

**The Rural Land Plan:
An innovative approach
from Côte d'Ivoire**

Volker Stamm

A former teacher of economics at the University of Ouagadougou, Volker Stamm is currently a Senior Officer with the German Overseas Development Service. His field of research is agrarian and land tenure systems in Africa and pre-industrial Europe. He is a member of the APREFA. Contact address: Volker Stamm, Robert-Schneider-Str.15a, 64289 Darmstadt, Germany. E.mail: volker.stamm@gtz.de

CONTENTS

ACKNOWLEDGEMENTS	ii
INTRODUCTION	1
ORIGINS AND OBJECTIVES OF THE PFR	1
LAND TENURE STRUCTURE AND POLICY IN CÔTE D'IVOIRE	4
Land tenure structures	4
Land tenure policy and legislation	6
THE PILOT PHASE OF THE PFR AND ITS RESULTS	7
Basic premises	7
Procedure	7
Publishing results and allowing time for objections	12
Results of the pilot phase	12
THE EXTENSION PHASE	15
Aspects of operational planning	15
Technical planning	16
Results expected from the extension phase	18
LAND TENURE LEGISLATION	19
ANNEX: RURAL LAND TENURE LAW ADOPTED IN DECEMBER 1998 N° 98-750	22
REFERENCES	27

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INTRODUCTION

The purpose of this paper is to present an innovative rural land project which, even though it is still young, can serve as an example for the region as a whole¹, and to describe the development of this project from its origins and pilot phase to its implementation at national level. The project in question is the Rural Land Plan (PFR) for Côte d'Ivoire. The project activities implemented to date have been supported by a vast amount of research, and have resulted in the drafting, as part of rural land tenure legislation, of a law which was adopted in December 1998 by the National Assembly.

ORIGINS AND OBJECTIVES OF THE PFR

In many West African countries, including Côte d'Ivoire, a number of different reference systems and legal frameworks governing access to land and its use co-exist and compete with one another. These include state-imposed regulations, the influence of political parties, and local practices, which are still predominant in many rural areas. In Côte d'Ivoire, as elsewhere, this situation results in conflicts which are further aggravated in the south of the country by large migratory movements, by increasingly frequent monetary transactions in relation to land, and by the predominance of capital-intensive perennial cash crops. The outbreak of land tenure conflicts has often created a crisis situation for the government. But at the same time it has lacked adequate knowledge of the rules governing the existing land tenure regime and a workable legal basis which would enable it to take appropriate decisions and intervene to settle disputes.

As a result, politicians have become aware of the need to draw up an inventory of land tenure rights (cf. Gastaldi et al., 1994: 13). In their attempt to achieve this, one can discern the influence of a modernist tendency which, adopting the hypotheses of orthodox economics, insists that traditional land tenure rights are an obstacle to agricultural development, inhibit investment, and make access to formal credit facilities more difficult – the latter being an indispensable condition for the introduction of modern, profitable production methods. This view promotes the introduction of individual ownership rights and encourages the development of a market in landed property. There is very

¹ Similar programmes are in progress in Benin, Burkina Faso, and Guinea.

little empirical evidence in the African situation to support these arguments (cf. among others Bassett, 1995, Stamm, 1998 and Lavigne Delville, 1998), but this has not prevented the national agricultural administration and international donors from adopting and using these principles as a basis for interventions. Law, and more specifically land tenure law, is seen as a means of modernisation (for a critique of this concept see Spellenberg, 1997).

Nevertheless, those responsible for the PFR have managed to adopt a more subtle, realistic position in these discussions. As Gastaldi's seminal study (1987) points out: "It would be better to postpone a systematic concretisation of ownership rights, while protecting and strengthening traditional rights of use, and setting the latter in a framework which would allow them to evolve in the direction of real rights". In this article, we consider how this intention is reflected in the objectives, ideas and procedure adopted by the PFR. Generally speaking, the contradiction between respect for local practices and the demands of modernity can be seen throughout the history of the project, and in the resulting Law governing rural land tenure.

The objectives of the Rural Land Plan were defined and approved in a communication to the Council of Ministers dated 21.12.1988:

"The PFR involves [...] a survey of existing rights to plots of rural land, by establishing their geographical boundaries on a 1/10 000 map and by entering each surveyed plot in a register [...] The PFR will take stock of the present land tenure situation by recording rights to land as they are perceived and recognised by the village people and the administration, and as they emerge from agreements between individuals, neighbours, families and villages. To be recorded, such rights must be expressed before one of the pilot project survey teams and must not be contested by other interested parties".

During the pilot phase, the main objective was broken down into the following components:

- The first was to record, register and document all traditional local rights with the agreement of all the interested parties. Such rights would thereby acquire a status akin to that of statutory rights, which would make it possible to incorporate them into the planned land tenure legislation.
- The second was to develop methods of registering land which were feasible from a technical and financial point of view and which would be

accepted by the local people because they corresponded to their own concept of right.

- The final purpose of the pilot phase was to provide the competent authorities with a database and decision-making tools to help them plan and implement rural development activities.

The innovative aspect of the PFR was that it tried not to introduce pre-established legal categories (modelled on European practice) and did not force rural practices into a regulatory straitjacket, but took as its starting point the whole varied complex of existing local rules. This also ensured that local legal concepts would be recognised by the State, which is a very rare thing in West Africa. The PFR was also based on a participatory, rather than an administrative, approach, whereby all the participants were able to make legally relevant statements on the land tenure situation, regardless of their status (whether “land managers” or “land users”).

Box 1: Brief background to Côte d’Ivoire

The total area of the Republic of Côte d’Ivoire, lying between the Sahel countries and the Gulf of Guinea, is 322,400 km², of which 170,000 km² are suitable for agriculture. The population is estimated to be 16 million, growing at a rate of 2.5%. The country can be divided into two main agro-ecological areas:

- the savannah regions in the North,
- the forest regions in the South.

The savannah regions, with annual rainfall of between 900 and 1,200 mm, are characterised by rainfed crop systems – millet, maize, groundnuts and cotton being the main crops. Transhumant herding is an important activity. The forest regions (annual rainfall 1,200 to 2,000 mm) are dominated by perennial crops – coffee, cocoa, oil palms – grown largely for export purposes.

