LAND TENURE IN THE IVORY COAST:
A DEVELOPING PROBLEM AND A PROBLEM FOR DEVELOPMENT

by

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LAND TENURE IN THE IVORY COAST:
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Amal Rassam

Background: Land and People

Ecology and Land Use

The Côte d'Ivoire comprises an area of 320,000 square kilometers; this can be roughly divided into two general ecological zones: the Northern Savanna region (about 180,000 km²), and the Southern Guinean Forest region (about 140,000 km²). The savanna has one rainy season with an average yearly rainfall of 1,100 millimeters, while the Guinean forest has two, May through July and September through October, with an annual average of 1,400-2,000 millimeters. In addition to these two primary ecological zones, one may also distinguish the littoral zone in the southeast, which consists of a sandy, coastal strip, 30 kilometers wide, with abundant rainfall averaging about 2,500 millimeters per annum. The only cash crop grown in this part of the country is coconut palm; cassava is the principal food crop.

The Forest Zone. With its reliable and abundant rainfall and its fertile soils, the forest zone constitutes the country's major agricultural area. The dense primary forest (which used to cover about 16 million hectares) has been greatly reduced in size and replaced with secondary forest, bush, and tree crops. Continuing immigration into the forest zone and rapidly expanding agriculture now pose a serious threat to the remaining 3 million hectares classified by the Ivorian government as forest reserves and national parks. A recent World Bank report cautions that the current population pressure in this region places a heavy burden on forest resources. The current clearing of large areas of the secondary forests for itinerant food crop cultivation is bound to reduce the transpiration rates and lead to erosion problems.

Cocoa and coffee, the country's leading export crops, dominate forest agriculture and constitute about two-thirds of total cropped surface. Pineapples and bananas, grown mainly for export, currently make up no more than 1 percent of total cropped area, but indications are that their production is on the increase. The major food crops grown include plantains, yams, cassava, cocoyams, and some rice and maize. Yams provide the staple food for the majority of the people; they are usually consumed in the form of a thick, porridge-like dish called foutou, which is eaten with a variety of sauces.
The Savanna Region. This region, with two subzones, the forested and the Sudanese savanna, is too arid to allow the cultivation of coffee and cocoa, but is moist enough for upland rice and cotton, the major cash crops. The limited and unreliable rainfall (especially in the central and northeastern parts) and the poor quality of the soils put severe restrictions on agricultural productivity. Maize, followed by yams, is the leading crop, occupying about 26 percent of total cropped area.

Farmers cultivate annual crops in pure or mixed stands interspersed with bush fallow. Irrigated and dry rice farming is rapidly expanding in this region, reflecting a general trend in the country where rice production roughly doubled between 1965 and 1975. Rice, which currently constitutes a major import commodity, is fast becoming the preferred staple of the Ivorian diet, especially among the urban population. The expansion in rice and maize cultivation has generally been at the expense of the traditional grain crops of millet, sorghum, and fonio. Cotton, the major cash crop of the savanna, is estimated to take up about 16 percent of total cropped land area.

Manioc or cassava, which can be grown on poor and marginal soils, is found throughout the country from the southern equatorial zone to the northern Sahel. Since manioc can be stored for long periods of time, it serves as a reserve food throughout the rural areas. It is generally consumed in the form of atieke, a couscous-like dish.

The Ivorian Population

In 1955, the total population of the country was estimated to be around 3 million, with an annual rate of increase of 1.6 percent. By 1985, the population had increased to 10 million, with an annual rate of increase that has been variously estimated from 3.1 percent to 4.1 percent. Added to the Ivorian population are around 1.5 million immigrants, Africans from the surrounding countries, notably Burkina Faso and Mali, who make up the bulk of the Ivorian labor pool in both urban and rural areas.

The two major population trends in the country today are a rapid rate of urbanization and a steady movement of the rural population from the arid north to the forest zone in the south. The rural-urban migration (principally to Abidjan, but also to Bouake, Korhogo, and Man) as well as the rural-rural migration from the savanna to the forest is in part the result of the increasing integration of the rural population into the modern sector of the economy. Young men leave the villages in search of education, jobs, and an easier life in the city; savanna farmers move south in search of better land on which to plant cash crops. Rural youth, both male and female, make up the largest group of urban migrants.

Rural Population Distribution and Land Use. The rural population of the Côte d'Ivoire has been variously estimated at from 53 percent to 65 percent of the total population of 10 million. The majority lives in the southern forested region, which has an average density of about 25 persons per square kilometer, as contrasted to the northern region, with 12 persons per square kilometer.
Since the 1960s, the northern savanna zone has experienced a negative population growth due to the steady migration to the forested region, which boasts an annual growth of 2.8 percent. One consequence of this has been the emerging threat of land shortage in the east, south, and parts of the central-western regions. Land shortage, which is a new phenomenon in the country, is continually discussed in the newspapers. In 1975, no more than 2 million hectares were under cultivation in the forested region; the figure today is around 3.5 million hectares, with 27 percent being annually or perennially cropped. According to a recent World Bank report (1987, p. 103), "The emergence of such land constraints still tends to result more in migration to the Center-West and now to the South-West than changing agricultural practices, but land scarcity in the forest region will be an increasingly propitious force for the adoption of the more intensive agricultural practices."

In the savanna, no more than an estimated 5 percent of the total land area is currently under cultivation (mainly with rain-fed crops). But even so, the practice of slash-and-burn or shifting cultivation and the gathering of firewood have already reduced the natural tree cover, posing a serious threat to the ecology of the area.

As with the population itself, farm income is unevenly distributed in the country. In the northern savanna, income is estimated to be one-third of that in the southern regions. To redress this imbalance, and to put a halt to the north-south migration, the government undertook several programs in the 1960s to develop the northern part of the country. The major effort went into cotton farming. Under an accord with the Ivorian government, the Compagnie Française pour le Développement du Textile (CFDT) introduced a new strain of cotton (Allen) into the region. It encouraged the formation of cotton-producing cooperatives, providing cooperating farmers with seed, fertilizer, and technical assistance, and contracted to buy the cotton crop. By the mid-1970s, the Ivorian government had replaced the CFDT with its own parastatal. During this same period, 1970 to 1977, the government encouraged rice production in the savanna, providing farmers with easy credit, subsidized fertilizers and equipment, and guaranteed purchase prices.

