



# **Changes in land access and governance in West Africa: markets, social mediations and public policies**

**Results of the CLAIMS research project**

Jean-Pierre Chauveau (IRD)  
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April 2006





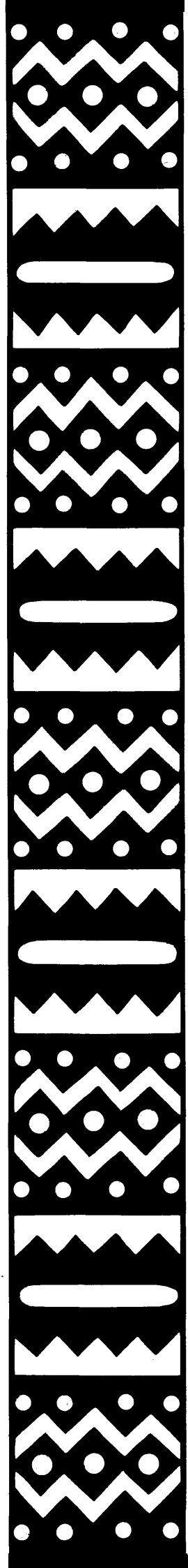
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This document brings together the results of the research project “Changes in Land Access, Institutions and Markets in West Africa (CLAIMS)”, which ran from 2002 to 2005. The project was funded by the European Union (Directorate General for Research), with contributions from DFID (Department for International Development, UK) and AFD (Agence Française de Développement, France).

The publication of this synthesis has been funded by DFID, which supports policies, programmes and projects to promote international development. DFID provided funds for this study as part of that objective but the views and opinions expressed are those of the authors alone.

Co-ordinated by IIED, CLAIMS involved fieldwork in four West African countries (Benin, Burkina Faso, Ivory Coast and Mali) and mobilised a network of eight research institutions:

- GIDIS-CI (Groupement Interdisciplinaire en Sciences Sociales – Côte d’Ivoire; Abidjan, Ivory Coast)
- GRET (Groupe de Recherche et d’Echanges Technologiques; Paris, France)
- IIED (International Institute for Environment and Development, Drylands Programme; London and Edinburgh, UK)
- IRD (Institut de Recherche pour le Développement, Unité de recherche Régulations foncières, politiques publiques et logiques d’acteurs, Montpellier, France)
- LARES (Laboratoire d’Analyse Régionale et d’Expertise Sociale; Cotonou and Parakou, Benin)
- UCL-IED (Université Catholique de Louvain – Institut d’Etudes du Développement; Louvain la Neuve, Belgium)
- UERD (Unité d’Enseignement et de Recherche en Démographie; Ouagadougou, Burkina Faso)
- UMB (Université Mande Bukari; Bamako, Mali).

The results of the project are presented in many other publications apart from this final report (see list in the Appendix), many of which can be accessed on the project website: [www.inco-claims.org](http://www.inco-claims.org).

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# INTRODUCTION

## 1. A joint research project to inform the debate on land policies

The rules governing access to land and renewable resources are central to the debate on agricultural development and sustainable ecosystems management. Land issues in rural West Africa are characterised by a growing commodification of land, and an increased competition between land users (both rural actors and urban investors). This competition is poorly regulated due to social and economic change, contradictory public policies and shortcomings in conflict management. However, while such insecurity may discourage investment in land and contribute to the degradation of resources, land actors have had varying degrees of success in developing new rules and mobilizing local authorities and government representatives to address their concerns.

Land tenure has been a key issue over the last fifteen years. It has been emerging or reappearing against a backdrop of structural adjustment, state disengagement and privatisation policies, as well as democratisation and decentralisation policies. It is important not only in terms of economic effectiveness and productivity, but also with regard to social peace, governance and citizenship (citizens' access to the law and local citizenship for migrants).

Land policies are debated as part of the process of tackling these issues. So what are the foundations for inclusive land policies that are consistent with local land dynamics and capable of tackling current issues? Should individual ownership of land and resources be systematically promoted? Should local 'communities' be allowed to manage lands and resources autonomously, and what type of 'community' should be promoted? How can the rifts between legitimacy, legality and practice that characterise land issues in Africa today be resolved, or at least reduced?

A well-reasoned response to these questions requires sound knowledge of the dynamics and processes involved in land tenure. This was the objective of the CLAIMS research project ("Changes in Land Access, Institutions and Markets in West Africa"),<sup>1</sup> which was funded by the European Union (Directorate-General for Research) and coordinated by IIED, mobilising eight African and European research teams from Benin, Burkina Faso, Ivory Coast and Mali, and Belgium, France and Britain between 2002 and 2005. This report brings together the main findings of the CLAIMS project.<sup>2</sup>

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<sup>1</sup> Certain components also benefited from contributions from the UK Department for International Development (DFID), the French Development Agency (AFD) and funding from the IRD "Land regulations" research unit.

<sup>2</sup> In addition to this final report, the results of this project are available in numerous publications (see list in Appendix), many of which accessible on the project website: [www.inco-claims.org](http://www.inco-claims.org).

## 2. Objectives and main themes of the research project

The aim of this research project was to analyse the dynamics of the rules and negotiations relating to land and renewable resources in the rapidly changing social, economic, political and institutional context of four countries, through a comparative approach involving an in-depth empirical analysis and an economic and socio-anthropological orientation. The objective was to improve our understanding of how actors try to secure their access to land in an unstable institutional environment, and to identify if and how new regulations are put in place that help clarify land issues and secure access to land and resources. It is hoped that this will contribute to and revive the debate on land policy and new modes of regulating land by communities, the market and the State.

A small number of diverse field sites were selected for the research: an area of central Benin currently being settled for agriculture; an area in south western Burkina Faso experiencing high levels of migration and one in central-western Burkina Faso still relatively unaffected by migration (Gwendégué); an archetypal old frontier plantation economy in central western Ivory Coast; and a very specific site where a 'no man's land' has been colonised in south eastern Ivory Coast. Complementary work was undertaken in a series of secondary sites.<sup>3</sup>

Taking recent work on this issue as our starting point, we decided to investigate several themes in greater depth. This report is structured around these themes:

- **Land transactions and the land 'market'** are central to the debate on land policies. According to the evolutionary theory of property rights on which land registration policies are based, the individualisation of rights and development of market transactions are spontaneous processes that lead to the emergence of a market. Are we witnessing the emergence and expansion of market relations around land and natural resources? If so, is this process happening everywhere and does it follow similar trajectories? Does it entail a parallel dilution of the collective and family dimensions of access to land? Can we really talk about a 'land market' with sales/purchases or indirect land use? These questions cannot be answered without deeper empirical research, based on an ethnography of land rights and the social interactions around these rights, and detailed analysis of the changes in land access and transfer of land rights.
- In many parts of West Africa, and particularly the forested regions of Ivory Coast, migrants were historically received through a system of *tutorat*, a patron/client-type relationship regulating land tenure, through which an autochthonous community receives 'incomers' and ensures that they have access to farming rights on one of the host families' land, provided they respect the social rules and render certain services to their *tuteur* and host community. How does this institutional arrangement function nowadays? How important is it, and what forms does it take in other regions? How is it evolving in response to the profound social, economic and political changes occurring in rural areas? Is it being replaced with agrarian contracts, which do not have such a strong social dimension?
- The emphasis recent work has placed on the question of relations between migrants and indigenous communities on the one hand, and land transactions on the other, has overshadowed the intra-family and inter-generational issues involved in land. However, there are strong links between these 'external' and 'internal' dimensions of land management. In forested areas of Ivory Coast and western Burkina Faso, tensions between migrants and indigenous actors are also (and perhaps primarily) related to the tensions between the oldest and youngest actors operating in a context of intense pressure on land. These intra-family and inter-generational issues were examined more closely, using the same ethnographic approach applied to rights: how are the rights held by a family distributed among and managed by its members? How do the rules for access evolve when the context changes and pressure on land intensifies? How do modes of transferring rights evolve? Will the desire of family groups to guarantee their descendants sufficient access to land, characteristic of customary logics, persist, and what are the implications of this?
- Land management amounts to much more than the distribution and circulation of rights over land and resources. Modes of distribution and circulation are based on social norms, which can change. They mobilise the authorities that define the rules, arbitrate conflicts and place themselves at the interface of local socio-land arenas and national rules and institutions. Contemporary forms of land governance engage multiple actors, local authorities, new dignitaries and government agents in complex relationships of competition and alliance that are closely articulated with local processes of socio-political change. They are characterised by legal pluralism, institutional proliferation and an intense politicisation of land issues. So, what are the characteristic features of local land arenas? How do we determine and explain the considerable variations between one region and the

<sup>3</sup> Field work in Ivory Coast was disrupted but not entirely prevented by the civil war there.

next? Are local forms of regulation emerging that make land management more predictable, and in what context? How much room for manoeuvre is there for public policies on local governance?

- The starting point of much reflection on possible directions for new public policies is the unsuitability of current land policies. The focus has often been on the impact of public policies and land interventions, while much less is known about the processes of policy formulation. Yet how can new policies be promoted without an understanding of the conditions in which the present policies were produced? Furthermore, new approaches are often promoted without having been properly evaluated. In short, **policies and interventions relating to land and natural resource management** are a research subject in their own right. Reflection on new policies would benefit from a better understanding of their production processes and effects. How and on what basis do the links between past and present land policies and the social and political evolution of countries manifest themselves? What do we know about the processes of negotiation, arbitration and possible conflict between the visions and interests that exist before a policy is defined? What part do internal national issues and external pressures play, particularly donors and international institutions? What is the basis of recent interventions on land and renewable resources? On what visions are the dynamics of land tenure built? And what are their concrete impacts?

The following chapters present the main findings of the CLAIMS project with regard to these different themes. This is not an exhaustive account, but our aim is to bring together the major lessons learned about the basis and orientations of land policies that are rooted in the land, social, economic and political realities of West Africa.



# CHAPTER 1

## Land transactions and land markets<sup>4</sup>

### 1. Introduction

The question of land markets has taken central stage in economic thinking on development. Markets in which land rights are transferred on a temporary or permanent basis are seen as having a potential key-role in the development process, as ways to improve the allocation of production factors in a context where the endowments in these factors and in management capacities vary greatly. The negative effects in terms of equity and/or efficiency imputed to the functioning of land markets (justifying land policies that prohibit or severely restrict them) are seen by the contemporary development economists as the results of the weakness of the market environment (especially markets for credit and insurance) (Colin, 2004b). In the African context, the question of land markets is generally addressed through an analysis of how customary systems of land tenure are moving towards private appropriation. The standard evolutionary approach interprets the emergence of individualised and transferable land rights in Africa in line with the economic theory of property rights. The emergence of private ownership rights is seen as the result of arbitration between the expected benefits of establishing such rights and the cost of excluding others from using the resource. The combined effects of demographic growth, development of cash crops and changes in cropping systems (development of perennial plantations, disappearance of shifting cultivation, shorter fallow periods) increase the value of land and spontaneously lead to the individualisation of land rights and a broadening of the bundles of rights, integrating particularly the right of alienation, which translates into increasingly monetarised access to land through sales and rental. A sequential evolution is then established between the opening of the bundle of rights and the commodification of these rights: the market transfers (i.e., the right of alienation) would appear once all the other elements of the bundle of rights are firmly established (Colin, 2005).

This report shows that the emergence of land transactions, and land 'sales' in particular, does not operate in all the contexts studied according to the dynamic suggested by this model. The first section covers land sales, while the second takes a quicker look at the rental market, as the theme of 'derived rights' has already been covered in a previous joint research programme (see Lavigne Delville *et al.*, 2003).

### 2. Land sales: an emerging market that remains socially embedded

#### 2.1 An emergence of land 'sales' rooted in the commoditisation of agriculture and in the relationships between migrants and autochthons

Village communities in the forested regions of Côte d'Ivoire were drawn into the market economy in the early 20th century with the introduction of coffee and cocoa into their cropping systems, particularly from the late 1940s onwards. With the introduction and development of coffee and cocoa plantations, land became a source of market value, and demand for it increased considerably. This demand came not only from autochthons ('autochthons' designating native people in a given region) but also from migrants attracted by the prospects of expected profits from the plantations. Indeed, the plantation economy developed in sparsely populated regions, and its rapid expansion can be explained by the massive influx of migrants from regions whose ecology was unsuited to coffee and cocoa production (the savannahs of central and northern Côte d'Ivoire, what was then Upper Volta, and Mali). The arrival of migrants, the long-term use of land for tree crops (from 20 to 40 years), and the economic stake in land control brought about changes in land tenure systems, with a trend towards individualization and monetarisation. New-

<sup>4</sup> Summary written by Jean-Philippe Colin, based on documents produced in the context of the CLAIMS programme cited at the end of this report.

comers' access to the land was granted by the 'gift' of uncleared forest (sometimes after a period of wage labor), by the purchase of uncleared forest or previously cultivated but unused land, or by the purchase of a coffee or cocoa plantation from a migrant planter leaving the area. Land transactions thus developed between migrants and autochthons, and then between migrants (particularly when they returned to their village of origin), but not, or very marginally, between autochthons. The workings of the land 'market' cannot be dissociated from the relationships between migrants and autochthons (Colin, 2005; Koné *et al.*, 2005). Monetary land transfers remained informal, with at best the simple drafting of a simple and very incomplete receipt under private signature.

The role played by the valorisation of land resources in the development of illegal, and thus informal, land transactions can also be seen in the developed zones and peri-urban areas of Mali (Office du Niger and Office des périmètres irrigués in Baguinéda) (Kéita, 2004; Diallo, 2003; Traoré, 2003; Djiré, 2004 and 2005). There were very few transactions and no competition over access to the irrigated areas before they were rehabilitated, as such lands were of little economic interest. Transactions only developed later, after their rehabilitation and the adoption and subsequent spread of more productive farming techniques. The sale (as well as lease) market is currently very dynamic. In the peri-urban zones studied (rural communes in the district of Kati, near Bamako District), the emergence and subsequent development of transactions was facilitated by urban expansion and increased demand for land for farming and housing. Pressure on land in peri-urban zones was also partly linked to the acquisition of rural concessions by civil servants and merchants from the 1970s and 1980s onwards, and partly to operations to parcel and sell off public lands to urban developers between 1990 and 2000 (Djiré, 2004 and 2005; Kéita, 2004). The emergence of land sales came through two processes. On the one hand, city dwellers that had been granted land free of charge started offering the landowner or intermediary a few banknotes along with the traditional cola, giving them a taste for such transactions. On the other hand, these city dwellers, when running into difficulties, began selling land to third parties. Seeing the incentives offered by the new land brokers, it wasn't long before villagers squeezed by growing poverty started demanding money each time someone asked them for land.

Three structural modifications transformed the social and agrarian landscape of south western Burkina Faso between 1960 and 2000: in demographic terms, the mass migration of the Mossi from the central plateau and north towards the south west; in terms of agricultural techniques, the expansion of cotton production and greater use of traction; and, more recently, the influx of returnees fleeing the socio-political crisis in Côte d'Ivoire. The context has changed, and land, which used to be abundant, is now in short supply. Until 1960 it was mainly used to produce subsistence crops like millet and sorghum, nowadays it is largely used to produce cotton, which is a cash crop, and everyone's financial needs have also increased significantly over this period. Two types of strategy developed along with a growing awareness of land scarcity and insecurity: (i) It is becoming increasingly common for autochthons to try to recover land ceded to migrants some 20 or 30 years ago (often by the parents of the current owners), i.e., to withdraw these lands in a more or less unilateral manner. (ii) The migrants who can afford it try to secure their access to land or to consolidate that access through monetary transfers. Initially defined as gifts or as help provided in the framework of good inter-family relations, these transfers tend to be understood today as counterparts of access to land ? although this is not happening at the same rate in every area (Bologo, 2005; Bonnet-Bontemps, 2005; Mathieu *et al.*, 2004; Mathieu, 2005).

The monetarisation of land transfers is particularly notable in the Province of Comoé (departments of Niangoloko, Sidéradougou and Mangodara), which was unaffected by immigration until recently. This province constitutes a new frontier zone fed by both internal migrants (from the old cotton zone and the north) and 'returnees' from Côte d'Ivoire settling outside their region of origin on their return to Burkina (Dabiré and Zongo, 2005). This huge mass migration (in 2005 migrants accounted for 89% of the population in the department of Sidéradougou) led to a radical modification of the conditions of access to land, which swiftly passed from the traditional mode of integrating migrants (*tutorat*) to monetarised forms of access to land. These range from payment 'of customary prices' (sums of money equivalent of customary duties) to sums charged according to the amount of land transferred. Monetary transactions first appeared in the Mangodara area towards the end of the 1990s, with the arrival of migrants from the old cotton-growing zone, and the evolution of local land practices was then accelerated by the huge influx of returnees from Côte d'Ivoire. In the department of Sidéradougou it was returnees wanting to acquire large areas of land who introduced cash into land transfers. The department of Niangoloko experienced a similarly rapid evolution: first when gifts were replaced by their monetary equivalent, and then when sales were calculated by the hectare, with prices standardised according to the nature of the land. Purchasing is now the dominant mode of access to land among migrants. Apart from the factor of migration itself, another element

explaining this dynamic stems from the fact that purchasing frees the buyer from the traditional ban on planting trees – the upsurge in tree growing was closely linked to the arrival of ‘repatriated’ migrants and ‘new actors’ (Burkinabé terminology for migrants and entrepreneurs from urban areas) (Dabiré and Zongo, 2005).

## 2.2 Land ‘sales’?

The fact that access to land in some forested regions of Côte d’Ivoire has been monetarised does not necessarily signal the emergence of a land market in a standard definition. In the first place, the content of the rights transferred is open to interpretation. What exactly is being purchased – land or the right to plant, with the expiry date implicitly determined by the length of the chosen crop’s growing cycle? Can the beneficiary retransfer his right? These questions are particularly acute when one generation succeeds another, since the heirs of the original assignor frequently challenge the content of the rights acquired by purchasers or their heirs (c.f. *infra*). Secondly, the social embedding of transactions through the institution of *tutorat* means that many sales cannot be considered as full in the sense of entirely freeing the purchasers from their obligations to the vendor. Strangers (in the local sense of non-autochthons) traditionally gained access to land within the framework of *tutorat*, an established system of obligations that tied migrants to their hosts and imposed a ‘duty of gratitude’ on them. Sales may in fact result in this duty of gratitude becoming more onerous and monetarised, with the relational dimension of the transfer persisting, at least in the eyes of the person assigning the land. Rather than closing the relationship, payment establishes or perpetuates it. Completing the transaction goes against this conception of the land tenure relationship, i.e., the existence of a monetary transfer does not signal the conclusion of a firm, definitive and incontestable sale. As far as the vendor is concerned, the practice of soliciting services from the purchaser long after the transaction remains firmly in place, and he will continue to request loans (which may never be repaid) and other ‘attentions’, or contributions towards major expenses such as funerals or medical care (Colin, 2005).

A major source of conflict over ‘sales’ is the different perceptions of the nature of the transaction, depending on the actors. While indigenous ‘vendors’ very rarely recognise the transaction as a sale, purchasers’ attitudes differ according to their place of origin, date of arrival and the links between them and their indigenous host. In south western Côte d’Ivoire, the Baoulé see these monetarised access to land as purchases; they say that the indigenous Bakoué have sold them the land and they can therefore use it as they wish. This group of migrants does not observe the moral and financial obligations usually associated with land transfers. Conversely, the Malinké and Burkinabé (especially the Mossi) usually maintain the interpersonal relationship entailed in the *tutorat* system (Koné *et al.*, 2005).

The atypical case of a former no man’s land in southern Côte d’Ivoire allows us to test this view that the *tutorat* or neo-*tutorat* relationship creates the conditions for an ‘imperfect’ commodification of land. Because this site (the village of Djimini-Koffikro, in the sub-prefecture of Adiaké) involved a genuine former no-man’s land, land transactions were not socially rooted in relationships between autochthons and migrants, thereby neutralising a major constraint to the ‘perfect’ commodification of land. Sales (which affected one third of the total area of village lands between 1950 and 2004) involve well-established rights, and may be described as full or outright sales. Once the transaction completed the purchaser is absolved from all obligations towards the vendor. The transaction corresponds to a transfer of the entire bundle of rights over the land, and is thought of and named as a sale (unlike the situation in Burkina Faso described in this report) (Colin and Ayouz, forthcoming).

The idea of land as a commodity has yet to be socially acknowledged in Burkina Faso, although it is about fifteen years since rural land was first exchanged for money in the provinces of Houet and Banwas. Such practices appeared more recently in the provinces of Comoé and Kéné Dougou (first noted around 1998 – 2000), where they are even more concealed. Those acquiring land are often incomers to local communities: recent migrants or new urban agricultural entrepreneurs (Mathieu *et al.*, 2004; Mathieu, 2005). In general these transactions can be described as ‘ambiguous’: the significance of the ‘goods’ exchanged is far from clear, unequivocal and agreed by all actors, and the transactions are often concealed and rarely accompanied by legal proof of transfer. In other words, depending on the predominant customary and social vision of the world, land is still rarely thought or publicly spoken of as a commodity. We can talk of a market that is ‘emerging’ but as yet unmentionable (at least in public), since it not only breaks with customary principles of land tenure, but also with land legislation as it is locally understood (Mathieu *et al.*, 2004; Mathieu, 2005). Dabiré and Zongo (2005) highlight the polysemic notion of sales in the province of Comoé, where land transactions are a very recent and particularly dynamic phenomenon. Given the differing interpretations of the bundle of rights transferred, they anticipate that these transactions will be challenged in the

future. The case studied by C. Bonnet (2005) specifically illustrates the hybrid aspect of current practices. Mossi purchasers make it clear that they view the process as a market transaction as they try to follow the administrative procedures needed to make it official. The transaction is however projected into a complex network of interpersonal relationships, requiring those involved to adopt a strategy of “cunning and ambiguous communication” to present a public image of the transaction that accords with local customs.

In Mali transactions also take place in an ambiguous context, although the social disembedding of land sales and a strict market logic seem to characterise the study areas (District of Kati, zones of the Office du Niger and Office des périmètres irrigués de Baguinéda). The assignor usually holds customary rights that may only be assigned to a third party under certain conditions set by the Land Law: registration according to a procedure whose modalities will be determined by a decree that has yet to be adopted. Because of this, sales of land held through customary rights do not appear to conform to the law. Nevertheless, such sales are usually subsequently formalised through a bill of sale whose authenticity is confirmed by the signature of an administrative authority (sub-prefect or mayor) (Djiré, 2004 and 2005).

### 2.3 A pure market rationale?

In Côte d'Ivoire autochthons in Sanwi and the mid-west started to try to charge explicit annual land fees in the 1950s and 1960s. After Independence, however, the tendency to favour migrants against autochthons led to the banning of these fees, and to migrants receiving certificates of occupation issued without consultation with the villages concerned, or having woodlands declassified in their favour. During decades immigrants (particularly the Baoulé, but also the Burkinabé) found their position substantially strengthened by the slogan “land belongs to he who cultivates it” and the stance taken by the prefectural administration against attempts by autochthons to collect land fees. In certain contexts the fact that autochthons were completely swamped by waves of migrants had the same effect. Fears that they would lose all control over their land without any compensation resulted in an upsurge of transfers in central western and south western Côte d'Ivoire, where it was deemed too risky to try to conserve forest reserves for future needs. The first lands to be assigned were those with less well established rights: land far from the village, areas disputed by villages or lineage groups, the outer edges of former hunting grounds and classified forests. In assigning such lands to migrants (in the form of sales or gifts), autochthons could try to get their status as *tuteur* recognised, with all its attendant advantages. In this context, commodification cannot be seen as an endogenous process prompted solely by the increasing scarcity of land resources. The ‘play of the market’ is essentially the result of the effects of the power exerted by the public administration over indigenous communities in forested areas (Colin, 2005). However, not all ‘sales’ can be explained by this logic alone. In the village of Djimini-Koffikro (southern Côte d'Ivoire) sales were essentially prompted by the departure of frontier farmers returning to live out their days in their village of origin – the land market, which was generally open at the end of the frontier phase, closed with the disappearance of the generation of pioneer farmers (Colin and Ayouz, forthcoming).

### 2.4 Land transactions, the broadening the bundle of rights and land pressure

Because of the conditions in which land transactions emerged in the forested regions of Côte d'Ivoire, two elements that are usually postulated in literature on the evolution of customary African land tenure systems are absent: the sequential relationship between broadening of the bundle of rights and the commodification of these rights, and the relationship between the emergence of sales and demographic pressure. First, the situation in Côte d'Ivoire invalidates the idea that the appearance of market transfers (alienation right) means that all the other elements in the bundle of rights are firmly established. As already mentioned, because of the impact of public policies and the huge numbers of immigrants, land ‘sales’ in central western and south western Côte d'Ivoire do not correspond to a full and definitive transfer of already firmly established ownership rights from autochthons to immigrants. On the contrary, these ‘sales’ make it possible to secure rights over the assigned land and get them recognised by establishing a *néo-tutorat* relationship. Secondly, the same reasons have made the ‘sale’ of land much more common in regions of low or very low population density, such as central western and south western Côte d'Ivoire (Colin, 2005).

In Mali, however, the sequential relationship between the opening of the bundle of rights and the commodification of these rights is widely recognised, as is the relationship between demographic pressure (mainly caused by migration) and the emergence of sales. The economic liberalisation that began following the coup of 1968 and resulted in the increasing monetarisation of social relationships was also a major factor in the commodification of

land in peri-urban areas (Djiré, 2004). In Burkina Faso too, the relationship between demographic pressure (due to the influx of migrants) and commodification has also been verified (Dabiré and Zongo, 2005).

## 2.5 Intra-family dimensions of land 'sales'

The case of Djimini-Koffikro in southern Côte d'Ivoire shows a process of involution in the land market, which has been active but has nonetheless only existed for a limited period of time. With the passing of the generations, the pioneer farmers' individual, private property right over land (expressed in the possibility of selling or giving land) is often transformed, through inheritance, into a family property right. Similarly, plots acquired on the market, which are the individual property of the purchaser, tend to be transformed into family property when the purchaser dies. This evolution in land rights as one generation succeeds another helps explain the almost total closure of the land market over the last decades, after a very busy period between 1965 and 1975. Nearly one in two sales were concluded in these ten years, which more or less correspond to the period when the planters who arrived between 1930 and the Second World War returned to their village of origin. For a frontier farmer, the decision to sell land acquired through his own labour in a region with no customary land controls was an entirely personal matter. Once the land is inherited, however, any decision to sell is a matter for the family council. Land sales have more or less halted due to several factors: the growing perception that land in the forested region of Côte d'Ivoire is becoming increasingly scarce; the introduction of new crops with great economic potential (palm oil, hevea and pineapple) to replace aging coffee and cocoa plantations; and the limited employment opportunities outside agriculture for family members with use rights on the family holding. This illustrates how land ownership can act as a kind of social insurance in uncertain environments, providing a safety net for the family. The fact that a heightened perception of land pressure leads to a reining in of land sales clearly runs counter to the property rights theory that sees this pressure as a stimulus to the land market (Colin and Ayouz, forthcoming).