Since the 1930s, there has been a great deal of migration into the rural parts of Côte d’Ivoire, the main area of new settlement being in the forest region. Much of this movement has involved the Baoulé people from the centre of the country, but it has also involved migrants from Mali, Guinea and Burkina Faso. Since the 1970s, large numbers of transhumant herders from the Sahel countries lying to the north of Côte d’Ivoire have also moved in. The most recent area of new settlement is in the south-west of the country, where Ivorian and foreign migrants (mainly Burkinabè) now form the bulk of the population. Recently, conflicts between local residents and migrants (particularly those from other countries) have become more acute.

Existing rights² were recognised in the context of the local reference system and the operation was conducted by local people, avoiding the need to import State regulatory systems (assuring intrinsic validation). At the same time, the recording of these categories of rights laid the basis for future conformity with the new land tenure legislation due to be introduced (assuring extrinsic validation).

LAND TENURE STRUCTURE AND POLICY IN CÔTE D'IVOIRE

Land tenure structures

The land tenure structures prevalent in the savannah regions in the north of Côte d'Ivoire are very different from those found in the wooded regions of the south. In the latter area, there is greater individualisation of usage rights - and monetary transactions (purchase, leasing) are more frequent - particularly in the case of migrants, while in the savannah regions of the north, access to land is chiefly by inheritance or gift. In the savannah regions, the right to dispose of land lies with clan chiefs; farther to the south, the power of disposal has more and more commonly been taken over by the household head and is often "individualised" in the generally accepted meaning of the term: "The individual dimension here includes the dimension of the nuclear family" (CIRAD, 1996: 258).

However, we need to describe this overall situation in a little more detail. In the savannah regions of the north, with very few exceptions, the PFR did not find any evidence of land purchases. In the predominance of non-commercial land tenure structures, these areas are similar to the neighbouring savannah regions of Mali and Burkina Faso (cf. Stamm, 1996).

In the forest regions, commercial land tenure transactions were more or less common, and played a considerable part in access to land. This is due mainly to the heavy demand for land on the part of migrants, and to the prevailing production systems, in particular the growing of perennial cash crops. However, even within these regions, significant differences were noted. In the south-east (Abengourou area), sales of land occurred almost exclusively between local people and outsiders, the former almost always being the vendors. Among the local population, non-commercial modes of access (in

² e.g. farming rights, transfer rights, rights of passage, pasturage rights, gathering rights, etc.

particular succession by inheritance) continued to predominate. In the west (Dalou and Soubré areas), on the other hand, commercial modes of access have become general, and the local population is now very much a minority.

The following table summarises modes of access to land in different parts of the forest region (according to CIRAD, 1996: 282-284). Please note that these figures are approximate, coming from different sources which do not always agree.

Table 1: Modes of access to land (expressed in percentage terms)

Modes of access	Abengourou (south east)	Soubré (south west)	Dalao (centre west)
Purchase	16%	32%	58%
Gift	33%	52%	10%
Inheritance	26%	7%	31%
Loan/tenancy	16%	5%	1%
New settlement	3%		
Miscellaneous	6%	4%	
n = number of plots	5 123 = 100 %	2 376 = 100 %	100%

For the purposes of interpreting this table, it should be pointed out that the categories mentioned often overlap, vary from one region to another, and should not be taken as equivalent to European definitions of these concepts. For instance, the distinction between “gift” and “loan” is very vague. In the north, a “gift” is understood as a free, lasting transfer; in the south, the recipient must, in exchange, provide services in the form of labour or pay money. Nor is the term “loan” interpreted in the same way everywhere and by all. It may mean a free transfer of fixed or indeterminate duration, or it may imply a tenancy relationship. Finally, even the object of the sale may not be very clear: is it the crops that are being sold, and with them the rights of use, or is it the land itself? Depending on the region, we find a general preference for the first interpretation, which implies that the purchaser is not entitled to re-sell the land (cf. Etude Juridique et Administrative, 1996; Gragg, 1996).

Despite their diversity and lack of clarity for the external observer, the formulae mentioned above do give access to land and confer rights of use, even in the case of persons from outside the region, including the right to plant and grow perennial crops. We cannot conclude from this that rural

producers lack legal security. They are well aware of their rights and to a large extent believe them to be adequately guaranteed (cf. CIRAD, 1996; Heath, 1993).

Land tenure policy and legislation

Until very recently, land tenure policy in Côte d'Ivoire was determined by the texts listed below, some of which contradict one another:

- a decree, dating from the early years of the colonial era (1900), which stipulated that all “ownerless” uncultivated lands (*terres sans maître*) must revert to the State;
- a decree dating from 1932, which stipulated that private ownership of land might be acquired by the fact of cultivating it, and must be recorded in a land register;
- a decree dating from 1935, which reaffirmed most of the principles promulgated in 1900 and went even further by stipulating that even cultivated areas farmed by virtue of customary law could be transferred to the State;
- the 1955 decree annulling these restrictive provisions and expressly recognising traditional rights.

After achieving independence, Côte d'Ivoire reverted to the colonial land tenure tradition, characterised by the preponderant influence of the State in such matters. Subsequent directives included:

- a draft law dating from 1963, which never in fact came into force, stipulating that the State should assume ownership of all unregistered, uncultivated lands;
- a decree, dating from 1967, which granted land ownership to those who developed it. Following a celebrated speech by Félix Houphouët-Boigny (“the land to those who cultivate it”), this principle was for many years influential in determining the country’s land tenure policy;
- finally, a circular from the Ministry of the Interior, dating from 1968, which decreed that all unregistered areas of land were State property, and that customary rights were suppressed.

Barely 1% of rural land is officially registered.

THE PILOT PHASE OF THE PFR AND ITS RESULTS

Basic premises

The pilot phase of the PFR covered five areas representing the varied ecological, social and economic conditions of Côte d'Ivoire:

- Northern savannah region: Korhogo area
- Central savannah region: Beoumi area
- Eastern forest region: Abengourou area
- Western forest region: Soubré area
- Central forest region: Dalao area.