The economic crisis, which began in 1980 following a sharp drop in the price of cocoa and coffee, has greatly curtailed government programs. Following the recommendations of the World Bank and the International Monetary Fund (IMF), the 1981-85 Five Year Plan outlined a gradual retreat from direct state intervention in agriculture. Government support of cotton and rice production has practically come to a halt; the government is now increasingly turning to the private sector and to foreign aid to keep its agricultural programs going.

**Agriculture in the Côte d'Ivoire; Engine of Development**

**The Colonial Period**

Formally declared a colony by the French in 1893, the Ivory Coast was viewed by the French as a region of vast agricultural potential. At the beginning, however, they limited themselves to exploiting the naturally occurring
forest products: timber, rubber, and palm kernels. By the end of the century, cocoa and coffee had been introduced and, by 1920, small amounts were already being exported. To entice French settlers, the colonial government granted the new arrivals large land concessions and paid large subsidies to those who planted cocoa and coffee. In addition, a policy of forced labor was instituted in 1919 and continued until 1946, when it was abolished. An average of 20,000 Africans were annually impressed to work on European-owned plantations. By the end of World War II, 300,000 hectares had been planted with coffee and cocoa.

Despite the presence of the colons and their concessions in land, the Côte d'Ivoire did not develop into a settler colony as happened elsewhere in Africa. Ivorians were not evicted from the best land in their country, nor did the French introduce rules that prevented them from cultivating coffee and cocoa. By the 1940s, in fact, Ivorian farmers had fully incorporated the new crops of coffee and cocoa into their agricultural production systems, planting them side by side with their food crops.

During World War II, European planters began to withdraw or liquidate their investments. The scarcity of labor and the decrease in world demand for coffee and cocoa drove many to sell out or to abandon their plantations. This trend was accelerated by the abolition of forced labor in 1946 and the blight that from 1949 to 1951 devastated many European-owned plantations. By independence in 1960, Ivorians had replaced most of the Europeans, who by then owned less than 1 percent of the total acreage devoted to coffee and cocoa.

**Agricultural Production since Independence**

The economic growth of the Côte d'Ivoire since independence has been one of the most impressive in the Third World. The average gross domestic product (GDP) growth rate of 7.7 percent per annum between 1960 and 1980 is one of the highest not only for Africa but also for the Third World as a whole and is surpassed only by some of the oil-rich countries. In the 1950s, the country's average per capita income was among the lowest for sub-Saharan Africa; in 1980, it ranked second, with $1,250 per person per annum. As observers have pointed out, the most remarkable thing about this achievement is that it was accomplished through the expansion and diversification of the country's agricultural production and in the absence of any mineral resources.

In the twenty years between the early 1960s and the early 1980s, cocoa exports increased fourfold; coffee, by five times; and timber, thirtyfold. At the same time, oil-palm production tripled while cotton production increased by a factor of 17.7. Of particular significance is the fact that this remarkable agricultural growth and diversification (Côte d'Ivoire has about a dozen major export crops) were attained without any major transformation of traditional farming systems and techniques and without the displacement of the small independent farmer. "The tremendous expansion of Ivorian smallholder agriculture--export and food crops--occurred, bringing into production a previously idle resource (land), and transferring labor from the less productive savannah to the more fertile forest. There was less modernization of forest agriculture, simply an extension" (Hermann 1981, p. 94).

In the early 1960s, immediately after independence, the state encouraged the production of the "colonial" export crops: coffee, cocoa, and bananas.
The southern forest region, with its good road network, attracted large timber enterprises (mainly foreign) and small farmers seeking to cash in on the cocoa and coffee boom. Many of these latter came from neighboring African countries such as Burkina Faso and Mali. They were allowed to clear and cultivate forestland under a law that granted land deeds to new planters. The majority, however, started out as laborers working for Ivorian farmers; in time, they rented or bought their own parcels of land from the villagers.

By the 1970s, other crops were added to coffee and cocoa: palm oil, rubber, and pineapple. These were usually cultivated on large plantations operated by public, joint venture, or private enterprises. Palm-oil and rubber plantations are run by semipublic companies, while pineapple (and, increasingly, banana) plantations tend to be privately owned.

Commercial-quality cotton was introduced into the savanna zone in the early 1970s and became the leading cash crop for the region. Increased domestic demand for sugar and rice led the government to undertake the cultivation of sugar through several agro-industrial complexes. Much effort and expense were also expended on rice production. The state company, DODERIZ, guaranteed farmers high farm-gate prices for their rice and provided them with technical assistance, both of which greatly stimulated rice production. However, because the processing and marketing infrastructures proved inadequate to cope with the increased productivity, in time, farmers grew discouraged and began to limit or abandon totally rice cultivation.

The strong market for export crops throughout the 1970s meant good, steady revenues for the government and for the farmers, who continued to produce traditional crops. The production of plantains and root crops generally kept pace with the demand. By the early 1980s, Ivorian agricultural production was still in the hands of smallholders (average farm size, 5-10 ha), who grew almost all of the food crops in the country and 85 percent (in value) of its export crops. Indeed, for the agricultural sector in 1980, the Ivorian smallholder generated 75 percent of the gross agricultural product (GAP), while forestry enterprises generated 16 percent and modern animal farms and industrial/crop plantations combined, only 9 percent.

Agricultural production began to slow down beginning with the early 1980s. While the agricultural growth rate for the 1960-70 decade had been a spectacular 4.2 percent per annum, between 1970 and 1980, it had decelerated to 3.4 percent. This decrease took place against an increase in the population growth rate, which rose from 2.9 percent in the 1960s to about 4.8 percent in the mid-1970s. The drop in per capita agricultural production (especially for food crops), the sharp decline in the world prices of coffee and cocoa, and the huge increase in rice imports led the government to reassess its agricultural policies and to develop new strategies in its 1981-85 Five-Year Plan.

