



Côte d'Ivoire 

Whose land is this?

Land disputes and forced displacement
in the western forest area of Côte d'Ivoire



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October 2009

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Summary

Armed conflict broke out in Côte d'Ivoire in 2002, which caused the country to be divided in two: the north under the control of the Forces Nouvelles rebels and the south in the hands of the government. It also caused the mass displacement of hundreds of thousands of people. In the west of the country, and in particular in the two regions of Moyen Cavally and Dix-Huit Montagnes, the crisis provoked a series of successive displacements involving population groups with competing claims over land.

These tensions in the west were among the consequences of a national policy on forest development, which led to significant migration flows in the two regions, particularly from the 1960s and 1970s. Ongoing land disputes in these areas have been exacerbated by the armed conflict, the resulting displacement, and now the return of internally displaced people (IDPs). While people were displaced, many of the plots they had planted were sold or leased by others, so depriving IDPs of their principal means of subsistence on their return and fuelling inter-community tensions. It is feared that the land disputes will multiply as more IDPs return.

Despite the customary principles that hold land as an inalienable asset, new practices have developed which have allowed much of the land to be sold. These practices have followed policies designed to facilitate the access to land of migrants, in order to encourage them to come to exploit the resources of the western forest area by developing agriculture for export. This practice of informal land sale, which is contrary both to custom and to statutory law, has encouraged more or less intentional misunderstandings as to the nature of the land transfer. The buyers assert that they have acquired permanent ownership of the land, whereas the sellers consider that they have only sold a right of use.

Such misunderstandings gave rise to many land disputes when the economic crisis led young people to return from the cities to cultivate their fathers' land, only to find that much of it had been sold to migrants. These people's attempts to recover the right to use the land have led to an increasing number of disputes, with the migrants asserting their ownership rights. Politicians have exploited this situation in such a way as to further fuel the national divide.

Côte d'Ivoire has not developed a system of restitution or compensation for properties which IDPs were forced to abandon due to the conflict. Instead, the government

intends to settle disputes over the ownership of this land through an existing mechanism designed to recognise and formalise customary rights. Before a law on rural land was passed in 1998, no legislation gave customary land transactions any form of legal weight and only transactions witnessed by a notary were recognised. The 1998 law broke new ground by recognising customary rights on a transitional basis, before converting these into formal individual rights. It was particularly ambitious, considering that 98 per cent of rural land is subject to customary management, with only one to two per cent held under title deed in accordance with statutory law. Recognising the role that custom still plays in land transactions, the law confers transitional property rights based on customary rights and transfers, and translates these into title deeds in the case of citizens of Côte d'Ivoire, or into long-term leases for non-Ivorians.

Although the aim of the 1998 law is to reduce tensions over land ownership resulting from the uncertainty of customary transactions, the formalisation of customary rights in the context of displacement complicates land disputes and increases the risk of discord. Effectively, as well as recovering the land they left behind, returnees must also assert their existing customary rights and ensure formal legal recognition of these rights.

Certain provisions of the law that would normally be insignificant have a negative impact on these IDPs, and it is essential to adapt the law to their specific situations, to avoid discrimination. Prerequisites for the recognition of customary land rights, such as the "certified statement of the continuous and peaceful existence of customary rights" could prevent IDPs who have been absent from asserting their rights. One way to avoid this would be for the government to give clear directives for interpretation, emphasising that absence due to conflict cannot be taken into account in determining continuous and peaceful existence.

Similarly, the law provides that the request to formalise ownership must be made at the site where the plot of land is situated, obliging IDPs to undertake costly and potentially difficult or dangerous journeys. In this case, facilitating the transport of displaced people or other applicants could be considered, so that all parties may be heard and represented. Due to the distance of IDPs from their usual place of residence, a system also needs to be set up to inform them of any requests that concern them which are filed in their home villages, so that they can defend their rights.

A general campaign to inform people about the provisions of the 1998 law would enable them to benefit from it. This campaign should, however, be preceded by an effort to clarify certain provisions of the law, as it has some omissions and imprecisions that could easily lead to contradictory and sometimes discriminatory interpretations against migrants from within Côte d'Ivoire or from abroad.

The law only applies to the rural land domain and not to the protected forests benefiting from "forêt classée" status, where many displaced individuals had plantations. Many customary transactions between "autochtones" (indigenous inhabitants) and migrants in these forests were illegal, since the forest code prohibits all private transactions. Thus there is no specific legislative framework to resolve these kinds of land disputes; their great number calls for the implementation of global solutions that take the interests of displaced people and more broadly of migrants into account equitably. These solutions should recognise the years of work invested, by providing restitution of or compensation for their plantations. Beyond ad hoc solutions such as the Bloléquin Agreement on land sharing, it would appear that a global approach is currently being considered.

The crisis has made the existing customary, administrative and judicial mechanisms for managing land disputes less effective. Previously, customary authorities managed almost all land disputes, but their legitimacy has been increasingly called into question since the crisis. Furthermore, the displacement of many customary chiefs has kept them from performing this role. In many villages, customary authorities have also been displaced, carrying with them knowledge of land transactions. This has facilitated the irregular appropriation of land and the proliferation of self-proclaimed leaders who returning autochthones have violently rejected. In other cases, new mechanisms such as "Peace Committees" (Comités de paix) have been set up either alongside or in the place of existing ones, leading to confusion over the role of each in responding to land disputes.

In this context, the mechanisms provided by the 1998 law seem to offer a valid alternative solution, with the state offering, subject to the legal limitations outlined above, a better guarantee of impartiality in the face of the mistrust of migrants towards local customary authorities.

However, there are many obstacles to the implementation of the law, some connected to problems encountered during any programme to register customary land rights, and others connected to the content of the law itself and its imprecisions. The increase in the number of land disputes resulting from the crisis and displacement contribute to these obstacles. The law represents a radi-

cal change for populations who are used to customary management of land and who may be wary of adopting a system that imposes a complex procedure and payment of a land tax, in which they do not necessarily recognise any added value. Migrants may, however, consider the reform positively, and appreciate the chance the law gives them to secure their land rights.

From an institutional point of view, the formalisation programmes require considerable administrative, financial and human capacity in the short term as well as in the long term, and the government does not generally have a strong presence in rural areas. The creation of the Village Land Committees (Comités Villageois de Gestion Foncière), which are tasked under the 1998 law with the formalisation of customary rights, should be accompanied by a significant increase in the number of surveyors to demarcate the plots of land to be formalised; currently only 23 surveyors cover over 20 million hectares of rural land. Due in part to the conflict and these problems of institutional capacity, the law had only been partially implemented more than ten years after its promulgation, with the first land certificates only expected in June 2009.

These constraints call for cooperation between the various institutions, the formal courts and the customary authorities. Although the courts are not obliged to call on the customary authorities to resolve land disputes, they often have recourse to them in order to obtain further information about the nature of the alleged rights. In general, people rarely apply to the courts in the event of land disputes, due to the distance and cost involved and the difficulties involved in enforcing rulings. This is particularly the case in Dix-Huit Montagnes and in parts of Moyen Cavally, where the justice system has yet to be fully restructured following the conflict, complicating the task of establishing facts and enforcing rulings. In many cases, the courts send the plaintiffs back to the customary institutions.

When it does accept land disputes cases, the justice system has demonstrated a pragmatic approach: the Daloa Tribunal, which holds temporary jurisdiction in the areas studied, has notably agreed to take into consideration written notes that attest to customary transactions, even if these have no legal value. To implement the 1998 law, the courts could use the rulings of the Land Committees to better understand land disputes. Similarly, appeals to the customary authorities to facilitate implementation of the 1998 law could certainly make up for the lack of local institutional presence, but would increase the risk of partial rulings. It therefore seems judicious to rely on the Village Land Committee, while strengthening the representation of all members of the population within these committees.

Recommendations

For the attention of the Government

Concerning the 1998 land law

1. Define by statutory text or written directive the notion of “continuous and peaceful” occupation with respect to the situation of internal displacement, emphasising that absence due to the conflict cannot be considered as an interruption of continuous and peaceful existence. Thereby avoid discriminating against internally displaced people (IDPs) who have been unable to assert their customary land rights by demonstrating continuous and peaceful occupation.
2. Define by statutory text or written directive the action to be taken where a statement of continuous and peaceful existence of customary rights cannot be made, so that the procedure shall not be interrupted on this basis alone.
3. In the absence of precise statutory texts, clarify with the officials charged with the implementation of the law what the “obligation of lease for the non-proprietor farmer when the latter is of good faith” entails, and define the criteria for establishing good faith.
4. Clarify the value that will be accorded to the many “petits papiers” (small papers) used for sale and right-of-use agreements.
5. Clarify whether non-Ivorians can own buildings within the rural land domain without being the owners of land, and if they cannot, consider a form of compensation for the building.
6. Clarify whether or not non-Ivorians have the right to a land certificate, and specify the practical or legislative consequences in either case.
7. Establish affordable long-term leases for farmers who cannot become landowners. This will limit abuses of the system resulting from unequal power relations and will indirectly recognise the value of investments already made.
8. For farmers who cannot become landowners but who have obtained a long-term lease, consider a form of compensation through a deduction in rent corresponding to the lease price. In the absence of “petits papiers” or registers indicating this amount, a sum could be determined in accordance with the size of the plot, the date of sale and the current value of land in the area. Where applicable, a single “lump sum” payment could be considered.
9. Amend the law so that land transactions carried out since the 1998 law came into effect may be recognised and formalised.
10. Amend the legislation to charge to the state the fees related to registrations in the state's name, instead of to the lessee.
11. During investigations to determine the existence of customary rights, adopt a proactive approach to protecting the land interests of all members of the family, including women, children and those displaced, especially through the work of the village and prefectural land committees (Comités de Gestion Foncière Rurale). Formalise this approach through a decree or directive, in order to limit the risks of exclusion from ownership of the most vulnerable or the least informed people.
12. Ensure and systematically encourage the representation of all the communities and the displaced people within the Village Land Committees (Comités Villageois de Gestion Foncière Rurale), and help representatives to defend their interests effectively by allowing support from a third party mediator or NGO.
13. Facilitate the transport of land committee investigators so that the interests of all parties may be heard.
14. Set up a mechanism to take displaced people to their usual place of residence, to relate and defend their interests during public sessions presenting the results of the land investigation. When insecurity prevents their travel, put in place a form of assistance or legal representation allowing the statements of the displaced people to be recorded and transmitted to the Village Committee.
15. Set up a notification system in addition to the one provided under the law in displaced people's places of origin, to inform them when requests concerning them are filed so they can defend their rights. Prioritise the dissemination of this information along the axes of displacement.
16. Provide a general information campaign about the provisions of the law to allow the population, and

particularly displaced people, to best benefit from it. Given that the government aims to implement the law quickly, it is important to inform the general public, while simultaneously addressing the problems highlighted in this report.

17. Carry out an information campaign to let displaced populations know where they can find updated information on requests for certificates that have been filed, so that they may check if their land is concerned.
18. Establish a mechanism to survey problems, abuses and good practices that arise during the implementation of the law. The Rural Land Commission (Commission Foncière Rurale), although not yet operational, could play this role in its capacity as the “inter-sectoral body for monitoring the rural land situation and for studying the conditions for optimising land management” and the “permanent consultative body in the domain of rural land”.

In general terms

19. Initiate a profiling exercise on displaced people, to establish with greater certainty their numbers and the various patterns of displacement and return.
20. Develop a framework defining the terms and conditions for settling land disputes that arise within the protected forests.
21. Ensure the implementation of the legal provisions regulating access to Ivorian citizenship through naturalisation, giving special attention to those people who have already benefited from decrees of naturalisation.
22. Create land and property chambers within the courts, along the same lines as the employment tribunals, presided over by professional magistrates assisted as necessary by assessors who are informed authorities on land issues in the region.

For the attention of civil society

23. Initiate advocacy activities to encourage the adaptation of the 1998 rural land law to the specific needs and constraints of displaced people, and to encourage clarification in cases of contradictory interpretations.
24. At the same time, contribute to raising awareness and disseminating the 1998 land law and subsequent texts in collaboration with the Ministry of Agriculture.
25. Monitor problems, abuses and good practices of implementation of the law, and bring these to the government's attention.

For the attention of the United Nations Humanitarian Coordinator

26. Initiate a discussion within the UN country team regarding the requirements for profiling the displaced population and the options available for launching a concerted process, with the government's support, to establish the number and locations of IDPs, in order to more precisely identify displacement and return movements and so ensure better planning and assistance.
27. Ensure that land issues are considered within any strategy developed by the agencies and international partners of the UN to help IDPs achieve durable solutions.

For the attention of agencies and international partners of the United Nations System

28. Continue to advocate, to the government where necessary, for the adaptation of the 1998 rural land law to the specific needs and constraints of displaced people, and clarify the points of law that give rise to contradictory interpretations.
29. At the same time, contribute to raising awareness and disseminating the 1998 land law and subsequent texts in collaboration with the Ministry of Agriculture.
30. In the interim – while a coordinated, holistic approach is being set up – systematically involve the Ministry of Agriculture, along with the Ministries of National Reconciliation, Relations with Institutions, Solidarity, and War Victims, in reconciliation efforts and activities promoting the return of displaced people.
31. Render the mechanisms and initiatives for settling conflicts and promoting social cohesion consistent in Moyen Cavally and Dix-Huit Montagnes, by coordinating with the Ministry of Agriculture over the management of land disputes.
32. Ensure that specific issues are taken into account regarding the recognition of the land rights of displaced women within any programme supporting durable solutions for displaced people and the implementation of the 1998 law.
33. Support government efforts to facilitate the access of people to the identity papers they require to initiate a request for a land certificate.

For the attention of donors

34. Encourage the government to adopt corrective measures that take into account the particular difficulties encountered by displaced people with respect to the implementation of the 1998 law, and support it in these efforts.
35. Support government efforts in the implementation of the 1998 law, including activities which may help IDPs take advantage of the law.
36. Provide financial support for initiatives by agencies and international partners of the UN system that aim for a better understanding of the number of IDPs and their patterns of displacement and return, and which guarantee the promotion and respect of the rights of IDPs within the framework of the implementation of the 1998 law, and the possibility of long-term return for those who express a desire to do so (hence the need for profiling, combined with a survey of IDP's intentions regarding durable solutions). This exercise would help to better identify where, and through what activities, the implementation of the 1998 law should target IDPs.