Fieldwork began in 1990, after the taking of aerial photographs. The pilot phase was funded by the World Bank and the French Overseas Development Administration (Coopération française), which also provided the necessary technical support. The involvement of the World Bank may be regarded as a first test of its new approach to land tenure rights based on an evolutionary perspective (see Platteau, 1996), in the context of the programme of structural adjustment of the agricultural sector.

Procedure

The main objective of the procedure implemented by the PFR was to register plots of land and the rights attaching to them. The plots were registered in two stages, involving:

- the recording of the plot boundaries;
- a land tenure investigation.

Plot boundaries

Plans showing plots of land were drawn up using aerial photographs, and were then checked and amended on the ground. Fixed points and lines, such as rocks, trees, paths and watercourses, were used as landmarks. The farmers concerned indicated the boundaries of their plots to the survey teams, who then entered them on the plan. For registration purposes, a plot was defined as an area over which a uniform right of usage was being exercised. The plot might be put to various uses, e.g. subsistence crops, perennial crops, or left fallow. After recording the boundaries of a plot of land, the survey team

would move on to the next field, and so on. It was important that the persons cultivating the field, land managers and neighbours be present when the plot boundaries were recorded, to ensure that the survey was conducted with the agreement of all parties, and any conflict identified.

The information obtained in this way could be used to draw up a map of each holding, and to compile area maps. This information can also be used as an aid in drafting plans for village land management schemes.

Land tenure investigation

While the plot boundaries were being established, rights over the land were also recorded individually, plot by plot, using “a land tenure enquiry form”. The work was carried out in several stages:

- identification of plots;
- identification of the land manager;
- identification of the land user³;
- determining the nature and origin of the rights being exercised;
- recording of disputes.

The third page of the “land tenure enquiry form” was devoted to a written explanation of the origin and form of existing rights in that plot of land. This report, which also included the plot boundaries, was signed by the head of the survey team and all the other parties involved (land manager, land users and neighbours).

This phase of ascertaining the boundaries of and rights over land in the presence of all the interested parties was the key aspect of the PFR procedure. The proper performance of this part of the work was vital in ensuring the effective legal status of the results. It was therefore carefully checked by an *Etude Juridique et Administrative* (1996) and by a mission team appointed to evaluate the pilot phase, which proposed a number of improvements to the procedure and tools used (CIRAD, 1996), summed up below.

Two examples are shown here to demonstrate the method adopted in gathering data. These two interviews were recorded on 3 March 1998 at Amiankouassikro, in the Abengourou intervention area, in the regular course

³ The land user enjoys the right to farm the land, while the land manager has the right to dispose of it, including the right of sale/transfer.

of the PFR's work, on the land of the farmers concerned. The first farmer, who was a native of the village, gave the following explanations (in French):

"The field is mine. Before, it was my father's. He had it from my grandfather. I cultivate it myself."

"Is it your own decision how you use it, or do you have to ask someone else's permission?"

"It's my decision. As the one who gave it to me is no longer alive, I can do what I want with it."

(Further questioning showed that the farmer had not inherited the field directly from his father, but from his elder brother, who had also died in the meanwhile).

"Can you give the plot to someone else?"

"One day I shall give it to my son. I can also transfer part of it to another person, but I choose not to do so."

"Can you sell the plot?"

"No, I cannot. I need it to feed my family, and afterwards my children will take it over."

"Yes, I see, but are you entitled to sell it?"

(The farmer does not understand the thinking behind the question but, after some further explanations, replies)

"Yes, I can sell it. But I am not going to."

The second farmer was a migrant from Burkina Faso who had been living in the village for about 15 years and farmed the plot concerned. This interview was conducted in the Dioula language.

"Is this your plot of land?"

"Yes. My patron gave me the plot 15 years ago so that I could make a living from it. I gave him a sum of money."

"For how long can you use the plot?"

"No time has been set."

"Who planted the trees here (coffee bushes, cocoa trees)?" – "I did."

"Are you free to use the plot as you wish?" – "Yes."

"Can you give it to your children?" – "Yes."

"Can you change what you grow on it?" – "After telling the owner ("tigi"), I may do so."

"You have to inform him or obtain his agreement?"

"Inform him, and he will give his agreement."

"And what if he doesn't give his agreement?" – "I would say "sorry".

"Can you sell the plot?" – "No."

“Can you give it to someone else?”

“Yes, after telling the owner.”

“Have you undertaken any commitments towards the owner – giving him help, payments in money or in kind?”

“As he has helped me a lot. I shall also help him when he is in need”.

“Is that an obligation on your part, or because you want to do so.”

“That’s the way we do things here.”

Criticism of the procedure

As mentioned in the introduction, the innovative character of the PFR lies in it being used to record traditional legal formulae and, in the long term, to establish a coherent relationship between these and statutory law.

The challenging nature of this project, and the many problems connected with it, are revealed by a detailed analysis of the “enquiry form”, the content of which does not correspond well with the intended approach. The part concerned with land tenure rights and their origins comes last, on page 3. This section is preceded (on page 2) by a “survey of rights” based on European categories (inheritance, purchase, pledge, loan, lease, etc.). From the very beginning, the forms make a distinction between those with a right of disposal and those with a right of use (land managers/land users).

The former are not only entitled to farm the land but may also assign and cede limited or unlimited rights to third parties, for a fixed period of time or permanently. If need be, they may claim title to it. The classification adopted may have been borrowed from the “population census” which had preceded the land tenure survey. The census was intended to ascertain population data, but it was also used to ask questions regarding land ownership using very simple categories to distinguish between land managers and land users.

This procedure gave rise to many errors and over-simplifications. We noted earlier that the concepts used to define modes of access were often unclear or contradictory. The reasons for this lack of precision lay above all in the way the primary data was gathered: the survey teams were instructed to make an on-the-spot identification of rights of use and put them into categories on the basis of the explanations given by the farmers. These categories then had to be reduced to just two: “land manager” or “land user”. It is clear that this method did not do justice to the spirit of the PFR, and also gave rise to the danger that the final results would be imprecise or over-simplified. This danger was further aggravated by pressure of time, as each survey team set out to cover as many plots as possible in the shortest possible time. The data-

gathering process was subsequently reorganised in 1998, the investigation form was reformulated in different terms, and a list of local concepts and definitions of land tenure rights is now being drawn up. The surveying operation has been separated from that of recording the land tenure situation. After a section identifying the interested parties and the plot concerned, the present “land tenure survey form” starts with a statement by the farmer. Farmers are no longer meant to be classified into pre-established categories.

