

Time to Rethink?

A CRITIQUE OF RURAL LAND LAW IN CÔTE D'IVOIRE



Time to Rethink? A Critique of Rural Land Law in Côte d'Ivoire

Liz Alden Wily¹

March 2015

Acknowledgements

I am immensely grateful to Julia Christian of Fern for organising translation of laws and for contributing to editing. I am also grateful to Dr. Kouame Raphael Kra for kindly making texts available. All mistakes and misinterpretations of the law are solely the author's.

Fern would like to thank the European Union for their financial support.
The views expressed do not necessarily reflect the funders' official positions.



ISBN: 978-1-906607-52-4



FERN office UK, 1C Fosseyway Business Centre, Stratford Road, Moreton in Marsh, GL56 9NQ, UK

FERN office Brussels, Rue d'Edimbourg, 26, 1050 Bruxelles, Belgium

www.fern.org

¹ The author is an independent expert in land tenure and natural resource governance, with specialties in the customary tenure. She combines roles of technical adviser, researcher and practitioner, and works globally, advising governments, think tanks, consortia, universities and international programmes.

The objective of this paper is to critique rural land law and forest law in Côte d'Ivoire from an Africa-wide perspective. The paper starts with an overview of customary land tenure across Africa, and different countries' approaches to achieving legal protection. It then considers the Ivorian context, looking at the historical conditions influencing modern rural land law; the current legal framework governing tenure; and gaps in the legal framework as well as possible remedies. The paper finishes with a discussion of the implications of Côte d'Ivoire's new Forest Code for rural tenure, identifying areas that are unclear or potentially inconsistent, and offering suggestions for how these could be resolved.

Contents

Summary	5
Introduction	9
<i>Box 1: Modern Land Tenure in Africa</i>	9
1 Background	12
<i>Box 2: Ten Key Indicators of Customary Land Rights Security in 2015</i>	15
2 Rural Land Law in Côte d'Ivoire	18
<i>Box 3: Timeline of key developments influencing modern land law in Côte d'Ivoire</i>	18
<i>Box 4: Key Articles of the 1955 land law</i>	25
3 The Current Legal Framework for Rural Lands in Côte d'Ivoire	31
<i>Box 5: Summary of Key Provisions in the Rural Land Law (1998),</i>	34
4 Critique of the Rural Land Law	40
5 Suggestions for Remedy	55
6 Forest Law in Relation to Land Rights	62
<i>Box 6: The Forest Law (2014)</i>	62
Annex I: Key implementing regulations of the Rural Land Law	69
<i>Box 7: Attributes of a Land Certificate (Certificat Foncier)</i>	72
<i>Box 8</i>	74
Annex II: Giving customary rights force as real property without registration – examples from other countries	77
Annex III : Protection of Customary Rights in Tanzania	79
Annex IV: References Cited	81

Summary

Most land in Africa is rural; urban areas comprise less than two per cent of the total land area, despite housing over 40 per cent of the continent's population. The majority of rural land is forest and rangeland.

Across Africa, the legal treatment of customary land rights is a major issue. The way land rights are handled is influenced both by historical factors and by current rapid capitalist transformation. Land is increasingly being treated as a commodity, and ownership of and benefit from land are being concentrated in fewer hands. Contestation around land rights in African economies is largely between the majority poor and better-off elites, although it is sometimes shaped or co-opted by ethnic, religious or political agendas. This conflict reaches deeply into the most traditional of communities, and also has a significant impact on urban areas, where many younger village members now live.

In an environment of rising accumulation and dispossession and plummeting tenure security, concerns over the status and protection of *unregistered* possession of land and resources, along with contested conceptions of rights, have come to the fore. As events in just over half of Africa's states since 1970 have shown, contestation around land ownership has routinely triggered violent social conflict, sometimes spilling into war. The role of the modern African state in landholding is therefore a key concern.

The challenge of overcoming land tenure problems in a period of rapid social transformation is immense. This paper places a critique of Côte d'Ivoire's Rural Land Law within the context of attempts around Africa to find resolution to this issue through reformist land policies and laws.

Côte d'Ivoire introduced a new Rural Land Law in 1998, which on the face of it appeared to form part of this growing body of progressive land reform law. It even seemed to finally recognise that the idea of Africa as empty of owners was a myth, and that customary rights deserved to be treated as real property interests. It made a notable advance in enabling communities to have their rights formally recorded on a customary basis, as collectives. This seemed to open the way to give legal force to family tenure, and to the right of communities to vest ownership in themselves as a group. From this basis, communities could apparently make internal arrangements for issue of usufruct and other rights. The law also seemed to enable communities to earmark residual forest and rangeland areas outside of family properties to be formally titled as common properties.

On closer examination, the potential of the Rural Land Law is undermined by a fundamental impediment: for land rights to be identified, registered and certified, 'land certificates' must be transformed into 'land titles'. This indicates that customary rights as expressed in land certificates are not considered to have the attributes of, or deserve protection as, real property. They are viewed as less than property, perhaps merely as occupation and usage rights on unowned lands. To be secure, customary rights must be transformed into property through reconstruction as land titles – a concept which was brought into colonial and post-colonial law from France. Moreover, only individuals or legal bodies may hold such titles.

Côte d'Ivoire's Rural Land Law explicitly seeks the extinction of customary rights and the customary domain in general. Customary rights are a temporary class, active only up until a declared cut-off date for compulsory acquisition of certificates and their subsequent conversion into titles – currently

set for 2019. From that year, any customary land holders who have failed to get certificates and then title deeds for individually-held lands, including non-indigenous holders of derivative rights within the customary regime, will be deemed landless in the eyes of the law, as their traditional lands become unowned (*terres sans maîtres*). In the eyes of state law, their rights will simply disappear, and they will become once again, as they were in the colonial era, no better than permissive occupants on the land of the state, squatters on their own customary lands. The state will be free to dispose of their land as it wishes. This makes nonsense of claims that the Rural Land Law did away with the founding notion of *terra nullius* or *terres sans maîtres*. It offers no more than a temporary reprieve, from which this notion will be reasserted in yet more definitive and final ways.

The approach to customary land rights taken by Côte d'Ivoire's Rural Land Law – although once common – has been mostly challenged and abandoned since 1998. By that point, Ghana, Botswana, South Africa and Uganda had already legally established that customary rights were protected, whether registered or not, and were assured equivalent legal force and effect as rights under registered title.

The approach adopted in Côte d'Ivoire's 1998 law is entirely consistent with the classical titling that had been promoted actively but with little success since the 1960s, with donor backing. This titling process takes customary rights as its starting point, but then converts these into tenure forms that strip those rights of their source of jurisdiction – the community – and of their customary encumbrances, including land-related obligations to family members, and recognition of use rights held by non-owners. It also overrides nuanced and diverse land use arrangements held by tenants and land acquirers.

With such prescriptions, it is difficult to regard the Rural Land Law as either modern or fair. It creates a situation that is uncomfortably similar to that which prevailed from 1900 until the 1960s. In fact, the threat to traditional rights under the new law is far greater than it was during that period, since the law makes certification and transformation of customary rights into a non-customary ownership form compulsory. It raises the stakes dramatically.

More practical problems have also afflicted the Rural Land Law's application. The particular type of formalisation it prescribes is almost impossible to apply at scale. It also rests upon two false assumptions: first, that all customary rights can be identified and converted through registration within a mere decade; and second, that the majority of landholders want such formalisation, and are prepared to pay for it. The costs of registration foisted upon landholders run to several thousands of unaffordable dollars. The threat of subsequent property taxes, the multiplicity of procedures and actors involved, entirely unrealistic mapping demands, and inadequate institutional back-up are among factors which make the law's swift implementation unlikely, even in peacetime.

A further disincentive is the fact that while communities may secure collective certificates for shared lands, their collective status will not be recognised when it comes to converting these certificates into property titles. The presumption of the Rural Land Law is that a community will need to disband itself as a collective by subdividing the land. In order to avoid this, they can take the further costly step of creating and registering a legal entity in whom to vest their shared right. Alternatively, and equally unpalatably, the group can become a formal tenant of the state or one of its local government agencies.

These factors have made it practically impossible for collective customary property to be embedded with full force and effect as a form of private property. Nor can families secure rights on that basis. Instead, as in old and now largely discarded titling programmes, the land title would list one individual, normally the (male) household head, as the owner.

An additional problem with the Rural Land Law is that it gives concession holders and lease-holders an easy opportunity to convert their rights into absolute title. At the same time, it does not offer any procedures by which such properties, when they have been wrongfully taken from the customary sector, could be directly restored to community tenure.

Doubts must also be raised around the defining of 'rural land' as residual to other classes of land, most notably to ever-expanding state property in the deceptive form of 'public domain'. There is an urgent need to minimise the role of the state as landlord and private landowner, not least to enable it to act with greater disinterest and cleaner hands in matters of allocation. Furthermore, the Rural Land Law does not presently advance devolution in day-to-day land governance to the most local levels possible. Village land committees are provided for, but do not appear to be elected or accountable to their constituents, nor are they legally vested with important responsibilities.

In practice, it was other problems that threw the Rural Land Law into question after its enactment. Its provisions preventing foreigners from directly owning land, and its potential to reduce the tenure of those who were Ivorian but from other parts of the country, grabbed attention after the Law's promulgation in early 1999. Having being encouraged since the 1920s to open up forest lands for the country's famous cocoa, oil palm and other tree crop plantations, and having been assured by President Houphouët-Boigny in a 1963 order that the "land belongs to he who develops it", both of these groups were infuriated that the new Law reduced their ownership rights. These had been acquired under either the customary or the statutory titling regime as derivative rights, with either the state or – for Ivorians – original owners, as landlords. On their part, the original owners saw the Law as giving them the go-ahead to retake the lands of 'outsiders' and foreigners into their absolute possession, irrespective of agreements they or their families had reached with these immigrants. The results – social conflict and two civil wars – absorbed the first decade of the new century.

Still, for all the reasons listed earlier, uptake of the compulsory requirement to formalise rights in the manner laid out has been almost zero, civil war notwithstanding. For one reason or another the populace seems to have voted with its feet. Less than one thousand land certificates have been issued, and the continued validity of most of these is uncertain given they expire if not registered within three years.

Without a re-examination of the Rural Land Law's attitude towards customary land rights, efforts to reduce costs to the landholder of formalising his or her rights will be futile. Côte d'Ivoire needs to rethink how customary rights are protected prior to registration, and whether they need to be registered at all for protection of these property rights to be assured. This does not mean forsaking reasonable demand to see as many rights as possible formally certified. It does mean challenging the conventional view as to what such formalisation represents, how it can be achieved, and how useful it is to make certification compulsory.

Following such a re-think, practical changes could then come more easily into play, such as removing inessential and grossly expensive mapping requirements, and most importantly, reducing formalisation to a single localised step.

Another key concern is the pressing need for modern land law to treat families and communities, not just individuals, as natural persons for the purposes of registration. It is also recommended that policy-makers revisit how to better integrate the parallel definition and registration of village territories as administrative units. This process should provide the framework for significantly devolved land administration by elected and legally empowered committees, with the identification of individual, family, and collective rights to land as only one of its tasks. An initial responsibility could be to simply zone village lands to enable forests, rangelands and other typically communal resources to be set aside as secured common properties for registration in due course, and protected in the meantime from ad hoc expansion by individual community members. Rules of access and use

for each common property could be easily devised by communities, including earmarking the most vulnerable lands as community-owned and managed protected areas.

Much stronger connections need to be forged between the Rural Land Law and the new Forest Law of 2014. The new Forest Law has made an important advance in shifting ownership over trees from the state to the owner of the land on which the trees are found. Yet, so long as customary lands remain unregistered, ownership over the trees risks reverting to the state once the cut-off date for land ownership registration passes in 2019. This leaves communities in a state of high insecurity and increases incentives to deforest. In addition, tying tree ownership to land ownership may increase conflict at the local level, where under customary norms trees may be seen as owned separately (i.e. by the person who planted the tree, who may be a more recent migrant to the area) from the land (which may be held by a traditional resident). The Forest Code states that the issue of tree tenure will be addressed in an implementing regulation; this paper suggests ways in which this can be done.



Introduction

The task of this paper is to critique Côte d'Ivoire's Rural Land Law (1998) and Forest Law (2014), to assess how far these laws protect customary land interests, and where they are found lacking, to suggest remedies.

The paper is not written for land specialists, but for civil society, government, donor institutions and other actors who wish to better understand the present legal situation around customary rights. Land and resource ownership can be complex, and explanations are given where judged needed. Box 1 provides a basic introduction to land ownership in Africa.

Box 1: Modern Land Tenure in Africa

- a. **Most land rights in Africa are customary, in the sense of deriving from, being defined by, and being upheld by local community practice, not by state laws. Local community practice is variously termed customs or customary law (although the content may not be very traditional).**
- b. **State land law is national law, and overrides customary rules or law, unless it says otherwise. All Africans live within states, and what the law of the state says determines how community-derived rights are treated.**
- c. **Land ownership can mean either that the owner owns the land itself, or that she or he owns rights to the land, such as for occupation, use or development. This distinction is highly relevant in Africa, where many national laws vest all land, or all unregistered land, in the state. The state itself is defined in different ways, but is increasingly seen as being synonymous with the nation, meaning that the nation owns the land in common. In practice, however, governments behave as if government and state are the same thing, and may forget they are acting on behalf of the nation.**
- d. **Where state ownership of all land exists, as is the case in more than half of all African states, the property rights of the populace are limited to owning rights to that land. The content of that ownership can be so substantial as to mean that there is little difference between owning the land directly and owning rights to the land. An easy illustration of this is found in Britain. The Queen owns all land in England and Wales, but her subjects may acquire a freehold right to the land, and she does not interfere in any of those transactions. An English freehold has no fixed term, and can be freely sold in the open market place. In contrast, where governments adopt more landlord-like positions in their ownership of the land, they tend to also restrict the content of**

>

>

rights to the land, for example permitting these rights to exist only for fixed terms, or limiting the right to trade those rights to land.

- e. **Who may be a landowner or a land right owner varies in accordance with state law and the terms of customary law. The former tends to limit ownership to natural or legal persons, and views natural persons as existing only as individuals. Customary or community land law around the world is more nuanced, enabling families, groups and communities to be recognised owners. In addition, an adult member of a community may own rights to several different types of land. S/he may, along with all other community members, share ownership of the entire community land, or may be a co-owner of only the off-farm common land. S/he may own a share with other family members of the family house/homestead, and may also own a farm of her/his own.**
- f. **There are also lesser rights to land, generally referred to as derivative or secondary rights. These include seasonal or product specific rights, which outsiders may acquire over time under the aegis of customary norms. Rights additionally include contractual arrangements that land right owners formally or informally enter into, such as to lend, pawn, pledge, rent out, lease, or sharecrop their land to others, and which may result in conditional or absolute transfer of the right to the land. Today, these arrangements are often written down and witnessed, as are outright sales and purchases. In state systems, the dominant forms of secondary rights are leases and concessions (which are sometimes virtually the same thing). Non-owners, including governments, also routinely obtain rights of way or access to private lands for certain purposes.**
- g. **The recording of land rights has been the main focus of land administration in Africa for between 50 and 100 years. In some African states, modern land laws do not require land rights to be formally documented and registered. However, even in these states, the opportunity to register land is given priority as a means of increasing tenure security. There is tremendous variation in what is registered and how, and the intended effects of registration. This variation emerges as a key issue in this study of Côte d'Ivoire land law.**

Critique of Côte d'Ivoire's principal land law is timely, given the role that contestation over land rights has played in civil conflict over the last 15 years, including in two civil wars in 2002-2003 and 2010-2011. A rising number of actors and agencies are expressing interest in contributing to review of the law, including donor representatives.² Although there has been no indication since 2012 that the present government would not actively pursue the implementation of the Rural Land Law, the President has stated that simplification for easier uptake of titling is urgently needed.³

2 This includes the possibility of an in-depth Land Governance Assessment Framework (LGAF) exercise being conducted. It will be designed and facilitated by the World Bank, which has proved quite helpful in other African states for problem and solution identification.

3 Drawing on public statements and interviews, J-P Colin records President Ouattara's conviction that privatisation through formal titles is critical for tenure security, including to enable peasants to access credit (Colin 2012:2).

This critique is handicapped by being a remote desk study, not rooted in familiarity with Côte d'Ivoire. Nor is this study the product of field investigations. Additionally, legal texts have been examined mainly in English translation, and access to commentary has been similarly constrained.

However, the study does benefit from familiarity with tenure reforms more widely across the continent, and it is from this perspective that the critique is made. Customary land tenure is indisputably the main mechanism through which rights to land are acquired and sustained in Africa, and the analysis opens with an overview of the situation facing customary land tenure across Africa in 2015.

■ **Canoe in a forest near Komambo, Côte d'Ivoire. A key finding of community forest initiatives around the world is that forest conservation is much more successful when ownership as well as primary management authority is granted to local communities.**

Photo: jbdodane/Flickr CC



1 Background

1.1 Key truths about customary land tenure

Customary land tenure is not dying. In fact, this is one of the world's dominant landholding and regulation regimes (and not only in Africa). Several billion people acquire, hold, sustain, regulate and transact rights to land under customary regimes. At least five billion hectares are held under these norms.

Customary tenure is community based. While each local regime has its own characteristics, these are underpinned by strong commonalities across the globe. The most basic is that these systems derive from and are sustained by the community, not by the state. That is, it is the local social community that determines what rights to land exist, what those rights amount to (e.g. possession, absolute ownership, access, or use), what obligations they carry for the right-owner, what rules apply, and how the community will uphold these rules. It is accurate to refer to customary tenure as community tenure, to customary rights as community rights, and to customary lands as community lands. For familiarity in the African context, the term customary tenure is used in this paper.

Not all community rules are traditional. It is also useful to refer to customary tenure as community tenure as it reminds us that a community need not necessarily follow practices (norms) deeply rooted in tradition. What is customary about customary or community tenure is that the community rather than the state determines the nature and distribution of rights, and that even in circumstances of polarised leadership in the hands of elites or chiefs, significant community consensus is required for norms to be adhered to and upheld. The nature of the rights themselves varies over time as each generation makes adjustments to the practices and rules to meet modern needs. Rules (or 'customary laws') are therefore a mix of long-practiced norms and new norms, although tradition is routinely claimed for even the most novel of new norms ('reinvented traditions'). From a continental perspective, four prominent areas of change concern (a) how far rights to land are tradeable and to whom; (b) how decisions are made, with opposing trends towards concentration of authority in the hands of elites in some localities, and in other cases, strong trends towards democratisation and inclusion of previously institutionally weaker groups within the community; (c) shifting norms to accommodate (or at times, reject) the reality that many (younger) community members no longer live full-time in the rural community, with some shift as to their decision-making, landholding and communal land use and benefit rights such as to community forest and grazing resources; and (d) especially in West Africa given long traditions of agricultural migration, significant shifts in handling of the rights of 'outsiders' and their incorporation (or lack of incorporation) as accepted social and landholding members of the community.

Individual, family, clan, and community rights exist. Customary or community-based tenure does not mean that rights are always owned communally as collective property. On the contrary, rights to house and farm plots in the customary system are more often than not vested in families. The extent to which genuinely collective rights exist is (largely) corollary to the extent to which naturally collective resource lands such as forests, rangelands, and wetlands remain in the locality. Where these sharply decline or are threatened, there is frequently significant reassertion and remaking of collective rights as forceful property interests within customary regimes, to protect dwindling shared assets from both external and internal elite capture. There is also an evident trend towards inclusion

of all community members as shareholders in that tenure in localities where poorer families may have had less certain rights to commons than wealthier families.

Jurisdictional communality also strongly exists, in the sense of local land relations being subject to the will of the community as a whole to sustain norms, as mentioned above. In important ways, this is distinct from the collective property right that may be identified in respect of physical resources and which may be mapped and named. This distinction is clearest in areas where little or no common land remains but where the norms of the social community continue to determine and regulate inter-family and inter-parcel relations, including relations with outsiders. Indeed, the most fundamental and consistent attribute of customary or community based tenure regimes around the world is the centrality of community jurisdiction, albeit variously expressed and delivered. When this falters or fails, customary or community-based tenure ceases to exist. A fascinating aspect is how rarely this in fact occurs; even a community which has been physically resettled frequently retains or reinvents community-based tenure norms to regulate holding and transactions. Rural communities settling in poor urban neighbourhoods also commonly bring rural norms into their urban settlements.

Customary tenure is fit for the present day. Customary or community based tenure regimes persist, and with significant vibrancy. The dominant official view throughout the twentieth century was that these systems would disappear, as state-made systems – which in Africa have their origins in either English common law or French, Portuguese, Spanish or German civil law – penetrated land relations. It has also been argued that customary rights should disappear, as they do not generate property rights that can be registered and traded in the open market place as detachable assets of the owner. But by the end of the twentieth century, it was clear that penetration of imported tenure systems has not occurred in much of Asia and Africa; the average titled area in both continents runs at about one to five per cent of total country area.

Customary tenure is democratic and decentralised. The community-based nature of customary regimes offers a useful basis for democratic decentralisation of land governance, and customary regimes. Such regimes are beginning to see significant revitalisation and it has also become clear that community-managed land rights systems are not as backward as many had previously assumed. First, these systems have shown the capacity to respond to changing conditions and to adapt their rules accordingly. Second, in more democratic times, community-based land systems offer a practical foundation for devolved land governance. This goes hand in hand with shifting attitudes as to how far a government needs to own land itself or directly control landholding. There are strong arguments for the state to own as little land as possible in order to act as a disinterested regulator of property, with more sure-footed oversight. There are also practical reasons for modern states to build upon community-based systems rather than dismantle them. To keep access to systems viable, costs down, and accountability to landholders more direct, some countries now locate the land register at district or commune level, and encourage each village or community to establish its own register for rights within the community land area. Villagers, including the poorest, can inspect the records at any time, and do not need to incur the costs of travelling or buying documentation services. Should community systems be fairly regulated, advised, and vested with authority, they could go far in restoring to the population its historic right to manage its own local land relations, within the limits of national prerogatives and conditions. This, it can be argued, would deliver one of the fundamental elements of a mature agrarian democracy.

1.2 The Legal Status of Customary Land Rights in Africa in 2015

Everyone today is a citizen of a modern state. Therefore what state laws say about customary systems and the rights they deliver is very important. Much of the current debate around customary land rights is about what national laws say about those rights, and whether and how those laws recognise customary or community rights as property rights.