The 1981-85 Plan noted that previous state policies which encouraged extensive cultivation of the forest had led to the depletion and reduction in land area. It stated that "because the previous development model prioritized cash crops grown in the forest zone, there was a significant increase in shifting agriculture and land clearance for the production of food crops required by the increased population. The old lands were saturated and new forestlands were taken over or appropriated as a precaution." A government
report estimated that between 200,000 and 400,000 hectares of forestlands were destroyed each year and that by the end of the century, most of the forestland would be occupied. The Five-Year Plan also noted that the rapid development of cash crops and the intensive labor required for itinerant food-crop cultivation had resulted in heavy dependence on foreign African labor, adding that "this immigration often leads to permanent settlement and to an excessive burden of foreigners in the rural areas."

Having noted the problems generated by old policies, the Five-Year Plan set new priorities and defined a number of directional changes. These included the "modernization of agriculture" and a "better coverage of food needs"—that is, continued self-sufficiency in traditional crops (yams, plantains, cassava) and enough rice to contain the existing deficit. These new strategies applied mainly to the savanna zone, where land was still relatively available and where agricultural mechanization was more applicable.

As part of its new policy, the government has undertaken to address the growing problem of the country's youth, especially the uneducated, unemployed young men who abandon their villages and daily swell the ranks of the urban underclass. In 1986, the government launched a program to Settle Rural Youth in Productive Rural Activities. With the help of foreign donors, the state plans to transform thousands of idle young men into "modern productive farmers."

The plan calls for organizing the youth into cooperatives which, with the financial and technical assistance of the government, will produce rice and other cereal food crops. For reasons that will be discussed later on, this program to resettle the youth on the land has drawn particular attention to land tenure issues. A recent headline in the daily newspaper read, "The Minister of Agriculture tells the country's elders, 'Free the Land'." The article goes on to say that one reason that young men leave their villages is because they have no immediate access to land and because they resent the power that the older generation continues to exercise over their lives.

In brief, the last few years have signaled a transitional phase in the development of agriculture in the Côte d'Ivoire. This phase is marked by the decline in the prices of cocoa and coffee, the decrease in per capita production of food crops, the heavy rural-urban and north-south rural migration, the population increase, and the emerging land constraints. The role that land tenure plays in agricultural development has acquired new urgency. The "unresolved problem of land tenure" is increasingly singled out by ministers and by the media as a constraint on future growth and development of the agricultural sector. What is Ivorian land tenure about? What is its role in agricultural development?

**Land Tenure and Agricultural Development**

Land, along with capital and labor, is one of the chief factors in agricultural production. The impact of different systems of land control and land use on agricultural development is a fundamental concern to the leaders of developing countries; it is also the subject of a long and unresolved debate among developmental economists.
As is the case in other parts of the Third World, land tenure in Africa today represents the mixture and evolution of several systems. At the base are the indigenous precolonial systems; added to this are the colonially introduced rules and regulations and the "modern" postcolonial national systems. In some countries, particularly in West Africa, these latter are a mix of colonial and Islamic rules and practices adapted by the regimes in power. The regulation and control of property and property transactions are important aspects of nation-building, for they have important political and economic implications.

In sub-Saharan Africa, scarcity of land has seldom been a problem. Land reform as such was, therefore, rarely a target of government policy. Rather, the primary issue with indigenous land-tenure practices was their suitability or unsuitability for the development of modern agriculture. Do indigenous tenure practices constrain development and, if so, what can be done about it? What policy should the government adopt with regard to status of land? What laws and procedures are to regulate land registration, inheritance, use of forests and water resources?

In the case of the Côte d'Ivoire, these questions were posed early on. Immediately following independence, a high-level committee was set up to study the issue of land tenure and to develop a national land code, or code domanial. On 20 March 1963, the National Assembly reviewed the code proposed by the committee and unanimously voted (there was one abstention) its adoption. However, for reasons that will be discussed later on, the code was never approved by the president and was, therefore, never promulgated. Since then, the government has proceeded to regulate and control land tenure and land use through a series of administrative laws and decrees based on colonial ones. Registration and sale of land are now fairly routine in urban areas. But this is not the case in rural areas, where no more than 1 percent of the land is estimated to be registered. Land tenure is one of the major issues facing the government and one that is becoming increasingly urgent. All one has to do to appreciate the importance of the issue is to read the daily newspaper.

The reluctance of the government to address the problem head-on may be due to a number of factors. First, until very recently, there was no real land pressure. Considerable reserves of arable land remain available in the north and the southeast; observers generally agree that the "supply of the chief factors of production, land and labor, is unlikely to impose serious constraints on Ivorian agriculture in the near or medium term" (Hermann 1981, p. 134). Second, land tenure is a politically sensitive issue, one that pits the government against the traditional chiefs. By claiming ultimate sovereignty over land and encouraging individual registration of property, the government is undermining the authority of the village and land chiefs (chef de village, chef de terre), whose status and power rest, to a large extent, on their control of land.

Another factor in the government's reluctance to address the land tenure issue may have to do with the fact that until now, the existing tenure practices have posed no serious constraint to agricultural production. As previously noted, the impressive expansion and diversification of Ivorian agriculture during the two decades of the 1960s and 1970s were essentially achieved within the framework of traditional farming and land tenure systems. Since the mid-1980s, however, it has become increasingly evident that the structural...
features underpinning the Ivorian agricultural sector are less favorable for sustaining agricultural growth. Experts agree that this period (which roughly began in 1985) represents a critical phase for Ivorian export agriculture.