The statement by the person currently cultivating the plot covers the following points:

- cropping history of the field back to the year it was first brought under cultivation, if this is known;
- account of the way in which the present user acquired access to the field;
- mode and date of access;
- time period during which the plot was made available to him;
- connection between the person making the field available and the person gaining access to it (e.g. family relationship, neighbours);
- payments made or other services rendered by the person acquiring access;
- description of the rights attaching to the piece of land;
- description of the rights-holders and all rights in respect of the plot, with any restrictions;
- account of whether the rights-holders exercise their rights in their own name or in the name of a social group (family, clan, etc.);
- brief presentation of current usage and methods of cultivation;
- account of any conflicts in respect of use;
- identification of the people who actually cultivate the plot: share-croppers, agricultural labourers, family members, etc.

All these statements are made by the effective user, but in the presence of all the other rights-holders, in particular the person who has allowed the present user access to the land. Others may have rights in respect of trees, pasturage rights, rights of passage, pre-eminent rights as land chief or head of family, etc. These persons are entitled to add their comments with a view to complementing or correcting the present user’s explanation. When a consensus has been reached, they all sign the statement, so confirming its validity.

The survey of plot boundaries is formalised by another signed document. The persons taking part in this operation are not necessarily the same as those involved in the investigation of land tenure rights. Those with the most obvious interests are neighbouring land-holders. This new procedure is meant to ensure that only the rights-holders’ statements are registered and validated.

Other pre-established categories are no longer used. The introduction to the new form explains and emphasises that formal legal notions – purchase, lease, etc. – must not be used when the real purpose of the transactions differs from them. A summary and a transcription of the rights that have been recorded are subsequently drawn up by the PFR.

Publishing results and allowing time for objections

The results of the plot boundary surveys and land tenure investigations are then made public, both nationally and in the villages concerned, and a period of three months allowed for people to lodge objections. The purpose of this period is to give those people who had been absent or who had not been involved in the process the opportunity to approve or contest the summary of rights drawn up by the PFR.

Results of the pilot phase

Project activities and their acceptability

During the pilot phase, the PFR surveyed an area of approximately 6,500 km² (roughly 3,5% of the agricultural area of Côte d'Ivoire). It thereby achieved the important objective of demonstrating that a survey project was technically feasible at an acceptable cost. It also proved the viability of an approach based on the recording of local land tenure formulae, which would provide an alternative to the crude confrontation of traditional land tenure rights and so-called “modern law” rights, and prevent local formulae from being ignored or overridden. This is probably the reason for the amazing way in which the project has been accepted:

“Generally speaking, the pilot initiative was very favourably received by the villagers and did not meet with any real opposition or criticism from any particular ethnic group, political party, NGO, voluntary body or any other section of civil society”. (IDA, 1997: 7).

It is reported that villages situated outside the pilot areas made efforts to be included in the survey⁴. The initial fear that the operation might aggravate

⁴ The expectations of the different parties were summed up in the evaluation report: “On the one hand, local people feared that the PFR’s work would result in land ownership being handed over to outsiders, but in fact the PFR tended to reaffirm the locals’ lost pre-eminence, a pre-eminence contested by the administrative authorities when they had given

open conflicts or trigger hidden ones proved groundless. The proportion of plots over which there were found to be disputes was amazingly small: fewer than 2% of those covered by the PFR.

The costs of the pilot phase of the operation amounted to approximately 4,100 FCFA/hectare equivalent to US\$ 6.12/ha (based on 1995 costs). This figure includes all categories of cost except for technical support. In other words, the cost amounted to less than 5% of those which are incurred when registering land with the land registry by the conventional method (roughly 100,000 FCFA/hectare in Côte d'Ivoire).

Problems still unresolved at the conclusion of the pilot phase

The problems set out below were still unresolved at the conclusion of the pilot phase of the Rural Land Plan, and were left for the implementation phase as discussed further below. Attention has not yet been given to the effects of the PFR on the land tenure situation of women. Studies of this issue need to be undertaken as a matter of urgency. All we can do here is agree with the points made by P. Mathieu (1995: 23):

“Given the importance of women in the production of commercial food crops in Côte d'Ivoire, and the intention that the PFR should ensure security of land tenure during the present period of transition, it is particularly important that the PFR take into account and register the specific rights of women in areas where local society increasingly recognises such rights: women managing plantations, Agni women holding plantations in their own name, widows and divorcees.”

The same applies to the tenure rights held by livestock herders (cf. Fisiy, 1998).

We have already analysed deficiencies in the recording and transcription of local land tenure rights, which tended to be over-simplified and reduced to two basic categories (those of land managers and land users). These deficiencies have been eliminated as far as the working documents are concerned, but the reformulated land tenure enquiry form has still to be tested in practice.

official support to migratory movements (western forest region). On the other hand, outsiders feared that their settlement in new areas would be called into question and that there would be pressure to recognise the pre-eminence of locals in matters of land tenure. At the same time, though, they were aware that the very fact of their being involved the PFR was an acknowledgement of their hold on the land.” (CIRAD, 1996: 291)

Another problem is that of access to the results of the PFR. The practice of distributing extracts of the PFR to interested parties ceased in 1992 (cf. E.J.A., p. 13), which explains why so few boundaries have been certified. This decision was taken by the Ministry of Agriculture because of the inadequacy of the PFR's description of the local land tenure situation, referred to above. Ratifying these findings by way of official certificates might have the unfortunate result of giving final approval to inaccurate legal formulae, and so causing conflicts. The use of a deficient method would also make it more difficult to bring together the forms of local customary law and the concepts of statutory law.