Africa comprises nearly three billion hectares of land (excluding waters), in 54 states.⁴ The customary estate may be calculated by excluding urban areas, protected areas, and lands subject to registered, non-customary entitlement (private land).⁵

According to recently calculated data, the rural customary domain comprises 69.5 per cent of the total land area in Africa, or over two billion hectares.⁶ This land directly supports the livelihood of 600 million Africans. Urban dwellers (40 per cent of the continental population in 2012) are also often partly dependent upon rural land for livelihoods, and frequently dependent upon rural communities for social identity and as economic safety nets. Similarly, a growing number of rural community members spend much of the year in towns.

As a large number of protected areas are claimed by rural communities as part of their community domains, the total area of the customary domain may safely be raised to 73 per cent of the continental area by adding in only one quarter of the total area of all protected areas.⁷ It should also be noted that the customary domain constitutes 80 per cent or more of the country's land in nearly half of all African states.

The question of how much of this customary domain is acknowledged as owned by communities produces a very different picture. This is despite massive political change sweeping the continent since 1990, resulting in extensive constitutional change. An astounding 48 out of 54 African states (89 per cent) have introduced new national constitutions since 1990. Modern constitutions often provide much-expanded provisions for land and property and for natural resources.

There has also been a wave of land tenure reform since 1990. So far, this actively involves at least half of all African states (28 of 54 states, or 52 per cent). These countries, including Côte d'Ivoire, have all enacted new land legislation. Elsewhere, the intention to carry out reform is indicated by the institution of land observatories in Francophone Africa and similar commissions of land inquiry in Anglophone Africa.

There has also been legal change in respect of forests, waters and minerals. New forest law in Africa (and globally) is notable for setting up new forest agencies that are semi-independent of government, and for introducing management regimes that look to communities as forest managers. In some countries, provision is also made for forests to be formally owned and governed by their customary owners (as 'community forest reserves'). While there has been no relaxation in the overwhelming ownership of inland waters by the state, many countries do now provide for small waters (ponds, lakes, streams, and minor rivers, along with irrigation channels) to be managed by community user associations.

4 Somaliland and Western Sahara are excluded from this figure as they not internationally recognised as independent states.

5 Despite 50 per cent or more of populations residing in towns and cities, the proportion of land they absorb is extremely low, ranging from 0.1, to 1.1 per cent in Morocco. Privately titled lands are also limited, other than in South Africa, Namibia, Zimbabwe, Guinea Bissau, Morocco and Kenya. Many countries average between 1 and 4 per cent of total land area under private title. This excludes lands under short to medium lease or concession from governments, which constitutes either national or public property. A larger proportion of the continent is subject to protected areas, which cover 12.14 per cent of the total continental land area (excluding waters), ranging from 2.6 per cent of Cape Verde to 44 per cent of Namibia.

6 Alden Wily 2015a

7 Alden Wily 2015b

New mining laws have mainly been geared towards establishing new extraction rules, but some now also make benefit sharing with local communities obligatory. The majority of African countries have also enacted United Nations (UN) blueprint environmental management laws and investment regulation laws.

New devolutionary governance laws have been particularly important across the continent, including provisions in some countries for rural communities to elect their own governments in the form of empowered village councils. This has proved very helpful to community-based land tenure, as these legally empowered institutions serve as the lawful manager of all land matters and rights to land within their respective community land areas.

However, tenure reform is neither uniform nor complete. Not all new land tenure laws liberate customary rights from the shackles of denial, subordination, suppression and dispossession so routinely laid down by colonial governments and retained by early independence governments, often into the 1990s.

There are exceptions. Not all colonial era laws were similarly dispossessory, and some were quite enlightened. Swaziland, Bechuanaland (now Botswana) and Ghana are cases where old laws provided relatively good protection for the majority of rural land occupants. But overall, where laws have been barely amended since 1960, most commonly in the Congo Basin, rural majorities remain virtually landless in the eyes of the law, if not in practice.

The majority of land laws passed in Africa since 1990 have tackled the issue of customary land rights, although unevenly. To assess the security of customary land rights under national laws, this study uses ten measures as indicators, listed in Box 2.

Box 2: Ten Key Indicators of Customary Land Rights Security in 2015

Customary land rights are secure where the national land law:

- 1. Treats customary rights as real property rights, and gives these rights protection equivalent to those rights acquired through the state land law system.**
- 2. Protects customary rights as property even where these rights are not formally identified, recorded, mapped and registered. This shifts the burden of proof on to those who wish to acquire customary land: untitled lands are therefore owned until proven otherwise by the acquirer, including the state.**
- 3. Protects customary land rights from random takings by requiring the state to investigate, identify and record customary ownership prior to land taken for public purpose, or prior to registration of new non-customary interests without documentation as to how the property has been acquired.**
- 4. Makes customary land rights eligible for registration without conversion into non-customary forms of tenure so that customary attributes and encumbrances are**

>

>

fully recorded (i.e. including use rights belonging to non-owners and other rights to the same land that have been acquired through customary agreements).

- 5. Allows equally for customary land rights to exist and be protected whether or not the owner of the right is an individual, a spouse, a family, a clan, a village, or any other landholding group which is accepted by local custom to exist, and treats all landholders as natural persons. This means that there is no requirement for a community to expensively create and register a legal entity in order to be legally protected and acknowledged as a landowner.**
- 6. Provides a system of registration (formalisation) of customary rights which is voluntary and community-based so that the process is cheap (or free), fully accessible even to the very poor, and easy to operate, with steps able to be conducted by the community itself under the oversight of a trained facilitator. Once vetted by an autonomous land body, the community land record is accepted as the lawful record of land rights within the locality.**
- 7. Allows customary land rights to continue to be governed by community-agreed norms and practices within the boundaries of constitutional law, and through democratic decision-making, accountable to all community members. This means that the system for customary or community land rights governance is established alongside the recording of rights. Ideally, the land manager will be an elected committee which consults with traditional land authorities as necessary.**
- 8. Enables the community to make and uphold land rules, providing these are in accordance with constitutional principles of human rights and justice, and gives those rules explicit legal force, including requirement that courts use those rules when ruling on disputes.**
- 9. Explicitly acknowledges that customary land rights apply equally to off-farm lands such as woodlands, forests, small waters, rangelands, marshlands, and other resources characteristically owned and used collectively, as well as to more individual or family-owned rights to house and farm plots.**
- 10. Enables a community to be acknowledged as the lawful owner of protected areas, including those of national importance, subject to conservation rules applicable to that class of protected area.**

An overview of results is presented in Table 1 below.

Table 1: Legal Protection of Customary Land Rights in 2015

A: Most Legal Protection	A1: About to Become A*	B: Mainly Positive Legal Protection	C: Partial Legal Protection	D: Poor to No Legal Protection	No Data or Not Applicable
Tanzania, Uganda, Mozambique, Ghana, Morocco, South Sudan.	Liberia, Kenya, Namibia.	Botswana, Ethiopia, Gambia, Mali, Senegal, South Africa, Swaziland, Madagascar, Burkina Faso, Benin.	Angola, Chad, Democratic Republic of Congo, Republic of Congo, Lesotho, Malawi, Niger, Nigeria, Rwanda, Sierra Leone, Togo, Zambia, Côte d'Ivoire.	Burundi, Eritrea, Cape Verde, Cameroon, Central African Republic, Djibouti, Egypt, Equatorial Guinea, Gabon, Guinea Bissau, Libya, Mauritania, Somalia, Sudan, Zimbabwe.	Algeria, Comoros, Mauritius, Sao Tome & Principe, Seychelles, Tunisia.

* Legislation is already in draft in these countries and expected to be enacted in 2015.

Source: Alden Wily, 2015a

The following comments are important to fully understand the above:

1. No country meets all ten criteria. For example, among Class A countries, South Sudan's land law (2009) is sound but falls short by allowing the government to declare investment zones with only consultation with, not permission of, local community owners. Ghana has the oldest system on the continent for protecting customary land rights (1896), but has failed to limit the tendency of powerful chiefs from as early as the 1920s to behave as if they, and not the people, own the land, and to dispose of common assets for personal profit. Constitutional provisions in 1992 entrenched this further. Application of the law has also been problematic in four of the six countries listed, and in one of these, South Sudan, it has been non-existent.
2. Overall, Tanzania offers best practice in its combination of not requiring customary rights to be formally registered in order to be protected, while at the same time establishing a community-based system through which all 14,000 villages are given complete control over land matters within their respective village land areas (together these cover 69 per cent of the country). More information is provided in Annex 3 to this report.
3. The main reasons why new African land laws fall into B and C categories are that they either (i) provide fully for individually held properties but ignore or provide poorly for protection of rangeland or forest commons belonging to a community, exposing these to rampant takings by elites, often in collusion with officials and politicians (e.g. Botswana and Namibia); or (ii) they only recognise customary land rights once these are formally registered, and often require conversion of the right into a statutory form of tenure which extinguishes important attributes of customary land rights (e.g. Benin, Burkina Faso and Côte d'Ivoire).
4. The main reason why a country's land law is located under D category is the denial by state laws that customary land rights are property interests, regarding these as no more than permitted rights of access, occupation, and use of state property or ownerless lands. Individuals, families and communities are accordingly at risk of their lands being allocated formally to others, or asked to move to make way for public purpose developments without payment of compensation, other than for small amounts for standing crops and houses. These laws also don't acknowledge communal rights as affecting uncultivated lands. In short, these countries have effectively maintained colonial norms intact.

2 Rural Land Law in Côte d'Ivoire

2.1 Background

The conditions in which Côte d'Ivoire's Rural Land Law (1998) was enacted are outlined here. Of necessity, this looks back to the colonial era. A timeline of key developments is provided in Box 3.

Box 3: Timeline of key developments influencing modern land law in Côte d'Ivoire

1895: France forms the *Afrique Occidentale Française* (AOF), an administrative unit for its West African colonies

1900: France passes a decree for AOF, stating its ownership of all unoccupied and uncultivated lands

1920s-1960: French colonial administration encourages migrants to come to Côte d'Ivoire to engage in cocoa and coffee farming

1925: AOF decree allows registration of customary rights

1935: AOF decree reasserts state ownership of even registered customary land

1955: AOF law recognises existence of customary rights and allows them to be registered as ownership rights

1960: Côte d'Ivoire becomes independent from France

1961: The Nationality Law makes it possible for foreign nationals born in Côte d'Ivoire, or with immediate family born in Côte d'Ivoire, to be Ivorian

1963: President Houphouët-Boigny declares that "*la terre appartient à celui qui la met en valeur*" ("the land belongs to he who develops it")

1964: A new law forbids indigenous owners from selling land or renting it to migrants for cash

1968: The Minister of the Interior issues a circular declaring that the State is the owner of all unregistered land, and that customary rights to land are abolished

>

>

1970s onwards: Encouragement of migrant-led agriculture is dropped

1971: A decree confirms the right of the state to issue concessions over customary lands

1972: Parliament amends the Nationality Act to state that children born in Côte d'Ivoire after 1972 have no automatic claim to nationality

1990-2002: Implementation of the Rural Land Plan programme

1998: The Rural Land Law is passed

2000: The current Constitution is passed

2002-2003: First civil war

2010-2011: Second civil war

2013: The Nationality Law is amended to provide some routes for foreigners to become Ivorian nationals

2014: The new Forest Code is passed

The main trends occurring over this period may be drawn out from the rich academic literature on the subject.⁸ All of these had an important effect on the 1998 Rural Land Law.

1. **Denial that African lands were owned:** Land policies in Côte d'Ivoire have been heavily influenced by colonial-era ideas about what constitutes property, and how this should be recognised and protected. Key positions have been that:
 - Only rights formally registered by the state constitute real property (and accordingly acquire protection);
 - Communal possession is an unacceptable basis for property ownership;
 - Uncultivated or undeveloped lands are, by virtue of this fact, un-owned (*terres sans maîtres*).

From the outset of state formation in Côte d'Ivoire (beginning with France's creation of *Afrique Occidentale Française* in 1895), these positions surrendered virtually all lands and resources to the state. As this analysis will show, these ideas continue to influence policy.

8 The French language literature is especially rich. English language papers reviewed include Babo 2013; Chaveau 2000, 2003; Chauveau et al. 2006; Stamm 2000; USAID (undated); Zerbo 2013; Human Rights Watch 2013; Zalo 2006; Louassi 2012; Bassett 2009; Affou 2003; Lavigne Delville et al 2001; Lavigne Delville 2004a, 2004b, 2007; Berry 2008; ECA, ADB & AU 2011; Ruf et al. 2009; Bignebat & Colin 2011, 2012 and Kone 2002. Study of such trends was common in the 1980s; e.g. Francis Snyder 'Colonialism and Legal Form: The creation of 'Customary Law' in Senegal' in Crime, Justice and Underdevelopment, C. Summer (ed.), Cambridge Studies in Criminology XLVI, London, Heinemann. Also see Berry, 2008 and AU et al., 2011.

2. **Disempowerment of communal land governance:** Over time, the state has centralised its control over land management. Private land relations are today a major state concern, in ways that extend far beyond justifiable regulation by the state as to how lands are held and how rights to those lands are transacted. At the local level, this has undermined the capacity for communities, which governed land rights prior to establishment of the colonial state, to evolve as modern local land authorities. That communities (or those they appointed or accepted as acceptable governors of their land access, such as chiefs) have continued to regulate landholding in practice in various conscious or ad hoc ways, is testimony to both the insufficient reach of the state, and to the strength of communal jurisdiction as the means through which rural communities define or accept norms.

Local land governance has not, however, remained untouched. Officially, traditional leadership was formally restructured, initially through the colonial *Code Indigénat* which enabled the colonial government to select and pay village leaders, effectively as its agents. This both added to and subtracted from powers which traditional leaders had enjoyed. One trend throughout the region was for co-opted leaders to turn traditional roles as allocators of land to newcomers into landlordism in the sense of increasingly acting as if they, and not community members, owned uncultivated lands. It also helped shape class formation and related urban and political interests. Such elite interests would also shape the terms of how migrants used and settled local areas, and the forms of land allocation developed to accommodate them.

3. **Expansive land conversion:** The above changes would most likely have emerged sooner or later in Côte d'Ivoire, as they did almost everywhere in Africa in the twentieth century, as land relations were steadily commoditised. However, the impact of Côte d'Ivoire's exceptional cash-cropping economy dramatically accelerated these changes, and brought particular stresses to bear. Land conversion flourished from the 1920s, as thousands of hectares of lightly populated forest lands began to be cleared at scale, initially for coffee and cocoa production. After 1980, there was a transition to pineapple and oil palm production following the collapse of cocoa prices and production. Since the mid-1990s, land has primarily been converted for state schemes and smallholder rubber production.⁹ Timber exports also boomed through most of the twentieth century. Forest clearance and significant internal migration of non-locals and their new crops and systems dramatically affected local forest-based use and subsistence food farming systems, and raised the consciousness of local populations as distinct ethnic or social groups. Land was also converted for commercial cotton, cashew nut, cereal and livestock developments in the northern savannah, where local land losses were compounded by the coerced sedentisation of Peul pastoralists in 1974. These expansions set the stage perfectly for the hardening of community identities, for solidarity and protection of interests, and for conflictual relations between local landowners and incoming labour or tenants from other parts of the country, from Mali, and especially from Burkina Faso.
4. **A surge in contractual land relations:** The massive influx of outsiders into an area inevitably produced a raft of new arrangements as to their use of lands, their residence, and their rights if they settled permanently in the locality. Prevailing traditional arrangements for accommodating outsiders, broadly covered by the term *tutorat*, were inevitably insufficient, and were increasingly refined over time as challenges were met, conditions changed, and tensions between the givers and beneficiaries of land were resolved, often to the satisfaction of only one of the parties. Further complexities were introduced by the fact that some migrants became members of the community through permanent settlement or marriage.

9 Colin 2012

The increased documentation of agreements, and the growing use of money in land transfers (cash upfront or loans), also brought changes. The complex and changing nature of land use arrangements in Côte d'Ivoire became a major source of social conflict in the last half of the twentieth century, and has engendered an enormous amount of research, providing unusually rich academic literature on contractual land relations.

As described later, post-colonial governments underestimated just how important fair regulation of owner-tenant relations would be. Instead, they adopted extraordinarily blunt instruments, most notably in the decision made after independence that land belongs to he who develops it, which threw nuanced relations between local people and migrants into disarray. The literature includes careful exploration of contractual relations (formally or informally documented) and the mainly failed attempts to bring these to centre-stage in legal land reform measures. One can also see stubborn resistance on the part of the state to surrender its vision of property interests as obtainable only through absolute entitlement. This attitude would be most explicitly developed in the Rural Land Law and the associated abandonment of the more inclusive approach to recording land interests as developed through the Rural Land Plan programme (see below). Land relations might have been more peaceably structured by prioritising the registration of transactions and contracts rather than of the land itself, but this was clearly considered a backward-looking return to deed registration rather than title registration based on detailed survey and mapping.¹⁰ Donors after independence doubtless played a major role in this stubbornness, being convinced that only absolute title, in forms familiar to industrial society, would suffice for modernisation and development.¹¹

5. **Mass tenure insecurity:** Although not all Ivorians saw their tenure rights disturbed during the colonial and post-colonial period, uncertainty in tenure became an increasingly common concern. Customary tenure (real or reinterpreted) said one thing about peoples' land rights, while state law and state actions said another. Rights that came from customary systems were deemed by the state to be no more than occupancy and use rights on unowned and empty lands. The only means to counteract this assumption was expensive and alien, requiring the holder to obtain a statutory entitlement over land to replace the customary right – and only visibly farmed and developed lands were eligible. Legal change in 1955 (discussed later below) suggested wider opportunities for entrenching customary rights, but these were not applied, then or after independence. Migrants, including descendant generations of those who had permanently settled in pioneer commercial cropping zones, also experienced increasing tenure insecurity as more and more instances of conflict surfaced through the 1960s to 1990s. Neither statutory nor customary tenure terms seemed able to protect their interests and rights.
6. **Capitalisation of land and social relations:** Elite capture of lands rose as opportunities to make money from commercial crop production increased, particularly after Independence. Donor-funded schemes helped anchor polarised relations in many areas. To reiterate the point made above, customary norms were altered, especially, but not only around the terms through which incomers acquired, used and retained local lands. The academic literature on the subject places particular importance on the economic crisis of the 1980s, in which

10 To clarify: deeds registration historically registers a contract between two persons or entities such as for the sale or lease of an area of land, but does not necessarily define the land itself other than in a general description and possibly sketch mapping. Title registration (as it is known) identifies the parcel in exacting detail, with coordinates down to the last centimetre in some cases, and the boundaries of the parcel may thereafter be easily traced and also presented in official maps as necessary. It also gives the parcel a unique identification number, and records the owner, and any changes in ownership of that parcel. In practice, few countries around the world, including in Europe (e.g. Ireland), have yet managed to convert deed registries into fully formed cadastres and attached ownership registers. Primarily because of the formal mapping involved, the procedure of title registration is enormously expensive, although less so where hand-held Global Positioning System (GPS) readings are permitted (which is still not always the case in survey laws).

11 A vast amount of texts looking at this exists, but with a summary account in Alden Wily 2011b.

cocoa prices and thence household incomes collapsed. The crisis sent youth being educated or employed in towns back to rural communities, only to find that their relatives had 'sold off the family silver', in the sense of making scarce land available to migrants on not always crystal-clear terms. Norms as to what constituted community membership changed, partly due to political use of the issue for electoral support from 1960. This resulted in inter-ethnic and inter-nationality conflict and outright civil wars in 2002-2003 and 2010-2011. As so many incomers into the cash cropping zones were from Burkina Faso, the nationality debate became profoundly intertwined with political and popular views as to how land relations should be ordered.

7. **Resource losses adding fuel to fire:** The loss of forest and other natural land cover (bush, savannah species, etc.) also played a part in contested land relations prior to 1990, impeding traditional rural income generation from natural resources. Forest clearance began in the 1920s, and between independence and 2000 the country lost six million hectares of natural forest. High levels of degradation afflict the ten million hectares of forest remaining today, and only two per cent of these forests are primary. The creation of protected areas surged in the 1990s and again after 2000, bringing such lands to between 17 and 22 per cent of the total country area-- but many of these areas are occupied, farmed or degraded.
8. **Rampant land grabbing during civil conflicts:** Land grabbing has been fuelled and facilitated by ethnocentric politics, causing waves of displacement. For example, 200,000 people fled to Liberia during the conflict in 2011, and there was also significant internal displacement. In 2015, many have still not returned. There are many cases, especially in the west of the country, where the same land is claimed by Guéré 'natives' and Burkinabé migrants. There are also many allegations of wrongful sales of land by Guéré who remained behind during the war, and claims that some have taken over communal forests in the absence of other community members or migrants who had acquired forest lands and then fled.¹² Such conflicted relations are common in post-conflict states, and failure to address these speedily, including through adjudicated restitution, typically exacerbates grievances and the potential for further violence.¹³
9. **Rural Land Plans (PFR – Plan Foncier Rural):** The Rural Land Plan programme under the Ministry of Agriculture provided enormous preparatory backing for the Rural Land Law. Donor-funded rural land plans were conducted in four Francophone countries in West Africa, beginning in Côte d'Ivoire in 1990. They arose in response to conflicts between migrants and local people over land ownership. As described later, the plans involved the identification, mapping and recording of all land rights within a village, to produce an inventory upon which new land policy and law would be developed. They also involved decentralisation, to empower village land committees. However, the 1998 Rural Land Law left out several core assumptions of the rural land plan as to how customary land rights were viewed in the eyes of state law.

12 The land report of Human Rights Watch, October 2013, based on documented research in 49 towns and villages in the western regions, is the main source on the effects of civil war and displacement.

13 See cases studies in Pantuliano (ed.), 2009.

2.2 Land Law in Côte d'Ivoire prior to 1998

French law was directly applied to French enclaves along the west coast of Africa through the nineteenth century. Côte d'Ivoire became a formal polity only through the formation of *Afrique Occidentale Française* (AOF) in 1895, and it was at this point that state law in the formal sense emerged. The AOF was a federation of French colonies, enclaves, and hinterland territories, mostly run by the military. In 1895, it included Senegal, French Sudan (Mali), French Guinea and Côte d'Ivoire. Mauritania, Upper Volta (Burkina Faso), Dahomey (Benin), and Niger would join later. Former German Togoland (Togo) entered the AOF on terms dictated by the Versailles Treaty after the First World War.