The intra-family dynamics of land attribution appear to be quite different in the study sites in south western Côte d'Ivoire (Koné *et al.*, 2005) and south western Burkina Faso (Dabiré and Zongo, 2005; Mathieu, 2005). In Djimini sales slowed down in the interests of providing security for the family group, but in these study sites researchers found that young city dwellers returning to their village, young rural men and elders were selling off parts of their family holding, often without informing other family members.

## 2.6 Conflicts within and outside the family over land sales, and challenges to past transactions

In the forested areas of Côte d'Ivoire conflicts over past transactions (and more widely over land transfers to immigrants) are worsening in the current context of exhausted land reserves and economic crisis. Tensions are fuelled as unemployed returnees from urban areas to their native village join the many young autochthons who have found their access to land seriously constrained, and therefore accuse their elders of having squandered the family inheritance (Colin, 2005; Koné *et al.*, 2005). Insofar as the transactions often involve stranger 'purchasers' (Ivorian or foreigners) and indigenous 'vendors', these conflicts bear a strong political dimension, especially in the socio-political context of these last years. Conflicts may arise long after the initial transaction, particularly when, with the emergence of a new generation in the vendors' family group, the young challenge past transfers and refuse to be tied by the arrangements agreed by the previous generation. Land transactions can lead to considerable tensions within the family when the legitimacy of the transfer itself, or the legitimacy of the 'vendor' is challenged (along with the whole issue of who controls the cash received and how it is distributed). Some post-inheritance disputes arise when young heirs reach maturity or return from migration and realize that the land 'guardians' (the uncle or brother of their dead father) that used to look after their inheritance have sold land.

The risk of conflict is increased by the element of vagueness in these transactions, which is reinforced by their hidden nature (even within the family group). It may relate to the legitimacy of the assignor, or to the protagonists' interpretation of the nature of the transaction and thus of the content of the rights transferred and the purchaser's obligations to the assignor. Situations that seemed to have stabilised are thus open to challenge: lands 'sold' may be forcibly 'withdrawn', or sales reinterpreted as a mortgage or lease. The current socio-political context is obviously a major factor in this dynamic (Colin, 2005). Thus, in the south west, the Baoulé, who are seen as 'ungrateful' by the autochthons, are now particularly affected by the practice of grabbing back plots that have not been put to productive use. Since the late 1980s 'returnees to the village' and uneducated young men have challenged sale

conducted by their parents; nevertheless, this does not prevent them from simultaneously demanding ‘a little something’ from incomers (Koné *et al.*, 2005).

In recent years the national press has carried many stories on the expulsion of non-Ivorian and Ivorian migrant farmers by young autochthons, particularly in central western and south western Côte d’Ivoire. Here again the case of Djimini-Koffikro can be seen as the exception that proves the rule (Colin and Ayouz, forthcoming). The fact that in the present socio-political and legal context there is no conflict over land rights in Djimini, and particularly over rights acquired through market transfers, contrasts sharply with the general situation in southern Côte d’Ivoire and can be explained by the lack of indigenous land stake. It is now admitted that when land transfers are socially recognised, their informal nature does not constitute a major problem in securing transactions; there is, however, a very real problem when the informal framework does not legitimise these practices. The difference between the general situation in southern Côte d’Ivoire and Djimini hinges on the perception of the legitimacy of past transfers, which varies according to whether or not there is an indigenous population that can claim eminent rights over the land. The question is whether the present socio-political situation, with tensions between Ivorians and foreigners running high at the national level, will eventually lead to such disputes even in Djimini, by legitimising them on the Ivorian/foreigner register rather than the indigenous/migrant register, which does not operate locally.

In Burkina Faso, the economic opportunities involved in receiving and settling migrants is a source of conflict between indigenous lineages or families, coming from boundary disputes or from the emergence of the young generation as a land actor. In the past, village lands were divided between indigenous lineage groups, and land could only be given to migrants by the chiefs of these groups. Nowadays, some actors are selling family lands without the knowledge of the elders, and even assigning land that doesn’t belong to their family or selling the same plot to several actors. The emergence of the young generation as a land actor – a search for social recognition that challenges the authority of the elders – concretises in the unauthorised settlement of migrants and an increasingly open opposition to land sales. Conflicts over the installation of migrants outside the administrative boundaries of village lands are in fact attempts to redefine ancestral controls over land, which are not necessarily taken into account when these boundaries are set. Monetisation also generates conflict between longstanding migrants and newcomers, as the latter can offer landlords a better deal and are therefore settled on land already granted to the former through traditional means (Dabiré and Zongo, 2005). In Burkina Faso, land “withdrawals” seem to be motivated by the prospect of future transactions rather than constituting a challenge to past arrangements, as it is in Côte d’Ivoire (Bologo, 2005; Mathieu, 2005). Land is ‘sold’ by its indigenous owners after having been abruptly withdrawn from the migrants welcomed and settled on it some 20 or 30 years earlier. This land grabbing is a recent phenomenon, with such incidents first reported in the province of Houet in the second half of the 1970s. According to a study by Bologo (2005), 35% of the lands withdrawn were subsequently allocated to newcomers into the area, 30% were reintegrated into the family holding and 28% were reassigned to the former occupants under new conditions.

A parallel development to that of ‘sales’ is the formalisation of arrangements through papers which are becoming a ubiquitous instrument in local land transactions, even though they theoretically have no legal value. They come in various forms: (i) short local receipts signed in the presence of witnesses, recording the names and identity card references of the parties involved in the transaction, the amount of land sold and the sale price. Where these are produced the person acquiring the land can make long-term investments on it; (ii) the preferred documentation of new actors, the *procès verbaux de palabre* (PVP) – a written minute of discussions held in the presence of a government official, recording the terms of the agreement. A bill of transfer is then established by the administrative authority (the prefect) on the basis that the parties involved are in agreement. In addition to the information recorded on local receipts, the PVP specifies the rights and obligations of each party, with the location, delimitation and amount of land involved determined by technical agricultural agents. The person acquiring the land can then do whatever he likes on it. Having experienced considerable social and tenure insecurity in Côte d’Ivoire, migrants returning from that country are the prime movers behind these new forms of documentation and the new mode of access to land (purchase) that they validate (Dabiré and Zongo, 2005).

The regulating authorities regarding land conflicts include now, in addition to *chefs de terre* or village chiefs, administrative and religious officials (particularly imams) and migrants’ representatives; a realignment that shows how the function of *chef de terre* have been undermined. In the few villages where the *chefs de terre* have retained their authority, the arrival of migrants, and expatriate returnees in particular, has sparked competition between the land and village chiefs. As the sole interlocutor for migrants seeking access to land, the *chef de terre* tends to use this

position to generate political capital, which causes confusion over the scope of land/religious and political/administrative powers, and downgrades the village chief in villages where the two fields of power are distinct (Dabiré and Zongo, 2005).

## 2.7 An institutional transition

It became clear that all the sites studied in the context of the CLAIMS programme are going through a process of transition with regard to land tenure. Existing institutions are out of step, unable to deal with problems of scarcity and to co-ordinate or arbitrate between divergent interests in a context where land has become a scarce, economically valuable asset. In this time of changing norms, land actors are left to fill the institutional void. The only (implicit) rules are opportunism, force, simulation and playing on the pluralism of norms, since neither traditional nor state institutions are currently capable of legitimising, co-ordinating or controlling these monetary transfers. When there are no effective institutions to regulate the scarcity of a vital and valued resource, it is inevitable that unilateral land practices that no longer conform to the old norms will emerge. No new institution has yet appeared to tackle the recent land shortage in these new material, economic and demographic conditions. In the absence of shared meanings and reference points that would allow for 'debate' about shared norms, the protagonists are left to battle it out through physical force and the social violence of unilateral land withdrawals (Mathieu *et al.*, 2004; Mathieu, 2005).

An essential entry point for rural projects and policies aimed at promoting genuinely secure land rights for all and reducing conflicts would be to work on the signification of transactions and accessibility of information about how rights and transactions can be legally secured. This would involve (i) making legal information on land rights accessible to the majority of people, and (ii) creating opportunities to use this information, first through accessible legal procedures for clarifying rights, and then through recognition and formalisation of land transactions (Mathieu *et al.*, 2003).

## 3. The development of contractual agrarian practices

### 3.1 Conditions in which institutional arrangements have emerged and evolved

The emergence, development and functioning of the rental market was analysed in some detail in the village of Djimini-Koffikro in southern Côte d'Ivoire (Colin, 2004a). The development of the rental market in Djimini can be explained by the conjunction of (i) the productive redeployment of the village plantation economy through the development of pineapple production, and (ii) by the arrival of 'landless farmers' attracted by the possibilities of this type of enterprise. Rental in Djimini began in the mid-1960s, when the agro-industrial complex SALCI introduced pineapples as a smallholder production. This introduction increased the demand for land, especially from landless migrants. The new cash crop offered growers the material possibility of paying a land rent. In the beginning, the appearance of such a rent was due more to the nature of pineapple production than to land scarcity ("*there was money in it, so we went for it*") – initially the plots used by incomers for food crop production continued to be assigned through loans. It was only later, when demand was further increased by the influx of migrants, that the transfer for food crop production were monetarised. Thus, the introduction of pineapple prompted the evolution from a temporary access to land through loans that operated under the principles of a moral economy, towards an access to land based on land tenancy.

### 3.2 The land lease market as an alternative to sales

In Djimini-Koffikro the development of the rental market in the 1970s and especially the 1980s reduced supply in the sales market; on the one hand because actors didn't want to part with such a good source of income, and on the other, because leasing out compensated for the lack of a credit market and avoided distress sales (Colin, 2004a). Rental used not to exist in south western and central western Côte d'Ivoire, but is nowadays the dominant mode of 'market' access to land (Koné *et al.*, 2005). Here too it is now preferred to sales, which are seen as wasting the land heritage of the indigenous community.

### 3.3 Intra-family dimensions of agrarian contracts

In many families only the landowner (who has inherited or bought the land) can lease it out under a fixed-rent arrangement. The other family members are only permitted to lease out under a form of sharecropping known as *abougnon*. These restrictions can be interpreted in terms of how actors perceive rental and sharecropping contracts. Unless there is a very good reason for leasing out land, there is a stigma attached to leasing out under a fixed, cash rent, which is seen as a sign of laziness if the assignor is a healthy male, as an inefficient means of using the land capital, as a source of revenue that is quickly squandered, and as a practice that opens the door to structurally lease out as the need for cash leads to renting in advance over several growing cycles. Leasing out through sharecropping is not seen in such a poor light, since even if the assignor remains passive, he still has rights to part of the harvest and therefore sees himself as a 'producer'; furthermore the expected benefits are such (in the case of an *abougnon* contract for pineapple production) that this arrangement is seen as 'sensible' use of the family land.

Within family groups leasing out is not only a source of income, but may also be a source or catalyst of tension. Problems may arise when family members start leasing out 'too much' land. Other just reflect tensions between sibling groups in polygamous households; disputes may also boil down to contesting inheritance. Control over the cash income from land lease is the most common issue within families. Intra-family tensions in Djimini do not usually have perceptible repercussions on the workings of the lease market – unlike the situation in the nearby region of Bonoua (cf. infra).

### 3.4 *Tutorat* versus rental

In the situation studied in lower Côte d'Ivoire, the contractual relationship can be analysed as such, outside of any *tutorat* relationship. In the frontier zone of central Benin, however, where land is relatively plentiful and immigration from other regions of the country high, most assigned land rights function according to a logic of *tutorat*, embedded in local principles of the moral economy (Le Meur, 2006a). Certain forms of commodified land transactions are emerging in the zone of Oussè, but they still seem to be in the minority.

- Plots on the fringes of the core built village are informally assigned through parcelling and sale, inducing disputes within families over the appropriateness and legitimacy of these practices.
- In 'frontier areas' far from the villages, the assignment of rights under the *tutorat* regime may (from the point of view of the assignor) coexist with annual or pluri-annual (3 to 5 year) rental agreements, corresponding to different profiles of beneficiaries. Usually the tenants are in a weaker economic and social position than migrants in a well established *tutorat* relationship.
- Production constraints play a role in the evolution towards agrarian contracts. The recent development of cashew plantations has seen a parallel growth in contracts (with annual rents), whose duration is determined by the plantation reaching maturity (the cultivation of annual crops being then precluded) (Le Meur, 2005). It might be assumed that the social organisation of *tutorat* would affect the evolution towards agrarian contracts. In areas where the *tutorat* relationship is bilateral (as with the Mahi in the commune of Ouessè), a landowner may engage in parallel *tutorat* and rental relationships with different people, and there is no evidence so far of a shift from one regime to the other for a given beneficiary. However, in regions where *tutorat* is centralised at the level of the lineage group or chiefdom (as with the Tchabé in the communes of Ouessè and Savè), *tutorat* arrangements are tipping towards forms of land lease for a particular group of incomers (Edja, 1999; Le Meur, 2002).

### 3.5 Conflicts

In Djimini, use rights are assigned in an explicit contractual relationship and contractual relationships are not conflictual. However, Burkinabé producers living in Djimini but leasing in plots on village lands located within the sub-prefecture of Bonoua, in the Abouré country, have been directly affected by the troubles that hit this region in early 2001. In a context of high tension between the indigenous Abouré and (predominantly Burkinabé) incomers, a general assembly of young men from Bonoua called for a curfew on the incomer community, declared an Abouré monopoly over all commercial activities and transport, banned mixed marriages, etc., and prohibited the rental of land to strangers. This situation had its roots in a generalised resentment towards Burkinabé and their obvious economic dynamism, but also in particularly acute tensions over the inheritance and management of family land within Abouré society. The issue of access to land and control over the rent was a cause of growing strife within families,



and the conflict between the Abouré and Burkinabé tenants broadly reflects this intergenerational conflict within the indigenous community. In early 2001 trouble flared up over plots rented by Burkinabé pineapple growers, as young Abouré men pulled up shoots and planted red flags in any plot they suspected of being rented to Burkinabé. The message was clear: plant at your peril, we'll destroy your plantation. Things calmed down after some months and most growers were able to restart production, although from then on many tenants avoided leasing in plots in Abouré country. In a broader setting, agrarian contracts in the forested regions of Côte d'Ivoire as in Djimini do not seem to convey specific tensions and are much less contentious than transferring rights of appropriation through 'sales'.

## 4. Conclusion

Monetarised land transfers in the form of 'sales' bear little resemblance, in the situations studied, to the concept of the market mobilised in economic analysis. The 'market' as it appears through empirical analysis of central western and south western Côte d'Ivoire, or south western Burkina Faso, seems to be firmly socially embedded through the *neo-tutorat* relationship. The nature of the land tenure relationship between autochthons and migrants is certainly clearly economic, but is based on an 'incomplete' sale that imposes on the beneficiary a perpetual duty of gratitude to the assignor, with rights and obligations that are often implicit and renegotiable – at least in the view of certain actors. While the same can be said of the rural areas of Mali, peri-urban areas seem to be moving towards the establishment of relatively 'pure' land markets.

In a context where there was no government recognition of autochthons' rights over uncultivated land, and where establishing a system of fees was prohibited, 'sales' were often used as part of a strategy to maintain a minimal control over land (through a *neo-tutorat* relationship) or earn a minimum income from land. It could be said that the endogenous institutional change was otherwise moving rather towards the emergence of a rental market rather than a sales market. These 'sales' concerned not so much land already clearly appropriated by the vendor, but rather areas of uncultivated land under the control of the village or lineage group, over which there was no clearly recognised individual control. Once the analysis goes beyond noting that land is accessed in return for a certain sum of money, the question "Is this a market?" can only be answered negatively from a standard economic viewpoint. This may be a banal observation in a situation of land transition, but the problem here is that this transition has been going on since the colonial period, and it is hard to see how it will evolve. The case of Côte d'Ivoire highlights the risk of interpreting deeply socially and politically embedded economic practices in 'pure' market terms.

Regarding the development of the lease market, the case of Djimini Koffikro illustrates how the basic intuition of the theory of institutional change applies to land issues: by increasing the value of land, the combined effects of demographic pressure, development of crops destined for the market and changes in production systems open up the bundle of rights, particularly rights of transfer, and access to land is increasingly monetarised – here, through fixed-rent or sharecropping arrangements, with an informal contractual transfer of use rights. This dynamic has been noted with food crops elsewhere in the forested region of Côte d'Ivoire, especially after the 1980s and 1990s, but it began particularly early and has reached unequalled intensity in Djimini. Here migratory movement and technical change (introduction of a new, non-perennial cash crop) have stimulated the emergence of market-based land regulation and changes in the institutional arrangements governing access to land. The case of Djimini also demonstrates the value of combining analysis of land markets with analysis of rights and land management within family groups.

This study has also shown that informal contractual practices do not pose a major problem. This is partly because actors effectively screen their prospective partners, and partly because of the recent practice of perfunctorily formalising certain relationships with a simple receipt. In other words, genuine formalisation of contracts is not always necessary. The case of Djimini suggests that, except in situations of conflict, public intervention to regulate agrarian contracts in the African context could be limited to the following courses of action: (i) recognising the existence of these practices; (ii) not codifying the content of the arrangements so that they retain their flexibility; (iii) on the basis of discussed and shared local principles, helping negotiate contractual norms that are deemed to be legitimate; (iv) using this as the basis to promote the production of written contracts setting out each party's commitments; (v) encouraging validation by the local authorities of contracts agreed under private arrangements, and giving them a legal existence; (vi) at the local level, helping negotiate and make explicit the principles and rules that will be mobilised to arbitrate disputes, and appointing competent authorities in this arena.

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## CHAPTER 2

# Customary transfer of rights between autochthons and “strangers”

## Current developments and issues in the *tutorat* relationship<sup>5</sup>

### 1. Introduction: the conceptual framework

#### 1.1 Current issues surrounding the transfer of rights in the context of *tutorat*

The transfer of land rights between natives and outsiders within the framework of customary *tutorat* relationships amounts to a widespread agrarian institution in rural West African societies. In a context of abundant land and low population densities these transfers were traditionally embedded in client/patron and socio-political relationships, intensified by a religious dimension, since communities were more interested in attracting and controlling men and manpower than in the exclusive appropriation of land resources.

The institution of *tutorat* is found in most non-market transfers, such as indefinite ‘loans’ and ‘gifts’ to individuals or groups of outsiders received into local communities, and it continues to occupy a much more important place than sales/purchases as a mechanism for transferring land rights for an unlimited period of time. As an economic institution, *tutorat* establishes the ‘rules of the game’ regarding long-term transfers of land rights in a customary context. It is an inescapable element of the ‘informal’ institutional environment that regulates rights and their dynamics (North, 1993; Ensminger, 1997).

However, as an institution it is subject to numerous pressures, such as the monetarisation of land transfers, the relative scarcity of land resources, huge rural migratory flows, individualisation of land rights and state intervention. The relationships and customary principles associated with *tutorat* are being challenged, and are increasingly linked with situations of violent conflict between communities. Despite the fact that they are ignored by, and often run counter to, state legislation, these land relationships, with their strong social embeddedness, constitute a real challenge for public policies seeking to secure existing land rights through registration.

#### 1.2 Land-related and socio-political aspects of the rights and obligations entailed in *tutorat* relationships

The term “*tutorat*”<sup>6</sup> covers the reciprocal social relations that develop when a “stranger”<sup>7</sup> (or group of strangers) and his family are received into a local village community for an indeterminate period, which may span several generations. Transfers are effected through the assignment of land rights between a ‘customary landowner’ (referred to below as a *tuteur*) who is either a native (an ‘autochthon’) or someone who holds some prior control over the land, and his foreign ‘guest/visitor’ (referred to below as a ‘stranger’ – in this specific sense, and not in the general

<sup>5</sup> Synthesis written by J.-P. Chauveau, based on documents cited in the bibliography, discussions of an initial version during the final workshop and supplementary notes prepared by C. Bonnet-Bontemps, M. Djiré, J.-P. Jacob and P.-Y. Le Meur. References to CLAIMS documents are kept to a strict minimum in the text.

<sup>6</sup> The French term “*tuteur*” is often used locally to denote the holder of customary rights who has conceded rights to someone from outside the community.

<sup>7</sup> The term “stranger” is currently used to describe the outsider involved in the *tutorat* relationship.

sense of an outsider, as he immediately acquires lasting status within this category).

The 'land tenure' dimension of *tutorat* is inextricably linked to its 'socio-political' dimension. The rights and obligations involved in the *tutorat* relationship are embedded in a 'moral economy' in which receiving strangers is seen as useful for the wider reproduction of the community. Strangers are given access to land to enable them to make a living, but their settlement is conditional upon maintaining the social order of the community (Chauveau *et al.*, 2004; Chauveau, 2005 and 2006; Jacob, 2003, 2004 and 2005b). As a social institution, *tutorat* regulates both the introduction of 'outsiders' into the host community and the transfer of land rights.

The trans-generational nature of this arrangement means that the bundle of land rights transferred is not limited to rights of use. It includes rights of management and, quite frequently, administration (the right to define others' rights) so that the incomer (individual or group) can deal with the vagaries of the reproductive cycle of his own domestic group (assigning and allocating use rights within the family, and assigning rights to other strangers provided this is authorised by the *tuteur*). The principle that the stranger is not permitted permanently to transfer the portion of land assigned to him and, *a fortiori*, to sell it, is made very clear.

Within this relationship, the *tuteur* is obliged to secure the rights transferred to the stranger in relation to other rights holders within the family or village. He is also responsible for 'socializing' the stranger and bringing him into line if he fails to fulfil his duties. The stranger thus acquires a certain status within the community. For his part, he and his successors have a moral duty of gratitude to the *tuteur* and, more broadly, to his community, particularly the obligation to work hard there and help it prosper (Jacob, 2004 and 2005b). This obligation is regularly updated through different types of services that reflect the subordinate nature of the stranger's status and the subordination of the transferred rights to customary property rights.

Its trans-generational and socio-political dimensions give the *tutorat* relationship a specific position within the mechanisms for transferring land outside the family and community.<sup>8</sup> *Tutorat* does not include the transfer of rights that involve client/patron relationships but only last for a limited period of time (such as a growing cycle) or carry only a limited bundle of rights (such as sole rights of withdrawal or use). Nor do *tutorat* relationships include market agrarian contracts, even if they have an interpersonal dimension (rental, sharecropping, mortgages). Finally, although they may have a financial element, *tutorat* relations contrast with market transfers such as sales/purchases, which definitively close the interpersonal and joint relationship between the partners.

### 1.3 General issues: rights of access to land, social order in peasant societies, local citizenship and institutional change

*Tutorat* relations involve two interlinked aspects: rights and obligations regarding access to land, and rights and obligations regarding group membership. In societies that are regulated by the market, these bundles of rights are independent: property rights determine rights of access to land, and membership of collective groups is determined by definitions of citizenship. This is not the case in most contemporary rural African societies, where the moral economy of access to land still holds strong, and property and identity are not easily separated. Trans-generational access to land is mediated by membership of a community, or for strangers, by obligations to integrate into statutory 'local citizenship'. Reciprocally, rural communities in Africa are generally established on the basis of statutory access to land. This is partly due to the fact that there is little social recognition of other means of acquiring local citizenship (such as residents exercising the rights guaranteed by formal citizenship) (Richards, in Chauveau and Richards, 2005).

*Tutorat* relations are symptomatic of a social order that combines two features characterising peasantry in rural Africa. The first relates to the dominant agrarian dimension of local social and political institutions, which not only gives land a productive function, but also makes it a social link attaching all those who live off it to a single moral community. This first aspect is explained by a second, which relates to the particular form of domination that society as a whole exercises over peasant societies: although local rural communities are marginalized, particularly in terms of genuine citizenship at the national level, the hegemony of the State, the elite and urban economic activities remains fragile. Their rural bases are largely dependent on political intermediaries from rural societies, and local

<sup>8</sup> Here, the concept of "transfer" is distinct from the concept of "transmission" within the family or community.

institutional arrangements that are relatively autonomous of the formal institutions and bureaucratic rules of the State (Chauveau, 2000; Mamdani, 1996; Spittler, 1983). This explains why definitions of property rights and local citizenship are still essentially (and indissolubly) managed at the level of communities and village authorities.<sup>9</sup>

The central theme of our research on *tutorat* was considering its structural characteristics (both its land tenure and its socio-political dimensions) in relation to changes in its institutional environment: the monetarisation of production systems, individualisation of land tenure relationships and mechanisms of transfer, state policies on customary rights regarding the rights of migrants. We will examine the following factors:

- Variations in the land tenure component of *tutorat*, which lead to situations of transition from highly collective to individualised forms of *tutorat*;
- Main factors in the separation of the land tenure and socio-political components of *tutorat*, which explain its individualisation;
- Indicators that nevertheless demonstrate the inherent socio-political element of *tutorat* and its reactivation.

We will close by looking at the specificity of the process of institutional change demonstrated by these apparently contradictory observations.

## 2. Variations in the land tenure component of *tutorat*: situations of transition towards individualised transfers?

### 2.1 Types of *tutorat*: collective *tutorat* at the village level, collective *tutorat* between villages, individualised *tutorat*

We can distinguish three different types of *tutorat* (Jacob, 2005b; Koné *et al.*, 2005) that are not mutually exclusive and which may be combined with each other:

- A type of *collective tutorat at the village level* (I), where the bilateral relations between *tuteurs* and strangers are entirely mediated by the social and political organisation of the local society;
- A type of *collective, inter-village tutorat* (II), where the customary rules that determine relations with communities settled on the lands of an older village are the same as those that define the relationships between a newcomer and his *tuteur* at the village level;
- A type of *individualised tutorat* (III),<sup>10</sup> where the bilateral relationship between *tuteur* and stranger is very strong and seems relatively autonomous of the social and political organisation of the local society.

#### *Situations where collective village-level and inter-village level tutorat is most prevalent*

The case of Gwendégué in Burkina Faso is typical of the combination of types (I) and (II). It is generally found in the regions of Burkina Faso and Mali least affected by the major influx of migrants seeking land for a market-based activity.

The bilateral relationship between *tuteur* and stranger is mediated by society. It is socially sanctioned and put into effect by the village authorities. Even if the rights assigned to the stranger pertain to the family lands of a lineage group, the *tuteur* (as official representative of this lineage group) cannot challenge the bundle of rights granted to his tenant, nor impose new obligations (counter-payments in money, for example) without the agreement of the village authorities (land chief, village chief). In return, the beneficiary must respect the host's taboos, live in the village and adopt socially and economically acceptable attitudes. The relationship between communities settled on the lands of a 'mother village' with this village is the same as the relationship between an stranger and his *tuteur* within a single village.

<sup>9</sup> Another aspect of rural conditions discernible in most study sites is the high mobility between towns and farming villages, without a radical dissolution of the links with the rural communities of origin.

