

## Executive Summary

### **Property Right in Benin**

Confirmed by the Constitution of Benin, property right without discrimination is part of human rights as defined in the universal Declaration of human right (1948) and the International Pact relating to civil and political right (1976) which also specifies the right to an independent and impartial legal procedure.

In its first chapter (Chap. 1) this study examines access, safety and transfer of property, in particular land ownership (including the right of use) and the property of working tools, means of transportation and personal goods. The study is based on a documentary analysis, ten (10) case studies were carried out by following a qualitative method with the populations and the involved parties.

Chapter 2 first of all, presents multidimensional poverty (monetary poverty, non-monetary and human poverty), with its space distribution, how it is understood by the populations and analysis of its main causes. Legal empowerment deals with the legislations on property rights, existing regulations on property and the gaps between populations' practices and their relationship with justice, including their perceptions of the issues in these fields.

Four major aspects of the problems of relationship between poverty and land ownership are specified: (i) search for economic growth through investments requires land access and security, poverty reduction having to be done through a mechanism of distribution of wealth thus produced; (ii) the necessary access to land ownership and land use to enable the poor populations to undertake income generating activities and find somewhere to live and carry out other daily activities; (iii) impact of property mobilization to support growth on the access of the poor to land ownership; (iv) the relationship between land mobilization and space distribution of soil depletion to reduce operating costs of the human settlements and thus contribute to poverty reduction.

The issue of relationship between poverty and ownership of working tools and personal goods is definitely simpler, dealing with the possible gap between the legal and judiciary situation on the one hand and the prevailing practices of the population on the other.

Property Law as well as the structure of the legal system are presented in Chapter 3. Goods ownership, especially land acquisition, is governed by the civil code. Land ownership (including the right of land use) is jointly regulated by the customary Law and the modern or written law.

The principle of applying customs to each ethnic and cultural group, especially in rural areas concerning arable lands, that is based mainly on verbal testimonies, is ratified by the legislation, including a new law on rural land tenure (law n° 2007-03). In most customs (except for the Adja tribe), women are not entitled to inheritance but the Family Code (law n° 2002-07) provides that they have equal right to inheritance as children; The law thus abrogates the customary laws in this field.

Written laws were phased in into the customary practices with private agreement acts or document not legally certified, in particular regarding the event of sale, with the obligation (Little known) to settle Estate registration fees. For the sale with profit which is not subjected to the customary law should be monitored without delay, by the registration (another obligation very little known). However, only one quarter of the called owners has documentary evidences of property in rural areas (According to a survey conducted by PSIA, in 2006), the percentage being much higher in the South (47%), because of land market development. The proportions were definitely higher in the urban areas (60%) and suburban areas (74%).

Apart from the customary practices, and in spite of the contrary perception of the great majority of the population, the only written document on property is the land title. It should be noted that registration process is too long, tiresome and expensive. Therefore, only less than 1% of households only have a land title (a chart shows the stage and the cost).

Hiring of a building must be done on the basis of a written leasing agreement endorsed by a notary.

The law n° 2007-03 establishes the rural land plans (Rural Land Plan), experimented for more than 12 years on the one hand and makes compulsory the drawing up of a written contract in the event of final transfer and the registration at the state property department on the other. This thus requires raising populations' awareness on the new Land Law and on girls' right to inheritance.

The judiciary system most accessible to the poor populations (courts of conciliation and traditional and civil Chambers and the eight Courts of first authority is also presented.

Case studies in (Chapter 4) have shown the practical implementation of the various customary access modes related to land issue. They are more observed in rural areas, especially in the North. This situation is related to land availability. Poor households have access to land through inheritance (which they may use or lease), and sometimes through donation, seldom by purchase. Wealthy households have access to land much more through purchase or

inheritance than poor households. Here appear conflicts in the enforcement of the customary laws, in particular between native populations and immigrants in the immigration zones, in rural areas. The implementation of the Rural Land Plan met with inhabitants' approval because it guarantees the safety of land tenure and, in theory, facilitates access to loan, hiring and leasing, since that put an end to subsequent disputes over land issue.

Except for the Adja tribe, case studies confirm that women are generally excluded from land inheritance and that the Family Code is almost unknown. When married, women obtain temporary right over part of the land of their husband, this right is generally temporary. The widows or divorced women do so without rights over their husbands' lands and are particularly vulnerable to poverty. In the Southern region, however, divorced, widowed or women in conflict with their husband, seek a small portion of land in their paternal, family, after having posed acts of recognition. In other cases, the wife of the deceased can inherit when she is old and can no longer get married to someone of lineage different from that of her deceased husband, or if women undertakes to get married again to a member to the same lineage as her husband

If women are not aware of land issues in urban and questions in urban environments and outlying areas, one sometimes notes that girl children with high education level have access to land even before the promulgation of the Person and Family Code. Working women (in particular civil servant and traders buy build and lease out their houses) but poor women can not do the same as their purchasing power is limited

The situation of access to land ownership in urban and outlying areas (either by a right of use or by acquisition) is that of a widespread insecurity and non compliance with the written law. Households with very modest incomes that wish to buy a land should seek plot of land in large suburbs of cities, because of high prices. They must face repeated attempts of despoliation, in particular during land sharing out. Consequently, conflicts are frequent, sometimes they take decades, in particular as a result of lack of information on the legislation. Thus, those who wish to acquire a land have a general perception of injustice and unfair practices and a feeling that they will be despoiled and that chicanery is paying off among the despoilers. With regard to property of goods, the usual practice is the establishment of a receipt for valuable goods, (bicycle, motor bike, plough...) and a marking of other goods by a distinctive sign. For animals, the owners know their natural distinctive marks and often establish a relationship with the animal which can easily recognize its master. In the event of

theft, the first step is an attempt at recovering the stolen goods within the community possibly by sending a complaint at the gendarmerie squad or the police station. Women ownership of goods is implicitly recognized by the customs.