Between 1895 and 1960, laws were drafted at the headquarters of the AOF (initially Port-Louis, then Dakar), on instructions from Paris, and applied locally by lieutenant governors in charge of each territory. Laws therefore varied little among the member territories. Only in four original communes of coastal Senegal were Africans regarded as French citizens (albeit without the right to vote), as a result of the abolition of slavery in 1848. Elsewhere, Africans were governed as subjects of France under the above-mentioned Indigenat Code (1885). They were represented by canton and village chiefs, who were appointed by French officials.

The basis of AOF land law was the French Civil Code. Its definition of property had its foundation in the Declaration of the Rights of Man and of the Citizen (1789). Borrowing heavily from the American Constitution (1776), the declaration established “the right to property” as one of four basic human rights. Real property, meaning immovable property, was defined as coming into being only through registration, i.e. through written and filed documentation signalling the state's recognition and protection of that property right.

Establishing State Registration as the Source of Property

This position had enormous implications for Francophone Africa: no property interests needed to be protected *other than those formally acknowledged and registered*. All other land could be considered unowned (*terres vacantes et sans maîtres*). More or less similar positions were adopted by British, German, Portuguese and Spanish colonies. Their laws referred to unregistered lands as wastelands in Anglophone Africa and *herrenlos* in German Africa. Few colonial territories managed to avoid this wholesale dispossession or the presumption that African lands had never been owned until the colonisers arrived.¹⁴

Virtually all of Africa was accordingly ownerless (*terra nullius*) in European eyes, as registered ownership was limited to tiny enclaves and to commercial plantations beyond their boundaries, for cocoa, coffee, oil palm and banana production in Côte d'Ivoire.

Review of comparable laws in AOF sheds light on the land policy and law that was applied in Côte d'Ivoire.¹⁵

14 Ghana was a notable exception, due to the firm determination of strong forest chiefs (who had embassies in London, having been enriched by slave and commodity trading) to resist definition of their lands as unowned. There were also localised cases of strong kings retaining tenure autonomy, such as in Barotseland in present-day Zambia. Customary ownership was also assured in Lesotho, Swaziland and Botswana under less invasive protectorate agreements than colonial conditions enabled. Liberia also took a distinct course; the newly formed independent state of 1847 acknowledged by the 1890s that the hinterland remained owned (i.e. not only occupied) by tribal communities. This was confirmed in 1923 and reinforced in 1949 by issue of Aborigines Land Deeds over around one million hectares (Alden Wily, 2007).

15 Additionally, the land laws of AOF were not dissimilar from the sometimes earlier laws developed for the French Congo, which included quite detailed laws of acquisition, tenure, state domain, forests, mining and concessions, all promulgated in 1899, and adopted in 1910 by the evolving sister federation for central African French territories, the *Afrique Equatoriale Française* (AEF).

In 1900, AOF territories applied a decree stating that all unoccupied and uncultivated lands belong to the French state.¹⁶ By implication, this extinguished all customary rights to the land other than the right to use these lands with presumed permission of the state (permissive occupancy). A land register (*Livre Foncier*) was established.

The decree lay dormant until 1906, when Port Louis instructed lieutenant governors to apply stronger rules to regularise settler and other French occupation.¹⁷ No Africans applied for deeds, although there was nothing in the law explicitly preventing them from doing so. Land had to be visibly occupied and developed, and the applicant had to meet conditions of education and lifestyle to be considered a worthy property owner. Obviously, few Africans could meet these conditions. Owners also had to be natural persons (individuals) or legal persons in the form of registered companies or organisations.

Twenty years later, a new push to encourage registration was launched by a decree issued on 8 October 1925. This time, the law targeted Africans in French territories, encouraging them to apply for deeds, especially for town plots. This was not presented as registration, but as recognition and recordation of customary rights (confirmation or constatation). The deeds were defined as indigenous title deeds, to be recorded in a *Livre Foncier Coutumier*.¹⁸ The intention of the law was, "to raise awareness among the African population regarding the patrimonial value of their lands and thus to ease the transition to a Civil Code property regime".¹⁹

Few applications appeared. The proffered title still did not fit local conceptions of land holding, and denied that customary rights were equivalent to rights registered in the main title register (*Livre Foncier*). Nor was there provision for collective entitlement by communities, who routinely saw the whole community as the owner of the land from which family entitlements (usufructs, usually in perpetuity) descended. Nor, it may be presumed, did African communities see the point of paying to formalise their rights to lands that they already, according to custom, owned.

The 1925 law was followed by a decree in 1932, adding procedural details for registration of non-customary rights.²⁰ A subsequent decree in 1935 "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".²¹ This reminded Ivorians of the strictly permissive nature of their occupancy and use of their own customary properties.

As independence drew near, the French government retreated on its claim to all uncultivated lands. A new decree affecting all French territories in both the AOF and Afrique Equatoriale Française (AEF) was introduced in 1955.²² This marked some departures in policy (Box 4 below). Customary rights were acknowledged as existing, and by implication deserving of respect, although they still lacked the status of real property in the eyes of the law. Transactions in customary land were made lawful, and chiefs and traditional leaders were forbidden from making money in the process of authorising, supervising or witnessing transactions (Articles 3 & 4). Certificates for customary rights could be applied for and issued, as from 1925, but this time including provision for communities to apply for these. The procedure remained unchanged. Application and grant of certificates would still be through a distinct and inferior registration procedure (Article 4). A main change came in the form of then allowing some opportunity for certificate holders to transform their right into an ownership

16 Décret du 20 juillet 1900 relatif au régime de la propriété foncière en Côte d'Ivoire.

17 Décret du 24 juillet 1906 portant organisation du régime de la propriété dans les colonies and territoires relevant du gouvernement général de l'AOF.

18 Décret du 8 octobre 1925 instituant un mode de constatation des droits fonciers des indigènes en AOF.

19 Hessling 2009: 246.

20 Décret du 26 juillet 1932 portant réorganisation du régime de la propriété foncière en Afrique Occidentale Française.

21 Stamm 2000: 6.

22 Décret no. 55-580 du 20 mai 1955 portant réorganisation foncière et domaniale en Afrique Occidentale Française et en Afrique Equatoriale Française, and Décret no 57-704 du 10 juillet 1956 fixant les conditions d'application du décret no 55-580 du 20 mai 1955.

right and have it registered in the main title register (Article 5). However, only individuals were eligible to do this, and the opportunity only applied to occupied and developed lands.

The promise of customary security was conditional. Customary rights could be extinguished in favour of public collectives (local government bodies) or for issue of concessions to developers (Article 6). This was dependent upon the customary owners first renouncing their rights (Article 7). Concessions were to be granted on a provisional basis, on condition of development (Article 7). A degree of decentralisation in land administration was advanced, in that canton authorities could issue concessions. Small concessions could also be granted to individuals or families, presumably including to migrants.

Box 4: Key Articles of the 1955 land law

Article 1: In Francophone West Africa and Equatorial Francophone Africa, the private immovable property of the State, of territorial groups, territories, and other public collectives is constituted by the goods and immovable rights held by the bodies in question in accordance with the forms and conditions set out by the civil code or the legal framework pertaining to registration.

Article 2: Apart from where there are contrary contractual provisions, appropriated lands that contain buildings, works or development improvements at the cost of a local public collective belong to the private domain of this local public collective, even if they were registered in the name of the State or another public collective other than the one who paid for the structure in question.

Article 3: In Francophone West Africa and Equatorial Africa, the customary rights exercised collectively or individually on non-appropriated lands are confirmed in accordance with the rules of the civil code or the legal framework pertaining to registration.

No individual or collective holder may be barred from disposing of these rights unless required for a public purpose on payment of just compensation. No one may use the land in ways prohibited in law or regulations.

Article 4: The above-mentioned customary rights may be the object of a public procedure in which contrary claims are heard, giving rise to delivery of a title in opposition to third parties claiming the existence and extent of these same rights.

The forms and conditions of the procedure will be fixed by a decree. This procedure will take place before the local administrative authority and, in case of contestation, the local law tribunal will rule.

The chiefs of the land or other customary chiefs who regulate, according to custom, the use of lands by families or individuals may not take advantage of their functions to take for their personal profit any land rights other than those resulting from their personal exploitation of the land according to custom.

>

>

Article 5: When comprised of the right of disposal and subject to permanent and obvious control of the land, individual customary rights may also be transformed into ownership rights on application for registration.

Article 6: Customary rights other than those defined in Article 5 may not be registered. They may only be transferred to individuals or collectives eligible to possess the same rights by virtue of custom and only on conditions and with limitations as dictated by custom.

Nevertheless, all customary rights may be extinguished in favour of public collectives or applicants for concessions.

Article 7: Concessions may be granted after a public hearing in which contesting claims are heard where this inquest does not reveal the existence of customary rights on the land where the concession is proposed; OR, where there are customary rights on the land, if the recognised holders of these customary rights have expressly renounced them in favour of the concession applicant.

All rural or urban concessions are granted on a provisional basis on condition of rational development of the land within a pre-determined timeframe. A detailed cahier de charges (book of obligations) will determine these conditions and timeframe. The fulfilment of development obligations gives rise to the transfer of ownership to the concessionaire, who must then apply for the registration of the concession land in his name. The transfer of ownership may remain open to contradictory resolution where the development requirements of are halted for more than ten years.

Rural concessions are given by the chief of the land with the permission of the territorial assembly, the high commissioner, or agreement following deliberation by the grand council where the concession concerns two or more areas of land. In case of disagreement, the disagreement will be resolved by decree made by the council of ministers, following the advice of the Assembly of the French Union.

In exception to provisions of the previous paragraph small individual or familial rural concessions may, by virtue of deliberation of the territorial assembly be granted by the authorities of local administrative constituencies. This deliberation will fix the maximum land area, as well as the clauses and general conditions of attribution of these small concessions.

-By regulation established within the conditions fixed by paragraph 3 of the present article, the granting of rural concessions may be prohibited or restricted to particular conditions in certain reserved areas, either for expansion of towns; or as an expansion of dwellings, crops, or usage rights of local populations; or for expansion of agricultural or industrial improvements carried out under economic and social development plans.

The general conditions that must be observed for the development of concessions are determined for each territory, by the deliberation of the territorial assembly.

Uptake of certification of individual and collective certificates seems to have been limited or non-existent in most of the AOF and AEF territories. Referring again to Senegal, Hessling observes that the Senegalese simply did not bother with the law. In any event, independence was already on the horizon.

The newly independent government in Côte d'Ivoire incorporated colonial land laws with little modification. This included a decree of 29 September 1928 defining public land, which remains in force today. During this time, the scope of public land has been steadily expanded through other laws defining the state as owner, including of waters, minerals, forests and protected areas.²³ This has been a general pattern throughout the continent since 1960.

In 1962, the state intended to retrench the 1955 law's progress through enacting a law to reinforce its control over all unregistered lands, meaning virtually all of the country.²⁴ This would mainly have affected the spirit of Article 3 of the 1955 law as above. This attempt was abandoned in the face of staunch resistance from traditional authorities and the elites dependent upon them. A stalemate resulted, with no attempt by the new government to pursue and apply the customary certification procedure provided in 1925 and expanded in 1955.

Retrenchment came, however, in the policy of President Houphouët-Boigny in an order issued in 1963, stating that "*la terre appartient à celui qui la met en valeur*" ("the land belongs to he who develops it"). It is arguable that this was already de facto policy in many areas where the colonial government had supported migration into forested zones since the 1920s to develop coffee and cocoa production. Houphouët-Boigny's clear statement reflected his determination to revitalise the flagging cocoa industry, encouraged by donors. His statement triggered a land rush into the western forestlands by Baoulé people and natives of Burkina Faso. Both groups already had a strong presence in forested areas as incoming labourers and settlers.²⁵

The president's order was not based upon any law, and only gained a little more legal force through a decree issued by him on 20 March 1967. This decree stipulated that land belonged to the developer *providing that exploitation rights had been formally registered*.²⁶ In practice, the literature suggests that clearing land continued to be a sufficient basis for the granting of concessions and even formal title within schemes started by the state. Donors backed some of these schemes.

It is not known whether local customary occupants voluntarily surrendered rights to these lands, or were coerced, or incorporated into the schemes. What is known is that throughout the major tree crop production areas in the south and west of the country, clearances accelerated and customary arrangements with incoming settlers diversified. The question of whether and how cleared lands belonged to the tiller or to the customary right-holder became the focal issue of tension and contention between the two parties.

With the industry heavily dependent upon labourers and land developers from Burkina Faso, Houphouët-Boigny aimed to include foreign migrants in the idea that "land belongs to he who develops it". In 1961, he succeeded in getting a Nationality Law enacted which made it possible for foreign nationals born in Côte d'Ivoire, or with immediate family born in Côte d'Ivoire, to be Ivorian. He also lobbied hard in the region for dual nationality to be permitted.²⁷ This was rejected by his parliament when it amended the Nationality Act to state that children born in Côte d'Ivoire after 1972 had no automatic claim to nationality.²⁸

23 Kra 2015

24 Chaveau 2000 and Kone 2002

25 Babo 2013, Chauveau 2000, Colin 2012.

26 Bubb 2011: 9.

27 Babo 2013.

28 The Nationality Act was amended by Law No. 72-852 of 21 December 1972.

A new law in 1964, meanwhile, made inroads into the terms of the 1955 law described above. The sale of land by indigenous owners was forbidden, and these owners were also forbidden to rent plots to migrants for cash (although they could receive gifts).²⁹ Finally, in 1968 the government got its way with issuance of a circular by the Minister of the Interior on 17 December that bluntly declared that “the State is the owner of all unregistered land”, and that “customary rights to land are abolished”.³⁰ As a circular, this had no legal force, but it did reinforce the revisionist position of the administration as to the status of customary land rights. While the 1955 law had not gone so far as to grant customary land rights status as real property, it had recognised that they existed and had a certain force as occupation and use rights, that they had to be considered prior to grant of concessions, and that they could be reinforced through application and issue of certificates. The 1968 circular was followed by a decree in 1971 which confirmed the right of the state to issue concessions over customarily occupied lands.³¹ It is also presumed (but not confirmed) that the 1971 decree repealed the adopted 1955 decree, if this had not been done previously.

Realities on the ground contradicted these interventions. Transactions by customary landholders through the 1970s and 1980s increasingly included cash demands, and the terms of traditional *tutorat* in general were both significantly diversified and commoditised by 1990, if not before. This is a subject upon which a great deal began to be written,³² as *tutorat* and similar practices became such a prominent (and contested) feature in land relations throughout coastal West Africa, and probably Côte d'Ivoire in particular. *Tutorat* is the customary regime through which land is lent, given or rented out to strangers, and in which a *tuteur* (guardian or patron) plays the key role. The *tuteur* is usually the original settler or descendant land allocator in an area, sometimes referred to as a land chief. S/he takes on responsibility for the migrant's interests and relations with other community members, and receives gifts from the migrant in return. S/he may also require the migrant to contribute to social occasions in the community such as weddings and funerals. Immigrants frequently began as labourers for others until they had saved enough money to acquire land and start their own farms.

*“In the early years following their arrival, Burkinabé migrants would typically work for the tuteur as labourers either on a daily basis or on longer-term contracts involving residence and work for a local family in exchange for board and lodging, plus a share of the harvest. Migrants also commonly hoped to gain sharecropping bousan contracts. After a few years, migrants asked for access to land from their employers who allocated them a portion to clear and establish a plantation.”*³³

During this era, traditional arrangements morphed into rental or sale agreements, documented in *petit papiers*.³⁴ By 2000, researchers were routinely identifying fifteen or so different contractual arrangements, falling broadly into categories of gifts, sharecropping, mortgaging, renting, loans, and guardianship by those looking after lands of family members or neighbours living in towns.³⁵ The details depended upon the type of land, the purpose of the agreement (e.g. for creating plantations for food cropping), whether the beneficiary was a kinsman, community member or incomer, and where they came from. An important element in the flourishing of such arrangements was that traditional inhabitants of the more sparsely inhabited western region were hunter-gatherer-cultivators living by subsistence and some cultivation, and tended not to be drawn directly into

29 Kone 2002: 1.

30 Bubb 2011: 9.

31 Decree 71-74 of 16 February 1971 on procedures relating to State Land; Zalo 2013.

32 E.g. by Berry in the 1970s.

33 Lavigne Delville et al. 2002: 18.

34 Changing arrangements are elaborated in a host of literature including Chauveau 2000, Berry 2008, Kouassi 2012, Lavigne Delville passim, and Kone 2002.

35 Lavigne Delville et al. 2002, Kone 2002, Berry 2008 and others, and recently, Ruf et al. 2009, Bignebat & Colin 2011, and Colin 2012, who document yet further evolution of such arrangements in the rubber sectors including specific contracts for weed and share and plant and share.

commercial cocoa cultivation themselves.³⁶ Neither were the Kroumen in the southwest, as they were primarily interested in fishing.

In contrast, the Baoulé from the central region were well integrated into cocoa production, and frustrated by local land shortages. In short, they were the ideal migrants for President Houphouët-Boigny's plans from the 1960s to permanently relocate them into the west and southwest to expand commercial cocoa and coffee farming. They were also his kinsmen. For both reasons, their security of tenure mattered.

By the 1990s, 58 per cent of all land acquisitions in the central west region were through direct purchase from local customary owners.³⁷ This was the source for 32 per cent of acquisitions in the southwest region, but only for 16 per cent of land acquisitions in the less sought-after southeast, where sharecropping or similar contractual arrangements have continued to dominate until the present.³⁸

Although illegal in state law, such transactions were presumed to have force in customary law and were accordingly upheld – until, that is, shifts in policy and law favouring migrants tipped tense land relations into outright contestation and episodes of violence. These first became noticeable in 1970 and multiplied through the 1970s and 1980s.³⁹ Contestation similarly began to emerge in the north of the country between local clans and settlers arriving for cashew, cereal and cotton cash cropping. As noted earlier, tensions were made worse by the settlement of incoming pastoralists, as demanded by the sedentisation policy of 1974.⁴⁰

In response to local conflict aided by increasingly heated ethnocentric party politics, the government launched the rural land plan programme introduced above.

A primary intention of the rural land plan programme was to strengthen customary rights rather than extinguish them. The key activity, as originally expressed in the plan approved by the Council of Ministers in December 1988, was to survey, identify, and record rights:

*"...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."*⁴¹

The three elements of pilot activities carried out under the rural land plan programme were:

1. To identify and record customary rights so as to make them akin to statutory rights and to give legal status to new legislation;
2. To develop methods which were financially and technically feasible for mass uptake, and also fully acceptable to local populations; and
3. To provide authorities with the data needed to help them plan and implement rural development activities.⁴²

36 Babo 2013.

37 Stamm 2000.

38 Colin 2012.

39 Babo 2013; Chauveau 2000; Colin 2012.

40 Bassett, 2009.

41 As cited by Stamm 2000: 2.

42 Stamm 2000: 2-3.

The rural land plan was also designed to play a key role in decentralised land management and territorial management. Village land committees would manage land, safeguard records, and record changes in rights such as transactions and contracts. Land based development, such as the setting aside of forest areas for protection, would also be channelled through these bodies.

Donors funded the implementation of rural land plans from 1990 onwards. By 2002, the operation had been carried out in nine zones, delineating 44,201 parcels in 1.1 million hectares in 708 villages.⁴³ Village Land Management Committees were established in all 708 communities, each headed by a land manager. Difficulties had been encountered, and not entirely resolved, as to how to ensure women's rights and other secondary rights were fairly taken into account. Deficiencies in recording and transcribing local rights were also noted, "which tended to be over-simplified and reduced these to two basic categories of land managers and land users".⁴⁴ In addition, the exercise provoked conflicts between indigenous and migrant populations in some areas as they struggled to reconcile their conflicting claims to the same tracts of land. This put a stop to the rural land plan operations in certain areas, but by no means all.⁴⁵

One of the tasks of the rural land plan was to guide new land law. By 1998, the Ministry of Agriculture had prepared a draft, which made no mention of the fact that the law would oblige holders of land tenure certificates to register them in order to be recognised as property owners.⁴⁶ Nor would the vision of the rural land plan programme, focused on locally-led surveying and mapping of customary lands, meet the new requirements of the Rural Land Law for formal survey. It was this, more than any other differences in approach between the rural land plan and the Rural Land Law, that resulted in the rural land plan beginning to limit its activities.⁴⁷ It continued to assist with the demarcation and registration of village territories as administrative units, leaving the identification, certification and introduced titling of land rights to other agencies. Donor funding had also plummeted by 2003.

43 Zalo 2006.

44 Stamm 200: 13.

45 Chaveau 2000.

46 Chaveau 2003: 2.

47 Chaveau 2003.

3 The Current Legal Framework for Rural Lands in Côte d'Ivoire

3.1 The Constitution

The Constitution (24 July 2000, as amended) gives minimal guidance on land and property. Its provisions are limited to one article:

“The right of property shall be guaranteed to all. No one may be deprived of his property, unless it is for public benefit and on condition that just and prior compensation is made” (Article 15).

This is a classical provision in constitutions. It establishes that private property exists; that all citizens may own property; that property may only be taken for public purposes; and that such takings will be subject to fair compensation, in this instance helpfully paid prior to eviction.

The article does not answer these questions:

- a. What is the scope of *real property* (immovable property)? Does it include natural resources such as forests, trees, and water, or only land itself?
- b. What constitutes *property*? Does it exist only if it is formally registered? Do customarily owned lands constitute property which will be protected against all involuntary losses other than takings for public purposes?
- c. Who are ‘all’? Does this refer to all lawful residents or only to citizens?
- d. What constitutes ‘public purpose’? Could deprivation of property for a private purpose, such as an agro-industrial farming scheme by a company, be deemed a public purpose on grounds that it will provide jobs, and income for the Treasury through taxation?

These are matters that other new constitutions often now cover, and with increasing detail, instead of leaving key principles to land laws which are more easily amended. In Africa, the status of customary land rights is particularly addressed in constitutions, in order to remove ambiguities.⁴⁸ Some countries provide entire chapters on land and property matters (e.g. Uganda (1995), South Africa (1997) and Kenya (2010)), with further such chapters intended in Zambia, Liberia, Tanzania and Sierra Leone, among others).