These difficulties typify the central problem of the PFR project, and can only be overcome in the context of an integrated approach to the planned land tenure legislation. This approach must ensure that its implementation takes into account local categories of land tenure rights and rules for their transcription. Finding a solution to these problems is a matter of urgency because the objective of the whole operation – i.e. improving the legal security of rural producers – cannot be achieved unless the promised documents are drawn up and delivered. As things stand at present, the absence of documents is a further source of uncertainty.

It is quite clear that updating results was not a priority at the start of the pilot phase; during the pilot phase, no structure was set up to gather complementary information. It is therefore difficult to assess how far transactions concerning plots of land have taken place since the register was drawn up (Gastaldi et al., p. 53). However, on-going maintenance of rural cadastral registers is an essential condition for ensuring that documents issued at the outset do not quickly lose their validity. A possible solution based on two structures – “maintenance units” and “village committees” – has been drawn up and should be put into effect during the extension phase.

Finally, it is important to remember that the PFR is intended to play a key role in land management and decentralisation policy. It is supposed to provide support for decentralised authorities and rural groups in the local management of their natural resources, making available the necessary planning documents and ensuring their proper legal basis. The achievement of this objective depends on the three following conditions:

- relating the PFR to land management and land tenure security measures, with a view to achieving “land management with security”;

- the creation of appropriate local, village-level structures;
- ensuring the availability of planning documents.

While the third of these conditions has been largely fulfilled in the pilot region, with the exceptions mentioned, a lot of work will be needed to fulfil the first two during the extension phase. They will be discussed in more detail below.

THE EXTENSION PHASE

Aspects of operational planning

Since 1998, the work on the PFR has continued as a component of the “Projet National de Gestion des Terroirs et d'Équipement Rural” (PNGTER/National Land and Rural Equipment Management Project). The thinking behind this project is set out as follows in a government document “*Lettre d'Orientation du Gouvernement*” dated January 1997:

“This project will be an instrument for realising government policies and programmes in the fields of sustainable agricultural development, decentralisation and regional development. It will be based on three main components:

- *security of land tenure, achieved by facilitating the access to statutory law of plots subject to customary law, and taking into account the realities of the rural situation;*
- *rural land management;*
- *support for investment in the rural setting”.*

The components of the project, as set out in this document, can be described as follows:

Security of land tenure is to be achieved by extending the PFR methods tested during the pilot phase, the objective being to establish rights of ownership over land, by issuing title deeds in the name of rural communities responsible for administering these collective arrangements. These can be seen as a way of

speeding up the procedures for registering rural land holdings, and as a first step in introducing modern law into the rural setting.

The intention of the land management component is to strengthen the capacity of rural communities for self-management, which also implies a transfer of the corresponding administrative competence. Priority in this area is given to promoting organisational skills. Individual, ad hoc land development measures, which are often wrongly lumped together with land management, are covered by a separate investment programme.

Generally speaking, one cannot help noting the strong pressure in favour of modernisation and the persistence of the myth of “modern law”, even though the need to respect local customary rights has also been emphasised. The need to achieve coherent integration of support for rural investment, decentralised rural development, security in respect of land tenure, and the strengthening of local institutions is clearly set out. However, following the example of Bassett (1995), it is important to warn against the false idea that reform of the land tenure regime alone will necessarily stimulate a significant increase in productivity. Though this is the hope of many African governments, and often shared by donor organisations, it has not yet been translated into reality.

This next phase of the project covers an area of approximately 2 million hectares, ranging over eight project zones in different parts of the country. It takes in roughly 12% of the useable agricultural area, and about 10% of the population. The total cost is reckoned to be around US\$ 71 million, approximately 41 million of which is being provided by the World Bank, 12 million by the French overseas development administration (Coopération française) and 19 million by the government of Côte d’Ivoire itself.

Technical planning

A reading of the project study (IDA Staff Appraisal Report, 1997) shows little change in the procedure adopted for the component dealing with the land tenure enquiry, as compared with the pilot phase. The main addition is the plan to issue deeds of land ownership, and to maintain and update the data previously gathered.

The first of these points is not clearly defined in the document, though the central preoccupation is evidently to issue collective title deeds to village communities or to family groups/clans. These ownership rights are to be

managed autonomously by the groups concerned, who may then share them out among their members⁵. This means that, without the agreement of the local authorities, the State may no longer exercise direct influence over village land tenure policy, for example by settling migrants in the area concerned. The objective being pursued here is to “strengthen traditional land tenure rights (i.e. collective rights) and supplement them by overseeing the state-managed registration of land and land tenure transactions” (IDA, 1997, legal aspects, p. 73)⁶. This is also in accordance with the objectives set out in the “*Lettre d’Orientation*”, which provides, in the medium and longer term, for “giving these communities the authority and administrative and legal powers they need to manage their lands themselves”.

The approaches being developed here fulfil a long-standing requirement: the need for co-management of natural resources and the transfer of competence to the local level (cf. Stamm, 1998, and bibliographical references quoted). The social effects of issuing these deeds of ownership, particularly as they affect current holders of delegated rights of use, deserve careful study. “If the certification of rights of land use is to be confirmed by the issuing of legal deeds, some of the major actors will either win or lose a great deal in the process” (Fisiy, 1998: 7). The IDA evaluation mission (Staff Appraisal Report, p. 17) expressly recognises the existence of a problem (“special attention will be given to holders of rights of use with a view to guaranteeing, or at least not detracting from, their security of tenure”). The PFR has also shown sensitivity in respect of these issues by seeking to support contractual arrangements likely to improve the security of farmers exercising rights of use. But the necessary concepts, strategies and indeed experience in this area are all lacking. This creates the risk that future land tenure rights which have not been sanctioned by a legal certificate will be weakened, at least to some extent. Despite Fisiy’s balanced assessment of the social risks involved by such an approach (1998), the World Bank seems to be adopting an ambivalent attitude on these issues, to say the least.

The main characteristic of the PFR model was that it recognised and protected all existing rights. It will however lose much of its legitimacy and *raison d’être* if it turns out that the lands protected by these certificates are more and

⁵ In the absence of the texts regarding implementation, we do not know how the collective ownership rights will be managed or shared out.