Cocoa, the driving force of export growth, faces serious market limitations and tough competition (notably from Ghana and Malaysia); the coffee subsector has been stagnant; and timber production has been in decline. A recent World Bank report noted that "while the diversity of Côte d'Ivoire's climate and production base provides excellent potential, the structure of agricultural incentives and incomes together with institutional constraints limit the rate of growth of many agricultural activities. Moreover, land-extensive agricultural development patterns of the past are progressively reaching their limits in the south while development in the north is constrained by low productivity and rural incomes, which is causing an important rural exodus" (World Bank 1987, pp. 99-100).

In order to sustain agricultural growth and to cope with the emerging resource constraints of land and labor, the government is currently reassessing its agricultural policy with a view to addressing a number of issues. These include the intensification and mechanization of agriculture and the reassessment of traditional land-use patterns in the light of population pressure and environmental concerns, especially deforestation.

Land Tenure in the Côte d'Ivoire

Land tenure refers to the body of rights and duties that regulate the use and control of land. As such, land tenure comprises the complex of socio-r ritual, legal, and economic ties that prevail within a given group over the land it occupies and exploits.

In the Côte d'Ivoire, one may distinguish two separate and often opposing systems of land tenure: the indigenous, precolonial system, and the modern one put in place by the government following independence. This latter represents an adaptation of the French colonial system. In practice, the tenure arrangements and understandings that prevail throughout the country today represent local combinations of elements drawn from both the indigenous and the modern systems. This is particularly true in the rural areas.

Indigenous Land Tenure

It is important to point out that there is no one indigenous system of land tenure in the Côte d'Ivoire. Different ethnic groups have their own ideological and institutional arrangements with regard to land and land use, and these have, of course, to be studied on a case-by-case basis. Enough is known about these systems, however, to allow us to draw on their common elements and to describe a generalized "indigenous land tenure system."

Like most other sub-Saharan Africans, the inhabitants of the Côte d'Ivoire traditionally assigned a sacred dimension to land. A group's right to inhabit and exploit a given territory was believed to rest on descent from the original
settlers who were the first to clear the forest (or savanna) after making a sacred pact with the local spirits. This pact between the settlers and the spirits is continually reaffirmed through the ritual sacrifices connected with the earth and the agricultural cycle; in addition, each village has its own sacred forest/woods.

The guardian of this sacred pact and the one responsible for all matters connected with the land is the chef de terre (known among the Bete as Dodogba and among the Senoufou as Torfala), who is believed to be a direct descendant of the first clan to settle in the area. The chef de terre's duties include the performance of the ritual slaughter of a chicken on all occasions involving land and the agricultural cycle.

The traditional view holds that the descendants of the original settlers have inherent and inalienable rights to the land regardless of whether they are actively engaged in exploiting it or not. Moreover, it is also believed that there is no such thing as "vacant" or "unclaimed" land—in other words, all land is appropriated by one group or another under the terms of the mythical charter. As will become clear later on, this conception is directly opposed to the modern principle, which holds that vacant and unused land belongs to he who puts it into use, and to the provisions of Legislative Decree no. 57-458 (4 April 1957), which declares that all "unappropriated land" in the country is state or domain land.

As a sacred patrimony bestowed in perpetuity on a group defined by its common descent from a founding ancestor (or ancestress), land was considered to belong to the whole lineage (considered as a corporate group) and not to any one individual member. As already mentioned, the management and administration of this corporate trust is in the hands of the chef de terre, who is assisted by the village council of elders. His chief responsibilities are to undertake the primary division of village lands among the constituent lineages and to mediate and adjudicate conflict over land. The moral/religious authority of the chef de terre (who may or may not also be the political chief of the village) is based on his status as a direct descendant of the founding ancestors.

Each village usually consisted of one large, exogamous lineage or kin group organized along patrilineal or matrilineal descent lines. All members born into this group had access to the land. However, the rule of village exogamy meant that in the case of patrilineal groups (the majority of ethnic groups in the country), women who were married outside their natal village had no access to their ancestral land. Likewise, in-marrying women, who were considered to be "strangers" to the lineage, had no inherent claims to land. Women's access to land was, generally speaking, at the discretion of their husbands.

Each village functioned, in effect, as an autonomous ministate; it had its own government, best described as a gerontocracy, and its own territory. A village council, made up of all the elders of the lineage, directed village-wide affairs. At a lower level, each of the different lineage segments was ruled by its most senior male member; he assigned duties, controlled finances of the segment, arranged for brideprice and weddings, decided on crops to plant, and so on. A village or lineage could number anywhere from 100 to 500
people, grouped into a number of family segments, each averaging between 30 and 50 people.

Village land consisted on two categories: a communal area of virgin or uncleared land, variously known as the secondary or black forest (grande terre), and the area that had once been cleared, referred to as primary or white forest (petite terre). The grande terre covered all the land claimed by the group which was available for hunting, fishing, and wood collecting. This area was administered on behalf of the group by the chef de terre, who had the authority to grant villagers the right to clear and cultivate private fields on this communal land. The petite terre consisted of the land that had been divided among the segments or family units of the village. Each of these segments had, in effect, its own chef de terre, the senior elder who managed the land and supervised its use by the individual families who made up the segment. Although the grand chef de terre had, in principle, the authority to rotate land among segments, in practice, land was passed on from one generation to the next within the same segment. However, it should be remembered that traditional tenure conferred usufruct rights only.

The sacred status of the land and its communal nature rendered it, at least in principle, inalienable. The usual way for outsiders to have access to land was through petitioning the chef de terre, who, after consulting with the elders, would assign the applicant a plot; in return, the farmer would give part of the harvest to the chef de terre or he would contribute his labor. A chef de terre or a segment elder could, with the consent of the village council, sell a piece of land to an outsider. The legal status of these "sales" was often unclear since the agreement was often informally concluded between the two parties involved. By the mid-1950s, the French made an effort to have such sales put in writing and registered by the administration under the rubric conventions entre Africains. The introduction of cash crops such as cotton and cocoa brought substantial change to this system.