Also typically provided in other constitutions, but absent from that of Côte d'Ivoire, are these articles:

- a. The right of every individual to acquire and own property alone or in association with others
- b. The right of freedom to settle in any part of the country, although often subject to local conditions

⁴⁸ To one extent or another this is evident in these African Constitutions: Lesotho (1993), Uganda (1995), Ethiopia (1994), South Africa (1996), Eritrea (1997), Republic of Congo (2002), Rwanda (2003), Mozambique (2004), Burundi (2005), Democratic Republic of Congo (2005), South Sudan (2005), Madagascar (2010), Guinea (2010), Kenya (2010), Niger (2010) and Zimbabwe (2013).

- c. Statement as to who owns the soil/land, where this is treated as distinct from ownership of rights to the soil/land (as is the case in Côte d'Ivoire)
- d. Statement as to who owns inland waters, minerals and foreshores
- e. Specification as to how non-citizens may acquire rights to land, and any limitations pertaining.

3.2 The Civil Code

Some of the above provisions are covered in the Civil Code of Côte d'Ivoire. For example, the Code defines property as:

"The right to enjoy and dispose of things in the most absolute manner provided they are not used in a way prohibited by laws or regulations." (Article 544);

And it states that:

"No one may be compelled to give up his property, except for a public purpose, and with fair and prior compensation" (Article 545)

The Code is a long and largely archaic document, in the form of the French Civil Code adopted into law after independence. Although whole chapters have been removed since, hundreds of articles remain on the subject of property, including chapters on usufructs, servitudes and contracts.

Typically, given contestation as to rights between customary landowners and outsiders, the Code stipulates (my emphasis in italics) that:

- *"The owner of either movable or immovable property is entitled to all that the property produces, either naturally or artificially. This is known as the right of accession" (Article 546).*
- *"The products generated by the property belong to the owner, over and above the costs of reimbursing the costs of labour, work, or seeds given by third parties" (Article 548).*
- *"Ownership of the soil includes things above and below the land. The owner may develop plantations and buildings as appropriate, except as otherwise provided under easements and services. He may develop buildings and excavations as he thinks fit, and benefit from these excavations all the products they provide, except as stipulated in mining and police laws" (Article 552).*
- *"All buildings, plantations and works on land or in the interior, are presumed made at the owner's expense and belong to him unless the contrary is proved, and without prejudice to the property that a third party may have acquired or may acquire by prescription, this includes the land beneath the building" (Article 553).*
- *"When planting, constructions or other works were made by a third party or with its materials, the landowner may retain these or require the third party to remove them. If the owner calls for their removal, this will be at the expense of the person who made these developments, including payment of damages as necessary" (Article 554).*

- “If the owner decides to keep the plantations and buildings, he must refund the value of the materials and labour, regardless of the greater or lesser increase in value to the land created.
- However, where the third party is ousted without benefitting from the fruits of his labour or investments made in good faith, the owner may not request the removal of the works, plantations or buildings, *but will have a choice to refund the value of inputs or to pay an amount which reflects the increase in value to his property through those developments*” (Article 555).

The bottom line at first seems clear: all natural and artificial developments (e.g. buildings, trees including coffee, cocoa, oil palm and rubber trees) on the land belong to the landowner, and if the landowner wants to remove these or take full control of these, say from a tenant or sharecropper who did the work of development or construction, the owner must compensate him for the value of his inputs accordingly. However, this also leaves room for laws and regulations to give such a land developer ownership rights over the works he has contributed to. Contract law (as set out in the Civil Code, which has some 400 articles on this subject) also provides for a land developer (such as a tenant) to acquire outright ownership of the land or to transfer what rights he has to others.

The Ivorian lawyer Raphael Kra, in a 2015 study, raises a related conundrum: when the ownership of the land was statutorily unclear or unprotected, then the developer of the land could argue he was developing un-owned lands.⁴⁹ The president’s order in 1962 that “the land belongs to he who develops it” reinforced uncertainty as to who in fact is the owner.

3.3 The Rural Land Law (1998)

The new Rural Land Law clarified many matters – but not all. It (No. 98-750 of 23 December 1998) was amended in 2004, but otherwise remains in force. It repealed the above-mentioned law of 1971 (No. 71-338 of 12 July 1971).

The Rural Land Law is a framework or basic law (*loi*) enacted by parliament. It was promptly supplemented by three implementation decrees (*décrets*) issued by the president and the Council of Ministers, and numerous regulations in the form of orders (*arrêtés*) issued by the Land Minister. His ministry has also issued multiple administrative directives (*circulaires*).

Box 5 summarises provisions of the basic Rural Land Law, following the form it is presented in, without critique.

49 Kra 2015.

Box 5: Summary of Key Provisions in the Rural Land Law (1998),

as amended by Law of 28 July 2004 (Article 26)

Chapter 1: Definition and composition of rural land

- By implication, Côte d'Ivoire is divided into five non-overlapping land classes: rural land, public domain, urban areas, forest areas, and zones where the state has right of first refusal at sale.
- Only the state, public authorities and natural persons of Ivorian nationality may own rural land.
- Rural land presently comprises permanent and temporary domains. The latter includes customary lands (*domaine coutumier*) and lands that have been granted to third parties by the state (*domaine concédé*).
- Following compulsory registration of customary and granted rights, the temporary domain will disappear. All rural land will comprise state property, land owned by public authorities and individuals, and lands without owners (*terres sans maîtres*). The customary domain will no longer exist.

Chapter 2: Ownership, granting and transfer of rural land

- Only registered property will be recognised as *owned* rural land.
- A land certificate (*Certificat Foncier*) is not a certificate of ownership, but the basis upon which application for ownership may be made, as directed by the Rural Land Law.
- Application for such certificates is compulsory for customary landowners. This is to be undertaken by 2019 (originally set as 2009, but extended in 2014).
- Once obtained, the owner of the certificate has three years within which to apply for its registration and transformation into a land title (*Titre Foncier*), a real property entitlement.
- Failure to make such application results in the certificate expiring.
- Accordingly, any unregistered land after the set date in 2019 will be deemed un-owned and become the property of the state.
- These ownerless lands (*terres sans maîtres*) will comprise (i) lands not claimed by successors, (ii) customary lands which were not registered, and (iii) state-granted lands where stipulated development conditions were not met.
- The state may lease or sell unowned lands, with costs of registration paid by the lessee or purchaser.

>

>

- Recognition of customary right holders for the issue of certificates will be through a state programme of identification, or on an ad hoc basis at the request of stakeholders (i.e. as systematic or on-demand titling).
- The process is to be carried out by administrative authorities or those they delegate with concerned representatives.
- Issue of land certificates is dependent upon finding that enjoyment of customary rights has been continuous and peaceable.
- Certificates may be issued either to individuals or to groups exercising collective rights over lands.
- Collective land certificates are to be drawn up on behalf of public or private bodies with legal personality or by duly identified informal groupings.
- A manager will be nominated by members of a collective landholding group to act on their behalf, and whose name will appear on the collective land certificate.
- Concessions (rights granted by the state) must also be registered through a procedure that allows objections to be raised, and will result in the owner being the state. The grantee becomes a tenant of the state, paying set rent, and may not transfer or sub-let the land. Or, if the grantee is eligible (i.e. a national) the state may sell the land to the grantee, who may in turn sell or lease out the land.
- Groups given a collective land certificate (*Certificat foncier collectif*) may transfer or subdivide the land partially or fully among members, through application and issue of a deed certified by the administrative authority.

Chapter 3: Development and management of rural land

- Land use and development will be regulated. Permitted developments include breeding wild animals, maintaining forests, and uses other than crop cultivation.
- In respect of state-owned rural land, the state may issue fixed term leases with development conditions attached. Failure to comply with conditions will result in auction of the land with payment to the tenant after subtracting costs and debts.

Chapter 4: Financial and fiscal provisions

- Leases on state rural land will be subject to rent in accordance with the Finance Law.
- All rural property will be subject to land tax.
- Non-payment of rent or tax will result in sale of the land with right of first refusal by the state.

>

>

Chapter 5: Transitional provisions

- Rights acquired lawfully prior to this law remain valid even if they do not comply with the nationality requirements of Article 1, in accordance with a list drawn up by decree adopted by the Council of Ministers (Amendment of the law on 28 July 2004).
- Property rights acquired by natural persons prior to this law may be transferred to their heirs (i.e. not transferred to others).
- Legal persons (e.g. companies, registered associations) may transfer rights acquired prior to the law.
- In the event of land under a certificate being available for transfer, immediate neighbours to the land have a right of first refusal to acquire the land for six months.

3.4 Implementation Decrees and Orders of the Rural Land Law (1999-2003)

Three decrees and thirteen orders were issued to apply the Rural Land Law between 1999 and 2003. Although some newer decrees and orders are likely to have been circulated, this is not evident in a relatively recent list sent to this author.

In summary, the main provisions are for:

- a. **Institutional development:** Each sub-prefect is to appoint a Rural Land Management Committee (RLMC) to initiate and oversee the land formalisation process. This is a government body, but summons village representation when the interests of a particular village are being discussed. The RLMC also has final say over disputes as to ownership that arise in the process. One of the responsibilities of the RLMC is to establish Village Land Management Committees, whose appointed representatives are to play a key role in assisting an Investigating Commission appointed by the RLMC to conduct adjudication and recordation of rights.
- b. **Investigation and recordation of all customary rights:** The results of the inquiry of this joint body ('Investigation Team') include:
 - A delimitation file which includes a plan of all parcels prepared by a qualified surveyor, as well as a description of all boundaries
 - A report on the inventory of customary rights which includes a census of persons concerned, answered questionnaires of all landholders and signed declarations, a list of disputes, and a statement as to whether any concession rights affect the lands
- c. **Issue of Land Certificates:** Land certificates are issued by the directorate, which sends certified copies to individuals or groups as appropriate, attached to which are development conditions, instructions for registration of the certificate within three years, without which

its validity lapses, a list of leaseholders, and a list of those described as “legitimate occupants”.

- d. **Issue of Land Title:** Land titles can be issued only to individuals or legal persons.
- e. **Regularisation of concessions:** Regularisation enables concession holders to secure concessions as full ownership, following formal survey and settlement of any local objections. Concession holders who are non-nationals may obtain a lease from the state.

Summaries of several key implementing regulations are provided in Annex I to this report:

- Decree establishing Committees of Rural Land Management (*Décret no. 99-593 du 13 octobre 1999*)
- Order of 12 June 2001 (*Arrêté no. 041 MEMID/MINAGRA du 12 juin 2001*) elaborating the decree establishing Rural Land Management Committees
- Decree establishing implementation relating to the Customary Domain of the Rural Domain (*Décret no. 99-594 du 13 octobre 1999*)
- Order of 2000 providing the format of certificates (*Arrêté no. 002 MINIAGRA du 8 février 2000*)
- Decree establishing the procedure for consolidating provisional concession rights in the Rural Land Domain (*Décret no. 99-595 du 13 octobre 1999*)

3.5 Delimitation of village territories

The delimitation of village territories is another key procedure for recording land use at the local level. This does not fall under the Rural Land Law, as villages in Ivorian law are not landholding units, but administrative territories. The means through which a village territory is defined is described in a Law on the General Organisation of the Territorial Administration, independent of the Rural Land Law. This law has been reissued by each administration over the last decade, most recently in August 2014.⁵⁰

The Law on the General Organisation of the Territorial Administration defines two paths for governance outside the capital: one that deals with decentralisation of state ministries, and another that provides for elected local governments. Villages fall within the former. They are the grassroots entity within a chain of command that extends from the central state to districts (the largest unit of organisation), then to region (next largest; currently there are 19 regions), departments (currently 58), sub-prefectures and villages. Elected bodies only exist at the regional and commune level (currently 196 communes). Communes are an aggregate of urban neighbourhoods or rural villages. The village is described in Article 35:

“The village is the basic administrative unit nationwide. It consists of wards as established by the meeting of members of one or several families and possibly hamlets attached to it. A village chief assisted by a village council administers the village. The organisation and operation of the village shall be laid down by decree of the Council of Ministers.”

50 Loi No. 2014-451 du 05 aout 2014 portant orientation de l'organisation generale de l'Administration Territoriale.

The decree on organisation was unavailable to this study (and may not have been issued yet). It is unclear whether the village council is elected or appointed, and by whom. Village Councils are ambivalently distinct from the Village Land Management Committees, as the Rural Land Law also refers to councils (Article 7) and the decree described below does not mention councils but refers to Village Land Management Committees.

The procedure for delimitation of village territories is laid down in Decree No. 2013-296 of 2 May 2013. The process begins with each sub-prefect publishing a list of villages for delimitation, including villages neighbouring the delimitation area. This is obligatory.

The Minister for Agriculture then appoints an official investigator, presumably a state official. This investigator in turn appoints an investigation team in each village to be delimited. The team comprises two representatives of the chief and two representatives of the Village Land Management Committees, both from the village to be delimited and from all bordering villages.

The investigation comprises six steps (Articles 4-17):

1. Collection of the history of the village in a public meeting.
2. Mapping boundaries of the village territory, with agreement and participation of representatives from neighbouring villages. Where there is disagreement over the location of the boundary, the parties are given one month to reach agreement.
3. Written description of the boundary by a certified technical operator.
4. Installation of numbered temporary posts or beacons by the operator, positioned no further apart than 300 metres.
5. After 15 days to allow complaints, the certified operator takes the position of each post entering coordinates into the national survey network to an accuracy of one metre.
6. The operator draws a temporary village map at 1:10,000 or 1:50,000, including: names of neighbouring villages; the coordinates of the each post and its number; description of the total size of the area in hectares and square kilometres; and all other relevant information to be included or attached to the map.

The map and information are published through display in the village and bordering villages, and in other listed sites, and one month after publication, a public meeting is held in the village to record comments, points of disagreement and agreement. Minutes are drawn up by the official investigator and signed by himself, the chair of the Village Land Management Committee and the chair of the neighbouring Village Land Management Committees (Articles 18-19).

The full file is submitted to the chair of the Village Land Management Committee, which meets in full to approve and sign the results, and submits them to the sub-prefect for validation.

If the boundaries are not approved due to dispute with one or more neighbouring villages, this is reported for investigation by the sub-prefect's RLMC. The RLMC has 30 days to resolve the dispute. It makes its decision available at a public meeting. Its decision is final, with no recourse to appeal (Articles 20-23).

On approval of the boundary plan, the certified surveyor digitally draws a final map of the village territory, with ten hard copies submitted to the department prefect.

The department prefect will forward this to the Minister for Local Government, who shall gazette an order declaring the village territory. Boundaries will henceforth be protected by the state (Articles 26-28). Villages sharing boundaries have an obligation to plant trees along the boundary; the destruction of these trees is illegal (Articles 29-30).

Unlike applications for land certificates or registered land titles, this decree declares that delimitation of village territories will be undertaken at the cost of the state (Article 31). It should also be noted that the procedure to define the boundaries of each village does not produce any form of legal certification other than an order declaring the village land area ("village territory") to exist.

■ **Road near Bouaflé, Cote d'Ivoire. Waves of migration during the 20th century, from neighbouring countries as well as from within Côte d'Ivoire, have led to high levels of conflict in local land relations.**

Photo: jbdodane/Flickr CC



4 Critique of the Rural Land Law

A critique of the Rural Land Law shows that there are a number of areas which lack clarity. Some of these are minor, such as an unclear distinction between a Village Council and a Village Land Management Committee. The term “land manager” appears to mean several things, depending on the regulation in which it appears: a customary land owner, a person appointed by a group to represent their interests, and the manager who led development of the rural land plan. The relationship of rural land plans with rights identification procedures as stipulated in the Rural Land Law is also opaque; it is not clear (at least to international readers) whether the rural land plans continue to exist, and whether the rights as identified and recorded in those plans have any status today. These and similar points are likely to be better explained by Ivorians and others immediately familiar with developments on the ground.

There are other uncertainties that have more substantive importance. Some have been touched upon earlier, relating to:

- a. whether a collective has to form a legal entity in order to retain its property under a land title;
- b. who is eligible to be classified as an Ivorian national, in light of the 2004 amendment to the Rural Land Law suggesting that this is determined by the Council of Ministers rather than legal norms, which offers startling scope for potential abuse;
- c. the distinction between leaseholders and ‘legitimate occupants’ as listed on land titles; and
- d. questions that arise in the absence of legal instruction as to the formation, functions and especially powers of Village Land Management Committees beyond their role in facilitating rights identification.

These questions are discussed further below, along with more fundamental uncertainties relating to the position of the Rural Land Law towards customary land ownership. What exactly is being formalised through final issue of a land title – confirmation or extinction of the customary right?

Strengths

First, obvious strengths of the Rural Land Law and its associated regulations include:

Recognition that customary rights provide a basis for real property rights protection

1. More innovatively, ending century-long denial that rural lands which are not physically occupied, cultivated or in other ways developed are therefore ownerless
2. Related, legal recognition that many rural lands are communally owned in customary law, with provision for communities and other groups to secure collective land certificates
3. Through the above, making it possible for the majority of the customary domain to remain in the hands of communities and families

4. Legal entrenchment of a procedure for formal identification and registration of customary land interests
5. Provision for both systematic and on-demand adjudication and certification of existing rights at the request of groups or individuals, which is important where a community faces invasive land threats
6. Attention to the need for such exercises to be carried out with community representatives
7. Institution of Village Land Management Committees to fulfil this participation role (and potentially other land management roles)
8. Provision for conflicts over ownership to be resolved locally during the rights identification process, with the right of appeal to the sub-prefecture and a final decision within six months, helping limit forum shopping and endlessly unresolved disputes
9. Certified customary rights (land certificates) carry a little more protection than those without certificates. While the only protected rights are those that have been converted into statutory land titles through registration by the declared cut-off date (2019), certificate-holders who have failed to register their certificates are given another three months to request formal land title, or if they are non-nationals, to request a lease over the same land from the state.

Weaknesses also emerge, including in almost all of the above. To help unpack the complexities, this critique includes a review of how far the Rural Land Law represents a departure from earlier land law norms, as well as assessing provisions from a practical point of view.

Discussion

Departing from or entrenching colonial norms?

In general, the Rural Land Law seemed to herald a new era in the treatment of unregistered land rights descending from the customary regime, especially since more than 95 per cent of the rural population probably fell in this category at the time (and still do). However, when its provisions are read alongside the provisions of the 1955 law, it seems less innovative.

To recap, the 1955 law confirmed the existence of customary rights. It also provided for these rights to be identified through a public procedure of adjudication, and for certificates to result from this process. Both individual and collective rights could be expressed in certificates. The 1955 law did not indicate whether these rights would be registered in a customary land register as provided for in 1925. However, these recorded and certificated rights were not given status as real property interests deserving state protection when challenged, or subject to full compensation when the state wanted to take those lands for other (public) purposes. This is confirmed by the fact that only certain customary rights could be transformed into real property rights as registered in the title register. These were limited to rights held by individuals, and where the land was under their 'permanent and obvious control'. This suggested that while certification of customary rights would be available, only houses and permanent farm parcels would be eligible for recognition and registration as real property.

The 1998 Rural Land Law departs from this position in the following ways:

1. The end of ownerless lands

Most exceptionally, under the Rural Land Law it is no longer essential for the applicant to exclude undeveloped lands at application for a certificate. This is indicated in Article 1 of the law, which defines rural lands as comprising all lands, whether developed or not, along with provision for the state, public authorities and natural persons of Ivorian nationality to own such lands. This is especially important for communities who may have sizeable (and often purposely) undeveloped lands as their common property under customary norms. It also affects individual landholders who have significant undeveloped lands within their properties.

However, it must also be observed that this breakthrough is somewhat modified by other stipulations which repeatedly oblige land owners to 'improve' the land, implying that undeveloped lands may not be tolerated and are at risk of being removed from the individual or collective land entitlement (see the review of decrees and orders above).

While development conditions are normal through most of the continent (and justified in reference to large lands acquired for purposes of speculation, not use), the lack of clarity as to what is meant by 'improving' lands, 'developing' lands, and even 'occupancy' (as per Article 8 of the main law) could be used against many customary landholders and especially in respect of common properties. There are also impediments to the securing of collective lands under the definition of state property in the Forest Law (2014), as discussed below.

2. A partial approach to collective tenure

In general, the 1998 law opened the way for groups to secure their customary rights as absolute property. Groups, not only individuals, are eligible to transform their certificates (as already provided for in 1955) into full property rights in the form of land titles registered in the title register. This opens the way for families, clans, villages and other social communities to have their lands fully entrenched as property rights.

However, once again caution is advised. While appointment of a land manager by the group- is sufficient for issue of a certificate, the law is not so clear as to what the group must satisfy in order to convert its certificate into a full land title.

There is strong implication in the 1998 law and supplementary decrees and orders that the group should either subdivide its collective property among members or create a public or private body with legal personality in order to secure final entitlement. This is apparent in Article 9 of the law, which—when read alongside Article 1—clearly limits ownership of rural land to the state, public authorities and natural persons, and nowhere provides for a community or other social group to be considered as a natural person. Decree No. 99-594 reiterates that informal groups may secure certificates, but when it comes to transforming these into property entitlements through registration, the Decree is ambivalent:

"In the event of a collective Certificate or of joint ownership among heirs, registration, after division, shall be in the name of the various members of the group or joint-owners, or in the name of the State in the event of a dispute (Decree No. 99-594, Article 28)."

On balance it could be concluded that only individuals and legal bodies formed by collective groups may transform their certificates into real property rights. Alternatively, there is an option for the state to own the land and lease this to the group, but again, the question of legal personality is not resolved. More practically worrying are the serious difficulties which most communities or groups

within communities, including families, will face in forming legal entities. As described later, these restrictions have served in practice to eliminate common property as a recognised form of land ownership.

3. Weak protection of unregistered rights

It is also doubtful whether unregistered rural rights are better protected in the 1998 law than in 1955. The 1998 law is silent on this. In a sense, because certification and conversion of certificates into state-defined formal property rights is compulsory, millions of rural dwellers are worse off than they were in 1955 if they do not comply, or are unable to comply. In 1955, customary rights were recognised (confirmed) as existing, and because formalisation was not necessary, this was a continuing condition. However, in combination with making registration compulsory (and setting a time limit for this), the 1998 law explicitly intends to end the existence of all customary rights and the customary domain in general. This matter is further discussed below, as it reaches deeply into the conception of customary rights which underpins the law. For the moment, it may be concluded that customary right holders (including owners of both primary and secondary rights) were practically better off under the terms of late colonial law (1955).