Introduction

Following a series of political crises, armed conflict broke out in Côte d'Ivoire in 2002, leading to the country's division: the north came under the control of the New Forces (Forces Nouvelles) rebels and the south remained under government control. The conflict also caused the mass displacement of hundreds of thousands of people.

For three decades until 1980, Côte d'Ivoire was a haven of stability in West Africa. Its political stability from 1960 to 1980 was the result of both the political pragmatism of its leaders and a favourable economic environment. The key to the country's economic success was the development of the coffee and cocoa sectors, thanks to policies encouraging the migration of a national and international workforce, particularly to the western forest area. A sharp fall in the values of these commodities on international markets, coupled with an economic recession at the end of the 1980s, not only had an impact on quality of life, but also exacerbated the tensions between indigenous inhabitants and migrant workers from abroad or from other areas of Côte d'Ivoire.

Three peace agreements negotiated between 2003 and 2005 were ineffective, but the signing of the Ouagadougou Peace Agreement in March 2007 gave greater hope for stability, and many displaced people decided to return to their regions of origin. However, challenges remain in spite of the significant progress made in the implementation of this last agreement. The demobilisation and reintegration of the rebel soldiers of the Forces Nouvelles have been held up by financial constraints and problems relating to recognition of ranks acquired during the war. Similarly, the disarmament of militias is essentially symbolic¹: even though most of the prefects and deputy prefects have gone back to their positions in the north of the country, the rebel power structures are still in place and retain de facto administrative, security and financial control of the north, creating a double-headed and unequal administrative system. Prolonged delays in re-establishing the judicial system in the north is limiting the efficiency of redeployed public servants.

The west: the Regions of Moyen Cavally and Dix-Huit Montagnes

The west of Côte d'Ivoire constitutes the commercial heart for cocoa, coffee and wood production, due to its very fertile soil that favours agro-industry. Encour-

aged by a systematic national policy to promote² the fertile west, migrant workers from other regions of Côte d'Ivoire and from neighbouring countries have settled en masse in this part of the country since the 1960s and 1970s. The Regions of Moyen Cavally and Dix-Huit Montagnes constituted two of the main arrival points for these migrants. With the aim of maximising profit, the forest zone was progressively occupied, not only the plots of land that were already available, but also forest reserve land protected by the government against any form of exploitation.

Since the western forest area is one of the preferred zones for export agriculture, the issue of access to the land and its management in this region has caused many tensions. The return of young city-dwellers to the villages following the economic crisis has increased the demand on the land and created inter-generational conflicts as they have contested the transfer of land to migrants in their absence. This intra-community tension has in turn soured relations between indigenous inhabitants and migrants when, under pressure from the young people, the older generation have sometimes been led to question the sales that they had made with migrants. This is particularly true where the death of the seller has provided an opportunity for indigenous "guardians"³ who sold them the rights (tuteurs) to call into question the terms of exploitation agreements or the limits of the plots of land concerned. Such conflicts relating to the ownership of farms and to the modes of cohabitation between various communities had already provoked minor localised displacements before the war. The armed conflict only worsened the tensions between the indigenous inhabitants and migrant communities including citizens from other regions of Côte d'Ivoire and other West Africans.

With the advent of the 2002 crisis, Moyen Cavally and Dix-Huit Montagnes experienced vast population displacements. Some 80,000 internally displaced people (IDPs) were recorded by humanitarian agencies⁴ in the Moyen Cavally region alone, following fighting between armed groups in 2002 and 2003 and growing insecurity due to the presence of pro-government militias and self-defense groups. This situation caused serial displacements, where groups caused others to flee and were then forced to flee in turn. On the one hand, the north-south conflict provoked massive displacements of part of the population along the Duékoué-Guiglo-Bloléquin axis and to the north, and on the other hand, inter-community

conflicts caused groups of allochtones (citizens of Côte d'Ivoire) and allogènes (non-nationals)⁵ to seek refuge near the city of Guiglo.

One of the underlying causes of the crisis that hit Côte d'Ivoire in 2002 was the resentment against access to the land by migrants, whether citizens or not. This resentment was exacerbated by the economic crisis. The importance placed on the concept of "Ivoirité" – which was used to deny non-Ivorians access to land ownership – is one of the manifestations of this resentment, which has equally affected migrants who are citizens of Côte d'Ivoire. This has had a particularly strong impact in the west of the country, with its economic potential connected to export agriculture and its many citizen and non-Ivorian migrants.

The armed conflict exacerbated existing land ownership disputes due to the displacement and to the increase in deaths and inter-communal disputes relating to succession. In terms of displacement, disputes generally break out when the displaced individuals attempt to reclaim their plantations and realise that their plots have been occupied in their absence: either given to new migrants for exploitation without taking into account previous agreements or contracts⁶ or without the authorisation of the rightful owners. According to an evaluation conducted by the Norwegian Refugee Council (NRC) in the zones of Duékoué, Bangolo and Man⁷, the majority of people interviewed acknowledged that land ownership disputes were recurrent (in certain localities this problem was highlighted by all of the interviewees). The persistence of tensions relating to land has not only contributed to a crystallisation of the axes of displacement but also constitutes a considerable barrier to the return of displaced people or to their achievement of other durable solutions.

With the signing of the Ouagadougou Peace Agreement in March 2007, certain localities of the two regions witnessed the return of an increasing number of displaced people from within the country. The spontaneous nature of these movements makes it difficult to obtain a precise evaluation of their volume and of the zones concerned. As highlighted in the recommendations of the mission⁸ of the Representative of the United Nations Secretary-General on the human rights of internally displaced persons, land and property issues are an integral part of the displacement situation in Côte d'Ivoire and merit special attention, with a view to finding durable solutions. The need to take into account questions of restitution or compensation following a period of conflict is reflected at the international level by the principles of restitution of the property of refugees and displaced people adopted by the United Nations in 2005⁹. These principles do not only concern private property rights,

but also customary rights pertaining to land access and management.

Côte d'Ivoire has not developed a system of restitution or compensation for the properties that displaced people were forced to abandon due to the conflict. To settle land disputes resulting from displacement, the government intends to use a mechanism designed to recognise and formalise customary rights. The government's analysis is that the legal uncertainty surrounding customary transactions is the cause of land ownership conflicts and that the recognition and subsequent formalisation of existing customary rights under private property law will enable it to resolve the land ownership disputes. Like many other African countries, Côte d'Ivoire established legislation in 1998 with the aim of transforming customary rights into private property rights regulated by the state. Until recently, this law had not been implemented systematically due to the conflict, but also because of the resources needed for its implementation. The objective of the law is to identify and list the property rights, and to make the transactions secure by providing them with a legal guarantee that may be upheld in courts of law.

However, certain provisions of the law could revive tensions between the communities in Moyen Cavally and Dix-Huit Montagnes. The law excludes non-Ivorians from private property¹⁰ without offering them any compensation other than the right to a long-term lease, but some have invested considerable amounts in the plantations that they exploit, and consider themselves as owners. As for migrant citizens, although they can become private landowners, their situation is just as vulnerable, since the recognition of their customary rights depends on the goodwill of the guardian, which may become difficult to obtain following tensions between indigenous inhabitants and migrant populations. Furthermore, the decision to accelerate the implementation of the law in a context of population displacement may penalise the displaced people who cannot defend their interests within the framework of investigations aimed at determining the existence of customary rights, because they are absent from their place of origin.

This study analyses land ownership problems in Côte d'Ivoire and more specifically in the regions of Moyen Cavally and Dix-Huit Montagnes, in terms of the economic evolution of the country, the crisis and the land disputes that have always characterised this area. The report will first describe the general framework of modes of access to the land (ancestral ownership of the land and right of use) and the manner in which land ownership relationships are governed in Côte d'Ivoire between autochtones, allochtones and allogènes. It will then show how the conflict and the population

movements have amplified land ownership disputes and fostered the development of diverse mechanisms for resolving land ownership conflicts. It is within this context that the implementation of the 1998 law comes into operation; although officially in force since it was passed, the law was previously only very partially applied. The principal characteristics of the 1998 law (demarcation of territories, legal validations of collective and individual customary rights and establishment of individual title deeds) will be presented, as well as a study of the interactions between the different mechanisms of land disputes (administrative, customary and legal mechanisms) and the impact of the law on the land crisis and the tensions that exist between communities. An analysis of the current situation aimed at facilitating the implementation of durable solutions for internally displaced people in Côte d'Ivoire will be made, along with practical recommendations.

contradictory) information given by the various parties. Even if the analysis takes general considerations as its starting point, the present study focuses on a very specific geographic zone and has benefited from the expertise of NRC field teams in the localities visited. This report, written by NRC/IDMC, used a preliminary report by Mr. Théodore Dagrou as its starting point, and added further documentary research.

Note on the study

The information for this study is drawn from a mission carried out in Côte d'Ivoire by NRC-IDMC from 26 June to 6 July 2008, as well as from field research undertaken in July 2008 by Mr. Théodore Dagrou, President of the Daloa Court of First Instance, recruited as a consultant by the Norwegian Refugee Council office in Côte d'Ivoire. The field research targeted the départements of Man (the villages of Yapleu, Bably and Pinhou), Danane (the city of Zouan-Hounien), Bangolo (the villages of Zou, Guéhouo and Duékpé), Bloléquin (the city of Zéaglo), Guiglo (the villages of Béoué, Zouan, CIB and the city of Guiglo) and Duékoué (the village of Guéhieby and the city of Duékoué). The team used a methodology based on semi-structured interviews with privileged informants (government and partners) and specific groups (women, young people and displaced people). In each village, the team met with the various social groups, including the village chief and the land chief (when the former does not assume both functions), the notables, the President of the Youth Association, members and representatives of indigenous and migrant groups, women, internally displaced people and/or returnees if they have not been represented by the aforementioned groups.

The interviews were held based on a list of questions dealing with different themes: social and historical composition of the village, description of population movements before, during and after the crisis, types of land disputes before, during and after the crisis, methods of resolution of these disputes before, during and after the crisis, and modes of land transfer. Reliable analysis was made possible by crosschecking with specific documentary research the (sometimes

Coexisting sources of land rights in Côte d'Ivoire

The management of land ownership rights in Côte d'Ivoire is subject to more than one legal regime. Two sources of land ownership rights exist: custom and the law. They operate in parallel with a minimum of interaction. Prior to the promulgation of a 1998 law on rural land, the legislation deprived customary land transactions of any form of legal weight and only recognised transactions carried out in the presence of a notary. The 1998 law breaks new ground by recognising customary rights on a transitional basis, before entirely transforming these into formal individual and private rights. In Côte d'Ivoire, the management of 98 per cent of rural land is customary, with only one to two per cent of land held under title deed in accordance with the law¹¹. Thus rural land is almost completely managed at the margins of the law, creating difficulties for administrators and formal courts called to resolve land ownership disputes concerning customary transactions without legal basis. It also illustrates the extent of the challenge of convincing people to convert to the formal system through the 1998 law.

This chapter will first focus on describing the methods used in customary land management, before outlining the rules of formal law governing land ownership, as well as the different policies which have been successively put in place regarding this issue, and which partly explain the current tensions.

Customary land management

Principles and evolution of customary practice:

Custom is founded on local social norms and implemented by local or customary powers¹². It is inherently localised and fluid, adapting according to social evolution. However, it retains certain fundamental characteristics around which functional practices develop due to the inadequacy of laws and the inability of custom to cope with new land ownership situations driven by political pressure and economic influence. Custom varies between communities, and many customs coexist within a single country. The following description is therefore necessarily a simplification of the complex reality of customs and of the relationships maintained between populations and customary authorities. The strength of custom is its proximity and its legitimacy based on its social acceptance, which permits effective enforcement of decisions made by customary leaders.

One of the basic foundations of customary land management in Côte d'Ivoire is the impossibility of alienating or selling the land. Custom makes a very clear distinction between the ownership of the soil – which belongs to the community (family, lineage or village) and cannot be sold under any circumstances – and the right of use of the soil, which may be transferred or sold. The beneficiary of a right of use transferred or sold by a customary owner may grow plantations and harvest crops, but cannot acquire the soil itself.

According to custom, ownership of the soil belongs to the first occupants of a zone. Depending on local particularities, the property will be considered to belong to a notable, to the land chief, to a lineage or to the important families (“grandes familles”) that founded the village¹³. However, this ownership excludes sale of the land and the “owners” consider themselves more as managers of the land, which must be preserved for future generations in order to protect their means of subsistence. This idea is illustrated by Elias Olawale’s affirmation that “the land belongs to a huge family, many of whose members are dead, some are alive and most of whom are yet to be born.”¹⁴ It is partly for this reason that neither custom nor formal law in Côte d'Ivoire accept a right of property derived from occupation (also known as “acquisitive prescription”), irrespective of its duration¹⁵.

The right of access to land is however wide open, notably when demands on the land are low. This results from both a concern for hospitality towards those from outside the community so they can ensure their subsistence, and also from more direct interests. Requests are made to the manager or managers of the land by respecting a very simple procedure and offering compensation for the right to use the land. This compensation depends on the demands on the land: it may or may not be financial, but in either case it involves gifts of gratitude to the owner. Traditionally, this may be a drink offered to the owner in thanks, a part of the harvest, or small gifts (“petits cadeaux”) offered to the guardians on special occasions such as wakes.

Granting this right of use of the land establishes a relationship of guardianship between the user of the land and the owner/guardian. Guardianship is a very common practice in West Africa which allows the transfer of land rights between indigenous owners and outsiders to be regulated. Guardianship also permits the integration of these individuals by granting them a status and a duty of gratitude towards

the guardian who has allowed their use of the land¹⁶. The periodic renewal of gifts of gratitude aims to remind the user of the guardianship relationship and of the fact that the guardian is the true owner of the land. For the same reason, certain customs prohibit outsiders from developing perennial crops such as rubber or cocoa, and restrict them to seasonal food crops, to avoid tensions due to users developing a sense of ownership of the plantations¹⁷.