A.J.F. Kobben, who studied land tenure among the Bete and Dida inhabitants of the southern Côte d'Ivoire, wrote that most disputes with strangers concerned the amount and frequency of payments for land or the extent of the land in question. He found it difficult to determine the precise nature of these transactions and the rights that they conferred on the stranger: Was it an absolute transfer of property rights (that is, purchase), or was it some kind of a long-term lease? He describes the case of a Bete who paid 3,500 Fr. for a plot in a village of which he was not a native and on which he started to cultivate coffee. The agreement was that the plot now belonged to him, but the old man who "sold" it continued to demand and receive an annual "gift" as a right. Kobben adds that this custom of demanding supplementary "gifts" (typically after harvest time) was widespread and sometimes continued years after the land had been transferred.

While there is no doubt that commercialization and sale of land has a long history in the Côte d'Ivoire, it is also true that even today, land cannot easily be disposed of without the consent of village elders. Random interviews in several parts of the country indicate that the traditional reluctance to sell land has not completely disappeared and that any sale of village land must, ideally, be done with the approval of the rest of the "family." Respect for this dictum varies from one region to another, but nonetheless, there
exists now a land market whose activities are not fully understood. Case studies of land use and agricultural development in several parts of the country (Boizo, Michotte, Castellu) indicate the presence of an active land market with the transfer of large tracts of land from one Ivorian group to another and from native Ivorians to nonnative immigrants.

The extent of these sales, the nature of these transactions, and the long-term status of the immigrant groups are all subjects of speculation. A study done in 1982 among cocoa farmers in the Daloa region illustrates the processes involved in this transformation (Boizo 1982). The Daloa area is a heavily populated, forested region inhabited by Bete and Niaboua ethnic groups. Local Bete custom distinguished between virgin forestland (black forest, korogba) and the agricultural zone of areas cleared for cultivation. Shifting cultivation and fallowing meant a gradual encroachment on the forest by the villagers as their land became exhausted. Often times, a whole village would abandon its site and move closer to the forest. When this occurred, the elders would begin by delimiting an area for construction of huts after which they would identify two or three agricultural zones, depending on the number of groups that made up the village.

Within these zones, the operating principle was that land belonged to the original clearer and to his heirs. Individuals had rights of usage only, with the transfer of these rights and of the possession of a specific parcel of land through inheritance only. When the chef de foyer (head of household) died, the chef de famille reassigned his land to his surviving brothers first and to those of his sons who had already worked on the land. In this, the older generation took precedence over the younger one. Under this system, the property remained within the confines of the larger family. Men were (and are) in charge of tree crops, coffee and cocoa, while women planted peanuts, maize, and yams.

Boizo writes that in order to increase the country's production of cocoa, the government undertook in the early 1960s to encourage the farmers to modernize their agricultural techniques, to group themselves into cooperatives, and to plant their cocoa in large "village blocs" under the guidance and supervision of the Société d'Assistance Technique pour le Modernisation Agricole de la Côte d'Ivoire (SATMACI). With the help of SATMACI, Bete villagers cleared large areas of the forest (a bloc averaged 150 ha) which were then divided into minimum units of 3 hectares each. These, in turn, could be rented out to immigrant farmers who, in time, would accumulate enough income to buy the land.

The result, according to Boizo, is a progressive modification in the status of the land. Instead of being the communal property of a lineage or large family grouping, land in this region has become the exclusive property of individual households which proceed to sell parts of it. The authority of the chef de terre and of the chef de famille seems now to be limited to the communal reserve land which is not yet divided among the different households. Boizo adds, however, that these sales remain rather controversial, are very often carried out en cachette (in secret), and usually involve uncleared forestland far away from the immediate site of the village.

The status of these transactions is, in most cases, ambiguous. Are these transactions to be regarded as final in the sense that the immigrant has full
property rights? Boizo indicates that the immigrants try their best to acquire valid legal titles to the land so that the Bete will not be able to reclaim their land by invoking their customary law under which land could not be alienated and where individuals could lay claim to the ownership of the trees they had planted but not to the land on which the trees were situated.

A major complication here is the fact that land registration is optional in the country except in the case where land is a concession from the state. Given this, it is not surprising that litigation over land is very common. A recent article in the Abidjan paper (Fraternité-Matin, mardi, 16 août 1988), under the headline, "Too Much Conflict over Forest Land," reported that land conflicts in the area of Dabou (between Abidjan and Gagnoa) pose a real threat to the economic development of the area. It added that the governor had convened a commission of local notables and agents of the ministry of rural development and charged them with dealing with these conflicts that "have their origin in the multiple claims made over forest land and the chaotic practices of the past."

**French Legislation and Land Tenure**

The formal presence of the French in the Côte d'Ivoire began with the signature of two treaties in 1843: one with King Peter of Grand Bassam and the other with King Attacla of Assinie. Among other things, these treaties stipulated complete respect of local customs and practices. Local kings and tribal chiefs ceded parcels of land to European speculators and settlers on an individual basis. By 1893, when the Côte d'Ivoire became an autonomous French colony, French citizens had managed to acquire large concessions of land as well as commercial monopolies for the extraction of timber and other forest products. When Governor-General Binger arrived at Grand Bassam in 1893, one of his first acts was to introduce measures to regulate concessions and put them under the direct supervision of his office.

A 1900 legislative text declared that all land that was vacant and without an owner ("les terres vacantes et sans maître") was state domain. Without written titles, Africans were hard pressed to "prove" ownership in cases where the colonial government claimed the land. This decree marked the beginning of the opposition between the French administration and the customary chiefs over land tenure. This opposition has been transferred from the French to the post-colonial Ivorian state.