4. Doubtful improvement in protection from concessionaires

Customary landholders are also not expressly better protected by the 1998 law from state allocation of their lands by lease or concession than they were in 1955.

The state's ability to issue of concessions was unlimited until 1955, as unregistered lands were treated as unowned lands and therefore available for the state to allocate freely as leases, sales or concessions.⁵¹ The 1955 law gave new protection to communities by requiring customary right holders to expressly renounce their rights to land before a concession could be granted. This suggested free, prior and informed consent (FPIC) – although practice was doubtless very different on the ground, with 'consent' perhaps achieved through coercion, payments or similar promises.

FPIC is not implied in the 1998 law. Instead, a procedure of amicable resolution is proposed. First, customary land holders, and those holding provisional rights such as in concessions, may transform their rights into full ownership through formal mapping of the area (Article 11-14 of the Rural Land Law). The application from the concessionaire for the land must then be published in the affected area (as well as at the prefecture and sub-prefecture offices), and any objections raised within three months. Should objections be raised, the procedure laid in Decree No. 99-595 comes into play. The sub-prefect in his capacity as chair of the RLMC has one month "to settle the matter amicably" (Article 8 of Decree No. 99-595). Failing this, a special government commission chaired by the prefect hears the matter, but without representation of the community or communities affected (Article 9). If decision is made in favour of the concession-holder, he may proceed to acquire full title (land title), at which point all other use rights to the land are extinguished (Article 12 of the Rural Land Law). Or, if a non-national, the concession-holder may acquire a lease from the state.

5. Mishandling the nationality issue to dire effect

In colonial conditions wherein all Africans in French territories were equally subjects of France, the question of nationality requirements for land ownership did not arise, and it was not tackled in the

51 Leases and concessions are similar; the main difference is that concessions are normally issued to give rights to a particular resource and purpose, and explicitly dependent upon development of the land for that purpose, hence often granted first on a provisional basis. Once those conditions are fulfilled, the grant becomes permanent in the form of either an absolute title or a lease held from the state.

1955 law (although with the creation of independent states clearly on the horizon, and with inter-territorial migration so prominent by this point, it must be wondered why).

Immediately upon independence, such matters became of pressing importance. The terms of non-national rights defined in the 1998 Rural Land Law were particularly provocative because they represented a dramatic departure from the post-independence presidential order of 1963 and decree of 1971.

A background observation on nationality requirements must be made here. Denial of the right of non-nationals to own land directly is the norm in most African jurisdictions. This is not especially problematic where foreign occupants tend to be urban-based with non-land-based incomes, are companies which do not expect to acquire more than leasehold rights to lands, or are refugees presumed to be temporary residents. Relatively few constitutions or land laws in Africa allow non-nationals to own rural lands outright, and some do not allow them to own any lands outright. The dominant norm is that these rights are limited to leasehold rights (usually renewable) where the landowner is the state, not a private citizen. It has also long been the case that only diplomatic missions are exempted from these limitations, and this exemption lasts only for so long as diplomatic relations between the two countries last.

In Côte d'Ivoire, nationality limitations in the Rural Land Law have much stronger implications. This is because these limitations backtracked on the country's longstanding invitational policy to non-nationals, who had come to expect to be treated not so much as temporary migrant labourers, but as *immigrants* who could expect to settle permanently and to secure all the rights of citizenship, including land ownership. Non-nationals from surrounding countries were particularly numerous in rural areas, actively cultivating lands and often living as integrated members of local communities. Some were second and third generation occupants. Moreover, many in this group believed that they had acquired rights to lands, at least within the context of customary norms, as a result of substantial payments in cash or kind over time through one mechanism or another, including supply of their labour. This process had had (partial) political support through the early 1960s, as expressed through the principle of "the land belongs to he who develops it", with the implication that this held true regardless of whether the cultivator was local or a newcomer from within or from outside the country.

The three issues of (i) how property rights are defined; (ii) how outsiders may secure tenure in their new localities; and (iii) how the interests of non-nationals are handled, all became hopelessly intertwined. With hindsight, these issues were mishandled in the law. The effect was that already-stressed social land relations between customary landholders and outsiders, between ethnic groups, and between national identities were tipped into outright conflict, contributing to the 1999 *coup d'état* and then civil war.⁵²

The depth of the 1998 law's departure from colonial and post-independence positions on non-nationals cannot be over-emphasised. To recap on points made earlier, nationality became an ever-more pressing issue from the 1960s, with increasing diversion of opinion and support, including along north-south and party lines. Houphouët-Boigny's attempts to establish dual nationality in the region had met with some success in an agreement signed by five countries on 31 December 1965, enabling their nationals to "enjoy the same rights and be subject to the same obligations of the nationals of the host state in which they settled".⁵³ The President had ambivalent support for this at home. The ruling party rejected this in January 1966, and parliament more thoroughly rejected

52 Chauveau (2003:17) remarks in relation to the violent events of November-December 1999 that "Most conflicts broke out after local villagers had been informed of the provisions of the new law of December 1998 on rural land, in particular the clause restricting the right of ownership to Ivorian citizens alone". Also see Babo 2013.

53 Babo 2013: 108.

the proposition in 1972 (Law No. 72-852 of 21 December 1972). Children born after that date in Côte d'Ivoire of immigrant parents would no longer qualify for Ivorian nationality. An obligatory residence permit was introduced for non-nationals in May 1990. In 1994, after the death of Houphouët-Boigny, the new President Bedie went further, with a campaign to distinguish between 'Ivorians with roots going back for centuries' and 'ad hoc Ivorians'.⁵⁴

It was in this environment that the Rural Land Law was enacted. The rights of incoming clearer-cultivators had received official favour between roughly 1920 and 1960, and had gained a massive boost from Houphouët-Boigny's 1960s policies, only to crumble from around 1970. The Rural Land Law swung the balance further away from non-nationals, marking 'the return of autochthony and the debate on *'ivoirité'*'.⁵⁵

In the process, the provisions had another effect. Intentionally or otherwise, they served to reinvent the customary sector, treating it not as a sphere of highly various interests delivered by community-led systems and norms, but returning 'custom' and 'community' to an archaic entity restricted to an ethnic group. In this, the Rural Land Law mistook the customary sector as a single amorphous lump, without internal variation of interests in which class, tribe, generation, location, and circumstance had already for some time dictated effects. The impacts of this would be felt not only by non-nationals, but by other Ivorians who were not members of the social clan or tribe by birth. Even the rights of members of the social clan were affected by the revitalisation of ethnic considerations.

To focus on the implications for non-nationals, the Rural Land Law was bluntly clear that they could only hold derivative rights to land (Article 1). Non-nationals had three routes through which to secure such rights. First, they could be listed as legitimate occupants by the Ivorian landowner from whom they had acquired lands. This was an unpalatable option for many. Second, they could accept formal lease conditions laid down by the Ivorian landowner; this was also unpalatable and exposed them to possible rent hikes. Third, they could acquire a leasehold from the state, and become a tenant of the state, subject to its terms and rent.

This situation had negative effects on nearly all non-nationals. Those whose land access arrangement fell short of the attributes of a statutory lease were forced to depend more than ever upon the goodwill of the land-giver. For those non-nationals who had settled permanently in the community, or acquired customary ownership of their lands, being reduced to a leaseholder was highly unsatisfactory. This was quite aside from the impact of the new law upon those local landowners who felt the land—if not the cocoa trees—had always remained their property. Few were satisfied, and rejection of the law from all sides was inevitable.

An amendment to Article 26 modified the situation of one group of non-nationals: those who had already been able to register ownership of lands ('property rights') before the 1998 law was passed. The Amendment as of July 2004 reads:

"Property rights over Rural Land acquired prior to the present Law by natural or legal persons who do not fulfil the conditions for access to property provided for in Article 1 above shall remain valid. The names of the owners covered by this derogation shall be included in a list drawn up by a decree adopted by the Council of Ministers (Article 26)."

This amendment holds significant problems. It does not cater to non-national smallholders, as it is limited to those who had already registered property rights (which most smallholders did not

54 Babo 2013: 110.

55 Collin 2012: 2.

do), and who have also been identified on a list by the Council of Ministers (and most smallholders would never have been known to the Council of Ministers). And yet, these smallholders are probably many times more numerous and land-dependent than companies and wealthier persons who had acquired formal 'property rights.'

The second part of the Article also opens the way for potential malfeasance, discrimination, and further concentration of privilege among those with means (and access to the Council of Ministers). Identification of who shall benefit from the amendment was to be by name, not by categorisation of situation. Worse, the amendment hints that the final arbiter of who is on the list is determined politically, by the Council of Ministers. Accounts suggest that a first list was produced, containing the names of seventy-two wealthy individuals and forty legal entities with large lands. It is not known whether a further list has since been issued.

The present government has broadened the scope of eligibility for citizenship, in two amendments to the Nationality Law in August 2013. These are quite precise. Foreigners may become Ivorian nationals on three grounds; (a) if they marry an Ivorian national; (b) if they have resided in Côte d'Ivoire since before independence, in which case their descendants also qualify for Ivorian nationality; and (c) if they were born in Côte d'Ivoire between 1960 and 1973, in which case their children also qualify. These provisions are improvements upon the 1972 amendment described above. They include many poorer non-nationals who are unlikely to ever appear on a Council of Ministers list. It remains to be seen whether these changes are sufficient to allow access to land ownership for foreigners and their children.

6 Failure to position customary rights as property interests in their own right

Many of the concerns raised so far stem from a single fundamental flaw in the Rural Land Law. This is its failure to recognise customary land rights as lawful property interests in their own right. Instead, the law reinforces colonial norms which dictate that property only comes into existence when the state says it does, through a procedure that ultimately transforms the right and cancels its customary heritage.

There are several elements to this basic shortfall.

First, most of the rural population are still deemed to be no more than permissive occupants, unless they acquire certificates. If they acquire certificates but fail to transform these into property titles, they have no rights at all. The biggest problem is the law's reversion to and strengthening of the position underpinning the colonial laws of 1925 and 1955, that while customary rights are acknowledged as existing, they amount to far less than ownership rights in state law.

Second, the law does not allow customary rights ever to be acknowledged. It intends to extinguish them entirely, and to abolish the customary domain in general, by replacing existing rights with forms of rights that are often very different to those they are extinguishing. This is why the law does not consider recordation of certificates alone to be sufficient – they have to be surrendered.

Third, the failure to legally protect customary rights prior to their certification and transformation into another form of land ownership left millions of Ivorians in an even more uncertain legal space than they had been prior to the new law.

7. Compulsory abandonment of customary tenure

If customary rights had instead been recognised as having force and effect as property interests, deserving immediate protection, this would have had a corollary effect on how rights to land were formalised.

The importance of the formalisation of rights in an unstable modern world, with high levels of competition for land, is undisputed. However, what is being formalised is a major concern. Broadly, two forms of formalisation exist around the African continent today. The first is classical and extinguishes customary rights, through selecting one or two aspects familiar to European-derived land law, and making this the sole framework through which rural land may be legally owned. This is referred to as replacement, conversionary, or transformational land titling. It is characteristic of virtually all systems of rights formalisation before the 1990s.

The second approach is to acknowledge that property rights *already abundantly exist*, and that most if not all of the country's land is owned, and always has been. A route is provided through which these existing rights may be identified, recorded in the form in which they are defined and upheld by the community, and through registration, acknowledged as deserving the full protection of the state, to the same degree enjoyed by non-customary registered rights. The point of such registration is to double lock their security. This was the intention of the rural land plan programme described earlier, although its successes in recordation were variable. A corollary of this approach is usually that while recordation is strongly encouraged in order to help customary landholders protect their rights, such recordation and registration of their rights is not made compulsory.

8. Titling as replacement, not recordation of rights as they exist

The Rural Land Law was never about protecting customary rights, but about coercively ending their existence. The only concession was that identification of existing customary rights could be the basis of their transformation to statutory rights. The law was therefore designed to protect citizens' rights to land – but not to protect customary rights.

This distinction is not a case of splitting hairs. It puts the Rural Land Law at the centre of contested notions of what constitutes real property, and of how far the adoption of state forms of ownership is a prerequisite of tenure security. For example, within the customary system, certain lands cannot be sold in the open marketplace. In contrast, in the Rural Law's conception of land ownership, the right to land is treated as a commodity. The Rural Land Law's objective was not to secure customary land rights by recognising them, but to transform these rights into detachable commodities. This classical version of modernisation of property rights was expressed in the original preamble of the Rural Land Law, and continued to appear in some of the decrees and orders of 1999. It maintains the problematic position that African customary rights were never more than rights of access and use to unowned lands, and it remains dominant today.⁵⁶

By extinguishing customary rights, the Rural Land Law also removes the essence of customary tenure, which vests decision-making about the nature of land ownership and other land rights in the community rather than in government. The transformation of rights from customary to statutory involves even further losses, which are explored below.

9. Losing more than a single interest

As observed earlier, an exceptional feature of customary ownership rights, and a prime reason for their resilience and continuity, is that they are nuanced, layered and complex – and changeable via agreements among those with interests in the land.

The imported European land title is a single and absolute right, vested in an individual, who is usually the male household head. While serviceable for some purposes, it is too simplistic to encompass the sophistication of customary rights. In Côte d'Ivoire, the Rural Land Law mishandles

56 Colin 2012: 2.

the rich diversity of derivative rights that have evolved to reflect and regulate complex cultivation systems involving different forms of sharecropping and tenancy, including routes to final transfers of ownership. Under the Rural Land Law, derivative rights holders are to be simplistically listed as either lessees or legitimate occupants, with the terms of both defined by state, not by local regulations.

It is not just inter-tribal and inter-national relations that are damaged; the law also threatens familial, spousal, intra-community and extra-community arrangements and relations evolved over time. What happens to women, for example, who under customary norms own some share in the property, but whose names will not appear on the individual-centric title? What also happens to adult children in these circumstances? What happens to the legitimate settler who has, for all intents and purposes, acquired rights that are less than outright ownership but more than legitimate occupation? All sorts of dispossession can result. In other countries where attempts have been made to convert customary land rights into titles on a large scale, literally thousands of cases clog the courts as family members battle against the statutorily-protected rights of the single registered landowner. Even matters of traditional inheritance can be thrown into confusion and heated intra-family dispute.

10. Decapitating community based land governance

The intended abolition of the customary land sector does more than end customary land rights; it is also designed to end community jurisdiction over such rights. Once a customary right is formally expressed in a land title, it will be legally administered by the state's rules and the state's not always well-informed dictates. Community members will no longer have responsibility for upholding those rights when contested, or determining changes in the rights' scope and character.

In this way, a practical and operating system of localised land governance is casually disposed of in favour of an expensive, bureaucratic, remote and centralised regime, which loses all social content. A fully empowered Village Land Management Committee would lessen these kinds of losses. However, the Rural Land Law and its implementing decrees are vague as to the powers of Village Land Management Committees, beyond assisting the state (via the sub-prefect) to identify and record rights. Nor, as noted earlier, do these Village Land Management Committees appear to be democratically formed.

One of the ironies is that states who have taken this approach are usually eventually forced to invest enormously to re-devolve and re-construct community-based land governance systems, as the centralised system is unable to cope with the pressure and demands for community-level devolution increase. The lack of a community-based regime for governing land titles in Côte d'Ivoire is especially curious given the emphasis which the rural land plan process found necessary to place on local-level institutional development.

It cannot be assumed that community-based regimes are always fair or incorruptible. In practice, communities endure the same problems of malfeasance, land-grabbing and elite bias that the national community endures. Nevertheless, by being located in the community, and being relevant to the landholders and areas with which most villages are very familiar, community-based regimes can quite actively limit the worst effects and resolve many issues outside the courts. Ultimately, though, traditional leaderships also usually need to gradually be replaced with elected and more accountable systems if true inclusion and majority will are to gather force.

11. Keeping compulsory titling in perspective

Much concern was expressed from 1999 over the compulsory nature of tenure formalisation. Adoption of cut-off dates for registering rights is quite common, as a mechanism to coerce uptake. But the dates are routinely extended. Namibia is up to its third extension, and Angola is coming

close to that point. Some countries have effectively abandoned their cut-off dates (e.g. The Gambia, Ethiopia, Lesotho, Eritrea and Burundi). Even Rwanda, which has issued more than 10.5 million titles since 2007, missed its self-imposed deadline. Cut-off dates are also often set for the submission of restitution claims, but these too are often extended (as recently occurred in South Africa).

Cut-off dates often fail because of the impracticalities of achieving identification, titling and registration of land rights on a large scale. The workability of mass titling depends upon its simplicity and affordability, and upon serious devolution of registration and dispute resolution procedures to the most local level possible. Mass titling also tends to thrive only where genuinely localised and legally-empowered institutions are established to sustain governance of the land rights delivered after first registration, to make it easy for local populations to record transactions involving their registered holding. Failures to meet cut-off dates can help governments face the need to adjust the process they envisage.

However, shortfalls can also conceal deeper reasons for low uptake of the duty to formalise land rights. These constraints have been explored above. Fixing the mechanics of the system may not be enough. Both practical and conceptual impediments to the system established by the Rural Land Law are examined below.

12. An unworkable process for scale

The proof of the workability of formalisation is first and foremost in its achievement. Many countries have barely made inroads into this since independence. The success of mass titling in Rwanda is an exception. Success has been much less in Namibia and Madagascar. By 2012, only 72,413 parcels had been recorded in Benin, affecting one tenth of villages; only 17 Land Charters had been developed in Burkina Faso; and only 16,000 titles recorded and registered in Senegal, covering a miniscule 58,000 hectares.⁵⁷ Even in Tanzania and Mozambique, where community titles rather than individual parcel titles are issued, both countries have achieved only 10 per cent coverage in 15 years. In these two countries, formalisation is less threatening to customary land rights, which have clear constitutional and land law protection regardless of whether they are registered.

Against such a backdrop, it is unsurprising that Côte d'Ivoire's Rural Land Law achieved so little – particularly given the country's two civil wars. An introduction to a recent government-led workshop states that only 809 certificates (of around one million rural farm parcel certificates needed for completion, or 0.8 per cent) have been issued since 1999.⁵⁸ These certificates cover 35,462 hectares, or 0.15 per cent of the 23 million hectares within the rural sector. By 2012, only one land certificate had been converted into a registered land title, and a single rural land lease (presumably from the government to a non-national) had been issued.⁵⁹ When one looks at Rural Land Law and its implementing regulations, it is not hard to see why: the legal framework contains a number of fatal shortcomings.

- I. **Too many steps:** The process of registering land involves at least 20 steps, and up to 35 or 40 steps if each action is counted (e.g. collecting forms, submitting forms, and forwarding these to multiple agencies). This is in addition to preliminary conditions like forming Village Land Management Committees.
- II. **Too many agencies:** These number at least ten, some of which are remotely located in the capital.

57 Elbow et al. 2012.

58 République de la Côte d'Ivoire & République Française, 2015.

59 Teyssier 2014.

- III. **Too long to undertake:** The process takes a long time, because of the number of actors and offices involved, and because of the two-step procedure to secure rights (certificates, then land titles).
- IV. **Too demanding:** The Rural Land Law asks too much in demanding that land certificate holders must register or lose their rights within three years: having spent their savings (if they have any) on the survey and the certificate, the majority cannot afford the next stage.
- V. **Too sophisticated in mapping requirements:** The mapping required to register rights is expensive, time-consuming, depends upon hiring qualified surveyors, and is altogether doubtfully necessary. Evidence of boundaries could alternatively be sufficiently determined through description by the applicant and, in the case of dispute, on-site investigation and testimony. Mapping requirements also necessitate hire of professional surveyors, who are expensive and not numerous enough to cater to district, let alone national, demands. So, even if a landholder has the funds, he may be unable to find a surveyor to do the work.
- VI. **Too little institutional capacity:** Despite some years of relevant land identification operations under the rural land plan programme, and considerable donor finance, Côte d'Ivoire still does not enjoy anywhere near the institutional capacity required to launch mass titling for country coverage, let alone via the costly approach that exists at the moment. Even the Tenure Information System is reportedly not set-up, despite this being the mechanism upon which mass titling depends. Numbers of staff are obviously too few for the scope of compulsory registration envisaged. As above, not only is the number of trained and approved private surveyors too few, there is also only a small number of state-run survey and mapping services.
- VII. **Too dependent on government institutions:** The Rural Land Law is explicit that recordation of rights cannot occur independently of an official identification exercise (Article 1 of Decree No. 99-594 of 13 October 1999). Even if the teams of government staff authorised to do this had no other responsibilities, they could not be expected to work at the speed they would need in order to cover the whole country in the 10-year time period given by the law.
- VIII. **Too expensive:** The facts around this are astounding. Analysis shows that a land certificate costs the equivalent of US \$1,370, and a registered land title costs US \$5,750. Even the cost of a certificate is far beyond the means of most rural landowners. The total cost of registering one million titles would be around US\$ 1.3 billion. Few other than elites will have the capacity to even begin the process. Moreover, the government has no intention of sharing costs with landholders, despite making certification and conversion of certificates into land titles through registration obligatory.
- IX. **Too complicated:** While first-step rights identification is quite well practised under the pre-law rural land plan programme, the Rural Land Law complicates this with questionable institutional impediments and hefty documentation requirements. The requirement to transform registered certificates into land titles is overkill, as well as being conceptually unsound.⁶⁰
- X. **Too short-term:** It is not clear, from either the Rural Land Law or its supplementary decrees and orders, that satisfactory arrangements have been made to make it cheap, easy and fully accessible for those with land titles to record transactions in the future.

60 Rwanda provides an excellent example of a single, one-stop office and one-stop process, a main reason for its success.