<sup>10</sup> Here, we are talking about an *individualisation* process in the *tutorat* relationship, rather than individual *tutorat*, to take account of the fact that even when the bilateral relationship between the *tuteur* and the incomer is most obvious, this relationship remains embedded in lineage or family relations.

### ***Situations where individualised tutorat (with or without collective inter-village tutorat) is most prevalent***

The site of Zahia is typical of the combination of types (II) and (III). Collective inter-village *tutorat* is essentially symbolic, and only becomes contentious if the host village claims administrative rights over the land assigned to the beneficiary village. In reality, what is at issue in these conflicts between villages is control over *tutorat* relations with individual strangers.

The colonial authorities established the Bété village of Zahia on land belonging to Gbékoukoghé, whose right of first occupancy is recognised so that certain magical-religious acts can be carried out. However, its land and political authority over Zahia is not recognised. The inhabitants of Zahia consider themselves to be just as ‘autochthon’ as those of Gbékoukoghé, and from the 1930s onwards they settled strangers under a system of individual *tutorat* relationships without reference to the authorities in Gbékoukoghé. The socio-land authorities have tried in vain to oversee these settlements and claim a share of the ground rent they generate.

There are also tensions between Zahia and Loboguiguia, a neighbouring village near the former site of Zahia, because Zahia accuses Loboguiguia of appropriating some of its old lands. The village chief in Loboguiguia sold a large area of woodland to strangers, claiming that “President Houphouët said that land belongs to he who cultivates it. And since he saw an empty forest, he put it to use by settling strangers there”.

This process of individualising land heritage and *tutorat* relationships between natives and strangers is also found in the Bakwé village of Gnamagui (sub-prefecture of Méagui) and the Gban village of Bodiba (sub-prefecture of Oumê). A similar situation exists in central Benin, where the individualisation of *tutorat* is such that young men can ‘settle’ strangers without referring to the family authorities. This trend is also found in central western Côte d’Ivoire, although here it is still clandestine, which it is not in Benin.

## **2.2 The delegation of rights under *tutorat*: transitional situations?**

In situations where collective, village-level and inter-village *tutorat* is most prevalent, these relationships tend to be managed at a central level. In Gwendégué, the land chief or political chief can ask or even require a member of the community to transfer land rights to a stranger, without giving him a say in the bundle of rights assigned to the beneficiary or allowing him to impose new obligations on the stranger without the agreement of the village authorities. However, in Malian sites where collective, village-level *tutorat* is also prevalent, we observed that extended families have been assigned the right to engage in *tutorat* relations, on condition that the ‘family’ *tuteurs* keep the village authorities informed of their activities in this regard.

Conversely, and equally logically, the implementation of *tutorat* relations is instantly decentralised to the family level in situations where individualised *tutorat* relations are most prevalent, as is usually the case in central western and south western Côte d’Ivoire and central Benin.

However, there are many intermediate situations where the right to engage in *tutorat* relations is being decentralised and becoming an individualised relationship between strangers and increasingly limited family authorities. This is the case in the village of Dégué-Dégué (department of Sidéradougou), which is characteristic of the situation in south western Burkina Faso, where immigration levels are very high and agriculture is strongly oriented towards market production. In recent years there has been a clear trend towards purely monetarised transfers, independent of the village socio-land authorities.

The spread of individualised *tutorat* in the sites in central western and south western Côte d’Ivoire and central Benin, its emergence in the site in south western Burkina Faso, and the latent process of decentralising the right to institute *tutorat* relations in most study sites suggests that this customary institution is in a transitional phase. Due to the effects of demographic and economic factors, a transition is taking place from a situation where collective, village- and inter-village level *tutorat* is most prevalent to a situation where individualised *tutorat* relations predominate. This transition is characterised by a separation of the land and socio-political dimensions of *tutorat*. The factors influencing this separation are described in the section below.

### 3. Factors in the separation of the land tenure and socio-political aspects of *tutorat* relationship

Observation in the various study sites revealed three main factors in this separation: the monetarisation of systems of production, changes in family structures and internal family land relations, and state interventions.

#### 3.1 Monetarisation of systems of production

a) The **commercialisation** (established or growing) of agricultural production (coffee and particularly cocoa in central western and western Côte d'Ivoire, cotton in Mali and Burkina Faso, commercialised food crops in Benin and cashew in Burkina Faso) is associated with the individualisation and delegation of *tutorat* in all the study sites.

- Production systems based on perennial cash crops for export (coffee, cocoa) most encourage the individualisation of *tutorat*. They involve the transfer of planting rights from the outset of the relationship, and the long biological cycle of the trees encourages the transfer of rights of transmission and, more often, rights of transfer. In Côte d'Ivoire the institution of a *tutorat* relationship or its renewal upon the death of one of the partners is sometimes done through a written agreement.
- The settlement of strangers on peripheral areas of village lands, where rights of appropriation are not well established, reinforces the individual rights of *tuteurs* and the individualisation of *tutorat* (forested region of western Côte d'Ivoire and settlement areas of central Benin).
- State classification of forests on customary lands encourages *tuteurs* to 'sell off' individual rights to strangers so that they don't lose all the benefits of their former territorial control.

b) **The individualisation of *tutorat*** in a monetarised context is accompanied by:

- i. Pressure from *tuteurs* to increase and monetarise the strangers' 'duty of gratitude'. In Benin and the forested regions of Côte d'Ivoire we can talk of a real income from *tutorat*;
- ii. Partners seeking to take advantage of the potential benefits of this relationship: access to strangers' labour in return for access to land (central Benin and forested regions of Côte d'Ivoire), access to credit from strangers. Where pressure on land is high, *tutorat* relationships may be overtaken by short-term agrarian contracts (forested regions of Côte d'Ivoire, where strangers who had planted their land reserves ask *tuteurs* to rent them land for food crops);
- iii. Increasing uncertainty about the duration of the relationship instituted by the transfer. One indicator seems to be decisive: transfer of the rights arising from the original transfer is no longer automatic (the stranger's right to transfer rights to a family member during their lifetime); in forested regions of Côte d'Ivoire, in particular, the death of the original stranger or *tuteur* is often the occasion to renegotiate the original conditions of the transfer. Furthermore, it is no longer unusual for land to be 'removed' from longstanding strangers, and not merely on the grounds that they failed to respect their duty of recognition or because the *tuteur*'s heirs need land; much of the land withdrawn in western Burkina Faso is transferred to new farmers with money at their disposal, in the form of disguised 'sales';
- iv. Growing differentiation between 'old' and 'new' strangers in terms of protection for their rights. Contrary to one of the essential moral principles of *tutorat*, this differentiation does not always work in the favour of longstanding settlers, who may be seen as having benefited from the advantageous conditions of the transfer (such as the payment of purely symbolic charges). It may favour recent immigrants who are in a position to make financial payments for the transfer or provide subsequent assistance to the *tuteur*. In Burkina Faso recent immigrants find it easier to obtain tree planting rights;
- v. The emergence of brokers who intervene between migrants and customary owners, particularly in Benin, where *tutorat* is individualised, but also in Mali, where it is not.

c) In a highly monetarised context like the forested regions of Côte d'Ivoire, **the crisis in commodity production chains has amplified rather than halted the individualisation and monetarisation of *tutorat***. *Tuteurs* are seeking to compensate for their reduced income by increasing the pressure on strangers (monetarising the duty of recognition, pressuring strangers to meet their obligations, putting in place systematic charges) and by emergency sales disguised as transfers within the *tutorat* relationship.

d) Finally, **the commodification and individualisation of the *tutorat* relationship may be encouraged by strangers themselves.** In Burkina, for example, new actors with capital are seeking to buy their way out of their social obligations to their *tuteurs*.

### 3.2 Individualisation of land relations within the community and the family

Increased pressure on land and the monetarisation of production is encouraging the segmentation of collective land control and leading small family groups to demand to manage their land heritage autonomously. This autonomisation has repercussions on their strategies for managing rights of transfer outside the family or community circle. Individuals or limited family groups tend to dissociate the direct advantages of transferring rights to strangers from the collective advantages of these transfers for the community as such. This is particularly the case for autochthon elders holding land administration rights, who can use their statutory position to assume more rights and allocate them to the strangers they receive in return for a financial consideration.

In return, the individualisation of the transfer of rights to strangers poses recurring problems within family groups that hold collective rights (see the section on Intra-family and inter-generational dimensions of land issues). Who, within the community or family, has the right to transfer rights to strangers? Who, within the community or family, has the right to manage or appropriate the benefits (in kind, in labour and, increasingly, in cash) associated with the position of *tuteur*?

Thus, the tensions that may arise between *tuteurs* and their strangers can be aggravated or even created by dissent within autochthonous families and communities over the transfer of rights (tensions between *tuteurs* and other rights holders in the family, between these rights holders and strangers, and between autochthonous family rights holders and strangers over transfers and inheritance). This is particularly true in the forested regions of Côte d'Ivoire, with villagers (mainly young men) that have failed to make their way in town returning to the village and claiming family lands that have been assigned to outsiders, as well as access to the revenue from the strangers that their elders have monopolised. The slippage and succession of generations between *tuteurs* and strangers offer various opportunities to renegotiate land tenure relationships, especially if the 'original' *tuteur* dies before the stranger (Benin, Burkina Faso, Côte d'Ivoire).

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### 3.3 State interventions and growing divisions between autochthons and strangers

The evolution of *tutorat* cannot be dissociated from the direct or indirect effects that past and recent state interventions have had on the conditions for transferring rights between local communities and strangers. By encouraging rural migration or weakening customary land controls through legal measures, these interventions have not only played a role in separating the land tenure and socio-political components of *tutorat*, thus weakening the institution, but have also accentuated the dichotomy between autochthons and strangers by tending to protect strangers' rights with regard to their *tuteurs*.

#### ***State interventions and the individualisation of tutorat relations***

Since the colonial period and the introduction of land legislation giving the State eminent property of lands assumed to be ownerless and not put to productive use,<sup>11</sup> the State has weakened the land prerogatives of local societies and encouraged migration in order to move people into zones of greater agricultural potential (such as the forested regions of Côte d'Ivoire) or decongest the most deprived regions with high population densities (like the Mossi plateau in Burkina Faso). The colonial and then post-colonial State weighed upon the customary conditions for receiving immigrants, using two contradictory arguments to further its policy on productive use or population redistribution: the authoritarian dictate that "land belongs to the State", which may assign land "to he who puts it to productive use", and the moral argument of *tutorat*, with its moral obligation to receive migrants in need. In the 1960s and 1970s these arguments were widely used by Ivorian political officials to sell the policy of "*mise en valeur*" to local people in the forested regions of western Côte d'Ivoire, as well as in Burkina Faso. In recent years the Burkinabé government has used the moral argument to justify its orders to receive compatriots returning from Côte d'Ivoire into south

<sup>11</sup> According to the French colonial legal doctrine that prevailed in the countries covered by the studies; the situation is different in neighbouring countries that were colonised by the British



western Burkina. In doing so, governments have helped reinforce the settlers' position in relation to their *tuteurs*, broadening and securing the bundle of rights transferred, and contributing to the individualisation of transfers between autochthons and migrants. In some way the State appears as the strangers' 'paramount patron', giving local actors a fair amount of leeway as to how they put the principles of *tutorat* into practice.

The consequence is that land legislation and reforms have encouraged the individualisation of *tutorat*. By strengthening the rights of occupants with regard to customary controls, the land reform legislation in Burkina Faso (the RAF) contributed to the individualisation of *tutorat* relations by decentralising control over strangers to the level of family land units and encouraging precautionary 'sales' to strangers under the cover of *tutorat*. In Côte d'Ivoire, one consequence of the administrative pressure to 'settle' immigrants, particularly the Baoulé, despite the reluctance of indigenous communities, was the proliferation of individualised transfers. In the face of this pressure, autochthonous families did their best to maintain a modicum of control over their land. They settled 'their incomers' on the edges of their vaguely demarcated village lands and family holdings, in order to mark out their land in relation to that of neighbouring villages and family groups who were also being dragged into a spiral of forced transfers. Some lineage elders undoubtedly used their land controls to amass a considerable income by systematically transferring family lands under the cover of *tutorat* (paid for in labour by migrants from the north and in cash by the Baoulé).

### ***State interventions and divisions between autochthons and strangers***

In promoting rural migration and in affirming the State's ownership of land and its power to influence the *tutorat* relationship, state interventions sanctioned the dissociation of the land tenure dimension of *tutorat* from the socio-political dimension of receiving strangers into indigenous communities. This encouraged the largest groups of strangers and those best protected by the government to pursue their own social and political project. This was certainly the case among the Mossi in the settlement zones of Burkina Faso, and among the Baoulé in the forested settlement zone in western Côte d'Ivoire. The monetarisation and increased 'duty of gratitude' in the forested regions of Côte d'Ivoire helped spread the perception among settlers protected by the administration that transfers could be assimilated into a 'hire purchase agreement' that progressively excused them from their moral obligations to their *tuteurs* and indigenous host communities. Pressure from the administration thus contributed to the indigenous population's growing frustration with strangers. Various factors, such as the differences in their modes of cultural, social and political organisation, and their religion or political affiliation contributed to the growing gulf between, on the one hand, indigenous *tuteurs* who were not collectively or individually in a position to control the flow of migrants, and on the other, the growing number of increasingly cohesive groups of settlers.

In Burkina Faso, the RAF initially recognised the rights of occupants with regard to customary *tuteurs*, although supporters of this legislation are more conciliatory towards the customary authorities and chiefdoms now, probably because of local and national policies. Moreover, initiatives to settle conflicts between autochthons and migrant herders (in agro-pastoral areas) or put in place administrative boundary changes (such as the creation of the department of Tiéfora) actually contribute to tensions. And when projects to secure land tenure explicitly refer to *tutorat* relations in order to take account of customary realities, they run into difficulties because of their ignorance of the history behind local situations (such as the Ganzourgou rural land plan and the invention of 'official' *tutorat*).

In Côte d'Ivoire the intense administrative and political pressure to encourage incomers lasted until the 1980s (it was decreed by President Houphouët-Boigny that "land belongs to he who uses it"), when it gave way to a critical reappraisal of the policy of mass immigration. Political officials have been seeking to quell tensions between autochthons and strangers in the forested region of Côte d'Ivoire since the early 1990s, particularly in the regions studied in the west and mid-west, where the liberal reception conditions previously imposed by the authorities have been called into question with advent of a new generation of *tuteurs* and increased pressure on land. The heirs of former *tuteurs* now openly claim the right to impose charges, while settlers have several arguments supporting their cause: the weakening – and even disappearance over time – of their moral obligations to their *tuteurs*, given the accumulated services rendered; their guaranteed rights under the principle of "*mise en valeur*", which has long prevailed in the regulation of conflicts by government agents; and, if they are Ivorian, the principle much quoted by government agents, that land belongs to the State and therefore to all Ivoirians.

In Benin, a project similar to the Rural Land Plan also led to a change in the relationship between autochthonous *tuteurs* and strangers, but in a context where the reception of outsiders is not highly politicised, and differs according to regional and ethnic variations.

## 4. The continuing collective and socio-political dimension of *tutorat*

The monetarisation of production systems, changes in land tenure relationships within the family and state interventions have all contributed to the dissociation of the land tenure and socio-political components of *tutorat*, and encouraged the individualisation of the land tenure component. Our observations confirm that this process is most marked where these different factors combine, as in central western and western Côte d'Ivoire, and that it is perceptible to varying degrees in most of the study sites.

So does this mean that the collective and socio-political dimension of *tutorat* is disappearing, ultimately to be replaced with bilateral market transactions unencumbered by any interpersonal relationship? Observations from the sites under study show that the contradictory effects of this process are in fact reactivating the collective and socio-political dimensions of the transfer of rights to strangers, or at least channelling the issues involved in transferring rights into the reproduction of social order at the village level.

### 4.1 Reactivation of the collective dimension of *tutorat* as it becomes individualised

First of all, it is worth noting that the individualisation of rights of transfer between natives and strangers in a market context is not a new phenomenon.<sup>12</sup> This suggests that while it is an ongoing process, there are powerful obstacles to full individualisation. This is the case in south western and western Burkina Faso, for example (respectively in the Tiéfo country, as mentioned above, and the provinces of Houet, Banwas, Comoé and KénéDougou), where financial transactions have been practiced for a good fifteen years, although these arrangements are still disguised as *tutorat*.

Where the individualisation of *tutorat* is most obvious – in central western and south western Côte d'Ivoire and central Benin – there has been a simultaneous reactivation of the collective dimension of transfers. In the zone of Ouessè in Benin, a system of charges for migrants was introduced as customary chiefdoms returned with the democratic transition of the 1990s. This mechanism, a cross between ground rent and a special tax, competes with the system of individualised *tutorat*, and has certain similarities with more centralised forms of *tutorat*.

In western Côte d'Ivoire the individualisation and monetarisation of the *tutorat* relationship has provoked a reaction from rights holders within family groups, particularly young men and émigrés living outside the village, who not only are trying to recuperate the land their elders assigned to strangers, but also claim a share of the 'income from *tutorat*' monopolised by the elders. Their arguments centre around strangers' failure to fulfil their moral and socio-political obligations to family and village communities, which makes natives feel that they have become 'strangers in their own home'; strangers not investing in the land or participating in the development of the community; their obvious economic success, which is seen as showing a lack of respect for the indigenous social order that generously received them; not respecting local customs, particularly Muslims who bury their dead in the bush and don't contribute to funeral expenses; and the fact that their economic power allows them to corrupt village chiefs and family heads, to the detriment of the traditional religious and land authorities. It is widely believed that 'good strangers' not only 'respect' their *tuteur*, but also contribute to the prosperity of the village and help uphold tradition, while 'bad strangers' weaken social cohesion and cause tensions within the community, particularly between the young and old, and chiefs and villagers.

### 4.2 Resurgence of 'indigenous identity' and the politicisation of *tutorat*

The reactivation of the collective and socio-political dimension of transfers extends beyond the village context and often leads to a resurgence of the collective ideology of indigenism. This phenomenon associates the feeling of land dispossession in the face of growing numbers of migrants with the fear of losing the local social and political prerogatives that go with belonging to the group of first occupants. This feeling and fear are further

<sup>12</sup> Observations to this effect have appeared in the literature on the subject since the 1950s, particularly with regard to the regions of Côte d'Ivoire covered by the study.

exacerbated by their resonance with policy issues at the national level, to the extent of encouraging the ethnicisation and politicisation of strangers' access to land, and consequently, of the institution of *tutorat* itself.

This phenomenon is seen in most of the field sites, whether or not the *tutorat* relationship is individualised. In Burkina Faso, where *tutorat* has a pronounced collective dimension, traditional chiefs have started organising themselves at the national level, and it is expected that villages will restrict the number of incomers as information trickles down to the local level (as in Bwaba in south western Burkina Faso). In Côte d'Ivoire, where *tutorat* is highly individualised, there has been a revival of traditional chiefdoms, especially in the Wobè country in the south west.

The 'indigenisation' of land issues is not restricted to the customary authorities.<sup>13</sup> It is also encouraged by local politicians and urban elite originating from autochthonous communities, who are concerned about the influence of the incomers' electorate at the polls. This is happening in both Burkina Faso and Côte d'Ivoire, where the controversy surrounding the over-liberal welcome of immigrants has been running for some time and is at the forefront of political debate at the local and national levels. In Mali, where the process of decentralisation is most advanced, it was initially welcomed as 'returning power to the village', with the implication that it would go into the hands of the politicians and local authorities originating from the autochthonous communities.

Previous state policies and interventions that encouraged rural migration and weakened customary land controls have also contributed to the resurgence of autochthony-based ideologies and the politicisation of *tutorat*. The feeling among autochthonous communities that they are being dispossessed of their land is coupled with strong resentment towards government policy, which is seen as the organiser of this dispossession.

Côte d'Ivoire is certainly one country where the State has contributed most to the politicisation of the institution of *tutorat*. By enforcing agricultural settlement in the forested regions of western Côte d'Ivoire from the 1960s onwards, and relying on local arrangements to meet its requirements under the cover of *tutorat*, it made *tutorat* a multiplex institution that not only regulated the relationships between *tuteurs*, local communities and strangers, but also intervened in the relationships between village authorities and the State and in the power play within autochthonous communities (between family groups, and the young and old). The more recent experience of the Rural Land Plan project (*Plan foncier Rural*), which aimed to secure all existing rights (including rights arising from customary transfers), highlighted the different ranges of tension surrounding *tutorat*: land tenure ("if you provide papers, the stranger will detach himself from the *tuteur*"), socio-political (suspicion of the government's real motives in making strangers more autonomous of the community) and within the community (accusations that chiefs, dignitaries and elders are too conciliatory towards strangers). Although the 1998 law and its arrangement excluding non-nationals from land ownership has yet to be implemented, the announcement and anticipation of its enforcement have stimulated a strong "ideology of autochthony" in the forested regions of western Côte d'Ivoire.

## 5. Conclusion

### ***Institutional change in which the individualisation of the tutorat relationships adds to, rather than replaces, its collective socio-political dimension***

The theory of a mechanical transition from situations where collective, village- and inter-village level *tutorat* is more prevalent to situations where individualised *tutorat* (with or without collective inter-village *tutorat*) is more the norm fails to take account of the dynamics of this institution. Situations where *tutorat* between individuals has become common show that it has been paralleled by a reactivation of the collective dimensions of transfers, various forms of re-centralised control over strangers, or by a strong resurgence of the collective ideology of indigenosity. The individualisation of the land tenure dimension of *tutorat* does not eradicate the collective and socio-political dimension of integrating strangers, but adds another layer to the process.

From a more theoretical point of view, our conclusions here complete those of the section on land markets by specifying the reasons why the dynamic of transfers within the framework of *tutorat*, and probably of transactions outside *tutorat* (see the point below), do not confirm the evolutionist model of property rights. The general process of

<sup>13</sup> However, customary chiefdoms are increasingly held by former officials from urban areas.

the individualisation of 'land *tutorat*' apparently confirms the economic theory of the endogenous evolution of rights. But observation shows that this only concerns one aspect of the change. On the one hand, this evolution will never lead to the end of the spontaneous process of the privatisation of transfers as we know it. On the other hand, the open-endedness of the process is explained by the quest for future (trans-generational) security for the rights acquired by transfer, whether or not these transfers are individualised. This security is seen as ultimately being dependent on the future socio-political conditions for the recognition of rights (Mathieu, 2005). It is hard for actors to envisage these conditions outside the framework of local citizenship where land not only has a productive function, but also provides social cohesion around a social order defined by locally constructed identities.

### ***Tutorat and the mechanisms for transfer within the peasant social order***

Despite the individualisation of the land tenure dimension of *tutorat* relations, their underlying collective and socio-political dimensions show the enduring nature of the peasant social order referred to above. According to this social order, land not only has a productive function, but also acts as a social link drawing everyone who lives off it into the same moral community. The persistence of this social order can be attributed to the way in which African rural communities are constituted, and the fact that the combined effects of history and politics have ruled out any alternative options.

The cases from the sites in southern Côte d'Ivoire (Djimini-Koffikro and its dependent encampments), where *tutorat* relationships are precluded by the historical presence of 'no man's lands' and absence of established autochthonous rights, shows that the observed existence of market transfers of full rights of appropriation does not eradicate the socio-political dimension of transfers or the requirement that acquirers integrate socially into the local community. Even here there is a latent tendency for social pre-eminence to be based on precedence of settlement, so that the first arrivals are recognised as the legitimate guardians of the socio-political order they inaugurated. This hierarchy still stands, and may influence the subsequent exercise of rights arising from these transfers (Mathieu, 2005; Mathieu *et al.*, 2005).

*Tutorat* thus appears as the social mechanism for transfers where the relationship between the transfer of rights and membership of a landed community is most institutionalised, although this relationship is not specific to *tutorat*. Where uncontested autochthonous rights exist, the socio-political and land dimensions are closely linked from the outset of the transfer. In most cases where rights are transferred across generations outside of *tutorat*, by purchase for example, the socio-political dimension comes into play while the transferred rights are being exercised. But in every case, the security to exercise transferred rights ultimately depends on the new rights holders being socially recognised as 'strangers into the community' who are entitled to participate in statutory and hierarchical local citizenship, provided they fulfil their socio-political obligations to this community by working hard on the land, participating in the prosperity of the community and unfailingly respecting its first occupants and 'traditions' (which are often 'reinvented'). These obligations are superimposed onto individualised tenure arrangements, which thus 'complicate matters' in terms of access to local citizenship.

This complication remains implicit and unlocalised in the case of non-*tutorat* transfers, but it may be raised in particular situations by groups that see themselves as descendants of the first occupants. Such situations arise when new social, political and economic differentiations blur the difference in status between longstanding occupants and newcomers, and where the former no longer see access to land as a factor of integration into the pre-existing social order, but as a factor in challenging this order. This may happen as a consequence of economic differentiation (through strangers gaining easier access to labour or capital), demographic differentiation (fear of being 'swamped') or political differentiation (privileged access by settlers to power networks and administrative protection, electoral weight of settlers).

### ***Tutorat and conflicts: the socio-political implications of policies aimed at securing tenure***

Many conflictual situations involve *tutorat*, an institution that is ignored by and often contradicts official legal arrangements, and is a real test of local social and land dynamics (Koné *et al.*, 2005). Although the most visible conflicts are those between autochthons and strangers, the issue of 'managing strangers' has major repercussions on local domestic and village-level power systems. It can lead to serious tensions within families and host communities (over the assignment and control of the right to transfer to strangers) that in turn, as in Côte d'Ivoire, can also aggravate tensions between communities.

The deep social embedding of *tutorat* relations presents a dual challenge for policies aimed at securing existing rights. These not only have to identify, in a socially acceptable manner, the rights arising from transfers between natives and strangers as they exist at a given moment; but also secure the future conditions for recognising these rights, in a context where land rights are not easily disentangled from rights of access to local identity or citizenship. There is a degree of know-how regarding the first aspect, although tools such as Rural Land Plans, local agreements, etc. are not always applicable to the situations of conflict where they are most needed (see section on Land governance); but there is no know-how regarding the second aspect, for the simple reason that we cannot easily legislate on modes of constructing local citizenship.

The emergence of new modes of socially integrating strangers that are likely, on the one hand to ensure their continued 'interest' in reproducing the community, and on the other, to reassure indigenous communities of the benefits of the productive and economic functions of land becoming autonomous, will be neither automatic nor straightforward. Under the cover of nationalising land, past interventions by the State have helped deepen the gulf between autochthons and strangers and defer the likelihood of a shared concept of local citizenship. Neither privatisation policies, which were supposed to ensure the free and certain transferability of land rights, nor the expectation of a 'modernisation' of customs, in the sense of free access to local citizenship, seem able to resolve these difficulties. The success of the 'sons of the soil' in local elections is testament to the enduring power of the normative referent of the principle of the pre-eminence of first occupants, and it looks set to hold sway for some time to come.