During the period of agricultural development in western Côte d'Ivoire, requests for sale of customary rights of use increased considerably, and were particularly encouraged by politicians who put pressure on customary leaders to accept land transfers. The development of cash crops, the expansion of the workforce and the resulting rise in demand on the land, led to an increase in compensation levels. As the land transfers started to involve money, and sometimes large amounts, people became confused as to whether the right of use was being sold, or the ownership of the land. This confusion was knowingly upheld, both by the state – notably by way of ex-president Houphouët Boigny's famous slogan "The land belongs to those who put it to good use" ("La terre appartient à celui qui la met en valeur") – and by certain local owners who used this notion to demand larger amounts of money.

While the majority of the "sales" are transacted orally, many private agreements are confirmed by being written down and signed by the parties in the presence of a land or village chief¹⁸. These "small papers" ("petits papiers") have no legal value since the formal law only recognises transactions carried out in the presence of a notary¹⁹, but they nonetheless reflect a common method of sale.

Thus, in spite of the customary principles that regard the land as inalienable property, certain practices allowing all kinds of transactions, including financial ones, have developed within a context of political pressure. This has encouraged misunderstandings that are more or less intended, as to the permanence of the land transfers. These misunderstandings have given rise to numerous land ownership disputes at a time when the economic crisis has forced many young people to return from the cities to cultivate their fathers' lands, only to find that much of it has been sold to migrants. In attempting to reclaim their land-use rights from these migrants, land disputes have multiplied, as the migrants have rightly or wrongly claimed that they bought the land. Political movements have contributed to the resulting resentment of migrants from within Côte d'Ivoire or from other countries.

Customary procedures for access to land

According to custom, land cannot be sold. The occupant acquires the right to use the soil, but also a right to administer and profit from the land that is transferred to them.

Plantations and other goods planted as part of the occupant's right of use thus become the property of the user, independently of the soil. They may then dispose of them freely, subject to certain conditions. Statutory law limits the right of use in Article 2 of Decree 71-340 of 12 July 1971, by prohibiting the sale of land within the customary land ownership domain. This text defines customary rights as "...rights concerning the use of the soil. They are personal and non-transferable." This discrepancy between the customary practice of land transfer and the legal framework that does not recognise these practices is an example of the legal pluralism mentioned above.

a) Sale: The only form of sale authorised by custom is the sale of rights of use. A farmer who has obtained a right of use for a plot and has created a plantation can sell the latter to a third party, but must consult the guardian. The question of sale of the soil is a sensitive issue, as it is not recognised as valid or legitimate under either formal law or the founding principles of custom. The existence of a procedure for the sale of land may be clearly attested by written documents signed by both parties and by the customary or village authorities; however, the terms of these agreements may present very little detail and may not specify the scope or the limits of the engagement entered into. Confusion then remains between the customary owners who consider that they have only sold a right of use, and the purchasers who believe they have acquired a right over the soil.

Interpretations diverge as to whether the practices of sale reflect the evolution of custom, or remain in contradiction with custom. The presence of the customary authorities during the signing of certain agreements feeds this confusion and debate. In either case, custom must adapt to the social, economic and political evolutions to which the community is exposed.

b) Planting/sharing: This is a practice whereby a customary landowner entrusts the agricultural development of his or her land to a farmer, in return for a part of the harvest obtained. After the apportionment, which generally takes place when the plantation is about to produce crops, the farmer acquires part of the plantation as originally agreed. The idea is that the work carried out by the farmer, sometimes over a period of several years, is paid by the transfer of a part of the plot of land to him. The purchaser may dispose of his right of use of the land as he pleases, but must present any potential buyer to his guardian by virtue of the continuing relationship which recalls that the ownership of the soil remains with the guardian.

c) Lease: Land leases are agreements that regulate the right of use of the soil. Generally, these contracts allow tenants to produce food crops for a period correspond-

ing to a seasonal harvest. The beneficiary pays a rent determined by the parties. In Zou, the Commission for the Management of Lowlands (Commission de gestion des bas-fonds)²⁰ was created in order to control the access to very fertile zones which were suitable for food crops. Their value, as well as the increased demand on land, has led to prescribed rules of access and fixed lease prices according to the type of agriculture that the tenant wishes to practice.

d) Pledging of plantations: The owner of a plantation can pledge it to a third person in exchange for money. This person will recover the initial outlay from the harvest resulting from the fruits of their labour. Generally, the parties specify the duration of the exploitation, taking into account the amount of the loan and the value of the plantation. Disputes may arise in the case of long-term pledges made without a written agreement or on the basis of an imprecise agreement, with one party maintaining that it was merely a pledge, and the other asserting that a sale of the plantation (as opposed to a sale of the soil) had taken place²¹.

*Customary land rights of women*²²

Women in Côte d'Ivoire do not generally have control of land and access it indirectly, through a male intermediary in their family such as a father, husband, brother(s) or uncle(s). This means that while women play an essential agricultural role (weeding, sowing, maintenance and protection of crops, harvesting and selling in markets), they cannot dispose of the land themselves, nor sell it, nor inherit it. This is partly due to the custom that land must stay within the original lineage to which it belongs. There are two essential systems of succession: the matrilineal and the patrilineal. In both cases, belonging to a direct lineage is the basis for the inheritance: brothers inherit and women do not necessarily inherit from their husbands. Hence, when a woman marries, she goes to work on her husband's land and does not inherit her father's land to avoid the dispersal of the community's land assets. Her rights over her husband's land last as long as the marriage lasts. In the event of the husband's death, a woman may assume a role as guardian of the land for the children of the deceased. Otherwise it is the deceased's brother who will inherit the land.

Most of the customs practised in Côte d'Ivoire follow these principles but many also ensure the subsistence of widows and female orphans by allocating them plots of land. Nonetheless, women remain entirely dependant on the male members of their family or on the goodwill of the community in order to have access to land.

However, while women cannot as a general rule own land, they can rent and cultivate it. From the interviews

conducted on site, it appears that women are generally excluded from farming perennial crops²³ (which are the most profitable) and so farm food and lowland crops that used to be considered less attractive. The recent interest in lowland crops due to the growing scarcity of the land has made access to these zones more difficult or expensive for women²⁴.

If their rights are contested, women hesitate to protest on a local or legal level – even if the positive legal system would no doubt justify them – for fear of suffering the community's disapproval, being marginalised or even accused of witchcraft²⁵. Furthermore, their rights of succession may be affected if the judge applies the law strictly²⁶, considering that only civil unions are deemed valid. The vast majority of marriages in rural areas are based on customary law, which authorises polygamy, thus complicating successions. Customary wives would however have an interest in taking advantage of the law, which recognises legitimate and illegitimate children on an equal standing in matters of succession (for fear that they have not been recognised by their father). The law thus permits customary wives to obtain the control of property for their children until they come of age and allows girls to inherit on the same grounds as boys. Customary wives without children remain however without any legal protection in terms of succession.

The recognition of customary rights governed by the 1998 law, and the transformation of these rights into a land certificate and subsequently an individual title deed, is likely to cement the situation whereby women cannot own land. Given that custom does not allow them to control land, they have little to gain from the recognition of customary rights and their transformation into formal rights. Where the law provides for a collective certificate so as not to break up the ownership of land, children and women may reclaim their portion when the collective land certificate is parcelled out into individual land certificates or individual title deeds. It is, however, extremely likely that the outcome will depend on the goodwill of a father or husband who controls the land and will decide how the collective certificate is transformed into individual title deeds.

Since the transfer agreements for customary land rights were essentially made with men, displaced women whose husbands are now dead have to face a multitude of obstacles when they attempt to assert the validity of their husbands' exploitation agreements. Not only have they lost their husband, but they may also lose the protection and support of their family due to their displacement. The distance from their homes makes it harder for them to attend the procedures of recognition of customary rights. If they manage this, they must then assert the right to file a request for a land certificate as heir to their deceased

husband, even though custom denies them this right. This state of affairs not only renders the condition of displaced women extremely precarious, but it also blocks their return. The application of the law is not the only path towards the respect of women's land ownership rights; women and other members of the community should be made aware of the law²⁷.

Political and legal framework

Brief history of land policies and the specificity of the western forest area

An overview of the various successive land policies in Côte d'Ivoire since the colonial period allows for an analysis of the roots of the current land ownership tensions and for an examination of the likely difficulties in implementing the law on rural land.

Customary land rights were rescinded in 1935, during the colonial period, and since then have not benefited from any form of legal protection. The State became the owner of unregistered land "concerning almost all of the pastoral and agricultural land; and the dispenser of private property (by licensed registration) and the dispenser of rights of land usage (by concession)". Since this period, formal law alone has governed all forms of land transaction and transfer²⁸. The legislation prior to independence confirmed this approach²⁹. Customary rights were defined and legally restricted to non-transferable rights concerning the use of the soil³⁰. It is clear that the law was not imposed in practice, since 98 per cent of land transactions are still carried out within the customary framework, versus one or two per cent by way of the procedures of formal law. Successive governments have been conscious of the strength of custom and have sought to use it to attain one of their major objectives, the development of agricultural colonisation in the western forest area, in order to increase exports from cash crops such as coffee and cocoa. Côte d'Ivoire is among the principal international producers of these commodities.

The development of these crops required a large workforce, which governments hoped to attract by facilitating their access to land. This policy was accompanied by other incentives targeting migrants, and especially those from outside Côte d'Ivoire, such as the right to vote accorded to non-Ivorians, the issuing of certificates of occupation (which, however, had no legal value), as well as pressure on the indigenous inhabitants to continue to accept the transfer to migrants of an ever-growing number of customary rights.

In order to facilitate the transfers between indigenous inhabitants and migrants, the administration introduced a

"customary administrative practice"³¹ whereby it encouraged the customary authorities to adopt practices that contradicted both the legal framework (which had considered customary transactions null and void since the country's independence) and the customary framework (which rejected any definitive land transfer). This mechanism was described in the following terms by Jean-Pierre Chauveau: "It is (...) the intervention by 'informal' means of 'customary administrative practice' which allowed the political elites to influence the redistribution of rights within the customary domain."³²

From the 1980s crisis onwards, this policy was increasingly contested by the indigenous inhabitants following the return of young people from the cities, where the model of urban upward mobility had ground to a halt. These young people saw that they could not work the land that had been transferred to the migrants and started to contest the nature of the transfers that had been made. The migrants affirmed that they had definitively bought the land, while the indigenous inhabitants insisted that they had only conceded a right of use. This rejection by the indigenous populations of the pro-migration policy of the government of Houphouët-Boigny encompassed both migrants from within and beyond Côte d'Ivoire, grouped together under the same label: "foreigners".

On a political level, this sentiment was expressed by a renewed focus on the notion of "Ivorian-ness" ("Ivoirité") that reframed certain rights to nationality, in particular the right to vote (abolished for non-Ivorians in 1990) and the right to own land. In the context of land ownership, the concept of Ivoirité ran totally contrary to the preceding years, by strictly limiting land ownership to Côte d'Ivoire citizens and denying the validity of transfers carried out in the past between citizens and non-Ivorians. The 1998 law enacted the concept of Ivoirité, by fixing as a basic rule that only Côte d'Ivoire citizens could own rural land. While officially in force, the various elements of the law have almost never been implemented, but its promulgation and the rumours spread about it have nonetheless caused heated tensions. The recent conflict and the displacements which resulted, were partly the result of the previous land policies and of the calling into question of agreements made with the migrants during the period prior to the 1990s, provoking their anger and contributing to the outbreak of the conflict.

The tensions resulting from this radical change were amplified by the fact that they affected such a large number of migrants who had been encouraged to settle in Côte d'Ivoire over the previous decades, and particularly in the west. Based on the last population census performed in 1998, four million non-Ivorians were residing in the country: 26.6 per cent of the population³³. According to a study, less than a quarter of the population of the

western forest area are indigenous inhabitants, a quarter are migrant Côte d'Ivoire citizens and over a quarter are non-Ivorians³⁴. It is in this context that the 1998 law that stops non-Ivorians owning land was voted and must be implemented. It is therefore likely that in the west – where land tensions and the impact of the crisis were the greatest – that the implementation of the law threatens to give rise to the most problems.

The 1998 law concerning the rural land domain

The 1998 law aims to secure rural land transactions by way of a transition to a system of individual private ownership in which transactions will be handled by the State, thus offering institutional guarantees. The idea is to abolish customary transactions that can be contested and whose tendency to create tensions was illustrated by the recent conflict. The law recognises the role that custom still plays in such transactions, by giving transitional support to customary rights and customary transfers, before transforming these into title deeds in the case of citizens of Côte d'Ivoire, or long-term leases for non-Ivorians.

a) The recognition of customary rights: The 1998 law broke new ground by recognising customary rights as the basis for future rural title deeds. It also demonstrated realism by accepting the failure of the previous laws which aimed to ignore custom and instead set up a system of land transactions based on title deeds. The law posited that once the customary rights received full legal recognition and were transformed into private titles, the control of land transfers by the customary authorities would disappear of its own accord.

The land from the customary domain is recognised as one of the components of the rural land domain (Article 2) and is made up of “customary rights in accordance with tradition” and customary rights transferred to third parties (Article 3). Therefore the law differentiates between rights in accordance with tradition, that is, “original” rights detained by the customary owner and his lineage and those transferred by a customary owner to people that do not belong to the lineage, especially migrants, whether they are citizens or not³⁵. Although the law considers these transfers as “not in accordance with tradition”, it recognises them in order to give them a legal value that will secure them. As we shall see, this recognition depends on the validation of the transfer by the customary owner, which, in a context of tensions with respect to migrants, is far from guaranteed.