- XI. **Weakly democratised:** Villages play some role in identifying and recording rights, but most of this work is left to government agencies and representatives, including offices in the capital. The lack of attention given to the development of community-based institutions is curious, particularly given that the rural land plan repeatedly concluded that this was critical to success in identifying and sustaining protection of rights at the local level.
- XII. **Land taxes:** While this is a normal objective and output of formal entitlement, when taken in combination with other disliked aspects of the approach, the threat of land taxation may add insult to injury in the eyes of millions of poor rural families who may have already incurred large debts to begin the process of acquiring a land title.
- XIII. **The principles underwriting the Rural Land Law:** It is possible that a number of landholders and users have been confused by or uncomfortable with the intentions of the law to overturn, do away with or reconstruct their rights to land, in ways which do not fit with their conceptions of what their rights amount to. Even if customary landholders are not aware of the destruction of customary tenure intended by the law, they may be reluctant to formalise rights in ways that reduce family interests to one individual (women may be particularly concerned), and to lose common properties through subdivision or through handover of these to local authorities or legal entities.
- XIV. **Fears that compulsory titling will be used by elites and outsiders, including wealthy individual and companies,** to co-opt and permanently acquire local lands wrongfully granted by the state or acquired through locally disputed means. The provision of the law that a grantee of a concession in rural land may acquire outright ownership when development conditions are met, may be viewed by local communities with wariness. Since the law was enacted, the view has periodically been expressed locally and by observers that its real purpose is to entrench the occupation of valuable farming lands by wealthy individuals and firms, not to secure the rights of the majority. Latterly, Jean-Philippe Colin, a long-term researcher in Côte d'Ivoire, has continued to ponder its intentions: "One may wonder whether the end result (in line with what might be seen as the implicit aim of the law) could not be a selective implementation of the law, mobilised on a case-by-case basis in order to secure land transfers benefitting national elites (through purchase) or national or foreign agro-industrial firms (through long-term leases on certified and then titled land)".⁶¹

13. Questionable strategy from a modern land governance perspective

This may be summarised as (i) a weak approach to instituting mass titling as a top-down process; (ii) a failure to make development of empowered Village Land Management Committees the primary source of land administration; (iii) a disconnect with the lessons of the rural land plan approach; and (iv) a puzzling disconnect between the intentions of the law and the identification of village territories.

The decision to identify, map and register village areas is a logical first step towards mass tenure security. Definition of village territories is a major state policy in Côte d'Ivoire, with a legally-embedded practical process for which the state is willing to pay. The result is not however a land right, but an administrative unit, although the definition of village territories would provide the context for the community to elect a more legally-empowered land management body. Not only could such a body lead on rights identification and recordation, it could also be authorised by the community to zone village territory for the protection of residual common areas, regulate access

61 Colin 2012: 2.

and administer land relations, and record transactions and related matters. All of these functions are needlessly over-centralised and disconnected in remote government offices.

14. Over-focus on individual tenure

Common property: A positive aspect of the Rural Land Law is that it allows community rights to be defined and embedded in collective certificates. This is important in rural land systems where a substantial portion of customarily owned and used lands are communal assets, including pastures, forests and marshes, which are rarely usefully subdivided among individuals if their survival and the protection of access rights by community members is intended. The Rural Land Law's requirements for how the group defines itself are reasonable, including the need for the collective to list members and to appoint a representative (termed the land manager) to act on their behalf.

However, the positives stop here. A group holding a collective certificate has no easy route to have that right protected through compulsory conversion of the certificate into a land title. Collective holding presents itself in the law as essentially a temporary condition to enable the members to then subdivide the asset into private parcels. Or, should the group wish to retain tenure as a group, they must undertake not only the expensive procedure of buying the title, but they must first form a legal entity to hold the land for them, or worse, hand over the common property to government or a public authority to own for them. These are all poor choices. They also abuse what is superficially offered by the law as a genuine opportunity to secure off-farm lands as locally owned. Much less contorted mechanisms for protecting common rights are available in modern land law in other countries.

The law also misses the opportunity to adopt formally recognised common properties as a critical route to securing many threatened pastures and forested lands.

Family tenure: Families are one of the social groupings affected by weak development of the law in respect of anything other than individual landholding. It seems that the only option for a family to own land is for a single (most likely male) household member to register the land under his name, meaning the land would now belong to him alone rather than to the family. Perhaps a family could form a legal association in order to own the land in its name, but even if this is legally possible, the procedure is likely to be beyond their capacity. Family tenure provides a very important option for modern landholders to nest complex norms such as land sharing, gift, borrowing and temporary use. It also helps limit contested inheritance matters.

15. Failure to protect vulnerable groups

The effects of the Rural Land Law on longer-term legitimate settlers have been relieved, to an extent, by the law's amendment in 2004 and to changes to nationality law in 2013. However, there are other constituencies whose rights are jeopardised by the Rural Land Law, such as women, and very poor people, including widows and orphans. It has long been a lesson in tenure reforms that legal measures to ensure full inclusion of *all* residents in a community area are essential to ensure the just and well-considered identification of rights. There is no sign of this in the Rural Land Law, or in Decree 99-594 of October 1999 which guides the investigation and certification of rights. In fact, that decree fails to provide any guiding principles as to process whatsoever. Even in its mention of the need to annex a detailed list of co-owners to a collective land certificate, the decree does not specify whether the list must include all individual adults, or whether the names of household heads suffice. Women and poor people in the community could well miss out and fail to be listed as co-owners of common lands in particular, and thence fail to receive an equitable share at subdivision, which seems to be the major route promoted in order to sustain ownership.

People displaced by conflict also face uncertain rights in their home villages, as their absence will prevent them from demonstrating “peaceable and continuous occupation” as required by the law. They may even not be informed that a rights identification exercise is underway. Again, very clear legal measures need to be stipulated in order to avoid visiting yet further injustices upon such groups. While the steady return of refugees from camps outside the country continues, as of 2013 there were – for example – still 58,000 refugees in Liberia, who claim that their lands in the western forested regions have been taken over by outsiders in their absence, including through wrongful sale of their lands by those who did not flee.⁶² There are also serious implications for the many displaced persons living elsewhere in the country, who could lose their rights through biased or unduly narrow processes of rights identification.

16. An undeveloped approach to land conflict resolution

A positive attribute of the Rural Land Law is that it makes room for localised dispute resolution prior to certification. It is also useful that the law has a clear path of appeal, and a point at which ruling is final, to avoid disputes lasting for decades. Nevertheless, the extreme nature of many local land conflicts suggests that the month-long time limit is too short. This means that wronged parties whose disputes have not been settled will be permanently denied access to a certificate or title. By default, the land will become state property. Where numbers of such cases are high, conflicts may restart.

The law also presumes that once title is issued, there will be no further disputes. However, experience of land reform elsewhere shows that the institution of low-cost, localised and fully accessible land tribunals has generally become a necessity.

17. The law an instrument for concentration rather than protection

The Rural Land Law appears to assume that all land grants from the state were lawful – and just. It thus makes no acknowledgement of the fact that the state allocated many thousands of hectares of customary lands in some regions to outsiders, backed by a presumption that all unregistered lands were vacant and un-owned. The law provides no mechanisms for local communities to challenge such state-made allocations. The law does allow objections to the conversion of land leases into absolute ownership title, but does not provide for restitution to the affected community. While this does not make restitution impossible, the absence of stipulations as to what happens if it is agreed that the objector has grounds for an objection, other than payment of some compensation, leaves the bias of favour upon the rights of the grantee. The absence of a more thorough review procedure for large-scale land grants and concessions after 1990 is surprising, in light of the role that large-scale allocations for crop production played in generating explosive conflicts after the announcement of the law, such as in Tabou in early 1999.⁶³

18. Legal construction of the rural domain

Finally, a comment on the nature of the rural domain needs to be made. There are ample hints that the intention of the Rural Land Law was to facilitate state capture. Rural land is defined as a residual category: it includes all land that is not already in the public domain, urban areas, zones where the authorities hold a right of first refusal at sale, or classified forest areas (Article 2). The law implies that these classes have precise and permanent boundaries. In practice, their scope is imprecise, and their further expansion is likely, on a *de facto* or *de jure* basis – including, for example, new city boundaries to encompass expanding suburbs, newly classified forests, new areas which

62 Human Rights Watch, 2013.

63 Chauveau, 2000.

the government would like to reallocate to large-scale commercial enterprises, and the vaguely specified public domain.

Key elements of the public domain are listed in the Decree of 29 September 1928, still in force. This lists mainly waters, rail tracks, roads, telegraph and telephone lines, hydro and electrical facilities and military installations. It then offers open-ended provision that all property of any nature that the Civil Code and French law (now Côte d'Ivoire law) declare as excluded from private property can be included in the public domain. In today's terms, this gives sector laws the task of defining what constitutes public property.

As has been typical around the continent, such laws in Côte d'Ivoire have steadily extended the reach of most classes of public property, including for protected areas and public service developments. Raphael Kra uses a law on communication facilities in 1991, an expanded water law in 1998 and an expanded mining law in 2014 to illustrate how the public domain has grown and grown, to an extent that suggests many rural communities may own significantly less land than they customarily believe they own or can claim.⁶⁴ The new Forest Law (2014) will be examined below with this trend in mind, but can be mentioned here as rapaciously securing virtually all forested lands to itself.

In general, the open-ended nature of public domain, along with the treatment of the rural domain as a residual class, shows a total absence of intention to dramatically reform or reduce the role of the state or its agencies as landowners and landlords. This is reinforced by the Rural Land Law's definition of the rural domain as comprising state-owned land, land owned by public authorities and individuals, and ownerless lands (*terres sans maîtres*). After 2019, ownerless lands will become state property: this will include lands that have been abandoned, customary lands that have not been registered, and granted concession lands that have not been developed in accordance with the terms of their agreement. In practice, the vast majority of customary lands could well fall under this category of ownership, due to failure to complete formalisation. Inter alia, this suggests that claims that the Rural Land Law does away with the colonial notion of *terra nullius* ring hollow.

64 Kra 2015.

5 Suggestions for Remedy

5.1 General Conclusion

There is no doubt that Côte d'Ivoire's Rural Land Law was bold and innovative in 1998. Driven by concern about rising conflict between original landholders and outsiders as to their respective rights, and between nationals and non-nationals in particular, it sought to unpack, order and entrench eligible rights in European-derived titles once and for all. It adopted the recognition and identification of customary rights as the basis for this transformation. This built on rural land plan experiences throughout the 1990s, which showed that communities could unpack their diverse interests in workable ways in many if not all circumstances, despite these interests being complex, often opaque, and contested. However, similarities between the rural land plan approach and the new law more or less stopped there. The former had envisioned the formalisation of customary rights, in the form of registered certificates, along with evolution of community-based ways to regulate rights – a vision which seems to have been uncertainly developed by 1998. At the stroke of the pen, the 1998 law replaced that still-evolving vision with one that reverted impatiently to colonial paradigms. It established that customary rights had no substance as real property, and that registration of their existence was nothing more than a platform from which the right holders could then acquire final title or ownership.

While land specialists originally seemed most concerned about the compulsory nature of certification and conversion into formal property entitlement, the greatest concern fifteen years later must be around the vision itself and its handling of customary rights. No amount of streamlining, cost-cutting, or other essential practical changes can alter the unsoundness and injustice of the law's aim to abolish the customary domain. The law leaves those too poor or too unwilling to exchange their customary rights for an individual entitlement defined by state rules, even more definitively than before technically landless occupants of unowned land. The notions of *terres sans maîtres* or *terra nullius* look likely to be dramatically revitalised, and once again, such lands are presumed to be unowned, falling by default to the state. The state in turn is free to allocate these lands to whomever it wishes. With the abolition of the customary domain and the extinction of rights at the cut-off date, customary landowners living on affected lands will once again be perceived in law as no more than tolerated, and perhaps even unlawful, occupants on state property. Ironically, their objections will hold less force than they would either today or under the 1955 regime.

Changing this unjust and damaging situation does not need to mean abandoning the goal of formally certifying as many rights as possible. But it does mean challenging the conventional view as to what such formalisation represents, and how to achieve it. Much more than cost reduction is needed to alter what has been virtually zero up-take. So far, the populace has voted with its feet and said 'No' to the Rural Land Law's vision of rights, and its demands. It is imperative that both the basic premises of the law and the mechanics of its application are re-examined. Fortunately, appropriate adjustments to the former will remove many of the impediments that have arisen in the latter, which make the law unworkable even if Ivorians were to support its current premises. A rethink of what the law seeks to achieve, and how far this accords with majority rights and interests in a post-conflict Côte d'Ivoire, seems due. Some suggestions are made below.

5.2 Suggestions

Any changes to the Rural Land Law should be made through an inclusive popular consultation process, resulting in the drafting of a National Land Policy, and then an amended or new law. For clarity, this study recommends several precise changes. These changes all reflect and build upon a fairer conception of customary rights as real property in the eyes of the law, and removal of the intention to extinguish these at registration. Fortunately, while the conceptual shift is substantial, there is enough in the existing Rural Land Law to suggest that a limited number of specific amendments could suffice.

1 Protect customary rights with immediate effect, whether registered or not

Customary land rights should receive full statutory protection. This protection should have equivalent force in law as that given to title rights granted by the state through registration. This is irrespective of whether or not these customary rights have been identified or formally registered, or whether there are family or other interests, or sub-rights such as those exercised by accepted land users.

The main reason for making this protection explicit is to ensure that customary owners are due the same degree of compensation at public acquisition as those holding title to land. More generally, it brings customary rights out of the long-sustained colonial cold, in which they were always deemed to be less than property rights.

In practical terms, modern land laws tend to make the assertion that customary rights are due full statutory protection. This is the foundation stone upon which such rights may then be systematically identified and registered. Usually, land laws simply stipulate that while a main objective is to ensure that existing land rights, including recognised longstanding occupation or use, are *clarified and secured* by the law, all lawfully occupied land, whether under a customary or granted right, *shall be deemed to be property*. Annex 2 to the report provides examples from Mozambique, Tanzania, Kenya and Liberia.

Some countries have accompanied such new laws with constitutional changes on land tenure, for example Uganda, South Africa, Kenya, South Sudan and Mozambique.

2 Subject new non-customary allocations to rigorous investigation of existing rights to the affected land

If customary rights receive automatic statutory effect as described above, land grants or public-purpose takings by the state must be subject to a thorough procedure of identification of rights in the affected area. Because these rights have statutory effect as full property interests, they cannot be ignored or denied equitable compensation in cases of compulsory acquisition.

Presently, the Côte d'Ivoire's 1998 Rural Land Law does provide for an investigation when a non-local owner or concessionaire is seeking land. This is through posting the intention in the area and inviting objections. However, as long as the broader context of the law presumes customary rights have no force unless subject to certificate or title, the balance of favour is implicitly on the land seeker, and the compensation due for an unregistered right is likely to be low.

3 Make it more difficult for existing concessions and state-granted lands to be converted into ownership titles

Existing concessions and state-granted lands for which conversion to full ownership title is sought should also be subject to the same process of identification of customary rights. Again,

this is provided for in the Rural Land Law, but a more explicit right of the original owner (which is often a community) needs to be entered into the law. For example, where the lands have not been developed by the concessionaire or leaseholder, these should be restored to the customary landholders, rather than revert to the state. Alternatively, where the concessionaire or leaseholder has developed the land and the state is to relinquish ownership, the law should at least provide an equitable opportunity for communities to benefit. A new legal option could be to give ownership over the concession land to the customary community, with the concessionaire leasing the land directly from the community. Where the land cannot be easily restored to customary owners or if this is not their wish, then the customary landholders should be compensated when these lands pass absolutely into the ownership of the concession-holder.

4 Make certification the final step of registration

An obvious change needed in Côte d'Ivoire land law is to simply drop the requirement that certificates are transformed into titles through a second stage process. First, this is a logical corollary of accepting that customary rights are property interests and must therefore, for the sake of equity, justice, and modernity, be given equivalent legal protection. From this perspective, transformation into titles (and the cancellation of customary attributes in the process) is superfluous. A certificate of customary title is perfectly adequate. A voluntary option to convert this into a state-granted title could be provided for those who wish to remove their entitlement entirely from the customary sector and subordinate it to the rules that apply to a state-granted title. However, this option has seen almost zero uptake where it has been provided for (e.g. Uganda), as the customary title has the same force as a state-granted title (a Freehold, in the case of Uganda).

The process of registering certificates of customary title could be easily converted into a final entitlement procedure. Already, for a certificate to be registered and a paper copy of evidence issued to the landholder, the steps of adjudication, local approval, government approval (by the sub-prefecture and prefect) and registration) are required. There is no reason why the register for certificates at prefect, or preferably, sub-prefect level, could not be accorded status as a customary titles register.

There are also logistical reasons why the abandonment of a two-stage approach to formalisation is advisable. This approach is ludicrously cumbersome and costly. The basic lesson that African states have learned from formalisation over the last sixty years is that it must be kept as simple, cheap and local as possible. Issue of certificates and registration of ownership should happen at the same time, and be conducted at the local level.

5 Make formalisation voluntary not compulsory

There are strategic, practical and also circumstantial reasons why the compulsion to formalise land rights should, as a matter of urgency, be removed from the Rural Land Law. The first is directly related to how customary rights are perceived. Failure to get a registered certificate of evidence for one's land rights should not mean that those rights have disappeared. Aside from anything else, to continue this approach would be to continue to locate people's land rights in the colonial vision of an un-owned Africa.

The bitter last decade of contestation over property makes compulsory formalisation particularly inappropriate at this point. And the reasons why uptake has been so low also need to be carefully investigated and taken into account. As this critique has concluded, these probably stem from resistance to the implications of abolishing the customary domain, as well as from the fact that Ivoirians do not seem to have had the means or local support to go through the land certification procedure. Continental and global experience also suggests that making formalisation compulsory does not significantly accelerate the process, which tends to advance at its own pace in response to the levels of need felt by communities.

6 Record customary rights in the form they exist

The basics of recording customary rights in the form they exist are already provided in the initial rights identification procedure stipulated by the Rural Land Law, but are inadequately developed in its implementing regulations. First, the procedure needs to be better guided to ensure that no rights are inadvertently extinguished through limitations on which kinds of rights can be recorded, or through weakly conducted exercises. The record of land rights should not be reduced to categories of owners and users, which can diminish the rights of family members as well as those of a host of other dependents and land sharers. This includes all those who fall under highly various land lending, borrowing, sharecropping and other traditional arrangements.

7 Recognise families and communities as natural persons

In general, it is important that the Rural Land Law be revised so as to avoid putting customary landholders through the tortuous process of cancelling or ignoring some people's valid land rights, simply for the sake of fitting in with externally-imposed norms as to who can be registered as a land owner.

Modern land laws now normally recognise a wide range of entities as natural persons eligible for land ownership: spouses, families, groups, villages and village clusters, pastoral clans, and any other social association recognised in customary tenure. Most modern laws find this a necessity, both to remove the obstructive costs of communities having to form legal associations in order to secure collective entitlement, and to avoid the often retrogressive step of subdividing a property such as a forested communal area, rangeland or swamp, which is much better retained as a common property.

Such reforms have most recently been affected in new or draft laws in Liberia, Kenya and Namibia, and are already available in Burkina Faso, Uganda, Tanzania, Mozambique, and Ethiopia. They contribute enormously to removing local land conflicts that arise where the only way to save the land as locally owned is subdivision into the hands of individuals. In Côte d'Ivoire, the only other option currently available is that the state takes over ownership of common lands, and leases it back to the collective. While this option could be retained to fit certain circumstances, it should not be the only recourse.

These problems could be avoided in Côte d'Ivoire by simply recognising communities as natural persons for the purposes of rural land law. This could be complemented by building on the measures already set out in the Rural Land Law for communities to acquire a collective certificate. Currently, groups must list their members and appoint a land manager to represent them. They could additionally be required to establish a simple list of rules, by which all members agree how the land will be used and managed, and the mechanisms through which the land manager will be accountable to the members, and to update the membership list every five years. An alternative to identifying a single land manager should be available in the form of a common property land committee.

8 Adopt a progressive framework for formalising rights

A successful land formalisation process should bring clarity to opaque rights, and provide an opportunity to unpack and reorder contested rights. Compulsory formalisation represents a major logistical and financial challenge, and is rarely quickly achieved. Therefore, the best approach is to assure statutory protection of customary rights in the interim, and to ensure that formalisation processes are sufficiently fair, cheap and accessible to be attractive to the majority of poor landholders. Getting the framework right is the first step.

8.1 The Village Territory as a Land Administration Unit

Côte d'Ivoire already has a highly useful framework in its legal menu, in its intended identification of all village territories as discrete not overlapping administrative units. This provides the perfect first step for securing unregistered rights: the village territory provides the socio-spatial framework within which all residents can then be assisted to take the following logical next steps.

8.2 Establishing a Village Land Management Committee

Again, the ingredients for establishing a Village Land Management Committee exist in the Rural Land Law. However, considerable development of these committees and their functions and powers is required. They need to be upgraded to become properly elected bodies, serving as the lawful local land administrator, under the guidance and supervision of the sub-prefecture's land office.

8.3 Zoning the village territory to limit ad hoc expansions

The competence of the village land committee can first be tested during the process of agreeing the boundaries of village territory. A second function of the committee is to zone the area so as to identify common lands, shared by all members of the community and not the preserve of any one family or individual. This presumes that many village territories do still contain a mix of private farm properties and shared lands such as forests, grazing lands, swamp lands, and even, in more land-rich areas, potential future farming lands.

8.4 Developing rules for common properties

A logical third step is for the Village Land Management Committee to draft appropriate rules concerning shared lands, along with decisions as to how, if at all, they might be disposable to individuals in the future. The forestry department should encourage each community to set aside residual primary forest or degradable forest which can be restored, as community forest reserves or as wildlife reserves. Community grazing reserves could be very important where livestock keeping is a critical element of livelihood and lifestyle.

8.5 Parcel and Rights Identification

The Rural Land Law stipulates that land parcel and rights identification should be led by government teams, and should involve villagers. It is not clear why a community cannot undertake this process itself, in accordance with clear guidelines and subject to checking by the sub-prefect investigation team.

The ingredients for community-based rights recordation are already in place in the Rural Land Law and in implementing regulations relating to village territories. Desirable amendments to the law in this respect include:

- a. Making it obligatory that definition of the village territory is the first step towards the formalisation of tenure rights.
- b. Providing simple guidelines so that every village in the country may carry out the village territory definition exercise itself if it wishes, subject to final validation by a competent local authority.
- c. Eliminating the obligation for each village territory to be formally mapped before its existence is registered, bearing in mind that the village territory is not a property unit in itself, but the framework within which property rights are identified and managed. The path to such recognition should be the boundary record, as agreed and signed by neighbours. This should be of sufficient detail to be recognisable on the ground, preferably using rivers

and roads as boundaries, or installation of beacons where these do not exist, and detailed descriptions of the location of each.