It is tempting to seek an unconventional, indirect route that will eventually ensure legitimacy and lasting social recognition for customary transfers. To do this we need to understand the local meanings of 'limited transferability' of customary rights, and methodically work from a belief in the absolute benefits of the 'generalised transferability' advocated by the economic theory of property rights. One way could be to support the 'modelling' of the social conditions of transfer on the basis of norms that are not only discussed by *tuteurs* and strangers, but also by other rights holders in any way concerned with the land rights transferred. And finally, according all rural actors – natives and strangers alike – full citizenship in access to state services and economic opportunities could make it easier for them to formulate a notion of open local citizenship, and thus of a socially accepted transferability of land.

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## CHAPTER 3

# Intra-family and inter-generational dimensions of land tenure<sup>13</sup>

## 1. Introduction

Little attention has been paid to the intra-family<sup>14</sup> and inter-generational dimensions (IFIG) of land tenure over the last few decades. The allocation of resources within local economic units has certainly been studied (particularly in the context of household economics), but the question of rights over land has hardly been broached, except by specific studies on this theme – which is increasingly approached from a theoretical angle or through analysis of public policies, rather than on the basis of detailed empirical investigations.

The relationship between kinship connections and control over resources is well established in British social anthropology, which has long been dominated by a structural-functionalist perspective in which individual rights are clearly defined and conditioned by an individual's social status and status in the kinship group. In recent times these assumptions have been questioned by anthropological research investigating the relationships between the game and the rules of the game, between actors and institutions; and the hypothesis that kinship relations can be manipulated by the actors concerned, that rules may be ambiguous and that rights are not given once and for all. In other words, having a claim to rights does not make them concrete. Nor are they the only means of gaining access to resources, as it is probable that conditions of access may be more influenced by the status an actor acquires through personal know-how than by his rights. However, we should guard against a “Brownian” approach, based on the idea that the way actors behave with regard to land resources can be systematically analysed by applying the classic distinction between the norm and reality to every relationship that might be affected by land issues – IFIG relationships, but also in certain contexts, relationships between family groups, lineage groups and villages, etc. Determining the level of social organisation at which land conflicts arise and what they are over is an issue that needs to be addressed empirically, on a case-by-case basis.

It is important to study the IFIG dimensions of land tenure because they help us better understand the basic organisation of the socio-land tenure system, its orientations, the degree of security it offers, its authorities and the dynamics at work across the whole society concerned.

## 2. Empirical exploration of the IFIG dimension of land rights

In the tradition of social science research, we are not referring to one right over land here, but to a cluster of rights. From an analytical perspective, this allows us to distinguish (in a non-restrictive manner) the following rights:

- (direct) rights of use or usufruct (use rights that specifically exclude alienation);
- the right to draw an income from use;
- the right to invest;
- the right to assign land use temporarily or for an unspecified period, on a financial basis (rental, sharecropping, pledging, payment in labour) or non-financial basis (lending);
- the right to transfer land, in the sense of market (sale) or non-market (gift or legacy) alienation;
- the right to inherit (from the perspective of the beneficiary);

<sup>13</sup> Synthesis by Jean-Pierre Jacob, with contributions from Jean-Pierre Chauveau and Jean-Philippe Colin and information from documents produced in the context of the CLAIMS programme cited at the end of this document.

<sup>14</sup> As in the larger extended family group, rather than individual households.



- rights of administration, in the sense of ‘rights to define the rights of others’: control over the rights of others regarding use, assignment, investment, enjoyment of benefits, alienation, appointing an heir, etc.

The range of rights should be assessed in relations with the restrictions imposed upon them. These include:

- temporal restrictions (e.g. disposal of use rights over a plot provided the palm trees on it are not cut);
- use restrictions (e.g. use of a plot for food crops but not for perennial crops);
- the need to demand an *ex ante* agreement;
- restrictions on the form of assignment (e.g. the possibility of assignment to a sharecropper but not to a tenant);
- restrictions on who may benefit from an assignment (e.g. lending to a friend but not to a stranger).

The ethnographic approach to rights explores two complementary dimensions of rights (Colin, 2004), through:

- a descriptive exploration of rights within concrete land holdings<sup>15</sup> or, more exactly, the ‘portfolio of rights’ within four major sets of variables, describing the content of the associated rights and obligations; the origin of these rights and obligations (i.e. the mechanisms for acquiring and transferring rights); the rights holders; and the authorities, regulatory bodies and powers that take positive action to lay down the law, remind people of their obligations and sanction transgressions;
- a descriptive exploration of the social interactions around rights, through a crosscutting ‘biography’ of the elements of land holdings, the course of rights holders’ lives and their strategies for gaining access to land, the principles of justification used, possible contestations and arbitration, and the influences of the social, political and institutional environment.

**Table 1: Evolution of the ways in which land rights are held in Kongodjan (southern Ivory Coast)**

Rights associated with land resources	During the initial settlement period		Now		
	Settlers	Family help	Family council	Heirs	Rights holders
Rights to cultivate an individual plot and use the yield (but not to grow trees)	+	-	-	+	+
Right to plant tree crops	+	-	-	+	-
Right to assign through sharecropping contracts	+	-	-	+	+
Right to assign through rental	+	-	-	+	-
Right to lend	+	-	-	+	-
Rights of disposal	+	-	+	-	-
Rights of administration	+	-	-	+	-

**Table 2: Ways in which land rights are held in Wibō (central western Burkina Faso)**

Rights associated with land resources	Family council	Guardian of common lands	Rights holders
Rights to cultivate an individual plot and use the yield (but not to grow trees)	-	+	+
Right to plant tree crops	-	+(1)	+(1)
Right to lend	+	-	-
Rights of administration	+(2)	-	-
Rights of guardianship (sacrifices, management of land reserves)	-	+	-

(1) only on village lands

(2) the family council is composed of the guardian of the land holdings and rights holders

<sup>15</sup> Here, the term “land holding” (*patrimoine foncier*) denotes all lands over which an individual or family has rights of appropriation. A land holding may consist of several plots of land (that belong to a single holder, are controlled by the same single source and are linked to a particular history of appropriation).

The study of rights identified in Kongodjan (southern Ivory Coast) reveals differences in both synchrony (not all members of the family group have the same rights) and diachrony: over time and with the emergence of new generations, land holdings are passed down through the family and new authorities and responsibilities emerge regarding rights of administration (particularly the family council, which is discussed below).

The rights identified in Wibõ (central western Burkina Faso) do not reveal the modifications over time. Because these land holdings were cleared by a group of brothers born of same mother, they are seen from the outset as family holdings, whose rights of administration are jointly managed by all rights holders (see below). Furthermore, differentiation between village lands and bush lands means that the intensity of the rights and their more or less exclusive nature depends on their location.

### 3. The household, an inoperative land unit

In the 1970s economists introduced the concept of the household in the African context as a unit for gathering statistical data and as a modelable centre of decision-making. The debate surrounding the over-simplistic nature of the notion of household is longstanding but nevertheless still topical (G. Ancey, 1975; Gastellu, 1980; J. Guyer, 1981), because although the principle of diverse levels of decision-making and functions/objectives is starting to filter through into theoretical models, in most studies the household remains the unit of reference in terms of access to and use of productive resources, control over crops, etc. Two observations can be made about land tenure: (i) in many contexts the household is not a relevant land unit, and (ii) it is important to research not one, but several land units, depending on how the different elements of the cluster of land rights are controlled.

Two determining factors should be taken into account when considering land units:

- First, the fact that land units and farming units are never completely isomorphic, except at the very earliest stages of settlement and population: the size of the family holding is a limiting factor, and in a normal situation the number of people in the lineage group seeking to use some of the land is constantly growing. Farm units may be fragmented over time, sometimes very rapidly, but the legal regime usually remains fairly static, vested in representatives that belong to a broader, over-arching kinship, that includes the members of the farm units (who may occasionally share the rights of administration; see below). Looking at IFIG conflicts, the current trend seems to be to try and establish some congruence between economic structures – farm units – and legal structures – land units.
- Second, when new settlements were being established in pre-colonial times, rights over resources were distributed in order to achieve both production objectives and the broader social and political objectives of building a society. This often led to the accumulation of land decision units. Some – family or lineage groups – took on the job of managing land rights in order to make them work for the rights holders and farmers who were to be granted derived rights (rights of access, workforce allocation, distribution of produce); while others – land and political chiefdoms, regional territorial bodies – who possessed superior rights of administration to the first group, but which were limited to certain domains, used land as the basis for building a sustainable, integrated community. Here, rights were a vehicle for defining a policy on receiving migrants or for maintaining current work conditions in the long term (traditionally through a ban on alienation).

### 4. IFIG dimensions of land and productive use of land resources

The content and relative scope of the rights held by each actor should be considered in relation to their status in the family group (eldest/youngest; male/female; etc.). Those in the lowest status categories generally have the most limited cluster of rights in terms of quantity (e.g. rights of use but not of administration) and scope (rights to grow food crops but not perennial crops).

The logic governing restrictions on the content and scope of rights is based on various considerations, such as:

- holism<sup>16</sup>: the head of the group of descendants has priority access to the means of generating an income from the family holding (as the only one able to farm perennial plantations on it, for example), which he has a duty to use for the benefit of the whole group;

<sup>16</sup> The term “holism” expresses the idea of the voluntary subordination of individual interests to the common interest of the group.

- the moral economy: because they need to be able to commence productive activities, the youngest are given priority access to means of working on the family holding and older members of the group are asked to seek land elsewhere; land holders lend land to their brother-in-law because he feeds their sister (see below); and traditionally, land is lent to incomers;
- the principle of precaution: not instigating situations that are difficult to reverse (such as lending for perennial crops) and which could compromise the circulation of land under the current system of devolution;
- specific representations of what constitutes available land: a plot assigned for sharecropping is seen as 'freer' than a rented plot, and land assigned to a tenant is not seen as tied up by the *tuteur*;
- values linked to differences in social status: the youngest cannot rent out a family plot because it would show that "*he was in it for the money...*".

In Kongodjan (southern Ivory Coast), family members do not share the same opportunities to use land on the family holding, even if it is recognised that they all have the right to exploit an individual plot on it. Within family groups the only person who can invest in crops with long growing cycles, such as palms or cashew, is the person responsible for the land unit, who holds the right of administration. He also has to pay for the first marriage of the men under his authority, and the evening meal for all their families. Other family members (holding use rights) are restricted to non-perennial crops like pineapple, cassava, etc.

The family holding of Ngatta B. (an Abouré man from southern Ivory Coast) is made up of two plots. One of these, a 25-hectare plot situated in Petit Paris (a farm encampment created by the Abouré in Agni-Sanwi country, in the sub-prefecture of Adiaké) came through patrilineage (handed down from father to son), and the other, a 30-hectare plot in Malamasso (an agricultural area in the sub-prefecture of Alépé outside the Abouré area) was a matrilineal inheritance. The distribution of use rights within the family, the rights holders and the content of the rights transferred are a function of the individuals' status and membership of the kinship group. Thus, the sons of Ngatta B., who are not members of their father's maternal line, do not have rights of appropriation over the plot he inherited through his maternal line: "*I (the heir) don't give the children these rights because when I'm dead and gone they (rights holders in the maternal family) will say that everything here (plantations and fallow) is for the family*". However, Ngatta B. has granted his married sons use rights over the plot, exclusively to produce food crops for domestic consumption (yam, cassava, banana, plantain, etc.). He is seen as no more than a manager of the family land, and is not permitted to sell or permanently transfer any part of the family holding without the consent of the matrilineal council. Conversely, his children are seen as primary rights holders over the plot in Petit Paris, which may be passed down to his sons. Any farm plot cultivated by family dependents in Petit Paris or Malamalasso may only be used for crops with short growing cycles (food and market garden produce). Only the heir or manager is permitted to plant perennial crops (cocoa, coffee or cashew in Malamalasso; and palm or cashew in Petit Paris) and to rent out a portion of the family holding for pineapple and cassava production (Petit Paris).

## 5. IFIG dimensions and gender

In terms of the content and scope of their land rights, women's situation depends on their dual identity as a sister in their family of origin and wife in their family by marriage. The social groups we observed seem to be caught between two contradictory positions in this respect:

- On the one hand, they don't want to give women really secure rights because most will eventually marry out of the group. It's a matter of ensuring that the family land holding is not progressively monopolised by another family, or even another village, which could happen if a sister has the right to transfer land from her lineage group's holding. Ultimately, every girl is expected to marry into another family, and she can neither physically nor legally "*take the land with her*". For the family in-law, the new wife is an outsider who may (and sometimes does) return to her family of origin if there is a problem with her husband or in-laws. With the Winye in Burkina Faso, the wife has access to *ñanvigu?*, fields that have been left fallow for a short time by their husbands, but cannot object if these fields are taken back for a collective production project undertaken by the farming unit. The same constraints apply to young men from the group who farm individual fields.

- On the other hand, they want to accord women status as full members of their original lineage group – as sisters, or daughters of the patrilineal family. This is done through use rights: their sons may also benefit from use rights and sometimes even administrative rights over the group's lands before the woman is married or (as is more often the case) when she is no longer married. While they are married and remain with their husband, their group of origin still has the same concern, since the head of the group usually feels obliged to accept requests to lend land to their brothers-in-law on the basis that they need it to “*feed our sister*”.

Two further points need to be made before we can discuss women's situation in the current West African context in more depth.

The first concerns the effects of the commodification of land. The three cases from Mali presented below show how this recent phenomenon has transformed the way that women gain access to land ownership, as a result of both jurisprudence and decisions taken within the family. In terms of access to land, women's situation does not appear to be getting any worse. Both traditional and modern institutions seem to have realised that levirate is no longer a viable means of reducing women's economic insecurity after the death of their husband, and certain elements of the moral economy mentioned above seem to persist and play a role in protecting women's interests, particularly a brother's duty to assist his sister and her children.

The first case concerns Dialakoroba, the main town of the rural commune, which is located some 60 kilometres from Bamako. When a major landowner in this village died leaving no male heirs, his younger brother, who had not lived with him, began selling off his lands. One of the daughters of the deceased claimed some of the land for herself, her sisters and their impoverished mother. When the matter could not be resolved at the village level, in May 2002, she took her case to the court in Ouéléssébougou, which had jurisdiction over such disputes. It was discussed at a sitting of the civil court on 26 December 2002, despite pressure from village dignitaries who wished to settle the issue through customary channels.

The judge declared the case admissible and ruled that the defendant (the paternal uncle) should hand over eight cultivable hectares of the contested land and pay costs, on the basis that he had removed the customary nature of the land by seeking to make money out of it. While recognising the merits of the niece's request insofar as she wished to maintain her sick elderly mother by selling some of the land, her request for additional land was dismissed as excessive in relation to the remaining lands. It was reduced to the proportionate amount of eight hectares, which she sold, and continued to assist her mother until her death.

This ruling is not unusual, and the two cases below show that women's right to land ownership is sometimes recognised through customary channels too. These cases took place in Banko, a village in the rural commune of Sanankoroba, situated about 30 km from Bamako.

Several decades ago the Massarana lineage group assigned some land to a Jula family originating from Ivory Coast. After the head of this family died, an émigré from the village sold part of the land that was not fully used to an incomer. When the chief of the lineage group was informed of this transaction he fought to retrieve the land that had been sold and make it available to the widow, saying that the field had been assigned to her husband and that as his heir she had the right to do what she wanted with it – thereby explicitly sanctioning women's right to land ownership through inheritance. The widow subsequently sold part of the land to meet her needs.

In the third case, the same Massarana lineage group assigned some very fertile land to a Guinean who had settled in the village and married a woman from the clan. When the couple ran into financial difficulties the husband wanted to sell off part of the land and went to the clan elders to get their advice. They told him that as the land had been a gift he was free to do what he liked with it, but reminded him that as he had been given it because of his wife, their sister, it would be good form to see what she thought about it, so that her children couldn't accuse their maternal uncles of having dispossessed their mother and failing to assign them any of the clan lands.

The second point concerns the availability of land on family holdings. Where there is pressure on land and an increasing need for cash, a woman's situation seems to depend upon both the availability of land in her group of origin or marriage and her opportunities for income-generating activities, whether or not these are connected to an investment in land.

Where there are no economic alternatives for income generation outside of agricultural production, holistic considerations work against women. Lower status groups are disenfranchised as priority is given to men, farm heads and those with family responsibilities. M. Doka and M. Monimar highlight the fact that, in southern Niger, the growing scarcity of this resource has resulted in women voluntarily relinquishing their land, mainly to their married sons: *"I don't work in the field any more. I handed it over to my married son because he didn't have any land. How could I carry on farming at my age and leave my son with no land? In return he gives me two sheaves of millet after the harvest"* (2004; 7). In Mali, women have been forced to hand over their cultivated land, and NGOs are seeking to secure their access to land by negotiating with village chiefs and lineage or family chiefs to get small plots for the women's groups they are training, especially for market gardening activities (see the example below).

Where opportunities for income-generating activities exist outside of agriculture in the strict sense, women use the same holistic considerations (prioritising men's needs) to explain their disinvestment in land.

During our studies in Kongodjan (southern Ivory Coast) we found only two women (sisters of heirs) exercising their use rights over family plots. This very low level of female participation in productive activities was not due to lack of use rights over family lands however, as women's right to access to land on the family holding is clearly recognised. It emerged that they had chosen to renounce this right because of the lack of land, and were putting the men's needs first...

Women in Kongodjan are generally rarely involved in productive activities. However, they are very involved in processing activities, particularly the production of palm oil, and the introduction of selected palm oil groves has enabled them to create an income-generating activity. They obtain seeds by gathering them after the palms have been cut and/or buying them from growers. Families with palm groves have an internal household 'market' whereby women buy seed from the head of the family (in addition to the seeds gathered up in return for removing produce from the edge of the plantation). The rationale behind this intra-family financial relationship seems to be that the money earned from processing palm oil will not be used to cover daily household expenses: *"she'll sell the oil she produces and keep what she makes on it, while I have to cover the outgoings"*. The market transfer of palm seeds within the household frees women from any obligation to the head of the family regarding their processing activities: *"once he's sold us the seed we don't owe him anything more on that score... we earn money for ourselves, and then he feeds us"*.

Development agencies have encouraged women in Bancoumana (Mali) to set up groups in order to gain long-term use rights over borrowed land, which they generally use for market gardening. NGOs like AMAPROS (Association Malienne pour la Promotion du Sahel) require borrowers to sign written documents to further secure these rights. AMAPROS uses two kinds of document: (i) a certificate of land assignment issued in the name of the village authorities, who then assume responsibility for the assignment even if the plot belongs to a specific owner. The certificate records the area and location of the plot, the nature of the activities undertaken on it (market gardening only) and how long the group will be using it for – usually an unlimited period. The certificate is signed by the village chief, the owner of the plot and the administrative authorities; (ii) a protocol of land availability. This is issued in the name of the owner of the plot, who agrees to make the land available to the group for an unlimited period. It specifies the area of the plot, its location and the nature of the activities undertaken on it (market gardening), and requires the group to recognise the assignor's ownership rights. This document is signed by the owner, the women's group, the village chief and AMAPROS.

## 6. The relationship between access to family and non-family lands

When land is scarce the stability of IFIG arrangements on family lands depends upon flexible access to rights outside the family holding. For producers, access to personal use rights on the family holding (tenure security as a private asset) is more or less critical depending on whether the overall system allows them flexible access to land outside the family holding, through FVI, for example (tenure security as a common asset). Thus, there is a structural link between tenure security as a private asset and tenure security as a common asset. Writing about the Bobo of Baré, Mahir Saul (1993) highlights the fact that rights holders can accept certain restrictions on the content and scope of their rights within the family holding, which is never large enough to satisfy all their needs, if they are assured of finding the means to work elsewhere. The author particularly stresses the importance of maintaining internal autonomy within the group as a condition for balancing tenure security as an individual asset against tenure security as a common asset. The pressure of external factors such as high levels of immigration or a public policy that undermines security can reduce opportunities for access to derived rights, which may in turn affect management of the family holding. When they are deprived of external access, farming units tend to want to secure their internal rights by forming land administration units and challenging the higher family units that previously played this role.

In Kongodjan, the only way that land is made available to active young unmarried male family members is by assigning them rights over family lands. These assigned plots only represent part of the land that other family members use, as they rent plots elsewhere. The model that emerges reveals available family land as a 'pool' of land that serves to start productive activity; with the relative amount of family land in the overall area used by an individual diminishing as their activities develop (this is particularly true of pineapple production).

## 7. IFIG and the sale/purchase market

The relationship between the IFIG dimension of land tenure and the sale/purchase market is particularly evident in the constraints on putting land up for sale. We observed Winye landowners in central western Burkina Faso consistently refusing to sell, and a process of market involution where a sale/purchase land market used to exist. According to Colin *et al.* (2004), a land market emerged in Djimini-Koffikro (southern Ivory Coast) when elderly settlers who had cleared the land returned to their region of origin, but swiftly closed again. Over time the transfer of land holdings through inheritance transformed the settlers' individual ownership into family ownership, and the land holding then became a collective asset shared by the whole lineage group. In this context, the growing perception that land is becoming increasingly scarce, the introduction of new crops with economic potential, and restricted employment opportunities outside agriculture constitute significant disincentives to sell land. When achieving security for the family is a primary objective, possession provides an element of social security in an uncertain environment. This function may explain the refusal to sell in societies where land has not gone through a phase of commodification.

## 8. Inter-generational dimensions of land tenure dynamics

There is a range of inter-generational relationships that can affect land tenure. They can be summarised as shown below:

Type of analytical situation	Sociological implications	Subject of investigation
Different generations co-existing within the same family group at a given time	Differences of status within the family, related to age and position, and their consequences in terms of the distribution of rights and participation in the administration of rights over the family land holding	Rights management within the family
Passing of generations within a single family group over time	Internal family mechanism for transferring rights (assignments, inheritance) and its evolution	
Production of society based on successive generations (continuity, irreversibility, rupture...)	Conditions experienced by each generation ('life opportunities'), and the difference they can make in relation to national history (plans)	Land relationships within the family and more general sociological issues

The first range focuses on the fact that generations within families do not succeed each other in the strict sense of the word, but are constantly overlapping, so that members of different classes are contemporaries for at least part of their lives. This is a source of tension that can lead to open conflict, depending on whether or not the younger generations accept the established forms of pre-distribution, production and distribution, or the decisions taken by their elders (especially regarding the distribution of rights) that partly determine their living conditions. All the themes that we have already seen, come back to this dimension.

The second range involves the transmission of rights between successive generations. The system of explicit norms and practices empirically observed in many of the systems studied reveal two types of transmission within the framework of a land unit that includes several farm units:

- Transmission through the indirect line, where inheritance passes from the eldest to the youngest brother before progressing to the next generation (to the eldest son of the eldest brother).
- Transmission through primogeniture, where inheritance passes from the eldest to the next oldest in the lineage group, regardless of their position in generational succession. This system is usually adopted by groups where the interplay between land units and units of consumption means that the eldest can argue the fact that they worked to feed younger members of the family when they were young themselves, and that their prerogatives are “*the benefits of their labour*”. It is not age alone that creates authority, but the fact that age signifies effort invested in sustaining those who came later. To use the language of Meillassoux (1982: 64), elders justify their position of authority by referring to the “organic, lifelong relations” that characterise production relationships within the domestic community, and the cycle of advances and returns this entails between age groups.
- In the relatively rare cases when the land unit covers a single farm unit, the chosen form of transmission is from father to (eldest) son. Inheritance is the dominant mode of access to land appropriation almost everywhere, with other modes of access depending on the existence of a sale/purchase market (for purchases) and the individualisation of land ownership (for gifts). It is worth noting that in central western Burkina Faso the traditional means of settling new villages was by giving land (thus involving a gift from one community to another), while in eastern Burkina political chiefs used gifts to thank zealous servants by setting them up in production (when they got married, for example).

The transmission of rights between generations entails a renewal of the authorities at the head of the land units. This renewal is often the occasion to re-examine rights both within the family (reconstituting units on the family holding and possible segmentation of family land authorities), and outside it (lendings to incomers, decisions to sell). Once again, it is a question of knowing whether, when the head of a farm dies, his successor can challenge prior arrangements agreed with a borrower (contesting an unlimited lending, for example) or, in certain zones, the sale of a plot. The answer varies according to the territory. Kaboré (forthcoming, pp.90-91) reports that this would be highly unlikely in Mossi areas of central northern Burkina Faso, as borrowers can bring misfortune upon an heir seeking to challenge the arrangement made by their dead father by reminding them of the origin of that arrangement.

In far western Burkina Faso or Ivory Coast, however, there seems to be a wave of disputes during this pivotal period when a new generation comes to power and challenges past agreements as one of its first acts of authority over a given legal unit (family or lineage group) (see Colin *et al.*, 2004; Zongo, 2001; Zongo and Mathieu, 2000). In central western Burkina Faso, the Winye in particular appear to use the renewal of the authorities as an opportunity to introduce modifications into their farming systems. Decisions to separate economic units are often taken by sons after the death of a father who had previously maintained the unity and objectives of the group. These decisions naturally have consequences for land tenure.

The third and most complex range (because it is the least specific) covers:

- The structural effects of tension and changes in internal family management on local society as a whole. Shifting attitudes among the young towards older generations and other local actors (lineage group and village authorities, resident incomers, local agents of the administration, etc.) are linked to the breakdown of local norms and regulations and the increasingly marginal role that land plays in lives marked by constant movement between rural and urban areas. Ultimately, in this type of context land is no longer expected to fulfil a social security function at the level of a group, but to be an interchangeable asset that is adapted to constantly changing individual interests.

- The implications of inter-generational issues for local society on a broader scale. The ‘young’ should therefore be envisaged as a particular ‘social class’ with specific claims that may, in particularly favourable historic situations (‘windows of opportunity’<sup>17</sup>), have a lasting effect on the destiny of a society as a result of the ‘plan’ that it seems to be pursuing.

Bodiba, central western Ivory Coast. This young man sold his land to a Burkinabé so that he could go to Abidjan and produce a record. However, things didn’t go as expected and he had to return to his village, where he had many problems. He accused his father of not giving him the land he wanted, and this led to an argument. When he couldn’t get his way he went to the Burkinabé he’d sold the land to and tried to take it back [...]. The new owner resisted so the young man went to the village chief, who told him that if he wanted the land back he’d have to repay the full cost of purchasing and putting his land to productive use...

## 9. IFIG conflicts

The potential for IFIG-level conflicts seems to depend on a range of factors far too numerous to be identified here. While individuals belonging to the same group often acknowledge sets of similar principles, norms, rules and rights, there are also situations where actors disagree over how these should be deployed, either because they interpret the principles differently, because they refer to several competing principles to justify their rights, or because they have different ways of ranking the principles to be used. Furthermore, the dynamics of rural areas range from situations where the usual social or ethical standards don’t apply, where IFIG relations no longer seem to obey any shared rule and where resentment dominates (especially among the young), to situations in which a family moral economy continues to operate and preserve a certain stability in internal relations, even if objectively the situation of those in the least favourable statutory position doesn’t seem very far removed from the kind of situation that will set off the most violent recriminations elsewhere.