By recognising the customary transfers, the 1998 law terminated the decree of 1971 that considered customary rights as personal and non-transferable³⁶. Similarly, it put an end to the insoluble situation created by Article 8 of the fiscal annexe to the 1970 law of finances, which

stipulated that only sales performed in the presence of a notary should be deemed valid. This article not only made 98 per cent of customary land transactions illegal, but also prevented any regularisation of transactions since, without a title deed, it was impossible to have an audience with a notary³⁷. This retrospective regularisation of customary transactions allowed the transformation of customary rights into title deeds to proceed on a more realistic basis.

Under the 1998 law, customary rights will thus be recognised following a specific procedure that will give rise to the issue of a land certificate (a transitional, transferable title deed), then a proper title deed for Côte d'Ivoire citizens. Access to land ownership is not open to non-Ivorians.

b) Access to the land for non-Ivorians: Article 1 of the law concerning rural land specifies that “only the State, public authorities and national citizens of Côte d'Ivoire are permitted to (...) become landowners” of land belonging to the rural land domain. However, non-Ivorians can access the land via rental agreements or long-term leases. This means that a non-Ivorian who has bought the land in the customary manner may not have this purchase transformed into a title deed. At best, he can expect to obtain a long-term lease with favourable conditions, but which still imposes the payment of rent for land that he considers his own. The non-Ivorian who is a beneficiary of a customary transfer may enjoy a long-term lease if a “statement of continuous and peaceful existence of customary rights” is made as part of an application for a land certificate, and if his guardian considers the non-Ivorian to be in good faith.

The long-term lease does not allow the land to be sold but does present guarantees for the duration of use, and terms which offer the tenant high security of tenure and may encourage him to invest in perennial and lucrative plantations even though he is not the landowner. The lease itself is transferable and its bearer can mortgage it. The duration of the long-term lease runs from a minimum of 18 years to 99 years, and it can be passed on to heirs. The bearer of the lease has an obligation to develop the land. In compensation, the amount of rent is relatively low. The rents will be fixed by regulations to avoid overly large disparities between prices. It is essential that these amounts are modest, particularly in the case of non-Ivorian farmers who do not have access to land certificates or titles, in order to limit the resentment of those who, in some cases, bought land and invested in plantations for dozens of years.

Where non-Ivorians were already bearers of a formal title deed prior to the enactment of the law, the law allows the title deed to be conserved in a personal capacity. According to Law 2004-412 of 14 August 2004, which amended

Article 26 of the 1998 law, these title deeds can also be passed on to heirs who do not themselves fulfil the conditions of access to property provided for by the law. It is important to note that this clause concerns an extremely limited number of people, given that only one per cent of the land is registered and mostly to Côte d'Ivoire citizens. This article is the result of an amendment obtained following peace negotiations in Marcoussis and illustrates the sensitivity of the subject at the heart of the recent crisis.

Half of the foreign migrants were born in Côte d'Ivoire, but do not have citizenship. This is both because the vast majority of the rural population do not have identity papers, but also because citizenship privileges the blood-right over *jus soli* (the right of the soil)³⁸. Large numbers of them are affected by the new state of affairs for land ownership, as most have invested in agriculture. Special consideration should be paid to the implementation of the legal provisions regulating access to Ivorian citizenship through naturalisation, giving special attention to those people who have already benefited from decrees of naturalisation. This would allow some of the tensions relating to the 1998 law to be resolved in the long term.

Furthermore, the law is imprecise on several points which have led to divisions between jurists with respect to non-Ivorians' access to certain provisions such as the land certificate. These points will be developed in the following sections, which examine in greater detail those clauses that pose a problem due to their lack of precision.

c) The procedures provided: The law specifies the terms and conditions for the recognition and transformation of customary rights into private ownership. People who consider themselves the bearers of customary rights (whether transferred or not) must initiate at their own expense the procedure that will allow their customary right to be recognised, then transformed into a land certificate. The bearer of the certificate must then initiate a new request within three years to obtain a title deed. In order to encourage people to follow the procedure, Article 6 of the law provided that any customary rights left unrecorded within ten years of its proclamation would be considered "lands without masters" and would therefore belong to the State. Given that virtually no land certificates had been delivered at the end of 2008, ten years after the enactment of the law, over 98 per cent of the rural land domain was likely to be declared "without master" and pass to the State, thus stripping the customary bearers of their rights and emptying the law of its effect. In order to avoid this situation, the time limit for the issue of land certificates was prolonged in February 2009, by ten years (and by five years for the consolidation of rights over transferred land³⁹). It is however, uncertain whether this new deadline will suffice in the absence of additional resources. The legislators should be realistic

and take into account past experience, particularly that of the Rural Land Plan (Plan Foncier Rural⁴⁰). This Plan, which was executed between 1990 and 2002, enabled 1.1 million hectares to be demarcated in 12 years⁴¹, while the 1998 law aims to demarcate and record the formal rights over 24 million hectares.

The "continuous and peaceful existence of customary rights⁴²" is recognised following an official investigation⁴³ at the request of the presumed bearer of customary rights. This hearing, led by the sub-prefectural administrative authorities and village councils, aims to determine the nature of the rights exercised over the land. The Deputy Prefect appoints an investigative commissioner to assemble the claimant, representatives of the village council and of the Village Land Management Committee (Comité Villageois de Gestion Foncière), the owners of the adjoining plots of land and anyone else likely to make a useful contribution. A surveyor marks out the plot, and an inventory of the customary rights is established, to be presented at a public session of the village land committee⁴⁴.

In order to allow all of the parties to be heard, the investigation and the public session of the village land committee, are publicly announced⁴⁵ in any useful site for the purposes of the investigation and by radio broadcast announcement. If the village land committee approves the statement of the continuous and peaceful existence of customary rights following the public session, the file is sent to the Land Management Committee of the Sub-Prefecture (Comité de Gestion Foncière de la Sous-préfecture) for validation and issuance of a land certificate. This Committee can also rule on conflicts left unresolved during land ownership investigations.

The land certificate⁴⁶ is a transitory form of land title. It may be individual or collective and may belong to an individual or a legal entity, whether private or public. In the case of a collective certificate, the bearers of the certificate appoint a manager. The certificate may be sold, and the land connected to it may be leased, including in the form of a long-term lease. In the event of the death of the bearer(s), the certificate is transmitted to the heirs. It can also be parcelled out to the members of the group or to third parties. The certificate is a provisional title deed that must be submitted for registration within the three years following its issue. Registration gives rise to an individual title deed, signifying that the collective certificates must be divided into individual titles⁴⁷.

The person making the request bears the costs of registration, even in the event that he only has a right to a lease agreement as a non-Ivorian or private company. In this case, the land is registered in the name of the State at the expense of the lessee. Although this practice is established as a pledge of secure land ownership, it none-

theless remains to be seen how many people will take the initiative to request a land certificate, then a title deed, and pay the fees in both cases, while conscious of the fact that they will only have the right to a lease agreement, unless the person has already invested significantly in the plot concerned and cannot afford to lose everything by not initiating the procedure. Opinions are divided as to whether or not non-Ivoriens are permitted to benefit from a land certificate, due to imprecisions in the law and its related decrees, but also because it is too early to say as the implementation of the law, although in force for the past ten years, has not led to the issue of any land certificates⁴⁸.

d) Problems related to the implementation of the law of land registration: Various obstacles stand in the way of the harmonious implementation of the law. Some are typical of the problems encountered in the course of a programme to register customary land rights, others are linked to the content of the law itself and its imprecisions. The state of tension and the proliferation of land ownership conflicts resulting from the crisis and the displacement have contributed to these difficulties.

The problems that are typical of registration programmes are social, economic and institutional in nature. From a social perspective, populations that have been accustomed to customary management of the land for generations are resistant to change and hesitant to turn to the State to proceed with a registration in which they see no added value. This hesitation is reinforced by the fact that the transfer to a formal title deed requires adherence to a relatively complex procedure and the levying of taxes for the operation and updating of land registers. The work of informing people, and the short-term and long-term institutional, human and financial resources necessary to carry out the reform and maintain registers are enormous.

This law proposes a veritable cultural revolution by offering, after a transitional phase, to definitively eliminate customary land management and hence take away one of the essential roles of the customary authorities, who represent the cement of social relations at the village level. Without strong government intervention within each village, it is unlikely that the customary authorities will easily give up their power and that people will turn from them to a far-off administration whose legitimacy in regulating village relations is less accepted. Indeed, "Legal repeal does not always coincide with sociological repeal and the law that the legislator wished to abolish can very well continue to live on strongly in individual consciousness."⁴⁹ Moreover, for decades in Côte d'Ivoire the population as a whole has continued to turn to the customary system to regulate land transactions, while ignoring land laws that only recognise as lawful those transactions carried out in the presence of a notary. However, it must be noted that in the context of Côte d'Ivoire,

migrants, whether citizens or non-Ivoriens, consider the customary authorities as somewhat biased in favour of local populations and therefore often not in line with their interests. They may therefore see recourse to the State as a way of protecting their rights.

The programmes to formalise customary rights aim to reinforce the security of land transactions by granting the State control over these transactions. The model of title deeds, in Côte d'Ivoire as in most of the other countries, is the western model of private ownership whereby the rights over a plot of land attach to its owner. This approach ignores the pre-existing "cluster of rights"⁵⁰, such as access to the land for family beneficiaries or others, rights of way and of pasture, by only considering a one-to-one relationship between the owner and his land and by concentrating its powers on individuals. The difficulty of such programmes lies in "rendering local foundations of land management compatible with the legal framework, that secures family assets with respect to outside interests, while remaining sufficiently flexible to encompass the diversity of socio-proprietorial configurations and allowing evolutions to occur at their own pace."⁵¹ Unfortunately, it is clear that "the State's Jacobean logic is not very compatible with the recognition of the diversity of land norms and the role of local authorities"⁵².

Since they do not reflect the reality and the complexity of customary modes of access to land, the formalisation programmes very frequently result in a confiscation and concentration of ownership rights in favour of an elite who are most aware of the benefits to be gained from them. Within families, the people who follow the steps towards formalisation (sometimes without the rest of the family being informed) may exclude other family members or the community, and the latter may lose their customary rights of access to the land. The most vulnerable or least wealthy individuals within the families, who are often the least informed, are the first to be affected by the formalisation programmes. This is particularly the case for women, and in the context of the crisis that has struck Côte d'Ivoire, it is also the case for displaced people.

While the law allows for collective land certificates which can confer to the whole family the advantages of consolidating its rights, the second registration phase requires that the title deed be an individual one. Women and members of the family who are less informed of the procedures of the law, for instance those who cannot read or are less educated, thus risk exclusion. The law provides that a manager is appointed in the case of a collective certificate. This role is likely to be assumed by the head or the most informed member of the family. The inclusion of other members will depend on this individual's goodwill, unless the procedure leading to the land certificate

includes systematic questioning by the Comités de Gestion Foncière Rurale of all of the family members who are likely to hold interests or rights in the land.

The mechanism of confiscation by influential personalities within villages or families is clearly described by Aline Aka: "How can we be sure (...), that the head of the family will redistribute the family land equally, when he could establish financial assets by granting himself huge portions of land. He could simply legitimise this action in his capacity as head of the family, as he could just as easily legitimate the refusal to grant land to the women of his lineage in accordance with custom. In short, nothing could prevent the most influential social categories of the village from appropriating the majority of the land, to the detriment of the weak and the absent."⁵³ A special effort should therefore be initiated to ensure that each person knows their rights and can assert them within the process.

Furthermore, by not allowing collective registration in the name of communities or villages⁵⁴, the law focuses on a process of individualisation of land ownership that is far removed from the experience of populations and leaves little room for a decentralised⁵⁵ form of management of land ownership relations. The land reform would have profited from relying on local authorities closer to the affected people, not only during the phase of recognition of rights, but also for the subsequent transactions. This would also have provided an opportunity to make customary land management more democratic, by enabling the participation of the various groups within the villages. While the consultation with customary organisations and populations would have allowed for a better understanding and recognition of the various land ownership rights, the existing rift in Côte d'Ivoire between the local customary authorities and migrant populations means that the customary authorities must not be relied upon alone, and that the State should be able to arbitrate between the various parties.

This does not exclude the possibility of taking into consideration certain approved practices accepted by users, as long as these are not discriminatory or unjust. It may also be useful to associate local organisations with the implementation of the law, not only during the recognition phase but also for the subsequent transfers, as long as this does not lead to biased decisions. This would allow the inclusion of clauses in the laws that better reflect the complexity of customary land ownership relations and limit resistance to the implementation of the law.

Institutional and economic obstacles also stand in the way of the programme. The government does not generally have a strong presence in rural areas and this lack of proximity is a major obstacle to the implementation of this kind of law. Consequently, people are not well informed of the content of the 1998 law and its pro-

cedures. Notwithstanding the efforts deployed by the Ministry of Agriculture in organising several training operations in 2008, some of the public servants responsible for its implementation maintain a certain ignorance of the law. In the absence of a systematic information campaign in the zones visited, inaccurate information has allowed rumours to spread freely, which, in the current context of tension, reinforces the concerns of both local populations and migrants. NRC/IDMC has noted the diversity of interpretations of the 1998 law during its field visits. Understanding of the law was generally based on shreds of information received from visitors, government representatives, international organisations, or "executives⁵⁶" based in Abidjan. A thorough information campaign is needed to stop the rumours. However, this campaign should only be performed once the numerous uncertainties relating to imprecisions in the law have been clarified.

The establishment of the structures and the training of personnel to execute the law demand considerable financial resources, not only during the transition towards a formalised ownership system, but also in the long term, in order to maintain the accuracy of the land registry data. Côte d'Ivoire currently has only 23 surveyors for the demarcation of over 20 million hectares of rural land. Considering the important role assigned to them by the law as experts whose services are required for establishing land certificates, it is clear that this situation is a serious handicap that may slow the implementation of the law.