In an attempt to improve its relations with the African chiefs, the French introduced a provision in 1935 to the effect that the state would limit its claims to land that had been abandoned for ten years or more. This left unresolved the problem of land held in reserve for agricultural expansion. In 1936, there were complaints that the administration had favored Europeans, allowing them to appropriate large tracts of good, fertile land. This led the colonial government to halt its practice of outright sale of land to French and other Europeans; instead, it began to grant them long-term leases (bail emphytéotique), averaging twenty-five years. Under this system, the state retained "ownership" of the land, which it could reclaim when the lease expired.
This measure, however, did not resolve the conflict with the traditional chiefs since the administration continued to assert its claim that all land that was "vacant and without owner" was domain land. In 1955, a new decree was introduced. This time, the burden of proof was put on the administration; in order for the state to claim a piece of land, it had to furnish evidence of nonutilization. This was a victory of sorts for traditional African claimants since the state would have as much difficulty in "proving" nonuse as they had had in proving use. This decree was never put into effect, however, since the years between 1956 and 1960 marked a transition toward full independence and the French administration was preoccupied with more pressing matters.

The Unpromulgated 1963 Code

In a message addressing the nation, the new president of independent Côte d'Ivoire, F. Houphouet Boigny, said, "In a country of free men, custom ought to be respected, but only to the extent that it does not conflict with the march of progress." A report on land tenure, commissioned by the new administration in 1962, identified a number of problems with the traditional system:

the customary practice of land tenure contributes to the maintenance of an archaic agricultural regime based on extensive cultivation and with poor productivity; it constrains the evolution to a modern, productive regime based on rational intensive cultivation of the land ... the problem is then how best to transform the existing traditional system based on religious and para-feudal conceptions of the social collectivity to one based on rational appropriation and use of land (Ley 1972, p. 521).

To provide an answer to this question, and to resolve the outstanding problems of land tenure inherited from the French, the president convened a high-level commission and charged it with preparing a land code for the country. In his directives to the commission, the president said that its work must be guided by the "criterion of efficacity." According to Ley (ibid., p. 519), the most delicate part of the exercise had to do with the elaboration of new regulations or statutes for the terres coutumières: "This represents the essential aspect of the work and is conceived as a legal mechanism which would permit the government to realize real agricultural reform which is indispensable for a more efficient utilization of the country's natural resources" (quoted from the notes of the rapporteur to the Commission).

Although the new code was never ratified by the president and put into effect, it is worth looking at certain of its provisions in some detail. Articles 29-57 were devoted to the question of "the status of untiited (qui ne font pas l'objet d'un titre de propriété) land and forests." Article 29 stated that all such land was to be registered in order to clarify its status, a necessary precondition for agricultural development. Registration might take one of three forms: (1) registration in the name of the state, that is, as domain land (this is to apply to all land that has not been cultivated since January 1962); (2) registration in the name of the individual who is cultivating the land; and (3) registration in the name of the traditional
collectivity, *collectivité coutumière*, that is exploiting the land in accordance with local custom.

As can be seen, this first version recognized explicitly the traditional collective rights of the group. However, there soon developed a problem with the legal definition of a "collectivity" and with the question of what constitutes "customary usage." The code was revised and the category of *collectivité coutumière* was eliminated. In effect, the state in one stroke abolished the traditional system of land tenure, turning all "customary land" that was not under cultivation (and thus could not be registered by individuals) into domain land. (For a detailed discussion of the 1963 Code and the accompanying debates, see Ley 1972.)

No doubt fearing the reaction to these radical measures, the president deemed it prudent to veto the code and send the document back for "further deliberation" to the National Assembly, where it still languishes.¹

Failing to promulgate a legislative code for land tenure in the country, the government has instead relied on a number of early French decrees which it has supplemented with a few administrative rules of its own.² Together these form the basis for regulating land tenure today.

**Legislative Texts Regulating Land Tenure**

The two most important decrees (inherited from the French) in application by the Ivorian government are the decrees of 1932 and 1935 relative to registration and domain land, supplemented by the arrêté of 1938 relative to land concessions by the state. The Decree of 26 July 1932 states that all non-registered land is domain land, while the Decree of 15 November 1935 refers to the state's right to confiscate or expropriate land that is "abandoned" or not properly exploited (neglected for a period of ten years or more). The Order of 31 January 1938 gives the state the authority to cede land to individual applicants for exploitation. This can be in the form of absolute title or through a long-term lease, bail emphytéotique.

¹. A story is told in the Côte d'Ivoire that the president is awakened at night with the news that half of the country is on fire. On asking how this has come about, he is told that it is because of the Land Code. Having heard rumors about the new law, the farmers have set the forest on fire so that they can claim it as being cultivated. (Setting the bush on fire is the first step in shifting cultivation.) The president then quickly orders the suppression of the code, claiming that such a code cannot be passed but still maintaining that land will be considered as domain land and that the state will undertake to cede out in accordance with the wishes of customary chiefs who, after all, constitute part of the state hierarchy.

². The constitution of the Côte d'Ivoire (like the French one on which it is based) distinguishes between a domain of law and a domain of rules (règlements). Thus, without going through the legislative procedure, the administration can issue rules that have the force of law.
The texte d'application accompanying the order stipulates that if the demand is made by a stranger (to the local village or ethnic group or to the Côte d'Ivoire), the sous-préfet must first make sure that the collectivité coutumière does not plan to use the parcel within the next hundred years. In other words, the state will seek the agreement of the village elders to the installation of strangers, thus implicitly recognizing customary land tenure claims.

In addition to these three measures, the most important legislative texts related to land tenure are the following:

1) **Decree no. 64-164, 16 April 1964**, relative to land sale. All land sales transacted through private contract, acte sous seign privé, are considered invalid and cannot be recorded in the livre foncier. A ministerial decree issued later by the Ministry of Finance (where the cadastre is located) reaffirms the 1964 decree and declares all private contracts null and void. It does not, however, specify any penalties for infractions. As will be discussed later, only notarized acts of sales (involving registered titles) are considered to be legally valid.

2) **Law no. 64-379, 7 October 1964**, outlawing polygamy and regulating inheritance. This legislation prohibits matrilineal succession, whereby a man's property passes to his sister's sons, and generational succession, whereby a man's property passes first to his brothers and only after their deaths to his sons. The law specifies that succession is to be from father to sons. Despite the promulgation of this law, it is widely acknowledged that polygamy and matrilineal inheritance are widely practiced in the country.