We believe that these situations of high or low tension can be explained by several criteria:

- Socio-economic context: the key issue here is knowing whether rural populations primarily operate according to a logic of agricultural production or whether they are trying to earn money by assigning their available land. A range of factors come into play here, such as the existence of marketable crops, restrictions on or opportunities for employment outside agriculture, the presence or absence of an active sale/purchase market and a system of historically established *tutorat*, flexible access to land on or outside the family plot, etc. The hypothesis is that financially motivated behaviour tends to exacerbate tensions within IFIG relationships.
- The capacity of subordinate members to accept the ideology of the family group, particularly the values promoted by their elders, which are expressed through the restrictions they impose on the content of rights. In central western Ivory Coast, a Gban father may assign a plot to his son during his lifetime, provided the son accepts that he does not have full rights over this land and does not behave as if his father were already dead (“you can’t eat mushrooms off a living tree”). In Kongodjan (southern Ivory Coast), a Sénufo rights holder may assign a plot obtained from the family holding for sharecropping but must not rent it out; sharecropping is not seen as tying up the plot in the same way that rental is, and younger brothers are not permitted to earn money by assigning plots on their family holding. Furthermore, he is expected to subordinate his individual rights over family lands to their holistic function of providing social security for the whole group. Of course the family ideology is much easier to accept if individuals feel that these restrictions are balanced by greater personal freedom (“I don’t benefit from the plantations, but I don’t work on them either”, see box below), that they have alternatives that allow them not to be wholly dependent on the family group for access to the means of production, or that they benefit from the products of labour or income that the elders receive because of their privileged position in terms of access to land or their relations with the ‘incomers’ received onto family lands (through the *tutorat* system).

<sup>17</sup> 1946 and 2002 in Ivory Coast (J.-P. Chauveau, 2005), 1974 in Benin (P.-Y. Le Meur, 2005).



In Kongodjan, rights management within the family very rarely results in open conflict. We didn't come across any cases of contested inheritance or disputes within the family over land assigned for indirect use. However, this lack of open conflict doesn't mean that tensions don't arise. During the study heirs were frequently accused (but never to their face) of managing 'common' palm groves for their own ends: *"He sells the seed and keeps the money just for himself and his family. He gives the seed to his wives to make palm oil and the other women have to buy seed to make their oil"*. Another complaint (again, never made openly) is that they don't fulfil their obligations to assist the family group: *"We don't know what he does with the money. He's no help if you've got a problem, you have to sort it out yourself or borrow money"*. However, the heirs feel that they are fulfilling their responsibilities, especially by assigning use rights over land, mainly to the youngest men, making sure the whole family has an evening meal and paying for their dependents' weddings.

Actors use their 'dissatisfaction' to explain their lack of interest in 'family plots', and particularly to justify the fact that they no longer help with work on the palm or cashew plantations. Constraints on individual access to family land are overcome through recourse to the rental market: *"There are too many problems with the family, so if I've got the money to avoid all that I rent land elsewhere and grow whatever I want on it"*. In Kongodjan, the existence of a micro-regional FVI market helps explain the low level of conflict within families over managing shared land resources: being able to seek land on this market helps reduce pressure on family land resources. Conversely, the FVI market is a source of tension in Djimini-Koffikro and the Abouré country, where there is internal family conflict (particularly between different generations) over the distribution of income from the land between actors who are primarily in the position of suppliers for this market.

The Abouré see joint ownership of family holdings as a source of family 'unity' and 'security': *"Family lands allow the family to eat [and resolve social problems (funerals)]. Dividing the land would be like splitting up the family. What could you do with two hectares of palms? If someone in the family came to you with a problem you wouldn't be able to help if the land had been shared out, and then he'd go round saying you're nasty. So it would create divisions in the family, wouldn't it? The Juula understood this long ago. They work together. But we Akan, we all want a piece for ourselves. That's why we're not going anywhere"*. However, when land is relatively freely available the Abouré are in favour of parcelling off family holdings. This practice is seen as a means of satisfying the numerous rights holders in the family and defusing disputes between them: *"If you've taken a big plot of land then you're the head of the family [owner or manager] and you should divide it up..."* The beneficiaries of these lands are only the managers of family land assets, and do not hold individual ownership rights over the family holding.

## 10. Conclusion: towards an individualisation of IFIG rights?

Having started with the 'orthodox' theory of ownership rights, which holds that pressure on land resources leads to the individualisation, privatisation and commodification of land rights, at the end of this examination of IFIG relations in several West African societies it seems over-simplistic to talk about the individualisation of rights without specifying which elements of the cluster of rights are affected by this phenomenon. When individualisation is proven, it usually affects rights of use, and is not followed by an individualisation of rights of appropriation. This actually signifies that the privatisation of structures of production does not entail a concomitant privatisation of land structures.

In the context of Kongodjan (southern Ivory Coast), the individualisation of rights of appropriation could be envisaged if the availability of land on family holdings was bigger, or if opportunities for access to land outside family holdings were declining (which would probably lead to family members quarrelling over obtaining these rights).

The examples studied by J.-P. Chauveau in central western Ivory Coast and the cases from south western Ivory Coast presented by GIDIS are perhaps those where the individualisation of rights of appropriation seems most advanced: here we observed segmentation of authority within lineage groups, strategies for rapid accession to the status of autonomous adult through marriage, assignment during the rights holder's lifetime, etc. However, this is

balanced by the fact that each time a rights holder dies, there is a desire to put administration rights back into the hands of the extended family group (particularly among the indirect descendants of the deceased), which naturally leads to disagreements between members of the group over the identity of those 'who have the right to define the right'. At least everyone agrees on one point, and it is this that breathes life into the notion of the family as an extended lineage group: that it would be 'immoral' to take the problem to the local administration for arbitration.

## Documents produced within the context of the CLAIMS programme used for this synthesis:

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*This synthesis is also based on the work notes of Amadou Keita, Moussa Djiré, Jean-Philippe Colin, Marcelline Soro, Georges Kouamé, Jean-Pierre Chauveau, Jean-Pierre Jacob, Samuel Bobo, Jonas Ibo, Mariatou Koné and N'Guessan Koumé.*

## CHAPTER 4

# Land governance: actors, arenas, governmentality<sup>18</sup>

### 1. Conceptual framework

The underlying hypothesis of the notion of land governance in the approach presented here can be formulated as follows:

In the countries covered by the CLAIMS programme, access to land and associated natural resources is the focus of growing competition, which frequently results in latent or open conflict. (The first hypothesis to be tested empirically was the existence of regional differences in competition over land and its more or less conflictual nature). This competition is shaped by varying degrees of legal pluralism, a proliferation of institutions and the politicisation of land. Modes of regulation and arbitration are emerging that seek to instil an element of predictability into the land arena, but it has to be remembered that actors are endowed with different material, social and cognitive resources; institutions enjoy different degrees of authority and legitimacy; and the various participants have different interests, which may include an interest for stability or disorder. As all these interactions contribute to the production of land governance, it is defined here as an emerging mode of regulating land tenure relationships and the social field that they define.

Because of its moral, normative and institutional pluralism, land tenure is characterised as “a semi-autonomous social field” (Moore, 178: 54-81) with no fixed *a priori* boundaries and rules. It should be represented as an arena, or rather a set of arenas, within which social actors and political and political-legal institutions (state or other) compete over access to land resources and control over this access (Ribot & Peluso, 2003). This confrontation takes place on two levels: (i) between individuals and groups competing over rights of access to and use of land resources, and (ii) between authorities battling to assert the legitimacy of their control over these rights, and thus their capacity to define and enforce the rules of the game. These two levels interact: defining the rules is a constant issue for everyone involved, and the legitimacy of the controlling authorities is the outcome of a reversible process of interaction with potential or actual users (Lund, 2002). Not everything is possible or thinkable, and actors’ room to manoeuvre is limited by a spectrum of moral principles that generate specific repertoires of justification which have, over time, underlain specific modes of governance.

The notion of governance as a mechanism for regulation – in the broad sense of producing order and/or disorder (Le Meur & Lund, 2003)<sup>19</sup> – is analytically different from that of governmentality (Rose, 1999; Agrawal, 2005). The latter refers to the manner in which the individual or collective behaviour of actors in a specific social domain becomes, in a given historical context, a matter of concern for the authorities and is seen as an issue/problem that requires the government to take ‘action on actions’. Use of the term should doubtless be broadened beyond just state intervention to cover forms of human government involving non-state institutions (see Jacob, 2004, and forthcoming; Le Meur, 2006). Thus, the institution of *tutorat* could also be thought of in terms of governance – as an element that contributes to the regulation of land tenure alongside other institutions; while governmentality could be seen as a way of thinking about integrating strangers into a moral and political community at broader levels – at the national level in Ivory Coast (Chauveau, 2000).

<sup>18</sup> Synthesis by Pierre-Yves Le Meur.

<sup>19</sup> To put this concept of regulation into perspective, see Lavigne Delville & Hochet (2005: 98 *et seq.*). Here, the notion of governance is used as a kind of synonym (governance as a mechanism for regulation). Lavigne Delville & Hochet rightly observe that “the regulation of conflicts, i.e. the way in which differences of opinion, disputes and conflicts are dealt with by society [...] is thus an important aspect of the regulation of access to land and resources [...] and is not limited to this. It also concerns the production of the rules themselves and the dynamic interactions between rules and practices” (*ibid.*: 98). In the end, the difference between governance and regulation – above and beyond their shared philosophy of process – can be summarised in terms of outlook or angle of attack, with the former more centred on the actors and political and legal authorities, and the latter more focused on modes of normative production.

The two points below illustrate how this ties in with other components of the CLAIMS programme:

- Analysis in terms of governance enables us to raise the question of public policies without either overestimating their capacity to transform the way that land tenure works or underestimating their role; the very fact that those public policies exist creates specific constraints and opportunities (see Chapter 6 on public policies).
- The binomial governance/governmentality allows us to re-examine the boundaries and links between the public and domestic domain, without *a priori* setting their limits (see Chapter 3 on IFIG dimensions).

## 2. Actors and arenas

### 2.1 Plural actors, authorities and arenas

Land governance is the product of social interactions between actors and institutions in plural arenas. The first opposition shaping land arenas is that between actors seeking to win or maintain access to land resources and those – the political and legal authorities – seeking to legitimise control over this access. The first set of actors is itself highly diverse. Social actors engaged in land issues can be categorised according to a number of opposing elements that can be deconstructed and refined through empirical observation. A key defining element found in all sites is the difference between indigenous actors and incomers. However, its importance may vary, and the opposition between ‘autochthonous’ actors and ‘strangers’ evolves over time. It is the outcome of specific histories of population and mobility, and is organised within specific institutions such as *tutorat* (see Chapter 2). The second distinction is the one between rural and urban actors. Case studies have shown that the trajectories of mobility are complex and cannot be reduced to the simplistic idea of rural exodus. On the contrary, we are witnessing the growing importance of new actors in rural areas, young men without formal education, migrants, civil servants who lost their jobs in the wake of structural adjustment-type programmes, and entrepreneurs who are often involved in the development of market land transactions and contributing to the ‘rurbanisation’ of the West African countryside.

The more classic opposition between the elders and the youths, men and women, collective and individual actors, and farmers and herders continues to shape land issues. However, each of these categories is heterogeneous, and collective actors such as clans, lineage groups and households rarely function as homogenous entities.

The political and legal authorities involved in land are equally diverse due to institutional pluralism: the territorial administration, development services, courts, commune- and village-level authorities, NGOs, development and natural resource management projects, diverse committees arising from development programmes, hometown associations, religious movements, traditional and earth chiefdoms, etc. The State/society dichotomy is giving way to a more complex landscape as each of the two entities reveals its plurality and the boundaries between them shift and change. However, two types of authority occupy a central position in many of the study sites: the territorial administration (prefects or sub-prefects) and ‘traditional’ chiefdoms. They seem to embody two distinct legal systems: the national/state system and the local/customary system. The trajectory of the chiefdoms differs according to country and period, as they sometimes work closely with the State apparatus and sometimes distance themselves from it; while the territorial administration may at times play a very ‘customary’ local role. The institutional mechanism created by development projects and the councils emanating from laws on decentralisation also play an increasingly important role in land governance.

The history of settlement and political change is a determining factor behind the proliferation of political and legal authorities, as well as in the development of land arenas and legitimacy (through the interplay of precedence and mobility, and the weight of certain ‘pivotal events’ and ‘paths of dependency’, such as the one historically linking Ivorian prefects to colonial district commissioners). Local land issues are not merely local, in the sense that ‘local’ issues are negotiated and regulated in diverse arenas that are not always local, while local circumstances are subject to modification by external interests.

### 2.2 How these actors and arenas function: weak hierarchies, political regulations, normative pluralism

Land arenas are not only pluralistic, but are also poorly regulated and hierarchised, while the competencies and boundaries of land tenure authorities are often fluid and poorly defined. The characteristics outlined below were established by observing certain phenomena:

- There is no clear hierarchy of authorities that ‘must’ be dealt with when seeking recourse, which is generally guided by the interplay of interests, competencies and expectations. ‘Forum shopping’ is very widespread, conflicts are often ‘calmed’ rather than ‘resolved’ and files frequently reopened. Despite everything, there is evidence of ‘statistical’ rather than ‘normative’ consistency, as in central Benin, where the chiefdom constitutes a semi-systematic point of passage in the regulation of affairs (although at different times and with different effects), like the sub-prefect in Ivory Coast.
- The administrative authorities and *gendarmerie* are often asked to advise or intervene way beyond their official mandate and act as semi-judicial arbitrators, in a context of profound under-administration. In the cases we observed, the territorial administration often prioritises peace over justice (cf. Hagberg, 1998 on this theme) and ends up functioning like a customary authority rather than following codified procedures. A major difference from Anglophone countries like Ghana is the weak position of the courts, which is further undermined by the political nature of the system for nominating prefects.
- Operating alongside the state authorities, in a way that often verges on the informal, are the authorities created by development mechanisms. Assuming state prerogatives over surveillance and the power to sanction, their position is sometimes ambiguous, particularly with regard to natural resource management and the role of the forestry services. As interpretations and situations change they may find themselves allied with either the State or the associative authorities – a point illustrated by the management of non gazetted forests in central Benin (Le Meur, 2006).

**Western Burkina Faso.** We observed that it is not only individual actors who go ‘forum shopping’, choosing between several authorities according to their particular interests, as the authorities themselves may choose whether or not to regulate the disputes brought before them. Individual actors strategically select the authority most likely to guarantee them access to priority rights, and by approaching them in large numbers they in turn guarantee the authority of the institution and its ‘right to lay down the law’. Its legitimacy thus depends upon maintaining this authority and hence respect for the rights it defends. In this sense, authorities may end up choosing which battles they will engage in according to the risk posed to their survival (Bonnet-Bontemps, 2005).

The relationship between claims over rights and the functioning of the authorities is played out through the implementation of competing justifying repertoires for these claims. The pluralism of the authorities is mirrored by a normative and moral pluralism: justifications may be contradictory and used strategically by different social actors, but they may also constitute a common ground, which, for example, uses the principle of common humanity to allow incomers to be received into a community. Such principles or repertoires are associated with the interplay between communities of belonging.

**Central Benin.** Beyond the strategic game played by actors in local arenas, the projects mentioned – whether they are of local or external origin – embody the principles of justification and the political objectives that help model local communities (democracy,<sup>20</sup> legitimacy, the power of the State; and territorialisation, rooting the State in local areas, creating village lands as a particular form of “villagisation”; Woost, 1994; Scott, 1998). The manner in which public policies (here, decentralisation) are interpreted, anticipated or bypassed is not just a matter of the authorities competing for legitimate power to control and allocate resources, it concerns and shapes ‘moral’ or ‘epistemic’ communities based on the values (justifying principles) that shape local identity. It is possible to determine (i) a discourse on indigenism (on several levels: union in the face of migrants, and opposition – or rather parallel coexistence – between the indigenous Tchabé (Yoruba) and Mahi); (ii) a discourse on village lands, territorial or domianial, which tends to harden opposition between localities (the village level is central here), where the key is control over the frontiers of settlement, migrants and natural resources. These discourses may engage with (iii) local norms of perceiving and managing space (still steeped in the frontier spirit and reasoning in terms of lines of crops and corridors of cleared land: these representations are found in the expression of conflicts over land); and (iv) a principle of common humanity as the basis for receiving migrants. The more or less stable combination of these repertoires will – already does – contribute to the modelling of policies on decentralisation and natural resource management in this region of agricultural colonisation (Le Meur, 2006).

<sup>20</sup> To paraphrase Jean-Pierre Jacob (2002), democratic representation as the political expression of the principle of “shared humanity”.

## 2.3 Sociology of conflicts

It is well known that studying conflicts can be an informative part of the process of analysing the functioning of land arenas,<sup>21</sup> a fact that was confirmed by several studies conducted in the context of this programme. Conflicts appear as specific, but not autonomous, moments in a chain of social events and processes that regulate access to and control of land (Le Meur, 2002: 13; Lavigne Delville & Hochet, 2005: 98). As P. Lavigne Delville and P. Hochet emphasise (ibid: 103), the processes of negotiation that generate land regulations are “more or less conflictual according to the contexts and actors involved in the negotiations: the practical boundaries between regulation and conflict are very fine”.

We could go further and expand the empirical and methodological hypothesis that taking conflict as the point of entry in understanding social issues (a functional but not functionalist concept of conflict as a socially revealing mode of communication) will bring us to the position that conflicts may unfold within the framework of shared normative rules (conflict of interpretation) or focus on the rules themselves (Bailey, 1969; Chauveau & Mathieu, 1998: 245; Lavigne Delville & Hochet, 2005: 103).

J.-P. Jacob makes an interesting proposition in this respect. Comparing the results of J.-P. Colin’s study in southern Ivory Coast with his own work on the Winyé in Burkina Faso, he advances the theory that the level at which conflicts emerge corresponds to a specific level of integration – into a community of belonging – at which positive arbitration between tenure security as a public and a private asset no longer operates. This hypothesis allows us to identify and analyse the types of conflict that correspond to specific land tenure situations. In the case from the Winyé country studied by J.-P. Jacob (2004, forthcoming), conflicts emerge at the inter-village level because this is the weakest link in the local policy of integration through land tenure, either because of pre-colonial history (villages belonging to different networks of earth shrines), or because of colonial and post-colonial history (policy of villagisation; see Chauveau, Jacob, Le Meur, 2004 on this subject). According to J.-P. Colin, the preponderance of intra-family conflicts in southern Ivory Coast is due to the determining role of the family group as the membership group and institution regulating land (Colin *et al.*, 2004).

In the frontier context that characterises and moderates land tenure in central Benin, different levels of integration and different membership communities may compete over how migrants and land resources are governed. The two elements at play here are autochthony (possibly across ethnic groups) and village territory (vague administrative boundaries; Le Meur, 2006).

This proposed sociology of conflicts is inextricably bound up with reflection on the moral principles and basis on which claims are made (Boltanski & Thévenot, 1991; Widlok, 2002) mentioned in the previous section. It also allows us to reflect more deeply on normative, legal and institutional pluralism, beyond the banal observation that they are ever-present and play a determining role in the dynamics of land tenure.

**Mali.** Although plurality of norms is presented as something of a given fact in rural African societies, it seems that this may no longer apply to the social organisation of access to resources. In Minyankala, communities organise different levels of social and geographic membership through access to land and natural resources, from restricted access within the lineage group to sharing outside the village. There are repertoires of norms justifying the modes of access and delimitation of user groups for every level at which access and membership is organised. However, when an objective development such as resource scarcity prevents this type of organisation from evolving, contradictions emerge between these repertoires of norms and justifications. Thus, when crop residues used by both farmers and herders become scarce, farmers stop wanting to share them with the Fulani in the region. A contradiction then emerges: the Fulani continue to claim that crop residues should be shared outside the village, in the name of an agro-pastoral economy of sharing based on poor control over resources and a logic of precedence; while the farmers tend to view the crop residues as the product of their own efforts in order to justify them being controlled and appropriated by those using the plot – whose position is legalised by the validation of a commu-

<sup>21</sup> “There is only openly declared conflict when the charge of symbolic or physical violence goes beyond what is considered tolerable in daily social relations. Conflictual social interactions frequently hover on the boundary between intimidation, which is often found in ordinary social interaction or negotiation, and its passage to action. The identification of conflict is thus relative to each society and its modes of regulating conflicts, according to the types of confrontation likely to arise” (Chauveau and Mathieu, 1998: 243).

nal charter on crop residues. This kind of contradiction leads to many conflicts. In certain areas of Minyankala farmers and herders envisage an intermediate level of membership and access based on the exploitation of nearby productive land (fields and pastures) and regulated by the notion of “*sigi bè du dya*” (good neighbourliness), but the existence of the communal charter has allowed some farmers to challenge past agreements with their neighbours and pursue claims against the Fulani for damage to their fields. This example shows the need to recognise the role that the emergence of contradictions in the repertoire of norms plays in the dynamics of organising access and membership; how pluralism and the interplay between actors could be explained by broader structural factors (Hochet, 2005d).

### 3. Intermediations

In many cases modes of access to and control of resources are organised through mediating relationships, which play a determining role in land governance. These are the relationships involved in *tutorat*, social networks, brokerage, patron/client relations and the exploitation of ‘social capital’. Much can be learned from empirical exploration of these mediations, particularly the configurations of actors that establish these relationships: dyadic relations between two individuals, interventions by individual or collective actors functioning as intermediaries (NGOs, hometown associations, farmer organisations, political parties), the involvement of government agents, networks linked to migration and diasporas and ritual mediations (earth shrines and chiefdoms), etc.

In terms of governance, the forms of mediation identified not only concern access to land (or more precisely, access to a bundle of specific rights over land resources), but also access to state administrations, development projects and information – including legal information, which is an issue linked to citizenship (Le Meur, 2006). The ability to access information and political and legal authorities is, of course, an essential resource in contentious situations.

#### 3.1 Forms of intermediation and actors involved

There are several main categories of intermediary actors, whose functions cover political as well as land issues.

- *Tuteurs*. As we saw in Chapter 2, *tutorat* is both a client/patron, dyadic relationship regulating migrants’ access to land resources, and an institution that facilitates their integration as strangers into a moral and political community. This second function introduces a third party, the local community, into the relationship, which is thus not really dyadic (the community is ever-present, at least in the background). The *tuteur* acts as a double intermediary between the migrant and the land, and between the migrant as stranger and the host community, with the bundle of rights and obligations that he establishes driving this dual integration.
- *Brokers*. Land brokers have emerged in areas of agricultural settlement where land tenure is highly uncertain (such as central Benin), settling migrants without developing a type of *tutorat* relationship that is embedded in local forms of the moral economy, but which doubtless fits into other forms of market interactions. This new phenomenon is reminiscent of the intermediary in sales and purchases of land, and should be monitored (cf. Djiré on Mali, Mathieu *et al.* on Burkina Faso).
- *Networks and membership communities*. Chapter 2 showed that the settlement of migrants in a locality tends to lead to the development of ‘chains of *tutorat* relationships’, with each intermediary acting as ‘gate-keeper’ and controlling information. This automatically puts the *tuteurs* in a position where they are competing with the authorities in trying to control the flow of migrants, either with a view to the possible financial benefits or rent (chiefdom, commune, hometown association) or in order to implement an operation to recognise land rights (such as a rural land plan).

The box below presents two interesting empirical examples that broaden the notion of social mediation or brokering by connecting it with modes of regional governance and with the trajectory of the State, which may be built on alliances with ‘political brokers’.<sup>22</sup> It also brings to mind the case presented by M. Zongo, of Burkina Faso, of ‘neo-*tuteurs*’ settling fellow countrymen fleeing the crisis in Ivory Coast.

<sup>22</sup> See the notion of the peasant-State (Bauernstaat) developed for francophone West Africa by G. Spittler (1981), and revisited by J.-P. Chauveau with regard to Ivory Coast (2000).



**Benin.** By attempting to impose charges on incomers settled in the area, the neo-customary chiefdom in central Benin was assuming the role of a public body regulating incomers. In doing so, it set itself up as a tutelary institution for migrants and entered into a complex relationship with ‘individual *tuteurs*’, somewhere between competition and alliance, that also involved controlling information about the past (historical settlement patterns) and present (settlement of migrants) (Le Meur, 2006).

**Ivory Coast.** The customary institution of *tutorat* is not only the cornerstone of land tenure relations (a dimension that looms large in current literature on the agrarian history of Ivory Coast), but also a basic element of the politics of belonging in multi-ethnic rural communities, and finally, a political condition for the construction of the State. These elements are also found in the current context of the closure of the agrarian frontier, where they have had different effects due to the difficulties that the “peasant-State” mode of governance has in integrating them (Chauveau, 2006).

### 3.2 The market as an element of governance

If governance is a matter of regulations, the market as an institution seems to be a constituent of these regulations. Without going into the details of this debate (see Chapter 1) it is worth considering several elements that are relevant to our analysis.

Looking at ‘transitions in land tenure’, one can see modes of institutionalisation spanning a whole set of unplanned and largely uncoordinated actions and procedures. This is reminiscent of the grey area of ‘administrative custom’ in the local validation of transactions and resolution of conflicts over the sale or purchase of lands, where ‘*petits papiers*’ (unofficial papers) and informal contracts are used to try and introduce an element of predictability and stability into the land market. The land brokers mentioned above also play an active role in the functioning of land markets.

Secondly, in certain contexts the market seems to play a central role as an institution that regulates land tenure relations and contributes to the production of highly market-based governance. The cases from frontier zones (western Burkina Faso, south eastern Ivory Coast) are instructive in this respect, but doubtless very different. In the cases from southern Ivory Coast, J-P. Colin suggests that there is a link between the emergence of a market and a weak assertion of autochthony. He also shows the non-evolutionary emergence of a land market (in this case, the involution) in western Burkina Faso, where an upsurge in land transactions has not triggered the emergence of ‘full’ sales, and where claims of autochthony are becoming more firmly entrenched.

**Southern Ivory Coast.** The economic dimension of the frontier first appeared with the institution of land holdings and spontaneous emergence of individual private rights over land. This did not preclude the subsequent transformation of the first settlers’ individual land holdings into family land holdings, and the introduction of inheritance. The frontier nature of this micro-region also facilitated the emergence of a land market, insofar as the land rights of the first settler were not based on customary inheritance and therefore allowed him to use the land as his own. In a subsequent involution, this market closed as land passed into family ownership. This frontier aspect may also explain why these sales are often considered as ‘full’ sales that completely free the purchaser from any further obligation to the vendor, unlike many transactions in the forested regions of Ivory Coast. The initial conditions of access to land (no customary rights holders, no *tutorat*, rights based on clearance), absence of indigenous land claims and ‘full’ nature of the sales all help explain why land rights are not challenged, even in the current socio-political context (Colin *et al.*, 2004).