Problems of implementation relating to the clauses and imprecisions of the law

Beyond the problems typical to the development of programmes to formalise land ownership, the 1998 law contains numerous clauses or imprecisions that affect its implementation.

a) Omissions of the law: The law only views rural land in its agricultural dimension and does not pronounce on the question of houses and villages built on customary land. Since non-Ivorians do not have the right to own land, does this mean that they will also lose their houses without any form of compensation? Similarly, do non-Ivorians have the right to own houses without owning the land on which they are built? If this were not the case, there would be discrimination between the situation of non-Ivorians in rural zones and urban zones, where they have the right to own a house⁵⁷. Nor does the law pronounce on the management of pastoral resources such as rights of pasture and rights of way.

b) Imprecisions or incoherencies: The law contains imprecisions or incoherencies that complicate its implementation. The manner in which it is written seems

to indicate that only the transactions carried out prior to the promulgation of the law may be recognised and transformed. According to the President of the Daloa Tribunal of First Instance, Théodore Dagrou, the customary rights recognised by the 1998 law are those that were established prior to the promulgation of the law. The bearers of customary rights are not, in fact, on the list of people authorised to carry out transactions⁵⁸, which means that the transactions performed over the ten years since the promulgation of the law cannot be recognised. Excluding such a large number of transactions will revive the land disputes and complicate the implementation of the law. A strict application of the law on this point must be excluded, as it would run contrary to the spirit of the law whose obvious objective is precisely to adapt the legislation to the reality of land ownership.

Furthermore, this interpretation condemns to illegality the transfer of property by bearers of customary rights. The terms and conditions of transfer provided by the law (transfer of land certificates or title deeds) are no longer accessible since very few if any land certificates have been issued. By virtue of the principle of law whereby no individual can be denied a right for not respecting a time limit when legal and material obstacles prevent its observance, failure to respect the law on this point cannot be held against the individual. The problem is probably due to an error in the drafting of the law which could easily be corrected by a legislative amendment prolonging the time limit for the recognition of customary transactions until the mechanisms provided for by the law are functional and accessible.

Another imprecision of the law is the question of whether or not non-Ivorians may acquire land certificates. In the application of the law, the Direction of Rural Land and the Rural Land Registry of the Ministry of Agriculture makes it possible for non-Ivorians to acquire land certificates. According to decree 99-594⁵⁹, it may be inferred that non-Ivorians and private companies can enjoy the benefits of land certificates even though they are not able to become landowners. The advantage for non-Ivorians in obtaining a land certificate is that it could then be transferred (to a citizen of Côte d'Ivoire), thus allowing them to recuperate their initial investment, or it could be used to obtain a long-term lease from the State.

A situation such as this would complicate matters, however, since different individuals could claim a land certificate for the same land, bringing the customary landowner and the person to whom the rights were transferred face to face. Should the non-Ivorian make a claim in good faith, he would obtain a land certificate whose registration would benefit the State and not the original customary landowner. The foreign migrant would then enjoy a long-term lease with the State. The non-Ivorian

could also obtain such a lease and leave the customary owner to settle the investigation and registration fees. However, the first option presents the advantage of definitively severing the ties with the former guardian and customary landowner.

Certain jurists, such as Mr. Dagrou, judge at the Daloa Tribunal, are of the opinion that a non-Ivorian cannot acquire a land certificate since this establishes the ownership of land within the domain of customary land⁶⁰ while non-Ivorians cannot be landowners. Furthermore, article 17 of the law specifies that the transfers of land certificates may only be made between people who have the right to become owners, which confirms that a non-Ivorian cannot acquire a land certificate. Another decree confirms this position by specifying: "The land certificate indicates the list of occupants in good faith, yet not permitted to enjoy the benefits of the land certificate, whose rights shall be confirmed by the bearer of the certificate (...) in respect of the clauses and conditions of the long-term lease". Who are these "occupants in good faith, yet not permitted to enjoy the benefits of the land certificate"? According to Mr. Dagrou, these are generally non-Ivorians, regardless of whether or not they can prove the purchase or lease of the plot.

c) A complex and costly procedure: First of all, the implementation procedure is complex. The law does not explain why it intends to formalise customary rights in two phases instead of one, firstly by way of a land certificate, then within the following three years, the issue of the certificate of registration (title deed). This mechanism complicates the task of the administration and the claimant. The request for a certificate must be filed with the sub-prefectures and requires the possession of identity papers. However, in the villages, many individuals do not hold any identity papers. Other steps will need to be taken to obtain these documents, meaning more journeys to the sub-prefecture and further costs. These procedures will further delay the process of formalisation of customary rights. Added to this is the fact that both procedures involve a fee and that their cost must be borne by the claimant, even when the latter is unable to become a landowner. Furthermore, once the title deed has been obtained, the owner will have to pay a land tax. All of these elements do not encourage the populations to comply with the law, with the possible exception of migrants who wish to secure their customary rights by way of State intervention.

Problems of implementation related to the context of crisis and displacement

a) The impact of the crisis and of displacement on the implementation and interpretation of the law:

The 1998 law was developed within a context where land disputes raged in Côte d'Ivoire. The conflict and the

displacement have further complicated the situation by adding new land disputes to the existing ones. During the period of displacement, many plots of land belonging to displaced people were sold or leased to third parties. It is therefore to be feared that the land disputes will multiply with the return of the displaced people. The formalisation of customary rights transferred to third parties adds another issue to the land disputes, raising the risk of conflict.

The 1998 law therefore addresses a sensitive area and the terms and conditions for the formalisation of customary rights adopted are far from neutral in the current context of crisis. By stipulating that the recognition of customary rights of non-Ivorians cannot lead to a title deed but to a long-term lease, the law illustrates the pre-eminence of the principle of autochtonie, and risks provoking the anger and grievances of non-Ivorians, while intensifying their distrust of the law.

The law also presents many disadvantageous provisions or sources of uncertainty over land ownership rights for migrants who are Côte d'Ivoire citizens. The context of land disputes, particularly in the west of the country, heightens the risks of confiscation of land by the elites, by placing the local indigenous groups who are bearers of customary rights "in accordance with tradition" in a powerful position, since they are able to confirm or deny the customary rights transferred to third parties. This risk also appears clearly in article 14 of decree 99-594, stipulating that it is the bearer of a land certificate who confirms the list of occupants in good faith who are eligible for the long-term lease and who feature on the land certificate. The farmer's rights thus seem to depend on the goodwill of the individual who applies for the land certificate. While the interpretation of the Ministry of Agriculture is that the bearer of the certificate has an "obligation of lease to the non-landowning farmer⁶¹", the statutory text is ambiguous and thus constitutes a possible source of injustice. Effectively, if the obligation of lease to the farmer is not clearly established in the statutes and if it transpires that non-Ivorians cannot possess land certificates (see the section above on imprecisions in the law), the guardian would find himself in the position of both judge and party, to confirm whether or not the user of his land is in good faith. Given the breadth of the land disputes and the resentment caused by the conflict, the risk is very high that certain guardians will take advantage of the provisions and uncertainties of the law.

Certain provisions of the law, enacted before the conflict, take on a particular dimension in the context of the current displacement. Thus, one of the decrees in application of the 1998 law stipulates that the issue of a land certificate presupposes a "certified statement

of the continuous and peaceful existence of customary rights". The conflict and the displacement of populations have effectively interrupted the "continuous and peaceful" existence of customary land ownership rights. In the absence of precise instructions, it is to be feared that the Rural Land Management Committees will adopt interpretations that penalise the displaced people and call their land ownership rights into question due to a lack of continuous and peaceful exercise of customary rights. The authorities should specify by law or by decree either that the conflict and the displacement situation must not enter into the equation in establishing the statement of continuous and peaceful existence of customary rights, or otherwise provide precise details for interpretation.

Furthermore, the law does not specify how to resolve cases where consensus is not obtained, other than to state that the sub-prefectural Rural Land Management Committee will resolve such cases. One of the hypotheses is that the disputed land would be registered in the name of the State, who would then put it up for standard or long-term lease. In view of the many land ownership disputes, if this hypothesis were confirmed, the law would allow the State to confirm its control over customary rural land. Many non-Ivorians may perceive the implementation of the law as questioning their acquired customary rights over land. For them, the recognition of a right of use or of a sale results in both cases in a long-term lease. In the first case, the bearer of a right of use enjoys increased security of this right. In the second, even though he has invested a greater amount, the purchaser may experience the acquisition of even a secure right of use as a weakening of his rights, since he will be obliged to pay rent, whereas he considered himself to be the owner, and he will not receive compensation for the amount invested when the land was purchased. Moreover, the law does not provide for any compensation of the initial outlay in purchasing the land. A form of compensation equal to the purchasing price could be considered, in the form of an exemption of rent payments on the long-term lease for a period corresponding to the initial sum invested. In the absence of "petits papiers" or registers that indicate this amount, a sum could be determined according to the size of the plot, the date of sale and the value of the land in force at this date within the zone. Where applicable, a lump-sum payment could be considered.

Neither the law nor the decrees specify the value that will be accorded to the numerous "petits papiers" devoted to agreements of sale and of use. Although these are devoid of legal value, they do testify to the parties' desire to secure the agreement and therefore taking such papers into account would be in keeping with the security-conscious approach of the law. This consideration of the "petits papiers" could also facilitate the resolution of certain disputes, and contribute to establishing

the continuous and peaceful existence of customary rights. The registers held by certain land or village chiefs that record past transactions⁶² could also help resolve disputes, but many of these registers were destroyed during the recent conflict.

b) The representation and the participation of all the communities and of displaced people in the formalisation process: In order to limit the tensions that may result from the process of recognition of customary rights, it is essential that the composition of the village land committee reflects a cross-section of the population, including indigenous inhabitants and migrants, as well as women and young people. The presence of any person who can help the committee fully achieve its work provided for in the texts and should be strictly applied. In practice, it would appear that the presence of the various groups is subject to chance and also purely formal since non-Ivorians hesitate to openly contradict the guardians. This understandable reticence highlights the difficulty but also the necessity of this participation, which must be encouraged by the State representative within the committee.

However, the particular displacement of certain groups (allogènes, allochtones or autochtones depending on the zones) constitutes a major obstacle to the representation of the village land committee. The return movements have varied depending on the region, and in the absence of the displaced people, their land interests may be poorly defended and those of the groups who remained on site may prevail, thus stripping the displaced people of their rights and paving the way for further disputes.

The resentment caused by the war could in fact militate against the rights of displaced people appearing before the committee. The displaced people may be either migrants or indigenous inhabitants, but it is the interests of the migrants that are the most threatened. Since the law favours the rights of indigenous inhabitants in accordance with tradition, the recognition of transferred customary rights will first be verified by the customary owner. In the case of the right of an indigenous person, verification is not systematic, since it may be an original right and hence, in the absence of contestation, the committee would not have any elements to call into question the request for recognition.

It is therefore essential to send displaced people information on claims concerning their land. To allow interested people or those with information to make themselves known and express their point of view, a three-month notice period is provided to announce both the opening of the official investigation prior to the issue of the land certificates and the public deliberations of the committee. This provision is essential in the current context of

displacement: in the absence of notification to the displaced people of the procedures initiated in their village of origin, it is highly probable that these people would not be informed and could not therefore defend their rights.

An information campaign should be carried to inform displaced groups where they can go to learn about requests for certificates that have been filed, in order to check whether their land is concerned. This information should be regularly updated. A mechanism should be set up to allow displaced people to be transported to the villages where their land is located, in order to assert their interests. If the conditions of security do not allow for a form of assistance or legal representation allowing the statements of the displaced people to be recorded and transmitted to the committee, this should be put in place.

c) A particular resonance in the western forest area: It is most likely in the western forest area that the impact of the 1998 law will be the strongest. It is in this region that the stakes are the highest due to the existence of cash crops, the large migrant population and the equally large number of land ownership disputes and displaced people. For some, the 1998 law opens Pandora's box⁶³ by calling into question the customary agreements made with migrants. According to Jean-Pierre Chauveau⁶⁴ the most likely scenario is that of multiple conflicts based on the implementation of the law: "The rights of guardianship and transfer are mutually contested in a conflictual context; the indigenous inhabitants, reinforced by the position of power that the law gives them, take advantage of the situation by limiting migrants' rights and appropriating large land domains, notably through their influence on the agents in charge of the land investigations and the Comités Villageois de Gestion Foncière."

Although legally authorised to transform their acquired customary rights into land certificates then title deeds, the migrants who are Côte d'Ivoire citizens are no less fearful of the effects of the law. They are conscious that this formalisation of their rights depends on the goodwill of their guardian and worried that the guardian may prefer to accord a lease to a non-Ivorian who is better equipped to farm the land and able to pay the rent. The exclusion of non-Ivorian migrants from land ownership, in a zone where they represent approximately a quarter of the population and a quarter of the cultivated areas of the customary domain⁶⁵, clearly presents a risk of violence if the resolution of land disputes – and hence, broadly, the 1998 law – is not implemented with great care to inform the groups affected and the civil servants responsible for its application.

Land conflict resolution mechanisms in a context of displacement

The first part of this study describes the customary and legal framework for resolving land disputes, as well as the impact of the recent crisis and displacement on these disputes. However, given the multiplication of land disputes following the crisis, and the obstacle they present to durable solutions for the displaced people, it seems important to study the scope of the mechanisms to manage disputes in the areas under discussion, and their role in the implementation of the 1998 law.

The mechanisms provided for by the 1998 law are presented as an alternative to the customary management of disputes, even though the law has not yet been implemented in Moyen Cavally and Dix-Huit Montagnes. However, the effectiveness of the customary, administrative and judicial mechanisms to manage existing land disputes has been affected by the crisis. The customary authorities previously managed almost all of the land ownership conflicts, but since the crisis, their legitimacy and function have been increasingly compromised. Hence, some of the mechanisms created at the initiative of the government or certain population groups reflect the current crisis in legitimacy of the traditional authorities.

Customary mechanisms

The vast majority of rural land disputes are resolved by the customary authorities, which have the advantage of proximity and effectiveness. The customary rulings are widely respected in spite of the growing questioning of their legitimacy. The customary process does have a certain cost, but it remains much more affordable than legal procedures. At the same time, recourse to the customary authorities can vary from one village to the next, depending on the influence of the leaders and on local power relations.