The Law on separation of goods, as stipulated in the Family Code is at the disadvantage of the woman because she works on the farms of her husband or of the household but the profits are allocated to the husband who, by simply purchasing the land, acquires the right of the property. Indeed, only 31% of the women decide alone or in association with their spouses to make important purchases (EDS, 2001). By emphasizing the relationship between poverty and propriety in chapter 5, it is noted that access to justice often stops when a petition is introduced at the gendarmerie squad or the police station.

With regard to the land property, the situation is summarized as follows:

- (i) the implementation of the Rural Land Plan is likely to cause an increase in sales, in particular poor households and thus an increased social inequality within the village;
- (ii) (ii) in urban and outlying areas, one notes the existence of a kind of "half-customary law" can be noticed ;
- (iii) (iii) the gaps between this "law" and the implementation of the statutory law or written law and the law itself on the other hand, are important sources of conflicts;
- (iv) (iv) perception of the legal experts, in particular in the enforcement of the legislation on land are that it is not right, that the decisions lack legitimacy and are against the poor, at least in the urban and outlying areas. A song in fongbé language (Fon language) says: "*you do not count for nothing, it is no use appealing to justice: your beautiful eyes will not persuade others to take care of you. The poor can never pretend to be right*"; the integral enforcement of the current legislation is almost impossible because of certain inconsistencies, and will have as consequence, especially in outlying areas, a freeze of the land market. A reform is thus absolutely necessary.

With respect to legal empowerment, the following are noticed:

- (i) the legislation and the regulation on land property are not always coherent, and any way they are little known, especially by the poor populations;
- (ii) the legal and judiciary practices are still not well known;

- (iii) very few activities aim at educating the poor populations on their rights, their legislation and the justice procedure;
- (iv) there is an important gap between the practices of the authorities and their representatives on the one hand, the legislation and the regulation on the other hand, in particular with regard to land sharing out;
- (v) the effective use of the legal methods to secure land property is weak, in spite of a significant number of land disputes introduced into the Court of Cotonou)
- (vi) the practices of the poor populations are accompanied by speeches which reflect on the one hand their very low level of knowledge of their own rights and the legal and judiciary aspects on land property, and on the other hand their very little confidence in justice;

Chap. 6 presents a list of works carried out in favour of the legal empowerment of the poor with respect to land property as well as sources of expertise

Chapter 7 presents a strategy draft for promoting the legal empowerment of the poor with respect to land property. This strategy comprises several emergency measures, including:

- (i) legislative measurements to put an end to the worst practices noted;
- (ii) an outreach programme towards the populations on the legislation and on the current regulation concerning land. The latter should aim at gendarmerie squads, police, districts chiefs, and villages' local councillors and voluntary relays in each village and district in sensitive areas;
- (iii) an institutional audit of all lands sharing or development, that having lasted beyond a certain period, for example, 10 years, the provision of repayment fund for all lands allotments and a support to communes in this matter;
- (iv) The elaboration of information medium and simple training module to be designed for the whole of the elected officials, the personnel of engineering departments and civil servants;
- (v) An institutional audit of all land sharing out.

- Measures to be implemented on medium term comprise:

- (i) develop of new rules for land sharing out in rural areas and implementing an experiment like the PFR ;

- (ii) Provide support for these works along with land legislation review;
- (iii) Promote participatory methodology for the seven studies already conducted and the achievement of an eighth 8<sup>th</sup> study to analyze the poor populations opinions on the current land situation and their suggestions for the improvement of the legislation;
- (iv) Organize a public debate
- (v) Inform the public and creation of communication mediums between the persons in charge of the reform and the populations

- Measures to be implemented to reinforce Justice system are:

- (i) Taking into account the concern for fight against poverty and the role of justice in the training or capacity building of the legal and judiciary practitioners;
- (ii) Provide legal assistance;
- (iii) Promote civil society and public private partnership initiatives for the creation, at the head office of each Court of Appeal, of an additional system (with partnership structure) to provide support for fair justice;
- (iv) Organize session, of information, education, communication and reinforce advocacy policy to change behaviour and raise the awareness of the Public.

Chapter 8 which closes the survey is of great interest as it mobilizes social forces in favour of the required reform (in particular the civil society, the legal professions, projects personnel and officials in charge of projects programs and involved in the fight against poverty. The role of the commission is primarily seen as being that of making an advocacy for the implementation of the strategy. The attached document gives details of poverty in Benin.

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