The subsequent emergence of a rental market in southern Ivory Coast as pineapple production developed will also play an important role in resurrecting the barrier between ‘autochthonous’ actors and ‘strangers’ (from northern Ivory Coast and Burkina Faso). While the market may make a significant contribution to the production of land governance, it does not function alone, but interacts with other modes of access to and control over access to land. When the legitimacy of transactions is contested, as in western Burkina Faso, people talk of ‘transactions without a market’, in the sense that they are not socially recognised or are disputed.

**Western Burkina Faso.** Two types of strategy have developed as awareness of land scarcity and tenure insecurity has grown. More and more indigenous actors are trying to recover land assigned to migrants 20 or 30 years previously (often by the parents of current decision-makers about land tenure), more or less unilaterally withdrawing this land. Those migrants who are able to do so are increasingly trying to use financial means obtain or secure their land rights. Financial payments were originally defined as gifts or assistance given in order to maintain a good relationship between families. Nowadays, however, (and very progressively and patchily, depending on the area) they have a more obvious economic significance, and are seen as the price of renting agricultural land (...). The new transactions and diverse formalisation practices described above fall somewhere between custom and modernity, between 'ancestral lands' and the market, between the local sphere and that of incomers seeking land. Land is exchanged for money, but there is no market. None of the papers described above mention the words "sale" or "purchase", or the price of the asset (or ownership rights) exchanged in the transaction. This is a financial transaction in which money is given in return for the ownership rights obtained, but as a social practice it is a hybrid and hidden affair. We are looking at financial transactions with no market and perhaps not even any merchandise, as there is no social recognition of the fact that land may exchange hands as a commodity (UCL, 2005; Mathieu *et al.*, 2000; Mathieu, Zongo, Paré, 2002).

## 4. Territorialisation of land governance

### 4.1 Mobility, access to land and internal frontier

Land governance is about territories, differentiated ascendancy over land and the creation of geographic and conceptual boundaries: the territorialisation of the influence of the 'traditional' or 'modern' authorities (political and territorial chiefdoms, religious authorities and earth shrines on the one hand; and land use management, diverse committees and administrative boundaries on the other) that play different roles in regulating (controlling) access to natural resources. The overlap between these different authorities creates uncertainty and change as they interact with non-territorialised networks and the politics of belonging.

The question of territorialisation should not, of course, be reduced to state forms of local and territorial anchoring, but should deal with other forms of territorial control, such as customary controls linked to earth cults (Jacob, 2001) or the territories of lineage groups that express specific forms of mobility (Breusers, 1999). 'Customary' forms of land control reflect the particular history of settlement in a region, and manage the paradoxical link between mobility, human controls and access to land resources. The notion of the internal frontier developed by I. Kopytoff (1987) is useful here, beyond the pre-colonial historical framework for which it was conceived, as it allows us to place mobility at the heart of the creation of social and political order, rather than viewing it as a consequence of some dysfunction or 'anomaly' (Chauveau *et al.*, 2004).<sup>23</sup>

The social organisation of mobility is tied into the construction of complex, multi-localised '*espaces d'actions*'. The Ivorian crisis is significant in this respect, with its deep roots in a specific history of mobility and the State. Having created 'repatriated' and 'new' actors and the '*neo-tutorat*', it is now generating a specific form of transnational governance that is having a major impact on land tenure.

<sup>23</sup> "The model can also be enriched by adding in the mechanism for development, which has become a structural component of Southern societies. The metaphoric use of the notion of the frontier is productive here, especially if one retains the discursive practices behind the logic of development as an exogenous intervention involving a body of institutions. The rationale here is the conquest of spaces imagined as "institutional voids", which are filled by institutions exported wholesale, the trend towards segmentation and the identical reproduction through the proliferation of local development projects and ad hoc committees – here we find the theory of the cultural conservatism of the frontier advanced by Kopytoff (1999) – the temporary and often unacknowledged or denied coexistence of the competing narratives of the developers and the developed, who have differing visions of where it all began, whose idiom and vector of legitimacy are the ideologies of participation and modernisation; and finally the frontier entrepreneurs embodied by the multitude of brokers, NGOs and consultancy firms" (Chauveau, Jacob & Le Meur, 2004: 17).

## 4.2 State anchoring and the developmentist configuration

Land governance involves complex configurations of institutions that are largely driven by state and development mechanisms, which generate highly territorial logics by setting administrative boundaries, classifying areas such as forests, national parks, etc., and through patchy deconcentration of state services and the modalities of 'communalisation' or 'villagisation' currently associated with 'land use management'-type interventions. These forms of territorialisation are bound up with the specific trajectories followed by colonial and post-colonial states.

**Mali.** In Mali, municipal territories are used as the basis for defining the spaces and resources covered by decentralised natural resource management bodies. However, the social organisation of access to resources by the Minyanka is based on a more general, supra-village vision that has grown out of a taboo on setting boundaries to village lands: "No-one who sets limits between villages will last 24 hours". This lack of boundaries effectively guarantees peaceful relations between villages that are bound together by a web of derived rights, marriage and seasonal farm encampments, as well as tensions and quarrels that are always forgiven but never forgotten. In recent times certain actors have started to capitalise on these contradictory norms of territorial organisation.

The logics of three heterogenous entities/concepts as the frontier, the State and development do not sit easily together, and often lead to territorial contradictions. In this perspective, we should recognise the true value of "the local history of global policies" (Jacob) in revealing the range of different influences and local reinterpretations of public interventions. Thus, one could show that in western Burkina Faso the results of the Agrarian and Land Reform launched under the Sankara regime are clearly visible, while central western Burkina is still affected by the policy of the First Republic of Upper Volta favouring emigration from the east to the west of the country. This is reflected in Jean-Pierre Jacob's description of the ups and downs of the RLP in Burkina Faso (Jacob *et al.*, 2002; Jacob, forthcoming), with the need to reintegrate the traditional tutelary authorities of migrant villages in the AVV schemes (all Mossi) as another example of the local redevelopment of a given intervention involving both institutions and territories.

**Central Burkina Faso.** "A review of local history and socio-anthropology will show that the social fabric of Ganzourgou is such that the project is likely to be unevenly appropriated. Because of their particular history and poor internal organisation, migrants, who are the most important group targeted by the RLP in terms of its social policy objectives, turn out to be the least capable of (or interested in) ensuring that the practical effects of its application are regulated. Conversely, neighbouring indigenous villages, which are not the primary beneficiaries of the operation, will be key both to its introduction and implementation. Wherever possible, local chiefdoms will play the role of *tuteur* in this respect, in correcting the opportunistic behaviour that will inevitably arise due to the poor socialisation of the applied technologies" (Jacob *et al.*, 2002).

Just as national policies are subject to different local interpretations, authorities of exogenous origin also take a variety of forms. This is illustrated by the village land management committees instituted by the RLP in Ivory Coast (Koné *et al.*, 2005) and the land management commissions created in the context of rural land plans in Benin and Burkina Faso. Finally, the functioning of development, particularly the frequent use of so-called 'pilot' interventions (see Le Meur, 2006, on rural land plans in Benin) is a factor of territorial heterogeneity that could make it difficult for deconcentrated administrations and decentralised authorities to co-ordinate their activities.

It is from this angle that we can ascertain the effects of decentralisation policies on the land arena. Articulation between political and administrative decentralisation and land policy is generally poor, although attempts have been made to address this in Mali. Benin seems interesting in this respect, with a future rural land law that explicitly anticipates this link and integrates the rural land plan into the legal framework, but it is much too soon to make any judgements about its actual implementation.

## 5. Land and social change

The empirical fields discussed above are entry points (for actors, arenas, mediation functions and the type of territorialisation of land governance) that also allow us to organise data from the field. Beyond the interactions and strategies observed or reconstructed during field studies, it is a matter of trying to identify the main trends in land governance (and how to analyse them) over a longer time frame.

Jean-Pierre Jacob distinguishes three major modalities of change, based on his work in Burkina Faso and that of Jean-Philippe Colin in Ivory Coast (as well as the results obtained by M. Saul, 1993):

- The change associated with successive generations: land and political relationships include a structural inter-generational element characterised by varying levels of tension between autonomy and dependency, which tends to be either flexible or conflictual, depending on the context (cf. Chauveau, 2005; Le Meur, 2005).
- Changes linked to the succession of worlds (cf. Jan Vansina, on history as “the accumulation of static political stages” in societies with an oral tradition).
- Changes related to loss of the group’s autonomy (having to choose between the objective of tenure security as a common asset or tenure security as a private asset).

Although they are formulated in different terms, similar concerns are found in certain documents considering *tutorat* and frontier institutions from a historical perspective (Chauveau, 2006 on Ivory Coast; Le Meur, 2006 on Benin).

The evolutionist hypothesis put forward by J.-P. Jacob (forthcoming) is interesting in this respect, positing a loss of autonomy in local arenas and their transformation into a semi-autonomous social field, as it allows us to consider the relationship between bundles of rights and authorities in a historical perspective (provided it is used in relation to specific historical sequences and not as an over-generalising framework for interpretation). To make the most of this hypothesis, it would be worth combining it with a series of similar propositions regarding:

- Institutional transition, particularly from the perspective that there is a commodification or transformation of local norms over spaces where land controls are weakest.
- The tendency to focus on the complexity of interfaces between the local and the supra-local, which relates to questions of institutional pluralism and the influence of hybrid, state and development-oriented mechanisms.
- The tension between the processes of regularisation and situational adjustment (Moore, 1978), revisited from the actor’s perspective in terms of recreating autonomy (this would be the viewpoint of autochthonous and neo-customary movements) or the instrumentalisation of heteronomy (and legal pluralism).

These viewpoints also see the theme of land governance as clearly related to the question of political citizenship, especially in the sense that property relations are both a matter of recognising rights and creating individual and collective identities (Hann, 1985: 5). Social interactions and normative repertoires shape the production of local governance, which tends to reconfigure the relations of power and belonging, hierarchies and identities according to historical trends. There is still a plurality of models and referents. The procedures of governmentalisation (ways of thinking about different kinds of behaviour, autonomy and control) are not merely the exercise of power by the State and its territorial effects. There are many sources of governmentalisation, state and non-state, demonstrating the different sources of power in local political arenas and their insertion into broader power networks (Agrawal, 2005), but there is also a degree of regularity. Not everything is possible or thinkable, and actors’ room to manoeuvre is restricted – on the one hand by a spectrum of moral principles that generate specific repertoires of justification, and on the other by the needs of particular activity systems.

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## CHAPTER 5

# Policies and interventions on land and natural resource management<sup>24</sup>

## 1. Introduction

Contemporary research on land issues in West Africa has tended to focus on local land dynamics and the processes through which rights and modes of access to land and natural resources have evolved. However, there has been less interest in looking at land and natural resource management policies and interventions as a subject in its own right. What are the processes involved in formulating land policies and interventions? How are decisions made? How are the issues presented? How are these types of operation or projects supporting natural resource management implemented? How do the practical conditions of their implementation influence their impact? Why are there still discrepancies between public norms and local realities, even though negative effects of these inconsistencies are widely acknowledged? And do NGOs manage to avoid such contradictions in their interventions?

This chapter aims to synthesise the main findings of the project on this theme, in light of the literature on public policies.

## 2. Contemporary land policies in the broader context of national policies

### 2.1 Numerous reforms since the 1990s

#### *A historical constant: population management and relations with local authorities*

Formal and informal public interventions on land have always been (and still are) shaped by population policies: in Ivory Coast, for example, where indigenous actors were forced to receive migrants to help develop plantations in the locality, or in the old migrant settlement zone in west Burkina Faso which is also the cotton basin. The long history of land policies reflects the close links between the “government of men and the government of nature” at the level of both political customary territories (Jacob, 2004) and the State (Chauveau *et al.*, 2004): population management and land allocation, the control and integration of migrants, and relations between local authorities and the overarching political powers are integral elements of land issues.

#### *The global/sectoral connection and reforms of the 1990s*

Legislation on land and natural resources in the four countries studied has been reviewed in more or less detail since the early 1990s. This was prompted by the need to harmonise legislation with the more liberal economic policies instigated in the wake of structural adjustment plans (the introduction of private property in Burkina Faso with the 1991 Agrarian and Land Reform, or RAF), or following political events and democratic transitions (suspension of the Forestry Code after the revolution of March 1991 in Mali). Such political events may have a profound effect, as with the promulgation of the RAF in 1984, a year after the Sankara revolution, or relatively little impact, as with the revolution of 1991 and democratic transition in Mali. Thus, the evolution of land policies is linked to political change and the evolution of global economic policies, in what Muller (1990) calls the “global/sectoral connection”.

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<sup>24</sup> Synthesis by Philippe Lavigne Delville, based on documents produced in the context of the CLAIMS programme cited at the end of the text, and contributions from J.-P. Chauveau, Ibo Jonas and M. Djiré.

### ***The enduring model of “immatriculation” and “concession”***

Apart from the episodes when private ownership was abolished in Burkina Faso and Benin, land policies are still based on the State-centred land tenure model of colonial origin, with “immatriculation” as the sole form of private ownership. “Immatriculation” is the procedure by which, in francophone countries, private ownership is given by the State to an individual. Unimmatriculated land is seen as part of State Private Domain, and local rights are accorded varying degrees of recognition – sometimes merely tolerated. The long and costly procedure of “immatriculation”, first in the name of the State and then on an individual basis, is supposed to guarantee the rights recognised and justify the attribution of unassailable title of full private ownership. A “concession” is a temporary use right allocated by the State, under conditions of effective use and investment, which can after some time be transformed into title through “immatriculation”.

It is some time since the limitations of “immatriculation” were first analysed, along with the impossibility of applying it on a large scale, and the easy opportunities it offers urban classes and the State to appropriate rural lands with little respect for local rights. Djiré (2005) shows how this last point still holds true in the Malian commune of Sanankoroba, some 30km from Bamako. Although local demand for titles has rocketed, government agents represent 41% of titleholders, the State 36% and local people 1%, meaning that 99% of titleholders live outside the commune! Furthermore, the complex procedures that are supposed to make the system completely reliable are often bypassed, irregularities abound, and it is not uncommon for the ‘land brokers’ who specialise in monitoring the progress of files to get agents in the state property department ‘interested’ in pushing their files through the system.

In this respect, draft legislation on the rural land regime in the Republic of Benin that has been in preparation since 1999, and is currently awaiting debate in Parliament, marks a major break with the principle that land belongs to the State. Like immatriculated land, lands that are “subject to rights established or acquired according to local custom or practice” are considered as part of private lands. These rights are recognised and protected, may be transferred and assigned, and may also benefit from the new land certificates introduced following rural land map operations (Lavigne Delville *et al.*, 2003). However, this draft legislation also allows mayors (or prefects, for plots over 100ha) to continue the practice of granting rural “concessions” on state and local government lands, theoretically reduced to next to nothing by its treatment of customary land.

The enduring nature of allocation procedures that may lead to registration testifies to the extraordinary historical continuity of both traditional political concepts and colonial policies, where lands were assigned (and withdrawn) by the political authorities.

### ***The debate on local/customary rights: innovation or revival?***

Much of the current debate on land policies revolves around the question of local/customary rights and their legal status, since it is seen as important to recognise and secure these rights in the interests of both economic development and social harmony and citizenship. The historical analysis of Malian legal texts proposed by Djiré (2004, 2005) shows that this is not a new issue. The modalities for establishing and legally securing local rights were put in place at different points in colonial history, especially after the decrees of 1955 and 1956,<sup>25</sup> when the former overturned the need to prove the existence of local rights when applying to immatriculate land. After Independence the desire of the new independent elites to control development and national construction led to a reversal of this trend, and the State’s power to dispose of unimmatriculated lands was reaffirmed.

Thus, recognition for local rights is a re-emerging, rather than emergent, theme. Despite the very different political and economic context, perceptible increase in population densities and competition over land, and radical changes in technical tools (GPS, MIS, etc.), there are similarities between these colonial procedures and the current proposed reforms that merit more systematic study. The current debates can be seen as a renewal of the move towards recognising local rights that began at the end of the colonial period and was suspended by various regimes after Independence.

However, there is no general political consensus on this option, even within governments, which may be involved in parallel attempts to introduce wide-scale registration. The 1998 Ivorian land law provides individual or collec-

<sup>25</sup> The first decree anticipated the creation of a general cadastral survey by making an inventory of all customary rights, while the second specified the procedure for establishing customary rights (Djiré, 2005: 18).



tive land certificates on customary plots, but make it compulsory to immatriculate these plots land within three years: this means that the possession of land certificates is not a way to secure customary, individual or collective rights but only a temporary step towards full individual private ownership. Furthermore, while the issue of customary rights is certainly re-emerging amid a growing will to secure the rights of rural actors, the resurgence of indigenous movements and chiefdoms, and challenges to the rights assigned to migrants raise questions about the type of customary rights that are recognised and secured. These questions, and the winners and losers created by this approach, also need to be addressed in discussions and policies on this issue.

## 2.2 Production of land policies: the context of recent legislation

Turning now to the actual processes used to define land policies and operations, we need to consider the context in which these projects emerge. Who carries them forward, which networks of actors are involved, and what are the key questions that issues crystallise around? Here we distinguish between policies and interventions, not because they involve different processes by virtue of their very nature, but because operational demands mean that projects are defined according to a different logic. Furthermore, public development projects cannot necessarily be perceived as the implementation of national policy, given the fact that governments are dependent on external funding, and the role played by donors in project design.

### *The various versions of the Agrarian and Land Reform (RAF): an “inaugural” policy developed as economic policy in Burkina Faso evolved*

In order to achieve the two major objectives of the 1984 Agrarian and Land Reform – food security and access to housing (Kieffer, 2004) – it was decided that customary logics were to be replaced with rational public management that focused on development.

The RAF was the product of the Sankara Revolution, drafted in forty days by a small core of young executives versed in Marxist analysis and ‘pro-Third World’ theories, and promulgated on the very anniversary of the Revolution and renaming of the country. Aimed at making the urban middle classes and rural population the social base of the regime, it amounts to what Jobert (1990) calls an “inaugural policy”: one that establishes new compromises between actors and thus breaks with earlier orientations.

Despite being regularly criticised, particularly in relation to rural affairs, the RAF remains the frame of reference for debate on land issues in Burkina Faso. It responded to the aspirations of the young urban middle classes by easing the bottlenecks in parcelling and selling off public lands to urban developers, and in 1991 and 1996 was reviewed by the same core group that drafted the first version, in order to address certain issues raised by structural adjustment. The aim of first review was to remove some of its more ‘revolutionary’ aspects and harmonise it with the new policy of ‘rectification’, introducing the notion of private ownership demanded by the World Bank in the context of the Structural Adjustment Plan. The 1996 review was prompted by more technical concerns, such as the need to meet the conditions for selling empty plots under the new urban programme, and to make the text more coherent (Kieffer, 2004).

### *The missed “window of opportunity” at the time of democratic transition and the following review of the Land Law in Mali*

The transition to democracy in Mali began with the Revolution of 26 March 1991, which was the starting point for major political, economic and social reforms. After the rural uprising against the apparatus of the State (and particularly the Forestry Department), a national debate held in 1991 to assess conditions in rural areas was followed up with a national conference on rural lands in early 1993. These resulted in the creation of a national Land Observatory under the aegis of a committee in the Ministry for Rural Development, which was responsible for formulating a land charter, drawing on the results of the Observatory.

However, this was undermined by lack of guidance for the process, the disappearance of key figures within the MDRE and a parallel initiative by the Ministry of Finance to revise the 1986 Land Law. In 2000 the Ministry of Finance published an order (passed into law in 2002) reaffirming the principle that lands belongs to the State and that private ownership is possible through immatriculation. While it also accorded slightly clearer recognition to customary rights than the 1986 Land Law (Djiré, 2004; 2005), the decree determining how this would be put into practice was the only one that was never promulgated.

So it seems that the “window of opportunity” created by the transition to democracy and the mobilisation of large numbers of rural actors was missed. The prospects of an alternative policy dwindled along with the government’s will to reform and the MDRE’s ability to steer the land charter initiative, and the eventual outcome was no more than a simple adjustment of the Land Law.

### ***The Ivorian legislation of 1998, created in a context of deep political and social crisis***<sup>26</sup>

In Ivory Coast the liberalisation policies of the 1990s were not particularly restrictive in terms of land tenure. Despite its ‘liberal’ component, the 1998 land legislation was primarily the result of negotiations within the Ivorian political elite aimed at resolving the breakdown of the previous model of productive agricultural use and, more generally, the socio-political crisis that was hitting young urban men particularly hard.

So it seems that the main thrust of the Rural Land Law (Law N° 98-750 of 23 December 1998) was internal political regulation. The first draft presented by the MINAGRA in 1996 unveils the concept of ‘Ivorianness’, in the sense of state ownership of land and as a way of addressing the needs of large numbers of landless young men.<sup>27</sup> The 1997 version took the opposite course – using custom, and thus the values of ‘indigeneness’, to establish the original legitimacy of recognised and certified rights and exclude non-Ivorians and legal bodies from ownership.

The law was formulated against the troubled backdrop of preparations for the 2000 presidential and legislative elections, with their tumultuous politicking and appalling press campaigns. It was eventually voted in with just one abstention in December 1998, at the same time as the IMF suspended its aid to Ivory Coast.

Under this law customary rights are recognised and may be secured with ‘land certificates’. However, it is based on an ‘essentialist’ vision that ignores the many changes that customary rights have undergone, particularly all the rights obtained by migrants. In a context where ‘Ivorianness’ is being promoted, it thus encourages ‘indigenising’ interpretations of customary practice. Furthermore, the compulsion to register certificated lands within three years made the law a mechanism for establishing widespread individual registration through land certificates rather than a mechanism for recognising local rights.

### ***The new rural land legislation in Benin: an inaugural policy with no public debate?***

The future rural land legislation in Benin has followed a completely different course (Lavigne Delville *et al.*, 2003). After the transition to democracy in 1991, experiments in recognising local land rights began in 1993 under the aegis of the PGRN project.<sup>28</sup> The draft legislation, which was directly inspired by projects aimed at testing the Rural Land Plans (PGRN and PGTRN), resulted in the creation of an inter-ministerial committee and a committee of experts charged with analysing the situation and suggesting how it could be resolved. After numerous internal debates, this committee proposed a draft bill that was endorsed at a national workshop in 2001 and then presented to rural organisations in various regional seminars. In order to facilitate the rapid application of the law after its promulgation, the PGTRN called upon international expertise to prepare an action plan for its implementation. After some minor observations from the Supreme Court, the draft legislation was adopted by the government and sent to Parliament in the first quarter of 2005, for registration during the parliamentary session in early 2006.

Attempts by other ministries to challenge the justification for a specifically rural law and set registration as the ultimate objective were successfully contained. The specificities of rural land tenure are more or less established, and the draft legislation has made it through to Parliament, even though it was produced by a group of national experts and was not subject to broad public debate. It is particularly paradoxical that this draft legislation marks a major break with the principle that land belongs to the State, and thus also constitutes an inaugural policy: if the law is voted in without major modifications it will herald a significant change and will be the first piece of West African legislation to clearly recognise local land rights.

<sup>26</sup> Chauveau, 2002, 2003; GIDIS-CI, 2005.

<sup>27</sup> This was the basis of the Rural Land Map in Ivory Coast.

<sup>28</sup> A national natural resource management programme, which became the PGTRN in its second phase – the Village Land and Natural Resource Management Programme.

## 2.3 Elements of analysis

### *Specific, contingent processes*

Land reforms are called upon to address very different issues, thus confirming the specificities of national trajectories, historical paths of dependence and the links between land policy reform and global issues. This is equally true of the processes used to define reforms, in terms of their duration and the types of actors mobilised, and in the relationship between internal expertise (at senior levels of government), public debate, external pressures and the leadership of particular ministers. It is remarkable that alternative processes to immatriculation emanate from the Ministries of Agriculture and Rural Development, clearly demonstrating that rural lands and rights other than registration are not seen as a matter for the State Property Department.

The inter-sectoral nature of land issues is also viewed differently in different countries: in Burkina Faso the RAF has always been a multi-sectoral initiative, while in Benin the strategy is firmly rooted in the Ministry of Agriculture. There are ties with the Ministry of Justice, but there is no cross-ministerial authority dedicated to land issues, co-ordination is patchy and tensions regularly arise, particularly with the Ministry of Infrastructure, Habitat and Town Planning.

Donors' roles also seem to vary greatly (even if their strategies for influencing countries are not restricted to explicit conditionalities). Thus, while the conditions imposed by the World Bank were an acknowledged part of the 1991 review of the RAF, it has not interfered with the process in Benin. Donors did not seem to exert any explicit pressure in favour of privatisation in Ivory Coast, and the French Development Agency (AFD) has supported the work of the PGTRN and helped update preparations for a law without making any demands regarding its content.

### *More arenas than forums*

Apart from participating in the consultative procedures that are proposed to them, rural actors seem to be remarkably absent from these processes. The only exception to this general rule was the discussions following the national conference in Mali. Overall, the processes of reform are based more on the logic of political expertise and arbitration within limited networks than on broad processes of public debate. According to Jobert's distinction, these types of 'forums', in the sense of "*places dominated by debate and arguments over the meaning of policies*" (Jobert, 1999: 135) did exist in Mali in 1992-1993 and, to a certain extent, in the preparatory seminars for the review of the RAF. However, the main aim of the debate and parliamentary campaigns in Ivory Coast and feedback seminars for farmer organisations in Benin was to 'explain the law'. Consequently the prevailing logic is one of 'arenas' where "*the institutional compromises of a political system are negotiated*" (idem).

In the cases from Burkina Faso and Benin one can also identify a small number of key individuals and political entrepreneurs, actors who are in the land debate for the long haul, who play an essential role and sometimes straddle several institutional positions.

### *Incomplete policies?*

Another important element noted by many observers is the incomplete or even contradictory nature of many texts, which has led to:

- legal frameworks with no explicit policy, as in Benin;
- internal contradictions or arrangements that are virtually impossible to implement;
- incomplete regulatory mechanisms where none or only part of the decree has been promulgated.

Such contradictions are due to a number of factors: time constraints on defining processes, shaky compromises between different visions that lead to internal inconsistencies, division of labour that results in texts being drafted by lawyers who know little about the situation on the ground, legal reviews that reproduce procedural norms without sufficiently questioning whether they are realistic, the strategic will to make a particular arrangement unworkable by making it too vague, complicated procedures, etc. Given the complex interplay of actors around the major economic and political issues involved in this multi-sectoral theme, it is understandable that, here like anywhere else, there are many opportunities to create contradictions. Nevertheless, questions do arise regarding the underlying political will to act – the capacity of the State to take responsibility for arbitration and guarantee that texts are coherent and feasible, and beyond that, the role that the legislation will play in policies (Darbon, 1997).

### ***Effectiveness and ‘social working’ of the law***

Policies and laws are not effective in their own right, as they only alter the reality they are intended to shape or modify by changing the practices of the actors concerned. This is done through a double filter: first, the way in which they are read and interpreted by those responsible for their implementation, according to their particular context and capacity to act; and then by the way in which the actors concerned react to them, by either appropriating them or trying to protect themselves from their effects.