- d. This does not mean that an accurate map of village boundaries should not be pursued, but that its absence should not prevent registration of the village territory. Mapping in this case need not be expensive, given the ease with which GPS readings along the boundary can produce a digital map of the area. Charges for mapping should not be laid upon the community for this exercise. The sub-prefecture could commit to mapping all village boundaries as a single exercise, to reduce costs.
- e. Creating *elected* Village Land Management Committees. Once formed, the committee should be designated as the local land authority for the concerned village territory, and an order laying out the requirements of the committee should be produced. Election is important, but where fully accepted land chiefs or other leaders are in place, they may also be ex officio members of the committee, or if elected by the community, asked to chair. It is also essential to have a mechanism for accountability to all community members, for example through an obligatory public meeting of all adults every three months, where the committee presents its proposals for approval.
- f. Over and above a limited list of statutory functions, each village can establish its own list of functions for the Village Land Management Committee. One essential function of the village land committees in Tanzania is to ensure that no individual holdings can be registered until the whole community has agreed and set aside the communally owned areas within the territory. This issue has proved critical in countries like Botswana and Namibia, where the opportunity to establish private entitlement without this first step has seen significant self-expansion of farms into what others consider communal property.
- g. Following the identification of communal areas, individual rights identification of the residual lands within the village territory can then proceed – if the community so wishes. This should be conducted by villages themselves, led by the Village Land Management Committee, and following detailed step-by-step guidelines. The sub-prefecture investigating commission can then spot-check established benchmarks and results, the first being that the Village Land Management Committee has been properly appointed and is appropriate in its membership. The sub-prefecture commissioner should also require the attendance of all community members at a final public meeting to discuss each parcel identified, before s/he can register the titles. The key amendment to the relevant decree is that a community may carry out rights identification in accordance with published simple guidelines, without the necessity of the investigating team being present.

9 Dramatically simplifying formalisation to encourage mass accessibility and uptake

In summary, the following actions could help make voluntary certification and registration of rights feasible:

1. Merging the two-step certification and registration procedure into one.
2. Allowing the registered land title to include the customary entitlement, along with all customarily regulated interests. Ownership should be available to any customary social formation, such as a family or village.
3. Devolving the registration procedure to prefect or sub-prefect level, so that rural land registers are established and maintained at the local level. This can be instituted on an incremental basis.

4. Streamlining the registration process into a single land office (at each prefect or sub-prefect level), without requiring a host of other actors to be involved.
5. As above, enabling communities themselves to undertake most steps.
6. Removing the ambitious parcel mapping requirements for certification and registration, which currently constitute the major cost for landholders, by allowing detailed description of the boundaries of each parcel, witnessed agreement of these by neighbours, and an approximate measure of the parcel, to replace formal mapping. At granting of registered land title, the parcel will receive the correct Pin Number, and its boundaries will be provisionally indicated on an appropriately scaled map of the area. Landholders may, in future and at their own cost, seek formal survey of their parcels. Over time, this will build up a cadastral record, but production of a full-blown cadastral map for the parcel should not be a prerequisite for registration.⁶⁵

10 Step back to get changes right and to gain popular support in the process

There may be a strong inclination by the current government administration to make minimal changes to the Rural Land Law, or to assume that since it is now easier for non-nationals to become citizens through the 2013 changes to the Nationality Law, the main issue has been resolved. There may also be a tendency in some quarters to consider that the main problem has been funding, and that substantial investments by donors will remove the problems experienced with the law. In addition to ignoring the graver shortcomings of the Rural Land Law, this would result in missing the opportunity to initiate public discussion of the law, to be responsive to majority consensus on the changes needed, and through this to gain mass popular support for the law.

2015 seems like a good time to launch all the above. Côte d'Ivoire's constitution is under review. Close neighbours have important lessons to impart; Benin, Burkina Faso, Togo, Senegal, Mali and also Madagascar have particularly useful experience. In some matters, policy makers may find it useful to look beyond Francophone Africa to somewhat different paradigms and processes. Tanzania, Uganda and Liberia have been mentioned in this text as offering useful experiences in relation to the handling of customary land rights. Ethiopia and Rwanda have important experiences to offer as to practical procedures of mass formalisation of rights at least cost. Namibia offers useful recent experience of why provision for registered collective entitlement is so important. Bountiful documentation exists on all these experiences. Donors and agencies can facilitate access to these documents, and host consultation workshops with community, civil society and state representatives. Most invaluable would be the chance for Ivorian government and civil society representatives to visit some of these countries to see the challenges faced and the progress made for themselves.

65 Cheap or free titling is one reason why Ethiopia and Rwanda have been able to achieve strong progress. Lower cost than normal – in fact 30 times less than the conventional titling procedure – is one of the reasons Madagascar was able to issue 100,000 rural titles in seven years – still low, but much more than achieved in Côte d'Ivoire. It is also of note that, before Côte d'Ivoire's 1998 Rural Land Law was passed, the rural land plan programme reported in 1995 that costs of adjudication and recordation (including all technical support costs) averaged US\$ 6.12 per hectare, less than 5 per cent of the cost incurred when registering land in the Land Registry under the current Rural Land Act (Stamm, 2000). The rural land plan process relied primarily upon community members, rather than expensive and difficult to mobilise teams of officials, and also did not require the level of mapping stipulated by the Rural Land Law. Ultimately, it seems, the Rural Land Law took the most expensive path possible in adopting a full-blown map-based title register, which its own offices had – and still have – insufficient capacity to institute and maintain.

6 Forest Law in Relation to Land Rights

6.1 Status of forest cover in Côte d'Ivoire

Forest cover statistics for Côte d'Ivoire vary, but are consistently clear that forests have been in dramatic decline since independence, when cover was more than 16 million hectares. Some sources claim this has fallen to only four million hectares today. Primary natural forests now represent just half a million hectares. Whereas Côte d'Ivoire was once the main exporter of mahogany to Europe, exports of roundwood (small logs) are now banned and the forest products industry is in decline. Forests or forest patches exist throughout the country as rain forest, deciduous forest, and secondary forest in the northern savannah region.

Although there are 231 classified forest areas, nine national parks, three forest reserves, and seven semi-classified forests – all of which cover a total of four million hectares – only a small proportion of this land is reported to actually still be forested. Additionally, a large if imprecise area of forested land remains unclassified. Despite losses, Côte d'Ivoire is still ranked as having the highest flora and fauna diversity in West Africa. Conservation was made a priority around 2000. Following the end of the civil war, interest in recovering losses is reviving, and a new Forest Law has been enacted (*Loi no. 2014-427 du 14 juillet 2014 portant Code Forestier*).

6.2 The Forest Law (2014)

Côte d'Ivoire recently passed a new Forest Code, with several important implications for tenure. These are summarised in Box 6, below.

Box 6: The Forest Law (2014)

Provisions of the Forest Law (2014) relevant to land tenure include:

1. One of the law's objectives is the active participation of local populations, including by *"taking into account their individual and collective rights arising from customs, the Rural Land Code, and this law, and the application of forest policy"* (Article 2).
2. Forests may be owned by the state, territorial authorities, rural communities, or private natural and legal persons of Ivoirian nationality (Article 19).
3. Private forests (forests owned by or leased by natural or legal persons) include natural forests, plantations and acquired forests (Articles 36 & 37). Private owners own forest

>

>

products, with the exception of mining products and protected species of flora and fauna (Article 73). They shall enjoy the right of first refusal in the event of transfer of rights other than forest resources within the forests (Article 74).

4. Rural community forests belonging to one or more communities include natural forests on land over which they enjoy customary ownership; plantations on lands they occupy by local custom or lease; forests that the state or natural or legal persons have transferred to them; and forests they have acquired (Article 40).
5. Rural community forest owners shall also own products of all kinds, with the exception of mining products and protected species of flora and fauna (Article 77).
6. Forest products on lands formally granted to concessionaires shall be the property of these concessionaires (Article 20).
7. Trees within a village, its immediate environment, or within a collectively or individually owned area of land, belong as appropriate to the village or individual owner (Article 21).
8. This is reinforced by the statement that forest products, especially trees, located outside national forestland will belong to the natural or legal persons who have recognised rights of registered or customary ownership (Article 32). The owner (village or individual) may sell these trees (Article 21).
9. Forests are categorised as protected, productive, recreational or experimental forests. These can include forests created or maintained for water, soil or other protection purposes (Articles 23-24).
10. Forests are classified through a law or by decree (Articles 23-25).
11. Protected forests include non-classified state forests, private forests (on registered lands owned by natural or legal persons) and forests on unowned lands (Article 27).
12. Unclassified rural forests will also be protected forests, but subject to a less restricted regime of use (Articles 27-28).
13. State forests include those classified in the state's name, on unregistered land and on ownerless land. This includes *protected forests* (Articles 29-31) (*my emphasis in italics*).
14. Rehabilitated forests belong to the owners, but concession holders who have carried out rehabilitation shall have the right of first refusal to own the forest (Article 38).
15. All forests must be registered (Article 39).
16. Forest use rights, defined as being for subsistence needs, do not apply to the subsoil, and do not apply in forests owned by rural communities or legal and natural persons who may make their own rules of use, including suspending use rights (Article 43-44).

>

>

17. The Forest Administration may not charge taxes or duties on products harvested under forest use rights (Article 45).

18. Forest use rights are limited in classified forests (Article 46).

19. There will be no rights of use of the soil in public forests of the state and territorial authorities; clearing for cultivation is prohibited (Article 47).

20. Forests owned by natural and legal persons shall be subject to simple management plans and rural communities may draw up simple plans or approach the Forestry Administration to prepare such plans (Articles 72 & 74-75).

21. Sacred forests shall be managed by and subject to uses as defined by local tradition and custom (Articles 48 & 75), and when registered, may benefit from the assistance of the Forestry Administration. Traditional managers may authorise any organisation to protect and manage the forests (Article 78).

6.2 Critique of the Forest Law (2014)

1. On forest tenure

Drafters of the new Forest Law were evidently caught between the stipulations of the Rural Land Law (1998), which suggest that ownership only comes about through issue of a certificate which is then registered, and the reality that unregistered community-derived land rights and norms continue to exist 16 years after passage of the Rural Land Law and will continue to exist at least until 2019, albeit as a 'temporary domain'. They therefore drafted the Forest Law to provide for both options as a basis for acknowledging how trees, products and forests are owned in rural areas. This is illustrated in Articles 32 and 40 of the Forest Law, which are presented in full below (with my emphasis added in italics):

Article 32:

"Forest products not situated in national forestland, particularly trees not in forests, shall belong to the natural or legal persons in whom national and land legislation recognises a right of ownership or customary rights over the land."

Article 40:

"Rural community forests shall be protected forests belonging to one or more rural communities. They shall comprise the following categories:

- natural forests situated on land over which rural communities enjoy a right of ownership or *customary rights in accordance with national land legislation*;

- forest plantations created on land registered on behalf of rural communities or *on land occupied by them by virtue of local customs or a lease*;
- forests transferred to rural communities by the State, by territorial authorities, or by natural persons or legal persons governed by private law; and
- acquired forests.

Procedures for the formation of rural community forests shall be set through regulation.”

The Forest Law seems to pragmatically assume what the Rural Land Law does not make explicit: that as *unregistered* customary rights are the basis for future certification and registration of land ownership, they have *de facto* status as recognised property rights, and this shall be a sufficient basis upon which to recognise rights to products and trees, and also a sufficient basis upon which to recognise community forests which are natural, or planted by communities.

In the process, the Forest Law goes a step further than the Rural Land Law in implying that the creation of a legal entity will not *necessarily* be required for a community to be recognised as the holder of a natural forest on its customary land. There is therefore no reason why a community could not immediately define and declare its customary tenure over a local natural forest, and seek to have this acknowledged by the forest authorities. The same may apply to planted forests established on lands that the community occupies “by virtue of local customs”.

However, a contradiction exists in the Forest Law between forests recognised in Article 40 as belonging to communities, and Article 29 which claims the state owns forests classified on its behalf, i.e. protected forests situated on unregistered land and protected forests situated on unowned lands. Because community lands, in practice, have generally not been registered, Article 29 would automatically deem them as state-owned protected forests and therefore not community property after all.

Three problems reveal themselves in this contradiction:

- a. An out-dated approach to protection, in the assumption that protected forests must belong to the state in order to be sustained; global evidence is quite the opposite; and
- b. Cancellation of the incentive communities need in order to bring residual forest under protection; that is, if the community protects a forest, it loses it; and
- c. An unnecessary land grab by the state.

This contradiction is probably a mistake, and could be easily removed through public notification of interpretation.

The issue of unowned lands also presents difficulties. According to the Rural Land Law, unregistered customary lands are already implied as unowned (*terres sans maîtres*), and where customary holders fail to register and get final property title for their lands, these lands will be deemed ownerless. Unowned lands could become a major category in 2019 if the current cut-off date for establishing ownership is not extended. On present performance, few Ivoirians will have established their ownership by then, having failed to acquire certificates and/or to then register these within three years. In 2019 all these lands, including richly forested local lands as well as plantations, will be deemed to be the property of the state (Rural Land Law, Article 6). The state may then lease out these lands on fixed terms and development conditions (Rural Land Law, Articles 21-22).

As trees are attached to the landowner under the new Forest Law, communities and community members who have failed to register their lands by 2019 stand to lose both land and trees, planted and natural.

2. Failure to provide a mechanism for community forest associations

In practice, forests in African countries have often been managed as a collective asset, and their conservation is generally better afforded where a community or clan can retain the forest as their recognised community property.⁶⁶ It is unfortunate that the new Forest Law does not promote this as a path to conservation.

It may have been difficult for the Forest Law to declare for the purposes of forests or forest land that a community is a natural person, given the failure of the Rural Land Law to do so. However, the Forest Law could and should have provided a cost-free and accessible mechanism whereby a community may register a community forest association for forest conservation, management and utilisation purposes. This would give the community legal personality, and enable the association to acquire and register a certificate over the land and accordingly become a private forest owner on registration of that certificate (through issue of land title). Unfortunately, the costs of this would be substantial as long as the Rural Land Law requires formal survey and mapping for registration. Nevertheless, one would expect a modern forest law and its application decrees to provide a simple route through which a community may easily secure residual natural forests as its shared property.

Ideally, the forest legislation would offer to cover the costs of formal survey and mapping for the community, to encourage and make it attractive for rural communities to quickly save what little residual natural forests they still possess. This could do a great deal to reverse present trends of massive forest loss and conversion into farmland.

One would also expect to see special provisions for rural communities who are adjacent to or living within classified forests (state forests and protected areas). The forest law could give these communities the chance to be registered as the owners of classified forests, on strict conditions to carry out specified conservation measures. This is particularly important where the classified forest comprises small or scattered patches within the rural domain. Formal ownership by communities would help protect these from further encroachment and loss.

3. Treatment of Tree Tenure

The 2014 Forest Law apparently repealed the provision in the old Forest Law that all natural trees belong to the state. It is not clear how this entered the old Forest Law, as such a claim overrides Côte d'Ivoire's Civil Code, which says that, with the exception of mineral deposits, the landowner also owns the products of the land, including trees (Article 21). Article 32 of the new Forest Law brings it back in line with the Civil Code on this point.

The ownership of planted trees (cocoa, coffee, oil palm and rubber) is likely to have been as pressing a source of contention between original landholders and outsiders as dispute over ownership of the land itself. This is because trees are the productive resource, and the reason why immigrants acquired the land by grant or customary arrangements. Such immigrants may be prepared to accept that the original customary owner owns the land. However, they will also likely consider that, on the basis of prevailing policies between 1962 and 1998, they acquired ownership of the trees they planted. If the landowner cannot accept this, then as the Civil Code instructs, he must buy back the planted trees by paying for the costs of loss to the planter.

66 Alden Wily 2014.

The Forest Law does acknowledge problems arising from tree ownership (particularly relating to planted productive trees), as indicated in its intention to issue a decree or order on the status of trees sold to third parties (Article 21). If this can be satisfactorily provided for, it could greatly aid the resolution of land ownership disputes between original landholders and outsiders.

The upshot is that for the foreseeable future, even though the law envisions trees as belonging to the landowner (state, public authorities, natural or legal persons, or communities for as long as the cut-off date for formalization has not been reached), local reality will include many cases wherein trees on the land are owned separately from the soil.

6.4 Suggestions

An urgent requirement is for forestry authorities to develop clear norms and very simple uptake opportunities for rural communities to become lawful owners of natural forests that remain within their domains. This study has already recommended simple land use planning as a critical first step towards the establishment of village territories and to mapping exercises during land ownership registration. Forest authorities should intervene by providing clear regulation enabling community-based forest ownership and management. Substantial legal and practical implementation experience on these matters is available around the continent.

To this end, new implementing regulations for the Forest Law could lay out procedures providing for:

- a. Declaration of community forest reserves, to be owned and managed by communities including for purposes of forest protection.
- b. Clarification, for avoidance of doubt, that when a community forest reserve is declared, it is not the property of the state.
- c. The implementing regulation should set out steps to encourage every rural community in the country to identify and set aside forest within their respective village areas, which they wish to retain as communal property. These areas could include deforested or otherwise degraded forest land, remaining outside the individual or family sector.
- d. Registration of a village territory should carry with it an obligation for the Village Land Management Committee to earmark residual forest belonging to the community. Note that there is no reason why grazing and/or wildlife protection reserves cannot also be encompassed by this provision, especially in the case of multi-purpose community protected areas, not yet provided for in Côte d'Ivoire.
- e. The process of creating community forest reserves should include steps through which the community draws up a simple management plan for the planned reserve, including: the intended medium and long-term purposes of the reserve; how it may and may not be used; actions the community will take to rehabilitate the area if needed; and a management system that will ensure that the forest manager or forest committee are directly accountable to co-owners (members of the association).
- f. A category of community forest associations should be created, to enable communities to become the formally titled owner—in accordance with the Rural Land Law—of the community forest reserve. The procedure for creating community forest associations must be kept as simple and low-cost as possible. Costly mapping will still be required for the process of land ownership registration under the current Rural Land Law. If these requirements are not amended within the Rural Land Law, then forest regulations could provide for affected

communities to apply to a forest fund supported by donors to help cover the costs. One option might be to use a portion of the General Interest Tax (Taxe d'Intérêt General) to cover the costs of formal survey and mapping. This will greatly advance conservation.

- g. A new implementing decree could also prescribe how a rural community may become the designated manager of a forest which lies next to the community's domain, or which is already classified as a park or forest reserve. The decree would set out conditions whereby the community could apply to have ownership transferred to it, following a decade of substantial good performance as manager of the protected area. The decree would describe the terms upon which such transfer may occur, including conservation actions subject to state regulation and oversight. This opportunity is important, as a key finding of community forest initiatives around the world is that conservation of natural resources is much more successful when ownership as well as primary management authority is granted to local communities. This effect holds true both for both forest resources within communities' customary domains, and forests which have already been taken by the state in line with traditional conservation policies. Creating mechanisms to gradually restore state-held forests back to citizen tenure has become an imperative line of action to sustain conservation.

As Chhatre and Agrawal conclude following a review across 80 countries:

"When local users perceive insecurity in their rights (because the central government owns the forest land), they extract high levels of livelihood benefits from them, and when their tenure rights are safe, they conserve the biomass and carbon in such forests." (2009: 17669).⁶⁷

Community-managed forest reserves created in this way should also receive programmatic assistance and funding.

In general, the 2014 Forest Law needs a much stronger thrust towards community-based conservation, which in turn depends so pivotally upon community-based tenure. Being granted access and use rights is not enough. Community-based tenure would also help reduce the stridently expansive tendency for state agencies (in this case, forest authorities) to 'grab' forested lands in the name of conservation and to expand the already massive public domain in the process. Community security over forests must be assured if Côte d'Ivoire is to have a hope of overcoming its ongoing struggles with conflict, poverty and deforestation.

67 Also see Alden Wily, 2014, Rights and Resources, 2014, and Stevens et al., 2014.

Annex I: Key implementing regulations of the Rural Land Law

Decree establishing Committees of Rural Land Management (*Décret no. 99-593 du 13 octobre 1999*)

This decree provided for the creation of a Rural Land Management Committee (RLMC) in each sub-prefecture. These are comparable to a district or county unit in Anglophone Africa, but without elected councils to direct them.

Each RLMC is to comprise five representatives from government ministries; as well as six representatives from rural communities, villages and 'customary authorities' who are appointed to those roles for at least three years.

The RLMC is also to consult with rural land managers, village land committees (see below), and other people who can be useful to the work of the RLMC. As noted above, land managers are defined in the Rural Land Law (Article 10) as persons nominated by a group or community that holds a collective land certificate.

The RLMC is the decision-maker on all matters related to rural land within the sub-prefecture. This includes validating official investigations to register customary rights, resolving disputes raised during investigations and afterwards, and deciding requests for the transfer of customary rights both before and following certification and registration (Article 3).

The RLMC is also responsible for establishing reforestation schemes and urban development projects, and is to be consulted on the land implications of development projects (Article 3).

Each sub-prefect is also to create Village Land Management Committees in all villages of the sub-prefecture, "to examine all files concerning their land" (Article 5). "Land chiefs" must be members. The status of these described "land chiefs" is not clear. Nor is it clear from the law whether the Village Land Management Committees are elected or appointed.

Order of 12 June 2001 elaborating the decree establishing Rural Land Management Committees (*Arrêté no. 041 MEMID/MINAGRA du 12 juin 2001*)

This order adds to the above decree. It stipulates that sub-prefects personally chair the RLMC (Article 2).

It also notes that the six representatives of rural communities, villages and customary authorities are to be proposed by the bodies they represent, and appointed by the prefect (Article 4). At least two persons from each village (presumably as required) are to be proposed; these nominations are made at a meeting of the Village Land Management Committee.

The order also stipulates that managers of a rural land plan are to be appointed by the Directorate for Agriculture. Other members are to be nominated by the sub prefect (Articles 5 & 6). This applies to the 300 or so communities that by 2001 had already developed rural land plans, the content of which was similar to the inventory of rights described in the decree.

Article 8 provides that recommendations by the RLMC “must strictly comply with regulations in force and contribute to clarifying and modernising land rights” (my emphasis).

The order directed that Village Land Management Committees be created without delay in all villages, and especially where a land problem has arisen or where an official land inquiry has been requested (Article 12). There is no provision for how these bodies should be created (elected or appointed), or their functions, powers, or terms of service.

Decree establishing implementation relating to the Customary Domain of the Rural Domain (*Décret no. 99-594 du 13 octobre 1999*)

This decree defines the procedures for carrying out official investigations to register rights on customary land. It reminds right-holders that they must have their rights registered within the time specified (they now have until 2019). A successful registration process results in the granting of an individual or collective land certificate. Registration cannot occur independently of an official identification exercise (Article 1).