The village leader generally represents the great land-owning families in presiding over the search for solutions to the various land disputes, supported by his notables. The village chiefs have no social or land authority per se, but they may enjoy a form of pre-eminence as arbitrators of disputes. The village leader may also be the land chief; otherwise the land chief is generally present among the notables. While it is the village chief's role to pass judgement on the dispute, it is more often incumbent on the land chief and the notables, as custodians of tradition, to make inquiries and establish the nature and existence of

the customary rights. The village chief may also delegate the responsibility of dealing with the land disputes to the land chief, as is the case in Guéhibly.

The village chief is a customary and administrative authority often appointed to liaise with the administration and organise the village populations. On the other hand, the land chief is a purely customary authority that intervenes alongside the village chief and under his authority as one of his notables, to rule on questions of land ownership and occupation of customary land. Originally, the land chief belonged to the family acknowledged as the first to settle in the village. It is from this origin that he holds his legitimacy and his role as manager of the land. In practice, the land chiefs have often acknowledged the land management powers of certain heads of families, "les grandes familles" or important families of the village. In other words, one is born a land chief but one does not become one; however, over time, and particularly with the advent of the crisis, land chiefs have come to be nominated and this is gradually becoming a common practice. In the areas studied, the two modes of appointment of land chiefs were used. The land chiefs of Guéhibly, Zou and Bably in the Sub-prefecture of Zou were nominated by the village chiefs from among the notables, while those of the villages of Yapleu in the Sub-prefecture of Bangolo and Duékpé in the Sub-prefecture of Diouzon belong to the lineage of the first inhabitants of the village.

The major characteristic of the customary ruling is to seek a compromise between the parties in order that each party derives an advantage from the ruling. This method aims to limit humiliations or resentments resulting from the ruling and to maintain social cohesion. It is also a way of ensuring that the ruling is respected. The village chief of Yapleu explained that the ruling must always safeguard the interests of the parties by allowing each to retain a portion of the land under dispute. In another case, where a plot had been sold by a brother without the consent of the rest of the family, the customary judge obliged the brother who had sold the land to share the proceeds of the sale with the injured family, so that the sale would not be called into question.

If they disagree with the ruling, the parties may turn either to the village chief (if the author of the ruling is the land chief), or to the cantonal chief as a superior authority. In Pinhou, where the village chief appears as a customary authority for appeal, it is the latter's role to rule on

disputes as a back-up when the sentences given by the various community chiefs do not satisfy the parties. The cantonal chief is not recognised in official texts but is admitted within administrative practice. This institution dates from the colonial period, when the coloniser wished to give administrative roles to the influential customary chiefs in order to obtain their support and to serve as a counter-power to the village chiefs⁶⁶. The mode of succession of the cantonal chiefs remains customary. The cantonal chief (who covers several villages) considers himself to have authority over the village and land chiefs in his area and they generally accept this authority. During a visit to Bably, the various communities mentioned having recourse to the cantonal chief to resolve land ownership disputes that were not resolved at the village level. In other cases, the parties sometimes turn to the sub-prefecture or to the police (gendarmerie) to enforce a customary ruling. On the whole, customary rulings are largely respected even if migrants may see them as partial towards indigenous inhabitants, and even if, since the crisis, there has been a growing trend among young people to contest customary rulings.

The conflict and displacement may have impaired the operation of the customary authorities, and so undermined their legitimacy. For example, in the Sub-prefecture of Zou and in the former "Zone of Confidence" ("Zone de Confiance") bordering the rebel-held north⁶⁷, the customary institutions have been particularly affected by the displacement. Following the displacement of most of the people indigenous to the areas, several villages have remained without traditional land authorities⁶⁸. In the absence of the knowledge of the demarcation of plots or the identity of their farmers, the groups who have remained have sometimes encroached upon displaced people's plots or transferred them to third parties, without the possibility of effective intervention by a customary authority. In this context, the gradual return of the displaced autochtones has led to confrontations with the allochtones and allogènes who have remained. Furthermore, the legitimacy of new customary leaders, whether self-proclaimed or appointed by the groups that remained following the displacement or death of the previous leader, has in some cases been violently rejected by the returning indigenous population, preventing the traditional resolution of land disputes.

In other cases, the legitimacy of the indigenous customary chief may be called into question precisely because he was not displaced and is therefore suspected of collusion with the other communities. The legitimacy of the traditional mechanisms to resolve disputes may then be called into question by the indigenous returnees through the creation of new mechanisms. The village of Zou is a good example. With the arrival of the rebels of the Forces Nouvelles in 2002, the village leader, the

only indigenous Guéré inhabitant remaining in Zou, acted as a mediator between his own community and the allogènes and allochtones communities established in the village, including those displaced from the villages along the Guiglo-Bloléquin axis. However, the Guéré community criticised his mediation effort, judging him too conciliatory. In a village where, despite the return of displaced people, the indigenous Guéré community finds itself in a minority, being open to mediation may be interpreted as a sign of weakness and a risk of exposure to too many concessions. The creation, based on the initiative of the "President of Young Guérés" (Président des jeunes Guérés), of a committee to manage land disputes relating to lowland crops without the participation of the other communities can be seen as a valuable effort to resolve the growing number of such disputes, but also as an attempt to bypass the chief's conciliatory efforts.

Given that according to custom the land belongs to the indigenous communities, non-indigenous inhabitants cannot belong to the customary authorities that resolve the disputes. During a period of tensions between the communities, this situation may lead to biased rulings and to a rejection of these rulings by the non-indigenous inhabitants. To remedy these weaknesses, all of the communities must collaborate in the management of the village, as is the case in Zou and in CIB, in the Sub-prefecture of Zéaglo. This corresponds to the composition of the village land committees created by the 1998 law.

The real and perceived partiality of the customary authorities imposes certain conditions on attempts to formalise collaboration between administrative and judicial institutions and customary bodies such as cantonal or village leaders and land chiefs for the resolution of land disputes. Such collaboration would require large-scale training of local authorities, traditional leaders and civil society, to explain the basic principles of the legislation and the jurisprudence in the field of land conflicts, as well as the challenges represented by the situation of displacement. This collaboration would also require the participation of government and local administration representatives. Within this framework, the work done by government authorities and some NGOs in support of social cohesion in the surveyed areas pays an equally important role in pacifying the different groups in the village.

Administrative mechanisms

A variety of administrative mechanisms are involved at various levels in the management of land disputes, and coordination between them is often limited. Some were in place before the crisis, and others have been established as a consequence of it.

The legitimacy of prefects and sub-prefects was increased in the devolution of Côte d'Ivoire's territorial administration. The sub-prefecture, administered by a sub-prefect, is the administrative constituency that acts as an intermediary between the department and the village. It is made up of several villages. The sub-prefects represent the government in their constituencies, and coordinate and control the activities of the administrative and technical offices in their jurisdiction. They also supervise the activities of the village chiefs. The prefect administers the next administrative division – the department – and is charged with the monitoring of development activities, the execution of laws and regulations, the maintenance of public order, security, peace and health.

The prefects and sub-prefects are thus responsible for the implementation of the 1998 law on the rural land domain in their jurisdiction. The implementation of this reform was preceded by various pilots including the establishment of the Rural Land Plan, the foundation of the National Programme for Land Management and Rural Infrastructure (Programme National de Gestion des Terroirs et d'Équipement Rural) from 1989 to 2001. In execution of the law, the prefects and sub-prefects have contributed since 2002 to the development of 642⁶⁹ village land committees, which are more or less operational, in around 20 departments, with support from the European Union. Besides their principal role in assessing claims for land certificates, these committees are also responsible for settling disputes concerning customary rights over land. Finally, it is their task to carry out the demarcation of village land⁷⁰. In the west, land committees or commissions have been set up in Guiglo, Danané, Diouzon, Zouan, Bangolo, Zéo, Zéaglo, Bloléquin, and even in Zouan Houien.

Following several difficulties in the management of land disputes, the prefects and sub-prefects concerned have increasingly sought customary solutions to land issues. Since these conflicts are usually rooted in customary law, the strict application of state law by the administration has often proven to be inadequate. In general terms, the administration thus presents itself as a mediator that attempts to bring together the parties with a view to a peaceful resolution of the disputes that oppose them. Prefects and sub-prefects have sometimes used this capacity to encourage the return of displaced people. In the Department of Bloléquin, for example, the prefects and sub-prefects have succeeded in certain cases⁷¹ in creating the conditions for peaceful cohabitation, by supporting the customary authorities whose authority has been rejected by part of the population.

With the signing of the Ouagadougou Agreement in 2007, there was notable progress in the redeployment of

the administration in Moyen Cavally and Dix-Huit Montagnes. However, the impact of the prefects and sub-prefects has remained limited due to a lack of resources and security issues in certain areas. The nomination of civil prefects in the place of the military prefects assigned to the west, as an exceptional measure following the crisis, raised fears for the continuing security of the zone⁷². Furthermore, in the Centre-North-West (CNO) zone, the transfer of responsibilities between the prefectural body and local Forces Nouvelles commanders has not entirely been achieved, leading to a de facto division of powers.

Alongside the prefectural and sub-prefectural authorities, the customary authorities and the population often have recourse to the gendarmerie in the management of land conflicts. The role of the gendarmerie is informal, since the gendarmes do not have competence in property matters. However, as they are in charge of keeping the peace, they are often solicited to stop land disputes degenerating, either before the dispute is brought before the customary or judicial authorities (in which case the gendarmes generally send the claimant back to these authorities) or if one of the parties refuses to obey, they may demand the execution of a ruling. Often, the customary authorities “threaten” the intervention of the gendarmerie as a preventive measure in support of the traditional authorities.

With the dismantling of the Zone of Confidence, the international forces were replaced by mixed brigades made up of loyalist and rebel soldiers, with the mission of patrolling the zone in order to secure the region. As with the gendarmerie, the mixed brigades are often called upon to resolve land ownership conflicts even if they do not have specific competency in this domain. As mentioned above, the impact of recourse to the gendarmerie or to the mixed brigades is essentially based on fear of the gendarme, and so its effectiveness varies according to the proximity of the gendarmerie, the power relations in the zone and the determination of the recalcitrant party.

Peace committees with various names⁷³ were created under the aegis of the Ministry of Reconciliation to promote reconciliation between communities and strengthen social cohesion after the conflict. The committees bring together the various community groups to deal with any land and cohabitation conflict in a peaceful manner. The system of social cohesion rests almost entirely on their operation, but in the majority of cases they were set up before the displaced populations returned, and so their inclusiveness has often been questioned and should be reviewed. Furthermore, the working methods of the different agencies are not consistent and their interaction with the traditional conflict management bodies is

somewhat ad hoc. In the sub-prefecture of Zou, people interviewed were unsure about the jurisdiction of each body; hence there is a risk of appeals through peace committees overlapping with the customary authorities.

The peace committees have very often played an important role in facilitating the return of IDPs, and the conclusion of peace agreements between the various community groups was the real basis for return in some villages. The agreements have set the conditions relating to cohabitation and renew the land ownership agreements, ignoring the clauses and procedures fixed by the law on the rural land domain. In general, the agreements confer to the indigenous community the role of landowner and submit the sale or the purchase of the land to the prior approval of the customary hierarchy. However, in light of the law, this transaction would only have a transitory value⁷⁴. Even though these agreements represent an attempt to pacify relations between the various communities, in reality they impose extremely restrictive clauses, notably towards migrants. For example, they may oblige migrants to live in the village, far from their plantations, limiting their rights to freedom of movement and choice of residence.

Finally, the Rural Land Commission was set up by the Prime Minister by decree 55 of 11 July 2003. According to this text, the Commission is an intersectoral body to monitor the rural land situation and study the best conditions for land management. It also has permanent consultative status in the domain of rural land. The Commission is also tasked to follow up the implementation of the 1998 rural land law. However, it is not yet operational.

Judicial mechanisms

At the judicial level, there are legislative measures, notably law 98-750 of 1998 on the rural land domain, designed to resolve land ownership disputes in rural areas, and also the intervention of the justice system to resolve land ownership conflicts in the face of constraints caused by the crisis.

In the two regions considered, access to the justice system was limited as the courts of Danané and Man were closed following the crisis. In response, the Daloa Tribunal, as the only nearby court of first instance⁷⁵, declared itself competent to rule on land disputes arising in the areas covered by the two courts⁷⁶. In this situation, the Tribunal intervened in criminal cases, to sanction the wrongdoers in land disputes⁷⁷, or to resolve civil land ownership disputes⁷⁸. At the same time, the Daloa Tribunal declared itself competent for civil status issues, particularly concerning the establishment of supplementary judgements, certificates of nationality and sworn

affidavits in lieu of death, birth or marriage certificates, to complement the process being carried out in open sessions in public buildings.

Overall, this lack of coordination of the different customary, administrative and judicial bodies, and the failure to take into account the legislative framework, presents the risk that ad hoc short-term solutions will proliferate, even if they have the merit of addressing, albeit temporarily, the tensions over the land.

Challenges and prospects for the return of displaced people to the protected forests

By defining the rural land domain as beyond urban perimeters and outside the protected forests domain (Article 1), the 1998 law does not cover disputes over land in the protected forests, between migrants and local people who had sold them a parcel of forest land. Hence the 1998 legal framework for resolving land disputes is not applicable where customary transactions have been carried out in protected forests. Yet the exploitation of these forests is at the root of numerous conflicts in the western forest area. Many disputes remain outside of the mechanism for the recognition of customary rights, leaving many migrants uncertain as to their rights over the plantations that they have developed in these forests. Since many of them have been displaced, the uncertainty tends to restrict their chances of returning home. The absence of a systematic approach exposes them to ad hoc and unpredictable solutions.

The exploitation of forest resources in Côte d'Ivoire dates back to the colonial period, when the administration decided to protect a part of the forest area. Nonetheless, from the 1960s, the new government understood the great economic opportunities which the forest presented; it put in place a judicial system and infrastructure to enable their rapid development, and removed their protected status where local population growth or government interest called for it.