The effectiveness of the law is a problematic issue in situations of normative pluralism and “semi-autonomous social fields” (that have a certain degree of autonomy in the production of norms) (see Chapter 4). Depending on the context, public action wavers between coercion and negotiation with local authorities in complex interactions within the “local mechanism for land regulation”, which is defined as all the actors who – by right or by practice – make decisions about land (Lavigne Delville & Hochet, 2005).

Thus, many sources in Burkina Faso confirm that prefects do not always have the right version of the RAF, and that even when they do they do not necessarily know how to use it. Faced with many concrete problems that are not addressed by the text (such as the withdrawal of lands granted to migrants in the old cotton basin), they have to fend for themselves with no guidance, policy or procedures, acting according to their sympathies and making decisions that may vary from one department to another.

However, the effectiveness of a law does not depend upon its strict application. In the competition for land, actors use the law strategically according to the issues at stake. In Ivory Coast, for example, the law passed in 1998 is not enforced because of the political crisis, but some of its arrangements are widely known and are already used in local argumentation. The fact that non-Ivoriens cannot gain access to land ownership is widely used to justify strategies for taking back land, even when incomers currently using land have the legal right to do so (Chauveau, 2002b, 2003; GIDIS-CI, 2005). Thus the law is one element in the changing relationships between actors, used to legitimise certain arguments and undermine others.

## **3. Formulation and impacts of land operations: rural land maps**

Rural land maps (RLMs) are a procedure for identifying and registering local rights (Gastaldi, 1998b; Chauveau, 2003a). They use a plot-by-plot approach, combining land rights surveys and demarcation of plots, and leading to *procès-verbaux* (PVs)<sup>29</sup> that establish a consensus over local rights. After a phase for disclosure and gathering possible contestations, PVs signed by rights holders and their neighbours can be used to draw up a map of plots and a register of rights holders. These rights can then be legally recognised, if the legislation permits.

### **3.1 Transfer of institutional technology<sup>30</sup>**

Funded by the French Development Agency (AFD), the World Bank and GTZ, the PGRN is an initiative that has made tackling environmental issues an integral part of its procedure to develop water catchment areas and respond to conflict over land in rural areas. The AFD and World Bank proposed the RLM component as a strategy for responding to conflict and land insecurity, having funded this type of approach in Ivory Coast since 1990. The concept was initially designed to identify vacant lands for young men in Ivory Coast, and subsequently reconfigured to secure land tenure there. The AFD then transposed a scaled-down version into Burkina Faso to deal with tensions between indigenous actors and migrants settled by the government in the context of AVV operations (*Aménagement des Vallées des Voltas*) in the 1970s and 1980s (Jacob, forthcoming).

The fact that this single tool (or several very similar ones) is intended to serve a range of objectives is not only due to the many aspects involved in securing land tenure, but also to the tendency to see the tool as a response in itself and to “find problems for the solutions” (Naudet, 1999), formulating diagnostics and problems to resolve as a function of the potential supply. While they may start from an initial common ‘concept’, RLM operations in these coun-

<sup>29</sup> Written minutes of a discussion held in the presence of a government official.

<sup>30</sup> Cf. Le Meur, forthcoming.

tries are put in place in different institutional contexts and with particular implementation problems that oblige them to adapt and develop their own procedures. Beyond the links established through study trips, mobilising the same experts and circulating information, these operations develop and draw their own specific trajectories.

### **3.2 ‘Structural amnesia’ and its consequences**

Development projects often suffer from ‘structural amnesia’ with regard to previous activities, acting as though there is no history of prior interventions in the locality. The consequences of this are particularly evident in operations like the Ganzourgou RLM in Burkina Faso (Jacob, forthcoming). The justification for this project was the need to stabilise the situation for migrants settled by the government several decades earlier as part of the AVV programme, in a new context where it seemed unlikely that they could rely on the ‘power of the State’ to secure their position in the area.

However, the RLM procedure takes no account of the history of migrant settlements or the successive arrangements that have enabled communities to co-exist until now. It starts again from scratch in identifying rights, creating land management committees without recourse to the authorities already in place and consequently creating considerable leeway for prior agreements to be renegotiated. Although the State is supposed to be the ‘guarantor’ in this matter, the fact that it ignores these agreements shows that it has little respect for them.

### **3.3 Negotiating a local base and capacity to act**

A project cannot simply impose itself in the local arena on its own, even if it has the financial backing to do so. It needs to negotiate its acceptance and capacity to act by engaging with the local population and compromising with the local authorities and local administration if they do not support it. After the authoritarian interventions of the Kérékou regime, rural people in Benin were worried about a procedure that prioritised use rights (and thus migrants’ rights) in the land surveys, so they prevailed upon the PGRN to put ‘ownership’ rights first, even though this meant that these rights might be secured over and above use rights, which had been the initial target in order to safeguard production.

The situation in Burkina Faso was much more tense, and because the privately implemented intervention did not have the support of the local administration, the team had to negotiate its capacity to act with different actors, seeking out local political chiefs and imams, and mobilising former AVV agents to intervene in land mediations, etc.

Thus, the production of land operations is not simply the outcome of the design phase (deciding on the project concept, conducting feasibility studies, making decisions about funding and institutional setup, etc.): it is a permanent process of readjustment, of formulating and renegotiating objectives, operational modes and strategies for institutional appropriation over the course of the operation. These processes of adjustment and negotiation, and the capacity of local actors to influence modes of action themselves are an important element of projects, which is overlooked by rather determinist interpretations that overestimate the autonomy of projects and their capacity to impose themselves.

The capacity of an initiative to evolve therefore depends on the power play between the actors involved (the project’s capacity to impose itself, and local actors’ capacity to negotiate their contribution to the planned activities and even influence their modalities); the internal logic of the project (which may be precisely planned or allow for some flexibility); and existing feedback mechanisms, if there are any (monitoring and evaluation, procedures for debating project orientation, mobilising expertise to draw on elements of the field work and propose modifications). Finally, as we shall see below, it also depends upon the flexibility of the cognitive frameworks shaping the project.

### **3.4 Increasing or undermining security through rural land maps**

Rural land maps are based on a procedure that includes land rights surveys, and demarcation and mapping exercises. Although the aim is to ‘clarify’ rights by identifying all rights, whatever their origin, in reality RLMs concentrate on rights of appropriation and cultivation rights on family units. The implicit assumption (to which we will return) is that ‘clarifying’ rights and boundaries will contribute to tenure security. However, the socio-political

nature of land regulations means that rights can be adjusted or renegotiated, and that different actors often hold different rights over the same plot. The ambition of making an inventory of all rights translates into a methodology that in practice, *volens nolens*, selects the rights listed and encourages greater security for some rights at the expense of others. Furthermore, in situations where the underlying political choices are not explicit or survey teams are ignorant of local land history, it opens up opportunities for previously recognised rights to be challenged or manipulated. Thus, certain Dioula villages in Ivory Coast that had been settled for centuries found their land holdings contested by neighbouring Sénoufo villages (Chauveau *et al.*, 1996); while in one area of Benin, lineage chiefs who played only a political role and were not involved in land management found themselves recognised as ‘managers’ of family holdings exceeding 1,000 ha. This kind of leeway would not have been possible in other areas where RLM field agents were better acquainted with the situation.

The social impact of RLMs is particularly unclear in areas where relations between indigenous actors and incomers are strained. Jacob shows that in Ganzourgou “*the particular technique of registering rights introduced by the RLM [...] is a factor of insecurity in places or for problems that local institutions have no capacity to regulate*”. Here this involves pastoral areas and wetlands between indigenous villages and villages in the AVV (where there are no claims on lands allocated by the State).

Nevertheless, it cannot be said that RLMs systematically undermine security or encourage opportunism. After RLM operations were announced in the region of Sinendé, in northern Benin, Edja reports that local negotiations were held in advance of the survey phase to clarify the status of certain spaces. So there is no mechanical effect one way or the other. The outcome depends on local context, the configuration of actors and the level of tension over land. It is also a function of the way a project operates: whether it has legitimacy and political support, whether the team has the skills and capacities to manage the interaction between local realities and the methodological framework, etc.

Paradoxically, the RLM survey procedure ‘works’ well where there is functional local capacity to regulate – even though this is also where it is less obviously useful (since real problems of insecurity are limited and arbitration procedures are effective). It should have strong effects in situations where rights are individualised, the land market (rental and sale/purchase) is developed, or customary authorities no longer control the land game (or are stakeholders in speculation), provided the procedure has fully effective management mechanisms. However, given that it is still in the experimental stage, it remains to be seen whether this is the case.

## 4. Cognitive frameworks and narratives

Development actions and public policies respond to certain ways of defining problems and finding coherent solutions to them. They have complex relationships with the realities on which they claim to act, with always some gaps with it: the complexity of the world needs to be reduced to intelligible and manageable parameters so that we can get a hold on it.

The cognitive approach to public policies shows that policies are not merely the result of a ‘rational’ procedure, nor even of a simple battle between different interests. They are part of a cognitive framework that defines what is thinkable, at a given time, and which mobilises representations and beliefs. As a consequence, what is at stake in public policy discussions is not only the interests of actors involved, but also value systems and representations. ‘Policy narratives’ are causal histories that explain how a particular action is likely to produce a particular effect. Their function is to “*witness and stabilise the hypotheses needed to take a decision about what is, in reality, uncertain and complex. As such, while policy narratives may well be false representations of reality – and recognised as such – they nevertheless survive and become established* (Roe, 1994:51, cited by Radaëlli, 2004: 365).

It is interesting to analyse the representations underlying land policies and interventions from this viewpoint.<sup>31</sup>

<sup>31</sup> Various papers have discussed West African environmental policies in these terms, showing that the case for widespread environmental degradation was sometimes poorly argued (Marcussen, 2000, on Mali).

## 4.1 Cognitive framework of the RLM approach

### ***'Narratives' on securing land tenure by registering rights***

The economic 'standard' narrative logic holds that issuing ownership titles provides security and facilitates access to credit, thereby generating investment and increased productivity. The shortcomings of such a narrative have been widely discussed,<sup>32</sup> but it is still the underlying position of many actors. It is also gaining ground thanks to the success of De Soto's arguments (2005), which affirm that registering local land rights will help get poor people back into the capitalist system and reduce poverty. This view is countered by the 'neo-customary' narrative, which claims that peaceful and equitable land management can only be achieved by safeguarding autonomy or returning it to local communities, and that any registration of rights (particularly individual rights) will therefore only serve to undermine the structure of local societies.

These two narratives are based on different readings of reality that draw on representations of society and the role of the State, and reaffirm (but not mechanistically) the divisions between 'technicians' (surveyors, lawyers) and social scientists. They also take a different view of the current state of customary regulations: beyond a normative vision of the role of the State, part of the justification for public land management through registration is the assumption that customary regulations are becoming weaker or are disappearing. While this may be a proven fact in some cases, it is a self-fulfilling prophecy in others.

These two narratives compete over how best to resolve the problems of conflict and insecurity. Proponents of registration claim that it prevents conflicts by helping clarify rights, since conflicts are caused by insufficient boundary demarcation and the 'vagueness' surrounding rights. Its opponents focus on questions of regulating rights and the effects of normative pluralism, believing that this is the major issue in reducing conflict, and that registration will only exacerbate the situation by breaking local regulations and excluding people from holding rights.

### ***RLMs: a topographic and legal vision of rights?***

The first vision of the RLM was based on the classic economic argument that legal recognition would be beneficial both in terms of tenure security and in securing rights over investments and reducing conflict. Applying a less standardised view of rights in a context where immatriculation is the reference, the RLM reveals the fact that rights flow from social consensus and do not need to be unassailable to provide an acceptable degree of reliability and security.

However, the focus on conflicts over boundary disputes, the plot-based approach and the relative sophistication of land survey procedures compared with those used in socio-land surveys reveal a geometric and positive vision of land tenure: one plot, one easily identifiable principal rights holder (who may have individual rights or 'manage' the land). The very question of the rights at stake does not arise: 'customary land ownership' exists, albeit in a collective form, so one could argue for use rights in terms of 'carving up' ownership rights. The insistence on 'clarifying' the rights identified by RLMs is significant in that it assumes that they are as unclear to local actors as they are to the external observers who lack the right analytical framework to read them, and that this clarification, this levelling of the playing field, will in itself improve the situation.

Research into the ethnography of rights and studies conducted on RLM intervention sites (Bosc *et al.*, 1996, on Ivory Coast; Jacob, forthcoming, on Burkina Faso; Edja & Le Meur, 2003, on Benin) show that this is based on a questionable concept of local land rights and regulations that largely ignores the basis on which they are established. The very concept and apparent simplicity of the RLM procedure actually masks a series of selective operations and steps that translate and, to varying degrees, distort rights. Consequently, RLM methodology "*can be read as an 'applied ethnography of rights' that seeks to take exhaustive account of the complexity of land rights, but which generates imperfections and bias within and through the mode of describing rights and the chain of translation, and ends up obliterating their diversity and homogenising the different categories of rights*" (Le Meur, forthcoming). It is true that some degree of simplification is inevitable in every registration operation, and that there is no need to register every single right. The problem is that, in the way the procedure is currently implemented, these simplifications

<sup>32</sup> Cf. Platteau, 1996 for a detailed critique of this view.

are an uncontrolled outcome of a topographic and legal reading, rather than the result of a well thought-out method based on the nature of the rights in question.

More fundamentally, in places such as Ganzourgou (Burkina Faso), where the coexistence of indigenous actors and migrants settled by the government depends upon a fragile compromise and a degree of vagueness, the procedure “removes all hope of being able to continue to build social harmony on vague, approximate notions where divergent interests are not explicitly expressed, but which do not appear as such because they have not been articulated” (Jacob, forthcoming).

### ***Can the RLM go beyond the positivist approach from which it emerged?***

The dubious postulate underlying standard RLM procedure raises questions about its supposed impact, and partly explains why it sometimes undermines tenure security. Nevertheless, access to the law and legal recognition of local land rights becomes an important issue when external actors (the State, urban actors, migrants settling outside customary norms) constitute a strong presence in the local land arena. In places where the customary authorities do not have anymore a clear grasp of historical tenure in the locality, or where there are diverse and conflicting local mechanisms for regulating land, local actors want ‘papers’ to prove their rights. In such cases; it makes sense to have a procedure for identifying and legally recognising land rights, backed up with maps and formalised transactions; and it may be that RLM ‘technology’ could actually help secure land rights by closing the gaps noted above.

This is one of the issues that the PGTRN team and various researchers in the CLAIMS programme aimed to address through their collaboration in Benin (Lavigne Delville *et al.*, 2003). They conducted a field study on the effects of RLMs in order to pinpoint the key problem areas in terms of identifying rights and suggest how the methodology could be developed (Edja, Le Meur, 2003), to better determine “areas where the approach is valid on the one hand, and on the other, to review the methodology for identifying and transcribing rights. Within the logic of using RLMs as a tool for securing locally agreed rights, the overall aim is to reintroduce the question of rights and the norms that justify them. This will involve creating ‘some room to manoeuvre’ in the topographic and legal procedure, to make it more appropriate to situations on the ground and thus encourage better articulation between local rights and regulations within the normative framework proposed by the State” (Lavigne Delville, 2005).

Setting aside any practical questions about methodology, it is a matter of justifying RLMs through a slightly different ‘narrative’; one that picks up on the desire to reduce conflicts and promote investment, but is more coherent regarding the dynamics of land tenure. Until this way of seeing is put into practice,<sup>33</sup> the effective development of the procedure – and thus the capacity of RLM institutional technology to leave the paths of dependency of its positivist origins – will be suspended. The way forward would seem to lie in opening up the network of protagonists to the social sciences while producing a ‘narrative’ and associated practices that respond to the practical problems identified by practitioners, and disseminating this narrative within the group of actors concerned.

## **4.2 Yes to local natural resource management, but what does “management” entail?<sup>34</sup>**

### ***Lack of a clear consensus on local management***

Historically, public policies on natural resources have been based on a desire for state control and justified by a technical rationale that conflicts with local practices, which are seen as damaging to resources. However, local regulations have been rehabilitated by a new narrative based on research that shows the rationales behind the use of local resources and the perverse effects of government actions, the practical limitations of this vision and the abuses to which it has given rise. This analysis is informed by the large volume of work done on common property resources.

As liberal visions aimed at reducing the role of the State and populist visions idealising local communities were brought into the discussion about locally managed natural resources, it has been hard for the state technical ser-

<sup>33</sup> RLM operations in Benin have been suspended until the adoption of the new land law.

<sup>34</sup> This section draws on the work of Lavigne Delville and Hochet, 2005.



vices to oppose them head on, even though part of their professional identity and power base is being called into question. The next focus of the debate was the content of 'local management': is it participatory management, where the State delegates the implementation of management rules to local organisations, or decentralised management, where local actors are given the power to define the rules? Administrative decentralisation brings another actor into the debate.

Consensus has been reached on the theme of 'local management', but it is an ambiguous one, made of different visions of the environmental issues at stake and relations between those involved (the State, local organisations, customary powers, municipal councils). Such a consensus hides the battles over the concrete distribution of powers.

### ***Sustainable management at the village level: a technical, non-sociological concept***

Rather than imposing pastoral or forestry codes, proponents of decentralised management focus on locally negotiated rules that are legitimate in the eyes of local people and recognised by the technical services. In a situation of normative pluralism this emphasis on negotiating rules through local codes and conventions, etc. makes sense, since rules will only be respected if they are legitimate. However, analysis of discussions with practitioners in this field and assessment of the modalities for implementing these procedures shows that in reality, the issue of the legitimacy and effectiveness of rules is seen through a fundamentally technical, non-sociological prism.

Implicitly or explicitly, local regulations on resources are regarded in technical terms: there are village lands and resources, and local communities "manage" their resources at the village level. Such a vision already framed the policies on village land use management ("gestion de terroir") (Painter *et al.*, 1994), even though it had been shown that the village was not necessarily a land unit and that the spaces used for various activities did not necessarily match village territorial boundaries, which were not always defined anyway. Furthermore, in a context where social belonging is a more important criterion for inclusion than residency, there is not only profound ignorance of the local rationales behind access to and control of natural resources, denying their socio-political nature.

This is the basis used to promote the establishment of "rational" management founded on an assessment or inventory of resources and implemented by village committees. Even the term "management" is vague, denoting a technical function of implementing technical rules (when there is more involved than activities like installing stone lines, etc.), without raising questions about legitimacy, the capacity to define rules or the social norms on which access to and control over resources are based.

This is where the technical vision and the State's political vision (which seeks to impose the village as a unit over and above customary political spaces) come together. And because this is the global framework for analysis, the literature on common property resources is only partially mobilised and the number of cases meeting the conditions for the emergence and maintenance of common resources is over-estimated. It is worth noting that environmental issues are most pressing where state interference is greatest, where there are strong economic interests or where external actors are involved in exploiting resources – precisely the cases that the literature identifies as least propitious for common property regimes. Furthermore, this literature, which is essentially inspired by institutional economics, tends to give a rather functionalist vision of customary regulations, playing down the fact that they are embedded in local social relations and socio-political issues (Agrawal, 2003).

Most initiatives related to local agreements are based on this reference system. The focus is on the theme of negotiation, yet the social frameworks for access to and control of resources are not in place, nor are the social frameworks for negotiation. Workshops are held, committees organised and village representatives brought together without their legitimacy being questioned, and villages tied by historical links of dependence are put on a theoretically equal footing even though their inhabitants do not necessarily have the same capacity to formulate proposals or set legitimate rules. This raises questions about the effectiveness of these processes, which run the serious risk of being exogenous procedures with no local grounding and little chance of being effective.

As with rural land plans, the discrepancies between local realities and the cognitive frameworks of agencies intervening in NRM can only be overcome, at least in part, through new narratives based on better understanding of what is entailed in regulating access to natural resources, and using this to define coherent methodological parameters (as discussed by Lavigne Delville and Hochet, 2005).

## 5. Conclusions

This attempt to synthesise land policies and interventions has focused on the socio-political contexts in which policies are produced, looking at the way in which technicians' cognitive frameworks tie in with the long-term strategies of the State, and a global reference system based on a positivist and ultimately de-sociologised understanding of rights over both land and resources. It is not only the nature of the State and the rationales of the urban elites that produce and reproduce a vision of land tenure where "immatriculation" is the reference point for ownership rights. This vision based on positivist, more technical representations of the local realities of land tenure is also the product of cognitive frameworks that are widely shared, albeit with certain variations, and which play a major role in shaping what is thinkable or not. Consequently, the evolution of policies partly depends upon the evolution of these 'reference systems' and the construction and dissemination of different reference systems. This raises questions about social science research, how it can contribute to the elaboration of such reference systems through dialogue with social actors and collaborate with them in formulating coherent operational methods.<sup>35</sup>

It also raises the issue of the conditions required to break with previous configurations. When an 'established' policy results in both a stabilised reference system (a way of posing problems and justifying solutions) and a stable configuration of the actors and institutions that embody it, and when the paths of dependency are strong, what are the conditions that would make new policies, with a different basis and instituting a new configuration, possible? Are the economic, political and social evolutions in West African countries powerful enough to legitimise a new social compromise between actors, based on an explicit desire among rural actors for greater security of tenure?

In the context of this programme it was only possible to begin to study the processes of producing land policies by looking at various 'segments' of policies. These results demonstrate the value of this type of work, and of developing a political sociology of the production of land policies and interventions. An ethnographic description of the stages involved in producing a piece of legislation or an operation will enable us to identify the issues, modalities, networks and influences involved, and put them in the broader context of the social, economic and political evolutions of the countries concerned.

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<sup>35</sup> It was envisaged that the CLAIMS project would have a component that would contribute to public debate and policies. This actually took the form of interventions in non-academic forums, and expertise.

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## CONCLUSIONS<sup>36</sup>

How can knowledge on changes in local land relations be fed into land policy debates? What do the results of this research bring to such reflection? While “*the war of words on the political scene obeys different rules from those of scientific controversy*” (Jobert, 1999: 136), our research into the impacts of land policies and programmes (Chapter 5) shows that these need to be in tune with the realities they seek to transform if they are to attain their objectives.

### 1. Land policies in perspective

Despite their diversity, the four countries studied (and francophone West Africa in general) present important commonalities: institutional pluralism and its consequences, the impacts of huge waves of past or ongoing agricultural colonisation, increased competition over land and growing interdependence between rural and urban areas, etc.

#### Taking the long-term view

In the long term, the land policies of these four countries are closely linked to their policies to govern people and their movement, and to their desire for territorialisation – seeking to establish the administrative village, rather than customary territories, as the basic political and land tenure unit. Policies are also shaped by the State’s position with regard to local rights and local authorities (which are inextricably linked due to the socio-political nature of land rights). In this respect, the question of local/’customary’ rights, which is at the heart of the current policy debate, seems to be as much a re-emerging issue as a genuinely new one: it is an ever-present element underpinning land policies. The current socio-economic and political context may be radically different from that of the mid-20th century, but current procedures echo many of the measures taken in the mid-1950s to reinforce the recognition of customary rights. Similarly, historical analysis of migrant/indigenous relations in the forested regions of Ivory Coast show that rental emerged in the 1940s and 1950s, before Houphouët-Boigny’s plantation policy made it compulsory to receive migrants and reinforced the institution of *tutorat* – while associating it with socio-political issues that contained the seeds of future conflicts.

#### National trajectories

If we classify policies according to period and analyse the ways in which they are elaborated, we can see how land policies are linked to national political events and to the evolution of economic policies, and trace their specific national trajectories.

To place contemporary debates in perspective, we need to take a long-term view and consider land policies in relation to the political and economic course taken by the country in question. Three other issues are central in understanding these debates and the conditions that will make land reform possible:

- the cognitive frameworks that shape and determine what is thinkable or unthinkable;
- the signification of current land policies and programmes in relation to the State’s objectives and modes of action, and the deficiencies these reveal;
- the conditions required for a change of policy.

#### The question of cognitive frameworks

All policy is based on cognitive frameworks, values and symbols. The analysis of land policies and programmes (including those undertaken by NGOs) shows that they are very often based on simplistic and biased representations of modes of access to land and resources, and modes of land rights regulation. Far from recognising the intrinsically socio-political nature of land tenure, the majority of actors involved in land

<sup>36</sup> Conclusions written by Philippe Lavigne Delville, based on common elaboration with the other authors of this report.

tenure interventions (agents of the territorial administration, technicians; lawyers, surveyors, agricultural extension officers) follow a 'non-sociological' reading of land rights and of their management, even in interventions that are supposed to encourage local management or secure local rights. This leads to biases and a number of perverse effects.

## Public interventions: institutional gaps or mode of government?

It is classic to denounce the inappropriate legislation, ill-founded assumptions and inability of the State to offer a coherent institutional framework that offers appropriate responses to the problems facing rural actors. However, a new outlook on past and present policies and programmes allows this situation to be read in two ways: on the one hand, it can be seen as a manifestation of institutional shortcomings in terms of policy objectives and public expectations; on the other, it can not be seen, in the long-term, as the product of ignorance or lack of resources. Rather, it is the result of the very nature of the State, and of the largely informal relations between administrations and citizens, between the State and local authorities. The mode of governing people and resources in post-independence regimes is partly continuous with and partly separated from colonial policies (depending on the country, period and subjects), and in this respect, it has been or is possible for *laissez-faire* to constitute a policy in certain countries.

## Conditions for a change of policy

As a result of this, the question of reforming land policies is not simply a matter of acknowledging shortcomings and outstanding problems and attempting to resolve them. It also concerns the socio-political conditions required to change the reference system and elaborate new social compromises between actors; in short, the conditions for the emergence of a new policy to establish new forms of co-operation.

Jobert (1999: 137-138) wrote that, "*While the old formulas continue to produce predictable and acceptable results, there is a strong chance that the policy communities concerned are still unaware of the evolutions in scientific paradigms and variations in political rhetoric. If the old formulas hit a proven problem or are challenged by an influential protagonist in the exchange, then it is **possible** (our emphasis) that new intellectual resources elaborated in other forums could begin to be mobilised [... However,] we often see situations where policies retain the same orientations despite the confusion and upset they engender. This is especially true when the people involved in a policy have come to a compromise that shifts the cost of their agreement onto a third party*".

Has West Africa emerged from a situation where transferring the costs onto rural actors stabilises land policies that are manifestly counter-productive in many respects? Does the evolution of socio-political and economic contexts on the one hand, and cognitive frameworks on the other, make the principle of recognising rural actors' rights logical and unassailable, despite the interests lined up against this position?

If the answer is yes, could the re-emerging theme of recognition for local rights draw on alternative conceptual bases to these simplistic visions of rights, which when used as the basis of land policies necessarily entail a major reorganisation of land systems, with consequences that not been properly assessed?