3) **Decree of 16 February 1971**, relative to administrative procedures pertaining to rural and domain land. This decree reaffirms the illegality of all private land sales.

4) **Circular of 19 December 1984**, relative to the allocation of cultivable land. This measure fixes the size of land concessions and defines administrative procedures for land grants and leases.

The application of these legislative texts and their collective implications for the evolution of land tenure in the Côte d'Ivoire are discussed in more detail in the subsections which follow.

**Land Registration**

Registration or immatriculation in the Côte d'Ivoire refers to the act of inscribing or registering a specific parcel of land for the first time in the public land register, known as the livre foncier. The livres fonciers are kept at the Département de Conservation Fonciers, a department within the Direction Générale des Impôts (Division of Taxes), which also includes offices for cadastre and registration; the Direction Générale des Impôts is part of the Ministère de l'Economie et des Finances (Ministry of the Economy and Finance).
Besides the Conservation Fonciers and the Cadastre, the Département des Services des Domaines is also involved in land registration. It is divided among three ministries: the Ministry of Construction and Urbanism, the Ministry of Agriculture and Rural Development, and the Ministry of Economy and Finance, which handles the *recettes domaniales* (rent revenue) of the conservation fonciers.

The *livre foncier* is a legal document; it has the seal of the first president of the tribunal (high court). Once a title is entered into the *livre foncier*, it is considered to be valid and beyond contest. The *livres fonciers* are organized by *circonscriptions foncières*, the units into which the country is divided. These are not uniformly defined, however, since they include three different categories: city or town, ethnic group (*ethnie*), and geographical zone. Thus, there is a *livre foncier* for the Bete, an ethnic group; another for Bingerville, a town near Abidjan; and one for Sassandra, a geographical zone.

Registration is a long and expensive process. Briefly, for a rural zone, the major steps are the following. The applicant presents a request for a specific parcel of land to the *sous-préfet* in the area. The *sous-préfet* convenes a commission, which includes administrative personnel and village chiefs and notables, to review the request. If the area requested is less than 50 hectares, the *sous-préfet* has the authority to grant the applicant a permit allowing him to utilize it, a *permis d'occuper*. If, however, the area exceeds 50 hectares, the applicant has to petition the Service des Affaires Domaniales Rurales, located in the Ministry of Agriculture and Rural Development, in Abidjan. The Service reviews the request and, if it approves it, issues a ministerial order granting the applicant a provisional concession, *concession provisoire*, to the property subject to a two-month waiting period to clear any challenges from a third party ("sous réserve du droit des tiers"). The concession is then announced in the *Journal Officiel*. The person who receives the concession pays the Ministry of the Economy and Finance an annual rent. The *concession provisoire* gives the new proprietor up to five years in which to put the land into production; failing that, the state can reclaim it.

As soon as the land is in production, the proprietor can begin proceedings to convert his temporary concession into a more secure form of property. He or she has to prepare a *dossier technique*, which involves hiring a surveyor, delimiting boundaries, and the like. The *dossier technique* is forwarded to the Domaines Rurales with the new request; once approved, it is then forwarded to the Conservation Fonciers. Conservation Fonciers in turn forwards it to the Direction du Cadastre, where a permanent order or *arrêté définitif* is granted. This allows 12 hectares to be registered as private property and the rest to be given under a lease, *bail emphytéotique*. The limit of 12 hectares per individual together with the lease arrangement is designed to prevent the formation of large estates and to allow the government to retain some control over the land.

The rights conferred by the *bail emphytéotique* are extensive; the lease can be sold, mortgaged, and inherited. Leases are given for twenty-five years with the option for renewal. The process of obtaining a title (for private
property or lease) should in principle take no more than a year; in practice, however, it can take as much as seven years. The procedure is long and cumbersome, involving several different ministries in Abidjan. Given the expense, time, and effort that are involved, it is not surprising that, so far, only a fraction of rural land has been registered. Estimates of registered rural land range from a low of 1 percent to a maximum of 5 percent, which amounts to about 16,000 square kilometers out of the total of 320,000 square kilometers.

Most of the registered titles are for land in Abidjan and Bouake. Nevertheless, demands for titles have increased dramatically in the last decade. In 1951, only 36 titles were registered, most of them held by Europeans; by 1966, the number of titles had increased to 1,491, still mainly in the hands of Europeans and a few educated Ivorians in Abidjan. Beginning in the 1970s, and with the encouragement of the government, more and more people have applied for titles as they become aware of their value for obtaining credit and preventing litigation. One informant at the Domaines Rurales said that registration used to be done mainly by immigrants (non-Ivorians) who sought titles for security. Now, more and more Ivorians, especially in the forest zone of the south, seek to register their land. The south has large numbers of immigrants (Ivorians and nonnationals), an important land market (mainly illicit), and increased pressure on forestland for new plantations of palm oil and rubber.

To encourage registration, the government charges no fees for the procedure. From the time when the request and the dossier technique are submitted to the Ministry of Agriculture to the recording of the title in the livre foncier, no charge is demanded. However, the preparation of the dossier technique can be quite expensive since it involves hiring a surveyor and other technical experts who have to travel to the countryside. The cost of preparing a dossier technique in Abidjan is about 45,000 CFA (about $150 in U.S. dollars); in rural areas, it is much higher.

To speed up the process of registration, the government, encouraged by the World Bank, is considering a project to carry out a cadastral survey of selected regions in the country. By its preliminary surveying, such a project would facilitate registration. In other words, the government would take upon itself much of the burden which now falls on the applicant in the preparation of the dossier technique. Such a cadastral survey is expensive, however, and would in all probability reactivate the sensitive and unresolved issue of competing claims of jurisdiction over land—namely, those of the state and those of the customary chiefs.