The process comprises the following steps:

1. Submission of a request (which may be made by a village community or an individual) to the *chairman of the sub-prefecture RLMC*. An official form is to be used for this application, providing information on the identity of the applicant, a description of the concerned land, and the applicant's choice of land surveyor from an approved list of persons/agencies published by the government (Article 2).
2. The sub-prefect appoints an *investigating commission*, which opens its work with an announcement posted at the Sub-Prefect Office and other relevant departments.
3. The investigating commission appoints an *investigation team*. This comprises representatives from the village council, the Village Land Management Committee, and the appointed manager of the concerned land. Neighbours to the property are also required for the investigation (Article 4).
4. The written results of the inquiry by the investigation team are a *delimitation file and a report on the inventory of customary rights* (Article 5).
5. The delimitation file includes a *cadastral plan* drawn by the surveyor at no larger scale than 1:10,000, with at least two geo-referenced control points, and other technical conditions established by government. A description of boundaries is also required. Visible boundaries must be used or created (beacons, cut-lines, roads, rivers, etc.) (Article 6).
6. The report must include annexes providing a *census of persons concerned*, a land dossier comprising an answered questionnaire and the *applicant's signed declaration*.
7. *Where the right sought* is a collective land certificate, a complete list of co-owners is required. It is not specified whether this includes all adults, heads of households, or only the name of the family.
8. In addition, a *file listing disputes*, including relevant declarations, must be provided.
9. Finally, a statement must be made on possession or concession rights issued relevant to the parcel (Article 7).

10. The investigating commissioner displays the results of the inquiry in the concerned village, and also posts these results at the offices of the sub-prefect, Minister of State and Minister of Agriculture.
11. The results are also publicly presented in the village and a register of agreements and objections opened by the Village Land Management Committee.
12. After three months, the comments are read publicly and discussed, with a report of these discussions signed by those in attendance (Article 8).
13. The Village Land Management Committee approves the report and signs the record where continued and peaceable customary rights are shown to exist (Article 9).
14. The file is sent to the sub-prefecture's RLMC for *validation*. The applicant is notified, and the file is transmitted to the relevant directorate of the Ministry of Agriculture (Article 9).
15. If the applicant (individual or collective group) is dissatisfied with any aspect of the above, he may make a request for a final inquiry within six months (Article 9).
16. The directorate checks the file and prepares the *land certificate* (*Certificat Foncier*) for the department prefect to sign. This is recorded by the department director for agriculture and stamped at the expense of the certificate holder. A certified copy is sent to the right-holder or his representative, or the group's manager (the list of the group members must also be attached to the certificate). Each certificate is accompanied by the land plan (map) (Articles 12-13).
17. Conditions attached to land certificates always include obligation to improve the land, including consideration of practices related to fallow land, and information on how the certificate should be registered in the land register.
18. As appropriate, attachments to the certificate *may* include (i) a list of legitimate occupants, whose rights shall be confirmed by the holder of the certificate in a fair and equitable manner, under terms of an emphyteutic lease and rent as set by regulation;⁶⁸ and (ii) special easements to land held by the state or third parties (Article 14).
19. Issue of the certificate is published in the official gazette (Article 15).

This decree (No. 99-594) also lays out the attributes of the certificate, with some degree of duplication alongside new provisions (Box 7).

68 This is a common form of lease in Francophone Africa, which states that the lessee must develop the land and that rent is adjusted accordingly.

Box 7: Attributes of a Land Certificate (Certificat Foncier)

The certificate endows the holder with the power to go to court to contest land management decisions, to transfer the certificate, and to rent out part or all of the concerned land. The land can be inherited by recognised heirs through issue of a new certificate on cancellation of the original (Articles 16-23).

The land certificate is not a full ownership right. This may only be acquired through conversion of the certificate into a land title certificate.

Until the certificate is converted, the holder is obliged to develop the land; if he does not, the land may revert to state ownership.

To convert the land certificate to a full ownership right (Titre Foncier), the following steps must be followed:

- a. Following receipt of an individual or collective land certificate, the certificate holder has three years to request registration of the concerned land from the Agricultural Director. Note that this provision has not been amended, throwing the status of the few certificates acquired into uncertainty.
- b. The Agricultural Director then sends the request to the Departmental Prefect, who forwards this for the approval of the Minister of State and the Minister for Agriculture, who then finally send it to the Land Property Registrar.
- c. The registrar must register the certificate within three months of receiving the request. If the applicant meets requirements, the certificate becomes a registered land title.
- d. Charges and fees for registration are borne by the applicant (Article 30).
- e. No part of the concerned parcel may be transferred to any other parties during the registration period (Articles 24-27).
- f. The registered land title is registered in the name of the applicant, and in cases of collectives, or joint ownership, in the names of members following subdivision of the rights between them (Article 28). This provision is not clear as to whether division among joint heirs or members of a collective is obligatory for final registration (Article 28). This is suggested by Article 1 of the Rural Land Law, which describes lawful owners as comprising only the state, public authorities, and natural persons of Ivorian nationality. No provision is made for a collective to be regarded as a natural person for the purposes of land law.
- g. Where the applicant does not meet the conditions laid down in Article 1 of the Rural Land Law (relating to nationality), the state will be registered as the owner but with an obligation to lease the land to the holder where there are grounds for this, such as the applicant having obtained the land through previous transfers (Article 29).

>

>

- h. Specifically in the case of non-Ivorian applicants, the 2004 amendment to Article 26 of the Rural Land Law states that registered rights to land obtained by non-nationals prior to January 1999 will be upheld, in accordance with a list to be issued in a decree adopted by the Council of Ministers.
- i. Where certificate-holders fail to register their certificates within the requisite three-year period, the land will be registered as owned by the state. The certificate-holder will be notified and given three months to request the formal land title, or to request a lease if he cannot be recognised as the owner (e.g. a non-Ivorian who acquired the land after January 1999). Unregistered certificates will lapse as null and void (Article 31). The status of collectives holding collective certificates that fail to be transformed into registered land titles is unclear.

Order of 2000 providing the format of certificates (Arrêté no. 002 MINIAGRA du 8 février 2000)

This order publishes distinct formats for individual and collective land certificates. An example of an individual land certificate is shown in Box 8.

Box 8

CERTIFICAT FONCIER

N°

Le présent certificat foncier est délivré au vu des résultats de l'Enquête

Officielle n° :

du validée par le comité de gestion foncière rurale

d le

Sur la parcelle n° : Superficie :

A :

Nom :

Prénoms :

Date et lieu de naissance :

Nom et Prénoms du père :

Nom et Prénom de la mère :

Nationalité :

Profession :

Pièce d'identité N° :

Résidence habituelle :

Adresse postale :

Etabli le à

Le Préfet

The order also reiterates conditions as attached to certificates as:

1. Owners of rural land other than the state have the duty to improve the lands, and may lose the land if they fail to comply. Improvement means agricultural development or another operation; these activities must protect the environment and be legally compliant.
2. A list of *leaseholders* shall be attached to the certificate.
3. A list of *legitimate occupants* not eligible for the land certificate must be attached. The rights of these occupants shall be confirmed by the holder of the certificate in a fair and equitable manner to both parties and subject to rent set by law.
4. Also to be attached is a list of all easements or infrastructure completed by the state or by third parties
5. To facilitate the fulfilment of programmes or public interest, the administrative authority may prohibit certain activities which constitute a nuisance for said programmes or for the environment, notwithstanding the ownership rights of individual rights or groups.
6. The certificate holder must apply to register the land right within three years, through a chain of handling which ends with the registrar who must register the certificate within three months of the date of receipt of the request. No partial or total transfer of the land shall be authorised during the registration process. This process results in the granting of a full ownership right over the land, in the form of a land title (*Titre Foncier*).

In addition, the order establishes that –

1. The land title (*Titre Foncier*) shall be made in the name of the holder of the land certificate, if he is eligible to be a landowner by the Rural Land Law (namely, he is an individual rather than a group; he has Ivorian nationality; etc).
2. If the holder of the land certificate (*Certificat Foncier*) is not eligible to be a land owner under the Rural Land Law, the land shall be registered in the name of the state with a commitment to lease the land to the holder of the land certificate.
3. Once the period of three years allowed for converting the land certificate to a registered land title has passed, registered land title shall be given to the state at the request of the minister responsible for agriculture.
4. The holder of the land certificate shall be informed of the procedure for converting his land certificate to a registered land title. The certificate-holder then has three years to request that the registration be transferred into his name or, if he cannot be recognised as an owner, to request a lease. In both instances, the holder shall reimburse the registration fees to the administration.
5. All land certificates that are established without following these rules are null and void.

Decree establishing the procedure for consolidating provisional concession rights in the Rural Land Domain (Décret no. 99-595 du 13 octobre 1999)

1. Concession holders are to submit an application with full details attached including the decree evidence of the concession granted (a provisional concession) and with a map of the

property at 1:10.000 scale as completed by a registered surveyor.

2. The Director of Regulation and Rural Land Affairs is obliged to display a notice of the application in the village, rural community, region, town, and sub-prefecture and prefecture, for three months (Article 6).
3. Objections must be made within that period, and in the event of dispute, or a claim, the sub-prefect as chair of the RLMC has one month to settle the dispute amicably. If he fails then the dispute is submitted for decision by a special commission chaired by the prefect (Articles 8 & 9).
4. In the event of no objections or after the dispute is resolved, the concession is registered.
5. The applicant may obtain full ownership of the property if he is an Ivorian national (Article 11) (and now as applied to more exceptional categories through the 2004 amendment to the Rural Land Law as listed in Box 5 in the main text, above). Otherwise, the land is registered in the name of the state and the concessionaire receives a lease from the state on agreed terms.
6. Failure to register concessions after the deadline (2019) will result in the land being declared un-owned and available to the state to freely dispose of (Article 13).

Annex II: Giving customary rights force as real property without registration – examples from other countries

Note that the country context needs to be borne in mind, such as in the Tanzania and Mozambique examples where the nation owns the soil in common, with property defined as the right of occupancy and use of parcels of that soil.

Mozambique: Land Law, 1997

1. "The right of land use and benefit is acquired by:
 - a. occupancy by individual persons and by local communities, in accordance with customary norms and practices which do not contradict the Constitution;
 - b. occupancy by individual national persons who have been using the land in good faith for at least ten years;
 - c. authorisation of an application submitted by an individual or corporate person in the manner established by this Law (Article 12).
2. "The absence of registration does not prejudice the right of land use and benefit acquired through occupancy in terms of sub-paragraphs a) and b) of article 12, provided that it has been duly proved in terms of this Law. The right of land use and benefit can be proved by means of:
 - a. Presentation of the respective title;
 - b. Testimonial proof presented by members, men and women of local communities;
 - c. Expert evidence and other means permitted by law" (Article 15).

Tanzania: Land Act, 1999

(Under fundamental principles listed in the law)

"to ensure that existing rights in and recognised longstanding occupation or use of land *are clarified and secured in law*" (s. 3 (1) (b))

"Every person lawfully occupying land, whether under a right of occupancy, whether that right occupancy was granted, or deemed to have been granted or under customary tenure, occupy and has always occupied that land *shall be deemed to be property* and include the use of land from time to time for pasturing stock under customary tenure" (s. 4 (1) (3)).

Kenya: The Land Act, 2012

"1. There shall be the following forms of land tenure:

- a. freehold;
- b. leasehold;
- c. such forms of partial interest as may be defined under this Act and other law; and
- d. customary land rights where consistent with the Constitution.

2. There shall be equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of and access to land under all tenure systems" (section 5).

Liberia: Draft Land Rights Act, 2014

"All interests and rights in land, irrespective of the identity of ownership or the nature of ownership constitute property entitlement to the protection provided by the Constitution of Liberia" (Article 10 (1)).

"The existence, validity and/or enforceability of the ownership of Customary Land shall not be affected because of the lack of title document or prior registration as long as there is evidence including oral testimony of the existence of the required longstanding relationship and/or ties between the Community claiming the Customary Land and the particular land in question" (Article 11(3)).

Annex III : Protection of Customary Rights in Tanzania

Village Land Areas (community territories) are defined through agreement with neighbouring communities. Agreement of the perimeter boundaries of each village is now obligatory, as is simple land use zoning within each Village Land Area (2007). A main incentive for communities to take up this exercise is to limit creeping expansions by elites within the community or by outsiders.

Formalisation of rights to parcels of land within the Village Land Area is the legal responsibility of the elected village government. This council may establish a village land register and issue certificates of customary occupancy to individuals, families or groups. It may only do so following agreement by the community as to which parts of the Village Land Area are owned in common by all villagers, and this information, along with rules of access, is recorded in the village land register. The community is noted as the owner. Its entitlement has the same legal force and effect as individual or family property rights. Rights within village lands have equivalent legal force as rights granted directly by the government land commissioner in non-village lands, such as in urban areas.⁶⁹

Several thousand villages have defined their common properties within the boundaries of their village areas, recording grazing areas and protected marshlands, and setting aside lands for public services. Forests have been most actively protected so far. Over 1,200 villages have declared village-owned and managed village land forest reserves. This had already brought 2.3 million hectares into the protected areas sector by 2012. Communities manage their reserves by their own rules in accordance with a new Forest Act (2002). Villages also legally manage but do not own over 500 national forest reserves covering more than five million hectares (URT, 2012).

Protected areas beyond village boundaries may also be owned by communities. The Land Act (1999) purposely classifies reserved land as variously owned. There is therefore no legal impediment to ownership of a national catchment forest, national park, or a biosphere reserve by a community, although no village has so far sought to do so, possibly due to lack of awareness of the opportunity.

The Tanzanian land laws (Land Act (1999); Village Land Act (1999)) are also progressive in presuming that house plots and farms are the joint property of spouses, unless they declare otherwise. Spousal consent is also required for any land transfer. Existing seasonal or product access rights acquired through custom by pastoralists or other non-village members must also be upheld or fairly renegotiated with those concerned.

It would be incorrect to assume that rural communities in Tanzania do not suffer threats and losses of land. The government has periodically bullied villages into surrendering lands to investors, and collusive deals between the National Parks Authority and international hunting and hotel businesses presently threaten community lands in at least five different wildlife-rich areas. The Ministry of Lands complains that village governments are also too easily persuaded to sell their lands to outsiders and for cheap prices without considering the implications. Many checks and balances in the legal and administrative system are not working.

⁶⁹ The only property entitlements available in Tanzania are customary and granted rights of occupancy. This retains the colonial term for rights, given that the president owns all the land in trust for the nation, so that ownership refers to ownership of rights to that nationally shared property. The most absolute form of entitlement is the customary right of occupancy, held in perpetuity and tradable through procedures laid down in law. Each community makes its own rules, including retaining customs if wished, providing these are in line with human rights and the law.

Nevertheless, the delimitation of Village Land Areas, the inclusion of all common lands, the empowerment of each elected village government as the lawful land manager, the right of each village to establish its own internal land register, and the prerequisite that all shared lands are identified, set aside, and protected against creeping expansions, have proved to be cost-free and active bulwarks against rampant incursions, land losses and uncontrolled concentration of lands in the hands of a few wealthier villagers.

■ **Danane, Dix-Huit Montagnes, Côte d'Ivoire. Across Africa, rights to house and farm plots in the customary system are more often than not vested in families.**

Photo: jbdodane/Flickr CC



Annex IV: References Cited

- African Union, African Development Bank and Economic Commission for Africa, 2011. *Land Policy in Africa: West Africa Regional Assessment*, Abidjan.
- Alden Wily, L. 2011a. *Customary Land Tenure in the Modern World*, Rights and Resources Initiative, Washington.
- . 2011b. *Whose land is it? The status of customary land tenure in Cameroon*. Centre for Environment and Development, FERN and The Rainforest Foundation UK.
- . 2011c. *The Tragedy of Public Lands: Understanding the Fate of the Commons under Global Commercial Pressure* International Land Coalition, Rome.
- . 2012a. *Land Rights in Gabon. Facing Up to the Past – and Present*, FERN, UK.
- 2012b. *Enclosures Revisited. Putting the Global Land Rush In Historical Perspective*. In Handbook on Land and Water Grabs in Africa, T. Allan, M. Kerlertz, S. Sojami & D. Potts (eds.). Routledge, London.
- . 2014. *Communities as Owner Conservators of Protected Areas: Can It Work? An Expert Opinion Submitted to the African Court in the hearing of Case 002/2012 in Addis Ababa*, November 2014.
- . Forthcoming. *The Fate of Custom and Commons in Africa*, in *Essays in Honour of Professor HWO Okoth Ogendo: Thoughts on Law Law in Theory and Practice*, P. Kaimeri-Obote (ed.).
- Affou, S.Y., 2003. *The law relative to the rural land domain: a solution to the recurrent land conflicts in Côte d'Ivoire*. University of Bouake, Côte d'Ivoire.
- Amanor, K.S. 2009. *Tree plantations, agricultural commodification, and land tenure security in Africa*. In Legalising Land Rights, J. Ubink, A. Hoekema & W. Assies (eds.); 133-162. Leiden University Press, Leiden.
- Babo, A., 2013, *The Crisis of Public Policies in Côte D'Ivoire: Land Law and the Nationality Trap in Tabou's Rural Communities*. Africa 83 (1) 2013: 100-19.
- Bassett, T.J., 2009. *Mobile pastoralism on the brink of land privatization in Northern Côte D'Ivoire*. Geoforum.
- Berry, S. 2008, *Ancestral property: Land, politics and 'the deeds of the ancestors' in Ghana and Côte d'Ivoire*, in Contesting Land and Custom in Ghana, J. Ubink & K. Amanor (eds.).
- Bignebat, C. & J-P Colin, 2011, *Evolution of Cropping Patterns and Land Market Activity Under Liquidity Constraint: Evidence from Côte d'Ivoire*.
- Bubb, R., 2011. *States, Law, and Property Rights in West Africa*. Harvard Law School.
- Chhatre, A. & A. Agrawal, 2009, *Trade-offs and synergies between carbon storage and livelihood benefits from forest commons*. *Proceedings of the National Academy of Sciences of the USA*, 106, 17667-17670.

- Chauveau, J.P., 2000. *The land question in Côte d'Ivoire: A lesson in history*. Issue Paper No. 95, International Institute for Environment and Development, UK.
- . 2003. *Rural Land Plans: Establishing relevant systems for identifying and recording customary rights*, Issue Paper No. 122, International Institute for Environment and Development, UK.
- Colin, J-P., 2012, *Securing rural land transactions in Africa: An Ivoirian perspective*, Land Use Policy (In press version).
- ECA, ADB & AU, 2011. *Land Policy in Africa: West Africa Regional Assessment*. Addis Ababa.
- Hessling, G., 2009, *Land reform in Senegal: l'Histoire se repete?* In *Legalising Land Rights*, J. Ubink, A. Hoekema & W. Assies (eds.); 243-270, Leiden University Press, Leiden.
- Kone, M., 2002, *Gaining Right of Access to Land in West-Central Côte d'Ivoire*, International Institute for Environment and Development, London.
- Kouassi, N. F., 2012. *Social Constraints of Rural Land Management in Côte d'Ivoire and Legal Contradictions*. *International Journal of Asian Social Science*, 2 (3): 310-319.
- Human Rights Watch, October 2013. *"That Land Is My Family's Wealth" Addressing Land Dispossession after Côte d'Ivoire's Post-Election Conflict*. New York.
- Lavigne Delville, P., C. Toulmin, J.P. Colin & J.P. Chauveau, 2001. *Securing secondary rights to land in West Africa*, Issue Paper No. 107, International Institute for Environment and Development, UK.
- Lavigne Delville, P., 2004. *Registering and Administering Customary Land Rights. Current Innovations and Questions in French-Speaking West Africa*. Proceedings of an Expert Group Meeting held by FIG Commission 7 on 11-12 November 2004, UN, Kenya; 103-114.
- . 2007. *Changes in "Customary" Land Management Institutions: Evidence from West Africa*, In *Changes in "customary" land tenure systems in Africa*, L. Cotula (ed.), 2007, pp. 35-50. Institute for International Development, London.
- McCallin, B. March 25 2010. Côte d'Ivoire: land reform as a substitute mechanism for restitution to displaced persons.
- Mundt, R.J., 1973. *The Internalization of Law in a Development Country. The Côte d'Ivoire Civil Code*.
- Pantuliano, S. (ed.), 2009, *Uncharted Territory Land, Conflict and Humanitarian Action*, Practical Action Publishing, Rugby, UK.
- Republique de Côte d'Ivoire & Republique Francaise, Janvier 2015, *Atelier de Reflexion sure la Relance de la mise en oeuvre de Lao Loi Realtive au Domaine Foncier Rural*, Termes de reference, Abidjan.
- Rights and Resources Initiative, September 2014, *Recognizing Indigenous and Community Rights Priority Steps to Advance Development and Mitigate Climate Change*, Washington D.C.
- Ruf, F., J-P Colin and V. Koppen, 2009, *The Role of 'Weed and Share' or 'Plant & Share' Contracts in Cocoa Production in Ghana and Côte d'Ivoire*, PEGNET Conference 2009: Policies for reducing inequalities in the development world.

Stamm, V., 2000. *The Rural Land Plan: An innovative approach from Côte d'Ivoire*, Issue Paper No.91, International Institute for Environment and Development, UK.

Stevens, C., R. Winterbottom, J. Springer & K. Reytar, September 2014, *Securing Rights, Combating Climate Change*, World Resources Institute and Rights and Resources Initiative, Washington DC.

Teyssier, A., 2014, A necessary shift of paradigm to unlock the rural land management system. World Bank Conference on Land Tenure, Washington, March 2014.

URT (United Republic of Tanzania), 2012, *Participatory Forestry in Tanzania, Facts & Figures*, Ministry of Natural Resources and Tourism, Dar es Salaam.

USAID, undated. Property Rights and Resource Governance Côte D'Ivoire, USAID Country Profile.

Zalo, L.D., 2006. The current State of implementation of the 1998 Ivoirian Law on rural land. Presentation to "At the frontier of land issues" Colloque international, Montepelier, France.



Fern office UK, 1C Fosseway Business Centre, Stratford Road, Moreton in Marsh, GL56 9NQ, UK

Fern office Brussels, Rue d'Édimbourg 26, 1050 Brussels, Belgium

www.fern.org