The answer to the first two questions lies in the political debates and negotiations under way in each country. Each has its own more or less lively arguments, but has yet to prove its willingness to reform. Among the countries studied, Benin is the one where a major rural land reform has been prepared and is awaiting ratification by Parliament. For the third question, the results of our research on both land dynamics and land policies and programmes show that it is conceptually and practically possible to build policies and programmes on assumptions that are more in tune with the reality on the ground. However, this will require an evolution in the cognitive frameworks on tenure security of those responsible for land policies, as well as an institutional and methodological mechanism for land management consistent with this analysis.

## 2. Socially embedded rights: structural, sustainable and dynamic

The dominant theory on the evolution of land rights holds that land tenure systems tend to evolve progressively from a situation of ill-defined 'collective' and 'community' rights to one where rights are increasingly individualised and commodified. It has long been known that rights do not evolve along such simple lines, and that developments in the relationship between individual prerogatives and collective controls do not necessarily lead to the breakdown of these controls (Lavigne Delville and Karsenty, 1998). The results of the CLAIMS project have made a significant contribution to our understanding of these processes.

### Socially embedded rights

It is not land or resources that are owned, but rights over them. Here the word "right" is used in an empirical rather than normative sense, denoting 'socially sanctioned actions' that go hand in hand with responsibilities. Outside individualistic societies that are based on the notion of private ownership,<sup>37</sup> rights are embedded in social relations: they are only defined and they only make sense in terms of these relations. In other words, rights of access to land and resources are mediated by social norms and identities (Berry, 1989): by social position within family groups, the status of the family group in the local arena, networks of alliances and patronage, the attitude of the group towards 'others' and the generations to come, etc. This is not only true of 'traditional' situations, but also comes about through social and political reconfigurations and public interventions. Berry (1993) shows that land policies have not broken with this principle, but have attempted to reorganise networks of access to land around the State and its agents. Detailed analysis of current developments (see below) reveals that local evolutions in modes of access to land and governance, which may sometimes be profound, will only go a very small way towards 'de-socialising' land tenure and making land rights and regulation more autonomous of social identities and social networks.

### Bundles of rights and management of family holdings

The analytical framework for the ethnography of land rights developed on the basis of recent research is very useful in showing how 'socially sanctioned acts' related to land and resources are distributed between different members of family groups. This analysis clearly shows the distinction that customary norms make between use rights, whose aim is to ensure that individuals and households can meet their basic food and income needs, and management rights, whose aim is to organise management of family land holdings, which are collective because they are inherited, and which must be preserved for future generations. The links between social status within the family group and access to use rights evolve accordingly, particularly the fact that planting rights and rights of permanent assignment are reserved for the 'heir' who manages the holding in the name of the group and assumes all the responsibilities entailed in this function. Similarly, the status of women can only be understood in this context, which explains why it is primarily through the market that they obtain rights for themselves.

Within the family, land management rules thus fulfil a dual economic and 'integrative' function, guaranteeing members of the group access to a living, and seeking to secure life chances for future generations by conserving or increasing the family lands available to them. When economic opportunities outside agriculture are limited, uncertain or in crisis, this inter-generational dimension is fundamental in ensuring a degree of 'secure access to a living' for the young and for future generations.

Far from being a simple relic of the past, this collective dimension is the result of a decision not to share land heritage,<sup>38</sup> a choice based on the desire to ensure that all descendants have the right – in theory at least, and in accordance with their needs – to access farming rights on part of the family holding. Far from disappearing when pressure on land increases, this norm may actually intensify in order to avoid exclusion.

<sup>37</sup> And even here the economy is not totally dissociated from social relations.

<sup>38</sup> Thus, a cleared or purchased plot is the property of an individual, becoming part of his descendants' family holding when it is inherited.

This collective and inter-generational dimension becomes particularly clear when part of the family holding is to be assigned. Such decisions are beyond the remit of the head of the family, and can normally only be made by the family council (hence the frequent conflicts over sales when this principle is not respected): when important issues are at stake rights holders come together and collectively assume administrative rights again.

Thus, decisions about inheritance and the fragmentation of domestic units do not automatically involve complete fragmentation of the family holding, because the units of cultivation are not necessarily the same as the units of land management. Of course, none of this is mechanical – it involves negotiation, tension and sometimes conflict. Over time the bundle of rights may be distributed differently and certain rights may become individual, but this does not entail the complete disappearance of collective regulation within the family.

## Relations between migrants and autochthonous actors, access to land and local citizenship

Relations between migrants and autochthonous actors are shaped by both land tenure and socio-political considerations. The archetype is the institution of *tutorat*, through which the autochthonous community receives an 'incomer',<sup>39</sup> allocating him a 'tuteur/patron' who grants the incomer/client farming rights. To varying degrees, this arrangement combines an individual relationship between the *tuteur* and the incomer with a relationship between the incomer and the village community (in which it is particularly important to respect various local social norms). It allows the incomer to obtain more or less full rights of use (which may include planting rights) for an unlimited period.

*Tutorat* is a widespread institution with variants in all the countries studied, and is currently becoming established in new frontier settlements such as those in central Benin. The *tutorat* relationship is thus the social institution integrating both the individual and the collective dimensions of receiving incomers.

It bears witness to a rural model of co-residence and shared common territory in which modes of access to land and resources are never totally separate from modes of involving incomers in 'local citizenship'. Incomers are granted land rights (which are often more limited than those of autochthonous actors) on condition that they integrate into the community, i.e. conform to local social norms. These types of restrictions establish and reproduce the incomer's status as such within the local community, meaning that land still constitutes the main basis of social links in rural Africa. Because incomers must respect the socio-political obligations associated with the land rights they have acquired in order to maintain their status, land issues are easily politicised around notions of indigenosity and local citizenship. This is particularly true in Ivory Coast and the former cotton basin of Burkina Faso, and a distinct (if latent) possibility in Benin.

Here too, the nature of the relationships is evolving, although this does not mean that they have become completely individualised. There may be individualisation of the relationship with the *tuteur* (when land management becomes individualised within autochthonous family units) without the collective village dimension of the relationship disappearing (it may even intensify). Those who respect the local social norms and act for the benefit of the local community are still seen as 'good' incomers. *Tutorat* sometimes develops into agrarian contracts such as rental and sharecropping, with a more contractual relationship (more clearly defined rights and responsibilities) and a stronger economic dimension for the *tuteur* (emergence of an income), without eliminating the collective dimension of integration into the local community.

## Embedded land 'markets'

The transfer of land rights outside the family sphere takes place in a continuum that includes *tutorat* relations, farming contracts covering some use rights, and sale/purchase. Research has shown the importance of migrant/autochthonous relations and the insertion of agriculture into the market economy in the emergence of these markets, as well as the recurrent obstacles to their complete separation from non-economic relationships.

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<sup>39</sup> In the local sense of a 'stranger' to the local community.



The diversity and dynamism of the different forms of derived rights associated with agrarian contracts have already been described in earlier research (Lavigne Delville *et al.*, 2001). The results of the CLAIMS project show that the right to transfer land through rental or sharecropping does not always emanate solely from the head of the family,<sup>40</sup> and confirm the emergence of agrarian contracts involving a series of arrangements that are recognised as socially legitimate and not particularly contentious. Both rental and sharecropping are based on arrangements that are fairly clear in terms of rights and obligations, and which reduce (but do not eliminate) the interpersonal relationship from the moment the clauses are pre-defined. There is empirical evidence of a progressive increase in the volume and monetarisation of 'gifts' due to the *tuteur*, leading to the formalisation of a 'rental' agreement. Both migrants and autochthonous actors stand to gain from the monetarisation of the relationship and its evolution from the rationale of *tutorat* to the logic of rental: migrants by securing access to land while controlling the expectations of their *tuteurs*, and *tuteurs* by progressively building up a rental income.

The balance is upset when a plot is 'withdrawn' or more forcibly 'removed'. Where pressure on land is intense, young rights holders have fewer opportunities if land has been assigned to a third party, and they tend to challenge these assignments because they either want to use the land or get an income from renting it out. Conflict over management of the family holding between autochthonous actors within the same family thus translates into conflict between autochthonous actors and incomers. From this point of view, opportunities for young men to gain access to land outside the family holding ease the constraints on access to growing rights on family lands, and thus reduce tensions within the family.

Sales are a more complex matter. Because of the heritage aspect of land, it is usually only the family council that holds rights of alienation (see above). This intra-family and inter-generational dimension means that there are tight restrictions on the supply of land up for sale, and in some places sales have diminished or even stopped altogether. The rental market may therefore be an effective substitute for emergency sales, without economic inefficiency as modern economic analysis shows.<sup>41</sup> It seems that in a number of cases (in peri-urban areas of Mali and far western Burkina Faso), the land that is transferred is the land with the least secure rights, and that selling it is a way of pre-empting the loss of a plot – although this needs to be studied in more detail. We now know how 'sales' are negotiated, the role played by intermediaries and the causes of conflict. What remains to do is to analyse the choice and status of the plots that are sold.

Whatever the case, land transactions remain broadly embedded in social relationships, even when they are monetarised. The fact that access to land has been monetarised through 'sales' does not necessarily herald the emergence of a real land market. In the first place, the content of the rights transferred can be interpreted in contradictory ways: the 'sale' may involve rights of use and not the 'main asset', the land itself. Secondly, the social embedding of transactions through the institution of *tutorat* means that sales often cannot be considered as full in the sense of completely freeing the purchaser from any further obligation to the vendor: payment does not close the relationship, but inaugurates or perpetuates it.

In short, the view that all rights are becoming individualised and monetarised, and that collective controls are disappearing, does not take account of more complex evolutionary processes. The distribution of bundles of rights and the modalities for transferring rights can evolve without overturning the principle of socially embedded rights or the interplay between individual prerogatives and collective regulations.

The socially embedded nature of land transactions, which persists through successive evolutions, should no longer be perceived as a 'traditional' archaism, but seen as part of a rural social model. This model is partly based on societal choice aimed at conserving the life chances of future generations on their shared land heritage, choice that remains useful as long as economic opportunities outside agriculture are rare or uncertain. It is also partly based on the trajectories of governance in rural societies (see section on *tutorat*) where current generations still retain their status as 'subjects' and find it difficult to attain the status of 'citizens' (Mamdani, 1996). It is impossible to understand the land 'market' without taking account of its effect on the way rights are transferred outside the family, in terms of both intra-family rationales and the power relations that determine the life chances of young men in rural areas.

<sup>40</sup> At least for sharecropping, which involves neither money nor a fixed duration.

<sup>41</sup> See Deininger, 2003, for a comparative analysis of the economic efficiency of sale/purchase and rental.

### 3. Land governance and regulations: where will institutional change lead?

Land governance has little to do with the image of state-directed 'rational' land management that follows clear and impersonal rules. In reality it is an arena, or rather a group of arenas, within which social actors, political bodies and political-legal authorities (State or otherwise) compete for access to land resources and control over this access. This confrontation takes place at two levels, (i) between individuals and groups competing over rights of access to and use of resources, and (ii) between authorities (customary, chiefdoms, government agencies, politicians, NGOs, etc.) fighting to assert the legitimacy of their control over these rights, and thus their capacity to define and enforce the rules of the game.

Land tenure involves a multiplicity of authorities and norms that are the product of discrepancies between local norms and national legislation, as well as socio-political change and the evolution of the various powers ranged around land and natural resources. Land administration and chiefdoms are naturally central to land governance, but other actors are also involved – in complex, variable and changing relationships that are both competitive and complementary. Land tenure situations vary greatly, from cases where the customary norms and authorities still take care of most land management, with little or no public interference, to cases where these norms are being questioned, modes of access to land have changed profoundly and land governance is in the hands of new actors who deal with it in a more or less regulated and coherent manner.

Land tenure arenas are not only numerous, but also often poorly regulated and structured, with authorities whose jurisdiction and scope are frequently vague and ill defined. Thus:

- Recourse mechanisms are not guided by a clear hierarchy of authorities that have to be consulted in a particular order, but more by the interplay of interests, competencies and expectations.
- Administrative authorities are frequently asked to act (or intervene) beyond their official mandate and fulfil quasi-judicial functions. In all the cases studied, the territorial administration has tended to prioritise peace over justice, functioning more like a 'customary' body than a statutory one.
- Working alongside the state authorities in a way that often slides towards the informal, the authorities created by development agencies sometimes occupy an ambiguous position, assuming state prerogatives (particularly with regard to natural resource management) in matters of surveillance and sanctions (a prerogative of the forestry department). This leads to changing interpretations and situations, with state and associative authorities sometimes working with each other and sometimes in opposition to each other.

For all that, there is more to land management than conflict. Not all norms can be manipulated, and conflicts do not arise everywhere or over every condition. Looking beyond the description of conflicts and the course they follow, closer analysis of the places and circumstances in which they arise suggests that they mainly flare up when a community of allegiance (family, lineage group, village or group of allied villages) proves unable to manage the tension between the legitimate desire for individual tenure security for its members at a given moment (tenure security as a private asset) and its obligation to provide the minimum conditions of production for every member of each generation (tenure security as a common asset).

Furthermore, there are consistencies and obligatory procedures in conflict management (official or otherwise) that help stabilise the situation. One of the challenges in analysis is taking account of the diversity of situations within a common analytical framework: noting the diversity of actors, discovering and identifying the places where competition and conflicts crystallise, assessing the plurality of norms and how they are put into practice, and determining the relationships between the different political and legal authorities that intervene (*de jure* or *de facto*) in the regulation of land relations.

Policies and programmes operate within these complex configurations. They are adopted and reinterpreted by a range of actors, and their impact depends upon the position and rationale of those who put them into effect. Many interventions add to this complexity by failing to raise the question of governance, introducing new norms, establishing new authorities in addition to existing ones and increasing the number of management committees. Administrative decentralisation provides another opportunity to reshuffle the cards, either

increasing the confusion or encouraging co-ordination, depending on whether or not it deals with these issues of articulation between the various authorities.

The issues at stake in land governance, and the manner in which public policies (land or land-related) help or hinder consistency and reduce the negative effects of normative pluralism are thus an important issue in reflection on land policies.

## 4. Effects of the crisis in Ivory Coast

The Ivorian crisis has had major repercussions on land tenure, not only in Ivory Coast itself, but also in neighbouring countries as Malian and Burkinabé migrants return to their country of origin. The points below are based on evidence gathered in various CLAIMS sites and a specific study conducted in this context by UERD (Dabire and Zongo, 2005).

In Ivory Coast, the land tenure dimension of the crisis in rural areas is obvious. The crisis in the plantation economy has accentuated tensions between farmers, as Burkinabé planters are often more successful due to their access to cheap labour or control over the commodity chain. Young indigenous men returning to villages in the forested region after failing to make their way in the city find that all the land is taken, and proceed to challenge the rights their fathers had assigned to incomers. Although most accounts suggest that the Burkinabé are the first to be targeted, the situation on the ground is less straightforward – land has been ‘removed’ from some migrants, but there are other cases where they have not been harassed. Furthermore, Ivorian migrants (particularly the Baoulé) are often seen in a far worse light than the Burkinabé, who are more mindful of local norms and the need to assist their *tuteurs*.

A significant number of migrants have left for Burkina Faso, if only temporarily. According to the official figures there are about 350,000 returnees from Ivory Coast, most of them born in Yatenga. Some went back to their village of origin, but most either no longer had family ties with the Mossi plateau or didn’t wish to settle there because of pressure on land and the difficult agro-ecological conditions. The Burkinabé government directed them towards the south west of the country, which has become the new settlement frontier, especially in Houet (24%), Poni (10%), Bam (5%) and Comoé (4%).

The CLAIMS field sites (Niangoloko, Sidéradougou and Mangodara) are located in the province of Comoé, bordering on Ivory Coast. Land used to be relatively freely available this province as it was unaffected by migration until the mid-1990s, when it became a settlement frontier zone. Migrants poured in, some from the central plateau and many escaping the land insecurity in the old cotton zone. As huge numbers flooded into Comoé the proportion of migrants expanded from 3% of the population in 1996 to over 50% in some departments, and even 89% in the nine villages studied in the department of Sidéradougou (23% of whom are returnees from Ivory Coast). These huge influxes of people have led to radical changes in the conditions of access to land, which have gone from traditional modes to various forms of monetarisation, mainly sales. The first migrants were settled by customary rights holders, through the institution of *Diatiguiyi* (landlord or *tuteur*), which in some cases led to the assignment of land rights to the first wave of migrants. ‘Sales’ appeared in different forms, increasing as migrants returned home from abroad, and new forms of monetarised transactions began to emerge at the end of the 1990s in the Mangodara area with the arrival of migrants from the old cotton-growing zone. The massive influx of returnees helped accelerate the evolution of local land practices, even in villages where traditional modes of access to land still predominated. Migrants’ preferred mode of access to land is to purchase it,<sup>42</sup> because this frees them from the traditional ban on tree planting and thus offers the buyer more room to manoeuvre and better security. Young autochthonous men are also starting to emerge as actors, either by becoming directly involved in settling migrants or as opponents of sales. We can follow the various stages in the transformation of land transactions over the course of several years. However, the concept of sales covers several meanings, as interpretations of the ‘bundle of rights transferred’ vary.

<sup>42</sup> Particularly returning migrants, who are promoting tree-growing in the new settlement frontiers in the west and south west.

## 5. Implications for land policies

The implications of these findings for debates on land policies can be summarised in the four main points outlined below.

### The need to look beyond land matters to resolve land-related problems

One cause of tension within the family that has repercussions on social relations between autochthonous actors and migrants is the lack of economic opportunities outside agriculture. Land is not the only cause of land-related tensions, which is also a manifestation of young men's concerns about their future. The lack of economic opportunities outside agriculture makes it even more essential to maintain the logic of inherited land and conserve family land holdings.

*Effective agricultural policies supporting family farming on the one hand, and policies to develop economic activities in rural areas on the other (commodity chains, processing, crafts, services in small towns and rural market towns, etc.) would significantly help reduce pressure on land and facilitate more progressive and peaceful evolution. Developing micro-credit would help people meet their basic needs and would probably reduce emergency sales, which would help regulate land markets.*

Similarly, initiatives to increase tenure security should be accompanied by careful consideration of the arrangements regarding socio-land authorities (decentralisation, local citizenship), so that the norms they embody and interests they defend better reflect the diversity of status and interests involved. Decentralisation could be an opportunity to do this.

### Acknowledging the significance of the social embeddedness of rights

Land policies should not be based on simplistic assumptions about the transition from collective to individual landholdings. The social embeddedness of rights seems to be a fundamental, structural given of land relations, which does not run counter to the partial individualisation or commodification that it accompanies. Far from being an anachronism from the past, it allows the tension between individual economic interests and the longer-term interest of the community of allegiance (whether family or village) to be managed, in a context where access to use rights remains a fundamental dimension of both access to a living and of social ties. Its modalities evolve with the changing balance between actors (the old and the young, autochthonous actors and migrants).

Land policies must take this fact and its implications seriously, rather than seeking to break collective regulations. Otherwise, they run the risk of provoking massive social exclusion and triggering an influx of young men into urban areas. Instead of putting everything on hold, it would be better to promote gradual change.

There is tension and renegotiation over the forms of this social embeddedness, both within and outside family groups, and it would be absurd to wish to preserve its more contentious collective dimensions. This is particularly true of transactions that have changed significantly – progressively or abruptly, depending on the context. Without completely closing the relationship between incomers and their *tuteurs* and/or the community of allegiance, the emergence of rental markets allows actors to specify the content of the contract and of the services to be provided in return for the land, and corresponds to a partial 'disembedding' of the relationship that responds (at least partly) to the expectations of both autochthonous actors and migrants.

*Encouraging contractual forms of rights transfers, helping make the terms of these transfers clearer and offering opportunities to formalise these contracts through flexible mechanisms that allow people to comply with locally accepted norms provide a workable route towards combining economic effectiveness with greater security of tenure. When these norms do not have the desired effect it could be useful to propose longer-term rental contracts, validated by the authorities responsible for land management.*

The question of sales is an important issue insofar as they involve family land holdings. Current tensions are caused by the legitimacy of the transaction being questioned or challenged, the fact that sales are not always socially recognised where they exist in practice, that their clauses are not always explicit or are open to interpretation, and because they can proceed without the agreement of all the rights holders concerned.

*Given the fact that assignment is an internal family and inter-generational issue, and since rental is recognised as economically efficient, there is no justification for deliberately promoting the sale/purchase market.*

*Conversely, it is important that the State offers clear and simple mechanisms for securing transactions, making it compulsory to specify the nature of the rights transferred and to prove that the family agrees to the transaction. This would significantly reduce conflict over sales, while encouraging full sales where actors are ready to accept them, and long-term agrarian contracts where they are not.*

*Finally, where the status of sales is contested, some of the ambiguity surrounding the transaction could be removed by establishing local fora to define rules that are recognised as legitimate and, if necessary, to discuss how sales can be regulated.*

## **Improving the structure of land governance**

The multiplicity of norms and authorities intervening in land regulation is a structural dimension of land governance. It is a product of history, linked to the way that the State embeds itself in the locality, and the outcome of a process of institutional change that takes various, more or less marked forms depending on the region concerned.

*Normalisation and standardisation is not the way to deal with this situation. This not only fails to respond to the great diversity of local land and socio-political situations, but also runs the risk of making them more complex by creating new norms and authorities.*

A principle of subsidiarity built around clear political axes seems to apply here, and thus the rationale of local regulation in the sense of “*elaborating rules, i.e. social adjustments and the compromises that make them acceptable*” (Gaudin, 2004: 193).

*In the interests of equity, public interventions in local governance should encourage co-ordination between authorities and predictability in land relations. This will involve promoting the formulation of (sufficiently) shared rules that will increase the legitimacy of the decisions taken and make them more effective. It will also mean specifying the main responsibilities in land management and establishing a clear hierarchy among them, encouraging negotiation and compromise between actors, and stabilising arrangements and agreements regarding local legal norms and contracts.*

## **The question of local citizenship**

The fact that land rights are embedded in social obligations to family, village or supra-village communities indicates that ownership and identity are not easily separated, as they are in societies where the market is a socially recognised factor of regulation. In societies that are regulated by the market, rights of access to land are determined by ownership rights, and membership of a community is determined by definitions of citizenship. This is not the case in most contemporary rural African societies, where the moral economy of land still counts for much, and the weight of client/patron relationships in power relations and access to economic opportunities (both rural and urban) reinforces the importance of resources associated with local identity in gaining access to a living and the ‘good life’. Thus, the politicisation of land issues is always closely associated with their ethnicisation. The distribution of land rights cannot be separated from the distribution of status and identity, which creates differences in “local citizenship” (i.e. full integration into the local public arena in terms of decision-making and its associated rights, especially with regard to land).

In the context of high levels of migration, the integration of local rural societies into the national arena, long-established settlements and decentralisation policies, it is inequitable that local citizenship should largely depend on the prerogatives associated with long-term settlement and indigenosity, real or reconstructed.

This is largely explained by the fact that rather than clearly promoting other means of acquiring local citizenship, governmental authorities have often simply made use of them, especially the rights guaranteed by formal citizenship or peaceful enjoyment of acquired rights of appropriation.

*There is a need to encourage the emergence of local citizenship that is not exclusively based on socio-ethnic identity, although this assumes that the State will reform its own administrative and political practices.*

While it is counterproductive to assert that anyone who uses a piece of land for three years should become its owner, introducing a principle of adverse possession on the tuteur's land rights when the land has been used peacefully (in cases of proven, uncontested transfer to the next generation, for example) could favour access to full land rights for incomers, closing the gates on radical claims to 'indigeneness' and turning the tide of recent history.

It would also seem reasonable to assume that migrants would find it easier to gain local citizenship if a democratic system of appointing village administrative authorities was introduced to replace the colonial systems that still stand in some countries (based on a decree on indigenous authorities passed in 1935).<sup>44</sup> Finally, according to autochthonous and migrant actors in rural areas full citizenship in access to State services and economic opportunities could encourage them to take a more open view of local citizenship, and thus of the equitable transferability of land.

## Tools and instruments for regulating land tenure

In order to make land tenure less political, land transactions need to be firm rather than permanently negotiable, and less open to challenge; while the acquired rights of actors potentially threatened by this politicisation need to be secured. This will require tools and procedures that offer local actors the opportunity to formalise transactions, legal tools to make local rules official, and tools and procedures for recognising local rights (such as rural land maps).

However, the technicist illusion that these tools and procedures will produce the desired results of their own accord must be avoided. We have already observed the perverse effects of developing such instruments for their own sake or as part of an abstract instrumental logic.<sup>45</sup> They should be viewed as instruments for regulating land tenure at the local level, and should therefore be designed in function of land rights and the means of securing them, as a means of developing local modes of land regulation. They will only be relevant and appropriated by the actors concerned if they relate to local issues, respond to local needs and can be managed by local people. This will require a degree of flexibility, acceptance of the need for local negotiation and a degree of autonomous land management at both the family and supra-family level.

*Therefore it is absolutely essential to broaden the framework of reflection on tools and procedures to include the key aspects of land dynamics, particularly their socio-political nature, and avoid the perverse effects of procedures based on a de-socialised, over positivist/technicist vision of rights and land management. This applies both to the management of common resources and to procedures for recognising local rights.*

*More fundamentally, this implies that a land policy consistent with the socio-political nature of land tenure should not aim to bring a single model of rights into general use in the short-term, but should accept a logic of gradual evolution in response to social and economic change, endeavouring to better structure local modes of regulating land and offering a range of legal and institutional solutions that will help accompany and guide developments in the desired direction, according to the context in which they occur.*

<sup>44</sup> The situation varies greatly according to the country: there is strong continuity in Ivory Coast, Niger and Mali, but things are very different in Benin or Burkina Faso, for example. See Bako-Arifar & Le Meur, 2003.

<sup>45</sup> See Chapter 5 on policies and interventions.

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Developing effective land policies in West Africa requires a thorough understanding of the issues involved and of the changes taking place on the ground. How are mechanisms to gain access to land and to natural resources evolving? Are land rights becoming more individualised and “commodified”? How is local governance of land rights being tackled? What are the intra-family and inter-generational issues raised by these changes? What are the processes to elaborate policies and interventions on land tenure and natural resources? And what are their impacts?

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- GIDIS-CI (Groupement Interdisciplinaire en Sciences Sociales - Côte d’Ivoire; Abidjan, Ivory Coast)
- GRET (Groupe de Recherche et d’Echanges Technologiques; Paris, France)
- IIED (International Institute for Environment and Development, Drylands Programme; London and Edinburgh, UK)
- IRD (Institut de Recherche pour le Développement, Unité de recherche Régulations foncières, politiques publiques et logiques d’acteurs, Montpellier, France)
- LARES (Laboratoire d’Analyse Régionale et d’Expertise Sociale; Cotonou and Parakou, Benin)
- UCL-IED (Université Catholique de Louvain - Institut d’Etudes du Développement; Louvain la Neuve, Belgium)
- UERD (Unité d’Enseignement et de Recherche en Démographie; Ouagadougou, Burkina Faso)
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