⁶ One may well ask if the introduction of formal documents in respect of land tenure rights – whether collective or not – is a priority for rural populations generally or mainly for the more dynamic agricultural operators. In my opinion, no conclusive answers can be drawn from the pilot phase of the PFR.

more concentrated in the hands of large land-owners, to the detriment of small farmers.

Plans to maintain and update the databases have now entered their implementation phase. These tasks will be undertaken by “maintenance units”, soon to be set up and attached to the regional offices of the Ministry of Agriculture. The “village land management committees”, which observe and register any changes in land tenure practice, have an important role to play in this respect. They pass on information about such changes to the “unit” which, under the supervision of a district committee, is responsible for making the appropriate amendments to plans and documents.

It is clear that the success or otherwise of this operation will depend on how well the “village committees” perform and, above all, on people’s readiness to inform them of land tenure transactions. This is also the ultimate test of how much importance rural producers attach to the registration of land.

Results expected from the extension phase

As part of the planning for the extension phase of the PFR, solutions have been devised for three categories of problem which remained unresolved at the conclusion of the pilot phase. These are:

- the maintenance of databases, which is to be carried out using the method described above;
- the issue of land tenure certificates, which will be replaced by deeds of ownership (where these are concerned, please note the reservations stated above regarding security for those holding only rights of use);
- the establishment of a link between security of land tenure and decentralised land management.

The last of these points is guaranteed by the integration of the PFR into a much wider programme of rural development and the attendant decentralisation measures. The fact that the PFR documents are also available at local level and are administered by “village committees” provides a sound basis for the management of natural resources at village level.

LAND TENURE LEGISLATION

On 23 December 1998, a Law relating to rural land⁷ (Law no. 98-750) was adopted by the National Assembly and published in the Official Journal of the Republic of Côte d'Ivoire (see Appendix for the full text). The burden of the new legislation can be summed up as follows:

Chapter 1 (Art. 1-3) defines rural land and its components. It includes lands owned by individuals (provided they are “*personnes physiques ivoiriennes*”, i.e. Côte d'Ivoire nationals) and by the State, as well as lands farmed by virtue of customary rights (“*domaine coutumier*”) or which have been granted by the State to third parties (“*domaine concédé*”). The customary and concessionary regimes are both explicitly regarded as transitory forms on the way to an exclusive regime of formal ownership.

Chapter 2 (Art. 4 - 14) stipulates that formal ownership rights can only be acquired by being entered in the land register. Existing customary rights must be registered within a period of ten years. Such registration results in the issuing of a “land tenure certificate”, which may in turn be used as a basis for registration in the land register. Should customary rights not be registered within ten years, the plots concerned will be treated as being “ownerless” and will revert to the State (Art.6). A “land tenure certificate” may be drawn up in the name of an individual or a collectivity, the latter category comprising local authorities, villages, clans or families (Art. 10). Lands covered by a land tenure certificate may be distributed among the members of the community or transferred to third parties.

Chapter 3 lays down regulations for the use of rural land; chapter 4 is concerned with tax measures; while chapters 5 and 6 and the concluding section set out the rules that will apply in the transitional phase.

The several positive elements emerge from a first reading of this text. By creating the “*domaine coutumier*”, the text does justice to the legal reality of the rural situation in Côte d'Ivoire, unlike many other comparable legal texts in force in the region, which overlook it, or even try to do away with it. The collective land tenure certificate introduced for this purpose is adequate, not only in ensuring the maintenance of local rights of use, but in making an important contribution to the principle of village self-management.

⁷ *Loi relative au Domaine foncier rural*

However, a whole series of questions remain unanswered, and some additional points need to be clarified in the course of the legislative process, or when the provisions for its implementation come to be debated. The legal text and its preamble insist on the transitory nature of the customary regime. Postulating that only modern law can guarantee sustainable development and security of tenure, the preamble makes the following explicit statement: “*As a vehicle of progress, it [the rural land management policy] will encourage access to modern law and the security associated with it*”. However, the law does not state clearly how the move to an integral right of ownership – i.e. the transfer from the land tenure certificate to formal registration – will take place. It is likely that the customary management exercised by virtue of the collective certificates will continue for a long time to come, which in any case is in keeping with the identified needs of the rural population. We shall have to follow the response of the administration over time, given that this situation is clearly contrary to its intentions.

The issuing of land tenure certificates raises a whole series of questions of both principle and procedure. It is clear that these certificates will be drawn up on the basis of the findings of the Rural Land Plan (PFR) which, as we have seen, do not provide the means for establishing who is entitled to enjoy the benefits of this kind of “certificate”. Under the provisions of the old land tenure enquiry form, a land manager might have been able to apply for a certificate of this kind, but the detractors of the old procedure have shown that this practice would have given rise to uneven, inappropriate decisions, and so would have led to conflicts. The present version of the form which is still being tested gives no indication of which individuals or institutions might lay claim to a certificate. So the question of how a land tenure certificate can be obtained on the basis of the land tenure survey remains unresolved. The problem is particularly acute where individual certificates are concerned; in the case of collective certificates, rights within the group remain unchanged.

Certificates must be applied for within ten years. If this time limit is not respected, the land concerned is declared “ownerless” and reverts to the State. This regulation supposes that the State is capable of surveying the whole country within the time laid down. Fortunately, following debate in the National Assembly, the requirement that the land be developed in accordance with a management plan, together with the threat that the land tenure certificate might be withdrawn in the event of failure to comply, was suppressed, thus eliminating another factor of uncertainty. In the absence of directives applicable to them, such specifications will merely create an element of legally sanctioned insecurity. Moreover, a large number of negative

experiences of this kind in West Africa should serve as a warning against the inappropriate, and often counter-productive, character of such provisions.

Finally, it is important to point out that the law contains no provisions to protect farmers who have failed to obtain certificates. Their situation will become particularly precarious when they are confronted with attestations by others of individual or family ownership. It is to be feared that usage rights of unlimited or long-term duration will be modified or withdrawn in reaction to the new legislation. On the other hand, a collective deed of ownership issued to a village community would probably be a better approach. For this reason, when the implementation provisions are drawn up, it would be wise to consider whether land users could be made more secure by the granting of long-term contracts or leases which would be heritable and alienable.

