry of the title into land books | Fee 0.4% of the property value |

Table 8.2: Revised Structure of Fees for *Immatriculation*, January 2017

Source: *author's own compilation*

| | Method of calculation |
|--|---|
| TOTAL payments required | |
| Registration of the underlying contract of purchase/sale or cession of state/city rights | Fee of 4.5% (Tax Code Art. 586) |
| Penalty for late filing | % increases with each month delay |
| Publication in the Official Journal | Fixed fee |
| Payment to sheriff for posting of notice at site | Fixed fee |
| Ground survey and neighbors' agreement to lines | Price per survey point set by Order of Surveyors and IGN |
| *Fee for entry of title into land books | Fixed fee of 2,500 for registration of certificate of propriete (Tax Code Art. 542) |

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