Through law 65-425 of 1965 on the forestry code, the legislature defined the forests, protection and reforestation areas, and specified the conditions for the exercise of customary rights in protected areas as well as the issuing of concessions for forestry exploitation⁷⁹. The process of agricultural colonisation initially concerned forests that were still "free" but quickly spread also to the "permanent state reserves", and even to the protected forests, ignoring the legal provisions associated with them. Even though the government was responsible for the protection of forest reserves, it adopted an ambivalent attitude by accepting occupations within protected forests, which encouraged a large influx of migrant workers and the effective exploitation of forestry resources⁸⁰. Meanwhile, the local populations helped to worsen the situation by illegally and knowingly selling plots of protected forest land to newly-arrived migrants. This allowed local communities to make a living from these ancestral lands from which the Côte d'Ivoire administration had excluded them⁸¹.

In 1993, the government entrusted the management of the protected forests to the Forest Plantation Development

Corporation (Société de Développement des plantations forestières, originally set up in 1966) and renamed it the Forest Development Corporation (Société de Développement des Forêts or SODEFOR)⁸². This organisation was responsible for both the preservation of forestry resources and the reforestation of the areas exhausted by mass exploitation, using measures including the expulsion of illegal occupants. However, given its lack of resources⁸³, SODEFOR has not been able to prevent occupations and deforestation in the protected areas. For instance, it currently does not have the means to ensure that private companies to which it has entrusted the exploitation of forest resources do not also contribute to the occupations, particularly by paying employees with plots of land in protected forests⁸⁴.

Most of the migrant workers in the areas studied only knew from the 1990s onwards⁸⁵ that these were protected domains. Following the 2002 crisis, the displacements and abandonment of plantations in protected forests became general and widespread⁸⁶. In certain cases, other displaced people occupied these plantations, while in others, the indigenous inhabitants concluded agreements with newly-arrived migrants, so that they worked in the plantations of the displaced people. Meanwhile, the clearing and exploitation of new areas of protected forests increased⁸⁷. Considering the particular status of the plots in the protected forests and the fact that they have been the object of sustained recriminations on the part of the indigenous inhabitants, the return of the displaced people to their plantations in these areas has been opposed by local populations and has given rise to ad hoc arrangements.

The Bloléquin Agreement represents a case of an ad hoc attempt to resolve land disputes which has prevented the return of displaced people. Displaced people hoping to return to various villages in the sub-prefecture of Zéaglo have encountered several obstacles, particularly in the face of young people's refusal to grant them access to the plantations. Recognising the failure of the many negotiations led either by the local authorities or by humanitarian agencies, and the relocation of a large number of IDPs to the Temporary Reception Centre in Guiglo in February 2008, the government and international partners decided to broaden the framework of discussions and organised a workshop on the subject⁸⁸. The main disagreement was the contestation by the young people of the exploitation by the allogènes and allochtones of plots of land situated in the village forests⁸⁹, as well as

in the protected forests of Scio and Goin Dèbé. The workshop enabled people to describe their experiences and resulted in a provisional agreement.

The return of IDPs was accepted following an agreement between the various communities conditioning their return with an obligation, for the allogène and allochtone populations, to live in the village with their guardians and not outside the village as they were accustomed⁹⁰, and that the exploitation of plots in the village forests would be subject to new lease agreements, regardless of the original occupation agreements with respect to this land. From among the solutions proposed by the government for the protected forests, the communities opted for a division of the plantations with two thirds going to the allogène and allochtone farmers and the remaining third to the young people who would organise themselves as a group to exploit it. Plantations developed by people taking advantage of the crisis were excluded from the agreement. The young people and the migrants will reportedly⁹¹ have to pay SODEFOR a total of FCFA 12,500 (\$28) per hectare per year for the progressive rehabilitation of the forests. After ten years, the forests must be evacuated, by means which are not specified. As the Bloléquin Agreement is not a public text, there is a lack of transparency regarding its specific content which encourages inaccurate or biased interpretations.

The Bloléquin Agreement presents the major advantage of allowing IDPs to return to their plantations, or rather to a portion of them. However, imposing the division of the plantations developed in protected forests is a compromise that makes little legal sense and seems inequitable. The plantations developed in protected forests are illegal and therefore not likely to be restituted or compensated for. With a view to an equitable solution, it is however desirable to recognise the investment made over years by the migrants who mostly undertook the work in good faith on the basis of agreements, including financial ones, with the local populations or with the private companies operating in the protected forests. It is however unfair to profit from the effects of the crisis and from the absence of displaced populations to deprive the farmers of a part of their plantations without any form of compensation in granting these to the young people, whose investment in these plantations only dates from the crisis.

The Bloléquin Agreement promotes compromise between the resident populations and the displaced migrants by imposing concessions on all parties. This approach is made easier by the absence of legal rights over the plantations in protected forests. Beyond this ad hoc approach, it would be useful to consider resolving the land ownership disputes by taking factual reality as a starting point, rather than the legal situation, as the 1998 law has done in recognising customary transfers. On the

question of compensation, Judge Dagrou proposed taking into account both the customary right of use and the developments made. This is the method adopted in the decree of the Court of Appeal of Abidjan of 5 June 1970, which ruled that: "If the fact of clearing or enhancing the land does not confer a title deed, the planter nonetheless has the right to the fruits of his labour, or failing this, a form of compensation."⁹²

Internationally, the UN's Guiding Principles on Internal Displacement⁹³, and more precisely Principles 28, 29 and 30, as well as the Principles concerning the restitution of goods and property to the displaced people and refugees⁹⁴, prescribe that they must be able to recover their property either in the form of restitution or compensation. Evidently, the Bloléquin Agreement, the peace agreements or codes of cohabitation and the provisions of the law on the rural land domain that concern non-Ivorians, all go against these Principles. Indeed, in the case of the Bloléquin Agreement, not only is the return conditioned on the acceptance of prior conditions – that is, adherence to the clauses of subdivision and other fixed measures – but also on the subdivision of IDPs' property in favour of the indigenous inhabitants, without providing them with any form of compensation.

Recognising the limits of the ad hoc agreements, SODEFOR plans to carry out a census of the number of returnees who held plantations in the forest before the war. This operation would serve as a basis for establishing agreements with the returnees, in which the surface of the plantations would be specified so as to prevent abuse of the system. The returnees whose plantations were in production would thus pay FCFA 12,000 (\$27) per year per hectare to SODEFOR⁹⁵, which would then be paid to the newly-created Forest Commissions in the villages near the protected forest area, to be reinvested in micro-projects within the rural domain. The Forest Commissions will be composed of the village chief and other – mainly indigenous – representatives from different social groups. They will have a right to control the protected forest area, while having an economic interest in maintaining the returnees within the protected forest. It remains to be decided whether or not it would be more appropriate to integrate the role of the forest commissions within the *Comités Villageois de Gestion Foncière*, and what the position of returnees shall be in the long term.

Conclusions

The stakes connected to land issues constitute an important factor in the process of research for durable solutions for internally displaced people in Côte d'Ivoire. Following a national policy of mass exploitation of forestry resources through large migratory flows, new power relations between those who left, those returning and those who stayed during the crisis have added to past tensions surrounding the access to and management of the land in the western regions, and specifically in Moyen Cavally and Dix-Huit Montagnes. In this context, different mechanisms have a role in the resolution of land conflicts, which serve to encourage the return, the local integration or the resettlement of displaced people while also providing them with a process of restitution and/or of compensation of their estate. However, these customary, judicial or administrative mechanisms often prove inadequate for this task, in light of the consequences of the crisis and the scale of population displacement.

In most cases, rural land disputes are governed by customary authorities, which have the advantage of proximity and effectiveness, since the customary rulings are generally respected. However, the conflict and the displacement have impaired the traditional operation of the customary authorities, and sometimes undermined their legitimacy. The basic idea behind the adoption of the 1998 law is to modernise the management of the rural land domain and to abolish the customary transactions, which are subject to contestation and, as the recent conflict has illustrated, the source of a great deal of tension. While the objective of the law is commendable, it would benefit from clarification on several points which give rise to differing interpretations, and from amendments or directives with respect to certain aspects that undermine the rights of internally displaced people.

Interactions and contradictions exist, and particularly between the two systems – the judicial and the customary – and these are likely to have an impact on the effectiveness of the restitution process. In fact, both the administrative and judicial authorities generally ensure that the conflict has first been brought before the village and customary authorities before taking over a case. While theoretically the justice system is not required to appeal to the customary authorities to resolve land ownership issues, in practice it is obliged to turn to them for further information on the nature of the alleged rights. This is even more clear if one takes into consideration that almost all land transactions are performed outside the legal framework, and do not recognise the legal need for a title deed.

In practice, customary rulings collected in the form of texts or testimonies can attest to the customary reality of a situation. In particular, they can provide the answer to questions concerning the existence or exercise of customary rights. The Daloa Tribunal has adopted this approach, which need not call into question the statutory limitation of Article 8 of the fiscal annexe of the 1970 finance law annulling past transactions performed without a notary present. This is even more important since, following the conflict, the redeployment of the justice system is not yet effective throughout the areas considered. Finally, once the law has been implemented and the first certificates and title deeds have been granted, it would be interesting to study the position of the justice system on appeals against the rulings.

The Norwegian Refugee Council is conscious of the desire for the national authorities to proceed quickly with the implementation of the law, and offers its involvement in two ways to contribute to the resolution of land ownership disputes in Côte d'Ivoire:

1. To maintain regular contact with the authorities in order to encourage them to remedy the imprecisions of the law, based on the recommendations of this report, as well as information gathered in the field from interaction with the people concerned;
2. To inform people of the terms and conditions of the 1998 law on the rural land domain and to assist them so that they may benefit as fully as possible from the law. In cooperation with the authorities, the Norwegian Refugee Council will do its utmost to ensure that internally displaced people are not disadvantaged by the implementation of the law due to their displacement.

Notes

- 1 Eighteenth Progress Report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, UN Security Council, 13 October 2008, para.22.
- 2 President Houphouët-Boigny declared in 1963 that "la terre appartient à celui qui la met en valeur", entering into contradiction with customary law, which recognises the pre-eminence of the first occupant.
- 3 Guardianship is a practice that allows the transfer of land rights to outsiders to be regulated.
- 4 Rapport d'Evaluation Rapide des besoins humanitaires des problèmes de protection dans les localités affectées par le déplacement: Moyen Cavally et Dix-huit Montagnes, Norwegian Refugee Council, September 2008.
- 5 In this context, autochtones are citizens of Côte d'Ivoire who live on their "ancestral land" as opposed to allochtones, who are citizens who have migrated from other regions of Côte d'Ivoire, and allogènes, who are immigrants from other countries.
- 6 Several cases of this kind were recorded on the Guiglo-Bloléquin axis and in the Sub-prefecture of Zou. Here, groups of autochtones complained that the allogènes had taken advantage of their displacement to bring in other members of their family to settle on plots of land that had never been conceded.
- 7 Rapport d'Evaluation Rapide des besoins humanitaires des problèmes de protection dans les localités affectées par le déplacement: Moyen Cavally et Dix-huit Montagnes, NRC, September 2008.
- 8 Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin. Mission to Côte d'Ivoire (A/HRC/4/38/Add.2), UN Human Rights Council, 18 October 2006.
- 9 Principles on Housing and Property Restitution for Refugees and Displaced People, Resolution 2005/21, UN Sub-Commission on Protection and Promotion of Human Rights, 2005.
- 10 Except for a tiny minority among them who already held a title deed before the 1998 law was in force. Given that only one per cent of rural land is registered in Côte d'Ivoire and that non-Ivorians only represent part of this figure, few of them benefit from the provisions of Article 26 of the law.
- 11 Présentation de l'avancement actuel de la mise en œuvre de la loi ivoirienne relative au domaine foncier rural, Léon Désiré Zalo, p.1, from the international symposium "At the frontier of land issues" Montpellier, 2006.
- 12 Reconnaître les droits coutumiers : propriété coutumière ou faisceaux de droits ? Cadres cognitifs, conception des droits et faisabilité politique de l'enregistrement des droits fonciers locaux en Afrique de l'ouest, Philippe Lavigne Delville, from the international symposium "At the frontier of land issues", Montpellier, 2006.
- 13 In most of the villages visited by IDMC, the land transactions were managed by several "grandes familles" (important families) under the supervision of the land or village chief.
- 14 Quoted by Oumar Sylla in *Les structures coutumières dans la gestion foncière dans le Nord de la Côte d'Ivoire*, 2002, p.14.
- 15 *Ibid.* p. 11.
- 16 Chauveau, *La réforme foncière de 1998 en Côte d'Ivoire à la lumière de l'histoire des dispositifs de sécurisation des droits coutumiers*, p.17.
- 17 Sylla, *ibid.*, p.13.
- 18 In the course of our mission in the west of Côte d'Ivoire, we were able to observe and photograph numerous examples of these "petits papiers" that attest to the sales of land. Many of these documents have, moreover, been destroyed or lost during the conflict, contributing to raise doubts concerning past sales.
- 19 Under the terms of Article 8 of the fiscal annexe to the finance law 70-209 of 10 March 1970, "Any facts, agreements or sentences that aim to record, represent, transmit, declare, modify or abolish a real property right, to change its bearer or alter its conditions of existence (...) must be certified by authentic deeds with a view to their registration, failing which they shall be deemed null and void." ("Tous faits, conventions ou sentences ayant pour objet de constater, constituer, transmettre, déclarer, modifier ou éteindre un droit réel immobilier, d'en changer le titulaire ou les conditions d'existence (...) doivent, en vue de leur inscription, être constatés par actes authentiques sous peine de nullité absolue.") *Journal officiel de Côte d'Ivoire (JORCI)*, no. 20, p. 597.
- 20 The term "bas-fonds" (lowlands) generally designates the valleys and zones traversed by rivers.
- 21 In the course of investigations carried out for the purposes of the present study, we were able to witness a ruling by the customary tribunal in Bably in the Sub-prefecture of Zou of a dispute concerning a coffee plantation which, according to the plaintiff, was allegedly merely pledged in exchange for the sum of 15,000 francs. This ran contrary to the defendant's statements, who held that a sale had been made 18 years earlier to her deceased father. The tribunal ruled in favour of the plaintiff, on the grounds that this was simply a mortgage over property, and that conse-