Given the precarious balance characterising the different modes of access to land and usage rights, the PFR had two options. The first was to register all rights without transforming them in a targeted manner. The second was to fix and formalise existing rights with the aim of assimilating them into statutory law and developing them in the direction sought by the official powers. It is important to stress again that there is an essential difference even between this second procedure and that often adopted in the past, which was simply to impose modern law solutions.

Though Côte d'Ivoire has chosen the second option, it is now faced with the need not only to transform its existing regulatory systems, but also to beware the risk that the status of certain kinds of farmer may suffer.

By way of conclusion, and returning to the title of this article, the PFR should be seen as an innovative and successful approach to representing the complex system of local land tenure practices, and providing them with a flexible framework in which to develop. However, the text of the Law – which also has its merits – reduces this dynamic world to a simple, simplified order, with the attendant danger of marginalising a large part of the rural population of Côte d'Ivoire. We are therefore looking forward impatiently to the provisions governing the Law's implementation, in the hope that they will to some extent respond to the concerns expressed in this analysis.

ANNEX:
Rural land tenure Law
adopted by the National Assembly in December 1998

LOI N° 98-750 du 23 décembre 1998
relative au Domaine foncier rural.
Extrait du *Journal Officiel* de la République de Côte d'Ivoire, 14 janvier 1999

L'ASSEMBLEE NATIONALE A ADOPTE,
LE PRESIDENT DE LA REPUBLIQUE PROMULGUE LA LOI DONT LA TENEUR
SUIT:

CHAPITRE PREMIER
Définition et composition du Domaine foncier rural

Section 1. – Définition

Article premier. – Le Domaine foncier rural est constitué par l'ensemble des terres mises en valeur ou non et quelle que soit la nature de la mise en valeur.

Il constitue un patrimoine national auquel toute personne physique ou morale peut accéder. Toutefois, seuls l'Etat, les Collectivités publiques et les personnes physiques ivoiriennes sont admis à en être propriétaires.

Section 2. – Composition

Art. 2. – Le Domaine foncier rural est à la fois :

- Hors du domaine public ;
- Hors des périmètres urbains ;
- Hors des zones d'aménagement différé officiellement constituées ;
- Hors du domaine forestier classé.

Le Domaine foncier rural est composé :

A titre permanent :

- Des terres propriété de l'Etat ;
- Des terres propriété des Collectivités publiques et des particuliers ;
- Des terres sans maître.

A titre transitoire :

- Des terres du domaine coutumier ;
- Des terres du domaine concédé par l'Etat à des Collectivités publiques et des particuliers.

Art. 3. – Le Domaine foncier rural coutumier est constitué par l'ensemble des terres sur lesquelles s'exercent :

- Des droits coutumiers conformes aux traditions ;
- Des droits coutumiers cédés à des tiers.

CHAPITRE II

Propriété, concession et transmission du Domaine foncier rural

Section 1. – La propriété du Domaine foncier rural

Art.4. - La propriété d'une terre du Domaine foncier rural est établie à partir de l'immatriculation de cette terre au Registre foncier ouvert à cet effet par l'Administration et en ce qui concerne les terres du domaine coutumier par le Certificat foncier.

Le détenteur du Certificat foncier doit requérir l'immatriculation de la terre correspondante dans un délai de trois ans à compter de la date d'acquisition du Certificat foncier.

Art. 5. - La propriété d'une terre du Domaine foncier rural se transmet par achat, succession, donation entre vifs ou testamentaire ou par l'effet d'une obligation.

Art. 6. – Les terres qui n'ont pas de maître appartiennent à l'Etat et sont gérées suivant les dispositions de l'article 21 ci-après. Ces terres sont immatriculées aux frais du locataire ou de l'acheteur.

Outre les terres objet d'une succession ouverte depuis plus de trois ans non réclamées, sont considérées comme sans maître :

- Les terres du domaine coutumier sur lesquelles des droits coutumiers exercés de façon paisible et continue n'ont pas été constatés dix ans après la publication de la présente loi ;
- Les terres concédées sur lesquelles les droits du concessionnaire n'ont pu être consolidés trois ans après le délai imparti pour réaliser la mise en valeur imposée par l'acte de concession.

Le défaut de maître est constaté par un acte administratif.

Art. 7. – Les droits coutumiers sont constatés au terme d'une enquête officielle réalisée par les autorités administratives ou leurs délégués et les conseils des villages concernés soit en exécution d'un programme d'intervention, soit à la demande des personnes intéressées.

Un décret pris en Conseil des ministres détermine les modalités de l'enquête.

Art. 8. – Le constat d'existence continue et paisible de droits coutumiers donne lieu à délivrance par l'autorité administrative d'un Certificat foncier collectif ou individuel permettant d'ouvrir la procédure d'immatriculation aux clauses et conditions fixées par décret.

Art. 9. – Les Certificats fonciers collectifs sont établis au nom d'entités publiques ou privées dotées de la personnalité morale ou de groupements informels d'ayants-droit dûment identifiés.

Art. 10. – Les groupements prévus ci-dessus sont représentés par un gestionnaire désigné par les membres et dont l'entité est mentionnée par le Certificat foncier.

Ils constituent des entités exerçant des droits collectifs sur des terres communautaires.

L'obtention d'un Certificat foncier confère au groupement la capacité juridique d'ester un justice et d'entreprendre tous les actes de gestion foncière dès lors que le Certificat est publié au *Journal officiel* de la République.

Section 2. – La concession du Domaine foncier rural

Art. 11. – Le Domaine foncier rural concédé est constitué des terres concédées par l'Etat à titre provisoire antérieurement à la date de publication de la présente loi.

Art. 12. – Tout concessionnaire d'une terre non immatriculée doit en requérir l'immatriculation à ses frais.

La requête d'immatriculation est publiée au *Journal officiel* de la République. Elle est affichée à la préfecture, à la sous-préfecture, au village, à la communauté rurale, à la Région, à la commune et à la Chambre d'Agriculture, concerné où les contestations sont reçues pendant un délai de trois mois. [sic]

A défaut de contestation et après finalisation des opérations cadastrales, il est procédé à l'immatriculation de la terre qui se trouve ainsi purgée de tout droit d'usage.