In theory, as discussed earlier, the state's domain extends to all land that is not registered and "not in use" or vacant. This was explicitly stated in the unpromulgated 1963 Code and led to panic in the rural areas, where the people understood it to mean that they could become owners of the land under cultivation only and that all the rest would be appropriated by the state. To alleviate people's fears, efforts were made to try to portray President Houphouet-Boigny as the nation's chef de terre, in charge of "distributing" the land to the people "with the help of traditional chiefs." The innovation was that this distribution was to take place after the land was surveyed and identified as domain land. As the director of domain admitted, this was really fiction or a "supposition" since the state does take into account customary
rights. This is evidenced by the fact that when an individual demands a land concession from the state, the sous-préfet's advisory commission always includes village chiefs and notables whose approval is critical for granting the concession. In the case of the new program of installing youth on the land, the Ministry of Agriculture in most cases reaches an agreement with village chiefs for the use of land. In some cases, according to newspaper accounts, the chiefs give the land as a "gift" to the project. In other cases, the minister has been known to urge the elders to "cooperate and release" the land for the national project.

Legal Transformation of Collective Customary Rights. In common with French colonial practice, the Ivorian government does not recognize the village group (lineage or collectivity) to be a legally constituted entity. Villagers, however, can collectively incorporate themselves as a village cooperative or association which, when properly registered, can obtain title to their land. In a case near Dabou, the commissioner of police was sent by the mayor to chase out a group of villagers who had refused to turn over the site of a sand-and-gravel pit near their village. The villagers had petitioned to be recognized as a cooperative in order that they might jointly manage the marketing of the sand and gravel. In 1980, a new municipal zoning system, of communes, was established throughout the country and the new mayor sought to exert his authority over the sand-and-gravel pits. The villagers contested his orders, and the court upheld their rights.

Access to Land

One may distinguish two ways of access to land: public and private.

Public Access. The government or, more correctly, the administration allows individuals and corporations (parastatals, private companies, and so on) access to domain land through the above-described procedure which results in the issuing of a permis d'occuper, allowing the exploitation of land whose area does not exceed 50 hectares. An individual or corporation can continue to exploit the land with this permit. Registration is voluntary although increasingly the sous-préfets are encouraging concessionaires to register the land. The permis d'occuper generally has no time limit, and as long as the land is put to use, it is unlikely to be reclaimed by the government which, nonetheless, retains that right.

Private Access. This can take one of three forms: legally recognized purchases, inheritance, and extralegal transfers.

a) Legally recognized purchases. This involves the legal transfer of a registered title through the intermediation of a state-licensed notary, or

3. Old system: village/tribu/canton/sous-préfet. In 1980, the commune was superimposed on the cantonal divisions. A commune, which covers 8 km², forms part of the sous-préfecture, which in turn is part of a département.
notaire. The notary reports the transfer within a period of three months to the Conservation Fonciers, where it is entered in the register.

b) Inheritance. According to the 1964 Law, land is to be passed from the father to the children, who are the legitimate heirs. In practice, as informants are quick to point out, the law is ignored and customary rules of succession continue to prevail in most of the country, especially where land is not registered. Customary rights may involve matrilineal and generational forms of succession. In certain cases of litigation over succession, courts have upheld customary rules. Cases of "lineage or collective plantations," for example, have their origin in land cleared and maintained by collective family labor but managed by the village chief. On the death of the village chief, these plantations are "inherited" by the chief chosen to succeed him. In a few cases, this custom has been challenged by younger men who want the "collective" plantation divided into individual parcels. The court has upheld the custom, arguing that it prevents fragmentation and provides security for villagers. It appears that such property is treated as if it were held in "trust" for the lineage.

c) Extralegal transfers. Sale of land through an individual contract, sous seing privé, is widespread despite its being illegal. This most often involves the transfer of rights over property that is not registered; the "sale" is done without a notary. If there is no litigation, and the new owner puts the land in use, he is able to begin proceedings to have the parcel legally registered in his own name. Informants claim that much of the litigation over land relates to this kind of "illicit" sale, which usually involves "strangers" to the village or region. A. Ley writes that in this chaotic situation, people hesitate to buy rural property since it is difficult for the buyer to know who the "real owner" is. The villagers behave as if they "own" the land and, in some parts of the country, sell it under private contract without bothering first to have title to it. (A French decree of 1932 recognized the validity of private contracts.) The confusion is partly the result of the ambiguous policy of the state, which neither fully acknowledges nor ignores the customary system of land tenure. As already demonstrated, the state's rather ambiguous policy is to "respect custom to the extent that it does not hinder the march of progress."

Security of Each Mode of Access

It is evident that legal sales involving the transfer of titles through a notary are the most secure since, once title is entered in the livre foncier, it cannot be contested. Inherited land can be contested, especially when succession does not conform to national law, but it seems that in this area, the judges have wide discretionary powers.

The permis d'occuper, although legal, does not convey full security of tenure since rights to the parcel may be contested by villagers who claim it to be part of their customary domain. In the absence of nationwide cadastral records, and given the ambiguity regarding the status of much of the land in the Côte d'Ivoire, state concessions do become subject to litigation.
Land Litigation

Conflict over land among members of the same lineage or village is usually resolved by the chef de village assisted by the elders. Should he fail to do so, the parties take their case to the sous-préfet who, in turn, brings together the village chiefs, notables, and the local representative of the Service Agricole et Domaniale. This latter, who is an employee of the Ministry of Agriculture and Rural Development, is charged with investigating the claims on the ground and with preparing a report for the sous-préfet. The sous-préfet, together with the chiefs and elders, then attempts to resolve the case through arbitration. If this fails, the parties can take their case to the court.

Each sous-préfecture has, in theory, a local branch of the lower court, that is, the tribunal de première instance. Each of these courts (referred to as sections détachées du tribunal de première instance) has one judge. If the litigants are unsatisfied with his judgment, then their only alternative is to bring their case to the court of appeals, located in Abidjan, and then to the Supreme Court. In other words, litigation over land, if not resolved at the local level through arbitration, is handled through the regular judicial system, which in the Côte d'Ivoire is closely adapted from the French legal system.
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