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Shifting Visions of Property under Competing Political Regimes: Changing Uses of Côte d'Ivoire's 1998 Land Law

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by

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Abstract

Land law reform through registration and titling is often viewed as a technocratic, good-governance step toward building market economies and depoliticizing land transactions. In actual practice, however, land registration and titling programs can be highly partisan, bitterly contentious, and carried forward by political logics that diverge strongly from the market-enhancing vision. This paper uses evidence from Côte d'Ivoire to support and develop this claim. In Côte d'Ivoire after 1990, multiple, opposing political logics drove land law reform as it was pursued by successive governments representing rival coalitions of the national electorate. Between the mid-1990s and 2016, different logics -- alternatively privileging user rights, the ethnic land rights of autochthones, and finally a state-building logic -- prevailed in succession as national government crafted and then sought to implement the 1998 land law. The case underscores the extent to which deeply political questions are implicated in land registration and titling policies.

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Introduction

Land law reform via registration and titling in Africa continues to be viewed by many as a technocratic, good-governance step toward building liberal market economies and depoliticizing land transactions. In actual implementation, however, land registration and titling programs have often been driven by very different priorities and dynamics. In the African countries of Côte d'Ivoire, Kenya, South Sudan, Uganda, and others, recent land law reforms that promote formalisation of land rights have been used in partisan, starkly redistributive, and sometimes politically-explosive ways. In these settings, land law reforms have often been as much about extending and consolidating political power as they are about limiting the state and freeing markets. In some situations, they have been as much an amplifier of social conflict as a solution to it.

Léonard, Chauveau, and Lavigne-Delville (2013: 10) argued that in the domain of land policy reform in Africa, political logics and control strategies often determine the course of change. This paper extends their argument, using the case of Côte d'Ivoire to show how regime change at the national level produced dramatic shifts in the content, political purposes, and political uses of land law. Different logics -- alternatively privileging user rights, the ethnic land rights of autochthones, and finally a state-building logic -- prevailed in succession from the mid-1990s to 2016. Even with a new land law in 1998 that aimed at land certification and titling, the politics around implementation of the law were at odds with liberal visions of market-building and individualization.

In Côte d'Ivoire from the mid-1990s to 2016, each change in the locus of political (partisan) control at the national level produced reversals in the thrust of land policy. Reversals were visible in the government strategies to advance the land rights registration and titling agenda; in village delimitation and decentralization strategies; and in legal adjudications of land law. This paper traces these shifts in national priorities, underscoring the deeply partisan thrust of land law reform in each era and in the larger state-building purposes that land law was harnessed to serve.

The analysis is organized chronologically. Part I is a brief overview of the pre-reform era, the 1960s to the early 1990s, when land policy under the country's first president, Felix Houphouët-Boigny, was a "land-to-the-tiller" (or user-rights affirming) policy that was designed to promote land-pioneering in the zone of rapid expansion of export-crop production. Houphouët's death in 1993 set in motion a reconsideration of Ivoirian land policy.

Part II centers on mid-1990s pilot projects aimed at promoting the eventual registration (and perhaps titling) of landholdings. These took place amidst the national-level power struggles of 1993-2000. Power struggles found expression in a new land law, Law 98-750, which contained an array of potentially or inherently conflicting provisions for assigning land ownership rights on the basis of autochthony (ie., by confirming customary land ownership claims), and then dissolving these away under a World Bank-inspired individualization and titling plan. Opposition leader Laurent Gbagbo, with an electoral base in the Ivoirian center-west, was the leading national champion of the autochthony-affirming provisions of Law 98-750.

Part III tracks the efforts of the regime of Laurent Gbagbo, who came to power in 2000, to realize the autochthony-affirming promise of Law 98-750. Land activism under the Gbagbo government was aimed explicitly at replacing the Houphouëtist land regime with a land regime that asserted autochthonous communities' land ownership rights over those of migrants. The empowerment of autochthonous communities was to be confirmed through a sweeping political and administrative decentralization.

Part IV shows that after the fall of the Gbagbo regime in 2011, his successor, Alassane Ouattara turned the tables once again in the land domain. The Ouattara government, with a powerbase in the Ivoirian North and among the northern diaspora of migrants in the southern Côte d'Ivoire, neutralized the anti-migrant thrust of the land law. In its first term (2011-2016), Ouattara's government used the provisions of the 1998 land law to promote the recentralization of power, and to extend and deepen the state's presence in war-torn localities along Côte d'Ivoire's turbulent borders in the Far West region of the country. In 2011-2016, the government opened the doors to demand-driven registration and titling of land in a 50 mile radius around Abidjan, but did not invest political capital in pursuit of the land privatization agenda.

The paper contributes to knowledge about land politics in general and Côte d'Ivoire in particular by offering a macro-level, *political* analysis of land policy since 2000. It fills a gap between two different literatures on Côte d'Ivoire since 2000, one on politics and the other on land use. Political analysis in the 2000s focused mostly on the national *crise socio-politique* that brought Gbagbo to power, crystallized in a 2002 rebellion, divided the country into a government-controlled south and rebel-controlled north for five years (in a situation of "neither peace nor war"), and culminated in disputed elections in 2010 and Gbagbo's removal from power by rebel forces aided by the international community in 2011.¹ Although the fundamental role of the 1998 land law in precipitating the crisis is a prominent theme in these studies, there has been almost no scholarly analysis of the Gbagbo government's efforts to actually deliver on the promise of Law 98-750 in the government-controlled south, or political analyses of land policy under Ouattara. Indeed, most commentary conveys the impression that the 1998 land law and its political promises were swept away in the chaos of the crisis years. A separate stream of research on post-2000 Côte d'Ivoire focuses on micro-level changes in land use and land contracting in the Ivorian south.² This work tracks bottom-up drivers of change in the export-crop producing smallholder sector. It treats 98-750 as mostly non-implemented; it is not focused on analyzing the political determinants and significance of the law reform effort after 1998. The analysis here begins to fill these gaps. It draws upon local news reports, grey and secondary literature, Ministry of Agriculture internal documents from 2004-2006 and 2012-2015 that were consulted in Abidjan by the author, and approximately 25 unrecorded semi-structured interviews in the Ivorian land administration sector (in Abidjan and Bouaké) in 2015 and 2016.