En cas de contestations, celles-ci sont instruites par l'autorité compétente suivant les procédures définies par décret pris en Conseil des ministres.

Art. 13. – Sauf à l'autorité administrative en charge de la gestion du Domaine foncier rural d'en décider autrement, l'immatriculation prévue à l'article 12 ci-dessus est faite au nom de l'Etat.

Les terres ainsi nouvellement immatriculées au nom de l'Etat sont louées ou vendues à l'ancien concessionnaire ainsi qu'il est dit à l'article 21 ci-après.

Art. 14. – Tout concessionnaire d'une terre immatriculée doit solliciter, de l'Administration, l'application à son profit de l'article 21 ci-après.

Section 3. - La cession et la transmission du Domaine foncier rural

Art. 15. – Tout contrat de location d'une terre immatriculée au nom de l'Etat se transfère par l'Administration sur demande expresse du cédant et sans que ce transfert puisse constituer une violation des droits des tiers.

Les concessions provisoires ne peuvent être transférées.
La cession directe du contrat par le locataire et la sous-location sont interdites.

Art. 16. – Les propriétaires de terrains ruraux en disposent librement dans les limites de l'article premier ci-dessus.

Art. 17. – Le Certificat foncier peut être cédé, en tout ou en partie, par acte authentifié par l'autorité administrative, à un tiers ou, lorsqu'il est collectif, à un membre de la collectivité ou du groupement dans les limites de l'article premier ci-dessus.

CHAPITRE III Mise en valeur et gestion du Domaine foncier rural

Art. 18. – La mise en valeur d'une terre du Domaine foncier rural résulte de la réalisation soit d'une opération de développement agricole, soit de toute autre opération réalisée en préservant l'environnement et conformément à la législation et à la réglementation en vigueur.

Les opérations de développement agricole concernent notamment et sans que cette liste soit limitative :

- Les cultures ;
- L'élevage des animaux domestiques ou sauvages ;
- Le maintien, l'enrichissement ou la constitution de forêts ;
- L'aquaculture ;
- Les infrastructures et aménagements à vocation agricole ;
- Les jardins botaniques et zoologiques ;
- Les établissements de stockage, de transformation et de commercialisation des produits agricoles.

Art. 19. – L'autorité administrative, pour faciliter la réalisation des programmes de développement ou d'intérêt général peut, nonobstant le droit de propriété des collectivités et des personnes physiques, interdire certaines activités constituant des nuisances auxdits programmes ou à l'environnement.

Art. 20. – Les propriétaires de terres du Domaine foncier rural autres que l'Etat ont l'obligation de les mettre en valeur conformément à l'article 18 ci-dessus. Ils peuvent y être contraints par l'autorité dans les conditions déterminées par décret pris en Conseil des ministres.

Section 2. – Gestion du Domaine foncier rural de l'Etat

Art. 21. – Aux conditions générales de la présente loi et des autres textes en vigueur et à celles qui seront fixées par décret, l'Administration gère librement les terres du Domaine foncier rural immatriculées au nom de l'Etat.

Art. 22. – Les actes de gestion prévus à l'article 21 ci-dessus sont des contrats conclus directement entre l'Administration et les personnes concernées.

Les contrats de location sont à durée déterminée et comportent obligatoirement des clauses de mise en valeur. En cas de non-respect de ces dernières, le contrat est purement et simplement résilié ou ramené à la superficie effectivement mise en valeur.

Le non-respect de toute autre clause du contrat peut également être sanctionné par la résiliation.

Dans ce cas, les impenses faites par le locataire sont cédées par l'Etat à un nouveau locataire sélectionné par vente des impenses aux enchères. Le produit de la vente est remis au locataire défaillant après déduction des frais éventuels et apurement de son compte vis-à-vis de l'Etat.

CHAPITRE IV

Dispositions financières et fiscales

Art. 23. – La location des terres du Domaine foncier rural de l'Etat est consentie moyennant paiement d'un loyer dont les bases d'estimation sont fixées par la loi de Finances.

Art. 24. – Les collectivités et les particuliers propriétaires de terres rurales sont passibles de l'impôt foncier rural tel que fixé par la loi.

Art. 25. – En cas de non paiement du loyer ou de l'impôt, prévus aux articles 23 et 24 ci-dessus, et outre les poursuites judiciaires prévues par les textes en vigueur, les impenses réalisées par le locataire constituent le gage de l'Etat dont les créances sont privilégiées même en cas d'hypothèque prise par des tiers.

CHAPITRE V

Dispositions transitoires

Art. 26. – Les droits de propriété de terres du Domaine foncier rural acquis antérieurement à la présente loi par des personnes physiques ou morales ne remplissant pas les conditions d'accès à la propriété fixées par l'article premier ci-dessus sont maintenus à titre personnel.

Les héritiers de ces propriétaires qui ne rempliraient pas les conditions d'accès à la propriété fixées par l'article premier ci-dessus disposent d'un délai de trois ans pour céder les terres dans les conditions fixées à l'article 16 ci-dessus ou déclarer à l'autorité

administrative le retour de ces terres au domaine de l'Etat sous réserve d'en obtenir la location sous forme de bail emphytéotique cessible.

Les sociétés maintenues dans leur droit de propriété en application des dispositions ci-dessus et qui souhaiteraient céder leurs terres à un cessionnaire ne remplissant pas les conditions d'accès à la propriété fixées par l'article premier ci-dessus déclarent à l'autorité administrative le retour de ces terres au domaine de l'Etat sous réserve de promesse de bail emphytéotique au cessionnaire désigné.

CHAPITRE VI

Dispositions finales

Art. 27. – La loi n°71-338 du 12 juillet 1971 relative à l'exploitation rationnelle des terrains ruraux détenus en pleine propriété et toutes les dispositions contraires à la présente loi sont abrogées.

Art. 28. – Des décrets fixent les modalités d'application de la présente loi.

Art. 29. - La présente loi sera publiée au *Journal officiel* de la République de la Côte d'Ivoire et exécutée comme loi de l'Etat.

Fait à Abidjan, le 23 décembre 1998.

Henri Konan BEDIE.

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