- quently, the defendant, as beneficiary of the contracting party, did not have the right to resell the plantation in question. However, several incoherencies may be noted concerning both the ruling and the position of the mortgagor, who let his plantation be developed for over 18 years in exchange for a loan of 15,000 francs, to claim later that it was merely a pledge.
- 22 This paragraph draws heavily on Mariatou Koné, “Les femmes et l'accès à la terre en milieu rural ivoirien” in *Regards sur le foncier rural en Côte d'Ivoire*, Institut Africain pour le Développement Economique et Social (INADES), 2003.
- 23 Cocoa, coffee and rubber are perennial crops whose planting and harvests are carried out in the long term and which are the most profitable as export crops.
- 24 IDMC interview with groups of women in Yapeu, Zou and Bably.
- 25 Koné/INADES, *ibid*, p.70.
- 26 Law 64-379 of 7 October 1964 relating to successions provides that: “seul le mariage célébré par un officier de l'état civil a des effets légaux” (“only a marriage celebrated by a Registrar General has legal value”).
- 27 Koné/INADES, *ibid*, p.73.
- 28 Aline Aka, “Analyse de la nouvelle loi de 1998 au regard de la réalité foncière et de la crise socio-politique en Côte d'Ivoire”, in *Cahiers d'anthropologie du droit*, 2001, p.117.
- 29 Cf. note 15.
- 30 Article 2 of Decree 71-340 of 12 July 1971.
- 31 Chauveau, *ibid*, p.17 on customary administrative practice.
- 32 *Ibid*, p.26.
- 33 Institut National de la Statistique: see www.ins.ci/gene/INFOGENE1.html.
- 34 J-P Chauveau & S. Koffi-Bobo, “Crise foncière, crise de la ruralité et relations entre autochtones et migrants sahéliens en Côte d'Ivoire forestière”, in *Outre-Terre*, n.11, 2005/05, pp.247-264.
- 35 Zalo, “Présentation et explication de la loi n°98-750 du 23 février 1998 relative au domaine foncier rural, in *Regards sur le foncier rural en Côte d'Ivoire*, INADES, 2003, pp.16-17.
- 36 Article 2 of Decree 71-340 of 12 July 1971. This text defines customary rights as: “Rights concerning the use of the soil. They are personal and cannot be transferred.” (“Les droits portant sur l'usage du sol. Ils sont personnels et ne peuvent être cédés.”).
- 37 To remedy the problem, the justice system did however attempt to adopt a realistic approach to the situation before the 1998 law came into effect. In its judgement 21 of 9 July 1971 (chapelier T. 1, p. 571), Côte d'Ivoire's Supreme Court had indicated that “the donation of use of two portions of unused forest cannot be regarded as a property transfer; that it is therefore unnecessary that this agreement assume a legal form.” (“la donation en jouissance de deux portions de forêt en friche ne peut s'analyser en une mutation immobilière ; qu'il n'est donc pas nécessaire que cette convention revête une forme notariée.”) With the advent of the 1998 land ownership law, this condition of validity of the property agreements remains valid, except in the case of the transfer of a land certificate. Here, it is the provisions of Article 17 of Decree 99-594 of 13 October 1999, fixing the terms and conditions of application to the customary rural land ownership domain, and of law 98-750 of 23 December 1998, providing the authentication of the said transfer by the Administration, that apply.
- 38 Aka, *ibid*, p.123.
- 39 Communiqué du Conseil des Ministres, 12 February 2009.
- 40 The Rural Land Ownership Plan, initiated by the Côte d'Ivoire Government, consisted in recording existing customary rights and demarcating the corresponding plots, through investigations carried out at the village level.
- 41 Zalo, *Présentation de l'avancement actuel de la mise en œuvre de la loi ivoirienne relative au domaine foncier rural*.
- 42 Decree 99-594 of 13 October 1999, Article 9.
- 43 The terms and conditions of the official investigation are specified by Decree 99-594 of 13 October 1999.
- 44 The attributions and the composition of the Comités de Gestion Foncière de Sous-préfecture and at the village level are specified by Decree 99-594 of 13 October 1999. The CGFR of the sub-prefectures are made up of five representatives from different ministries and six village representatives and customary authorities appointed based on the populations' propositions. CGFR members and any person useful to the rightful ends of the Committee's work participate in a consultative capacity. The composition and role of the Comités villageois are not specified; besides the mention that land chiefs shall be compulsory members.
- 45 Notification must be for a period of three months prior to the date of the public session.
- 46 Articles 4, 8-10 and 17 of the law relating to rural land ownership and Articles 11 to 24, 29 and 31 of Decree 99-594 of 13 October 1999.
- 47 Decree 99-594 stipulates: “En cas de certificat collectif ou d'indivision entre les héritiers, l'immatriculation est faite, après morcellement au nom des divers membres du groupement ou de l'indivision ou au nom de l'Etat en cas de conflit”. (“In the case of a collective certificate or joint ownership between the heirs, the registration is established, after division in the name the various members of the group or in joint ownership or in the State's name in the event of conflict.”)
- 48 The establishment of the first land certificates was announced for June 2009. Cf., *Agriculture : La Guinée-Bissau cultive en Côte d'Ivoire*, Nord-Sud, 18 April 2009.

- 49 Jean Carbonnier, cited in Sylla, *ibid*, 2002.
- 50 Delville, *ibid*.
- 51 *Ibid*.
- 52 *Ibid*, p.31.
- 53 Aka, *ibid*, p.121.
- 54 See also Pierre Claver Kobo "La loi n°98-750 du 23 décembre 1998 sur le domaine foncier rural : une lecture critique d'une loi ambiguë", in *Regards sur le foncier rural en Côte d'Ivoire*, INADES, 2003, p.29.
- 55 On the question of the decentralisation of land ownership relations, see Kobo, *ibid*, p.29, but also "Foncier et décentralisation : Réconcilier la légalité et la légitimité des pouvoirs domaniaux et fonciers", Alain Rochegude in *Bulletin de liaison du Laboratoire d'Anthropologie Juridique de Paris*, n°26, September 2001, pp.13-32.
- 56 By using the word "executive" (*cadre*), we wish to refer to the individuals in positions of responsibility, usually in urban areas, and who maintain very close ties with their regions or home villages. These cadres have a very important power of influence since it is often they who inform – more or less precisely and objectively – the rural populations of government policies and suggest the positions to adopt with respect to these policies.
- 57 Concerning this question of houses, see Aka, *ibid*, p.125.
- 58 See section III of the 1998 law entitled: "La cession et la transmission du Domaine foncier rural" ("Transfer and transmission of rural land ownership").
- 59 Article 29 of Decree 99-594 states that "When the bearer of the land certificate is not permitted to become an owner of the Rural Land domain, the registration is issued in the name of the State with a guarantee to lease." ("Lorsque le titulaire du certificat foncier n'est pas admis à être propriétaire du Domaine Foncier Rural, l'immatriculation est faite au nom de l'Etat avec promesse de location").
- 60 Article 4 of the 1998 law on rural land.
- 61 Zalo, *Présentation de l'avancement actuel de la mise en œuvre de la loi ivoirienne relative au domaine foncier rural*, p.6.
- 62 In Béoué, in the Sub-prefecture of Bloléquin, in Zou and in Bably, in the Sub-prefecture of Zou, the upholding of registers to record the sale of land has been noted.
- 63 Chauveau, *ibid*, p.21.
- 64 Quoted in Aka, *ibid*, p.127.
- 65 Chauveau, "Une lecture sociologique de la loi ivoirienne de 1998 sur le domaine foncier rural", Chauveau, in *IRD REFO*, Document de travail de l'Unité de recherche 095 no.6, September 2002, p.16.
- 66 Sylla, *ibid*, p.5.
- 67 The "zone of confidence" ("zone de confiance") was established in 2003 by the United Nations to separate the Forces Nouvelles soldiers occupying the northern half of the country from the government troops occupying the southern half. Following the Ouagadougou Agreement, the zone of confidence was progressively dismantled.
- 68 A specific situation was listed in Kehibly in Bloléquin Department, in Irozon, Blody, Bagouoho and Gbapleu in Duékoué Department, and in Tinhou in Bangolo Department.
- 69 According to the information received by the Direction du Foncier Rural et du Cadastre Rural on 9 July 2009.
- 70 The "village soil" (*terroir villageois*) designates all of the land that constitutes the territorial base of a village, and belonging to it like the national territory of a country. The demarcation of the *terroir villageois* consists of placing markers so as to separate the various villages between them. The recent pilot project involved the Sud-Comoé and Bas-Sassandra regions.
- 71 Cf. the case of the village of Diouya Dokin.
- 72 "Affectation des sous-préfets et préfets civils avant les élections : Danger à l'Ouest", in *Le Nouveau Réveil*, 4 April 2009.
- 73 The NGO CARE, for example, established peace committees in the villages of Blotilé, Yapleu, Tontigouine-Douanzere, Gohouo-Zagnan, Blody, Yrozon and Boli.
- 74 A detailed analysis of the code of social integration was produced, for example, by the Groupe de Travail Protection en Côte d'Ivoire in May 2007, for the city of Tabou, in Bas-Sassandra Region.
- 75 As well as by virtue of the general principles of law, and that of law 61-155 of 18 May 1961 concerning the judicial organisation as modified by the Laws 64-227 of 14 June 1964, 97-399 of 11 July 1997, 98-744 of 23 December 1998 and 99-435 of 6 July 1999.
- 76 The Ministry of Justice sanctioned this arrangement by a written directive.
- 77 By its order no. 15 of 7 April 2006, ruled in the case of GUIDY Claude and BLEU Lainé Gilbert vs. GUIDY Rose and 7 others, the presidential jurisdiction of Daloa, who pronounced on events connected to an educational institution located within the non-operational jurisdiction of Man, concluded that Daloa held jurisdiction. On the basis of this ruling, it has continued to hear cases ever since, including land ownership disputes from within the area studied. Furthermore, the Daloa Court of Appeal has not yet delivered this ruling.
- 78 In particular, the Tribunal of Daloa was referred to regarding, questions of multiple sales or of occupation of land and plantations belonging to internally displaced people.
- 79 *L'étude prospective du secteur forestier en Afrique (FOSA) : Côte d'Ivoire*, Ministry of Water and Forests / UNFAO, 2001, p.5.
- 80 The efforts to rebuild road infrastructure contributed to optimising the exploitation of forestry resources. As an example, the opening of the Daloa-Guiglo road in 1974 encouraged the arrival of a large number of migrant workers from Daloa.

- 81 Cf. E. Leonard and J.G. Ibo, *Appropriation et gestion de la rente forestière en Côte d'Ivoire*, 2005, p. 29.
- 82 SODEFOR is under the supervision of the Ministry of the State, Ministry of the Economy and Finance and the Ministry of Water and Forests.
- 83 In July 2008, according to a SODEFOR officer in Duékoué, there were eight agents for 144,000 hectares (88,000 hectares of the Scio forest and 56,000 of the Duékoué forest). This equates to 18,000 hectares per agent.
- 84 IDMC interview with a SODEFOR officer from the Duékoué office, 1 July 2008.
- 85 Probably following reconnaissance exercises conducted after the enlargement of SODEFOR.
- 86 On the Guiglo-Bloléquin axis, in some cases the indigenous chiefs' councils followed up the abandonment of plantations. This element emerged in interviews with the Baoulés and Burkinabés communities of the Zéaglo village.
- 87 This is the case for instance in the forests of Scio and Goin Dèbé.
- 88 The workshop was held on 22-23 May 2008 after various meetings between the groups concerned and the representatives of the Ministries of National Reconciliation, Reconstruction, Reinsertion, Solidarity and War Victims.
- 89 In the popular understanding, the term "village forests" ("forêts villageoises") refers to all of the privately owned land, in contrast to the "protected forests" ("forêts classées").
- 90 Certain indigenous inhabitants consider that the isolation of migrants on their plantations could constitute a security risk. Another argument was that the fact of having migrants live within the village would also be a way of encouraging interaction and reconciliation between the communities. In practice, this obligation forces the migrants to make long journeys, since the plantations are sometimes several kilometres from the village.
- 91 "Bloléquin : allogènes et allochtones regagnent leurs plantations", in *Fraternité Matin*, 26 May 2008.
- 92 Abidjan Court of Appeal, 2e Chambre civile, 5 June 1970, *Le Chapelier* T.1 p.346.
- 93 Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 11 February 1998.
- 94 Principles on Housing and Property Restitution for Refugees and Displaced People, Resolution 2005/21, UN Sub-Commission on Protection and Promotion of Human Rights, 2005.
- 95 Discussions with the office of the Norwegian Refugee Council in Côte d'Ivoire.

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The Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre (IDMC), established in 1998 by the Norwegian Refugee Council (NRC), is the leading international body monitoring conflict-induced internal displacement worldwide.

Through its work, the Centre contributes to improving national and international capacities to protect and assist the millions of people around the globe who have been displaced within their own country as a result of conflicts or human rights violations.

At the request of the United Nations, the Geneva-based IDMC runs an online database providing comprehensive information and analysis on internal displacement in some 50 countries.

Based on its monitoring and data collection activities, the Centre advocates for durable solutions to the plight of the internally displaced in line with international standards. IDMC also carries out training activities to enhance the capacity of local actors to respond to the needs of internally displaced people (IDPs).

For further information, consult the website of the Internal Displacement Monitoring Centre and the database at: www.internal-displacement.org.

The Norwegian Refugee Council in Côte d'Ivoire

The Norwegian Refugee Council (NRC) was established in 1946 under the name Aid to Europe, to assist refugees in Europe after World War II. Today, the NRC is an independent, humanitarian non-governmental organisation which aims to ensure the promotion and protection of people forced to flee their homes within their own country or abroad, irrespective of distinctions of race, religion, nationality or political views.

NRC launched its activities in Côte d'Ivoire in 2005, initially to assist populations affected by the displacement in all of their administrative and judicial procedures with a view to recovering a fundamental right of all individuals: the right to an identity. Currently, NRC is implementing programmes in the sectors of protection, education and rehabilitation. Its programmes provide assistance to over 16,000 people in the west and central-northern regions.

For further information, consult the website: www.ivorycoast.nrc.no.

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