The Ivorian experience is significant for understanding contemporary land law reform in African countries. It shows how land law reform initiatives aimed at land registration and titling can have domestic political drivers and effects that are only partially or even tangentially related to liberal visions of land privatization, commodification, and market-making. At the same time, it is a

¹ For example, Chauveau 2000, Banegas and Losch 2002, Bassett 2003, Akindes 2004, Babo and Droz 2008; Marshall-Fratani 2007; Boone 2009, Bah 2010, McGovern 2011.

² See Tarrouth et Colin 2015, Colin 2015, Ruf 2013

strong corrective to political science analyses that insist that partisan competition for state power in African countries is about ethnicity and patronage only, and void of real, programmatic stakes. In Côte d'Ivoire the opposite is the case: struggles over land law have been intertwined with partisan conflicts, electoral struggles, and actual battles over the national trajectory *writ large*.

I: Land Law in the Pre-Reform Era

In the pre-reform era, from 1960s to the early 1990s, land policy under Felix Houphouët-Boigny was designed to promote land-pioneering in the zone of rapid expansion of export-crop production in the country's center-west and southwestern forest zone. Above all, it enforced user rights in this zone (ie., upholding the rights of whoever was using the land, even if the users had no ancestral claims to it). In doing so, land policy promoted the land pioneering interests of the ethno-regional groups who were represented by the Houphouët regime: ie., the Baoulé of central Côte d'Ivoire and the northerners with whom they were allied within the ruling *Parti Democratique de Côte d'Ivoire* (PDCI). Baoulé and northern farmers and farmer-traders vigorously colonized the southwest forest zone with active state support and backing. To achieve this, Houphouët built a strongly authoritarian and centralized state which repressed indigenous groups (and their customary land claims) in the southwest. A voluminous literature documents and analyzes this process.³

II. Land law innovation and reform in the 1990s

Côte d'Ivoire was one of four francophone West African countries to begin implementing a Plan Foncier Rural (PFR) project in the late 1980s. With active support from the World Bank and the French Cooperation, the PFR envisioned a process of definition of village territories and lands (*terroirs villageois*), registration of land rights, creation of the institutional framework necessary for the eventual conversion of customary rights into statutory land rights, and land use planning at the

³See Dozon 1987 and note 1.

village level.⁴ In western Côte d'Ivoire, land pressure was mounting, along with political tensions between autochthones and in-migrants over land rights. The general economic conjuncture contributed to rising social and political tension around land. The mid-1980s were a time of economic recession, shrinking employment, and IFI-imposed austerity which choked off growth of the cities and sent the middle class into a tail spin. In response to recession and fiscal austerity, unemployed urban youth began to "return to the land," but many who returned to the western regions found that in-migrants now occupied most of their families' land. One proximate goal of the PFR in the West, as least as far as the Ivoirian Ministry of Agriculture was concerned, was to release some of this pressure by identifying underutilized tracts of land that could be made available to unemployed youth. Around Soubré in the southwest, plans to build a new dam on the Sassandra River created a separate need to survey local populations and landholdings dovetailed with some of the proximate objectives of the PFR.

Between 1989 and the end of 1995, the larger political context also shifted. Côte d'Ivoire returned to multipartism in 1991, and in 1993, Houphouët died and power passed to his hand-picked successor, Henry Konan Bédié. During this period, the PFR progressed in five pilot zones. About 425,000 ha. of village land was mapped, with village boundaries and existing land rights traced out on the basis of local interviews: Béoumi (110,000 ha), Korhogo (192,000 ha), Abengourou (58,000 ha), Soubré (33,000), and Daloa (32,000) (Chauveau, Bosc, and Pescay, 1998: 577). In January 1997, the PFR matured into the Programme Nationale de Gestion des Terres Rurales (PNGTER), with a wider mandate and a greater emphasis on individual titling *per se* (see Stamm 2000).⁵

The very process of "village land surveys," the basic tool in the PFR toolkit, stoked tensions in the central and western parts of the Ivoirian forest zone. Surveys asked village elites and household heads to inventory their landholdings, and to specify who owned what, who had gained access to the land via whom, and who had rights to stay on or dispose of the land.⁶ This unfolded in

⁴ See Lavigne Delville 2005; Stamm 2000, Chauveau, Bosc, Pescay 1998: 580

⁵ Zalo (2006:4) refers to a different time frame in offering a balance sheet: He describes the PFR [and the PNGTER, presumably] as rolled out in three phases in nine zones over the 1990-2002 period: "Over the course of this period, 1,117,000 ha were delimited, 44,201 parcels were marked out (levées), and 708 villages were covered."

⁶ See Chauveau, Bosc, and Pescay 1998.

the context of intensifying partisan competition and political polarization at both the local and the national level. Conflict was especially acute in the center-west and West, where politicians from the ruling PDCI and their newly-unleashed partisan rivals, organized in the center-west by Laurent Gbagbo under the banner of the *Front Populaire Ivoirien* (FPI), instrumentalized indigene-stranger tensions to mobilize rival electoral constituencies. The political, economic, and social climate deteriorated. In the 1995 elections, as the PFR "pilot" phase was coming to an end, 5,000 in-migrants (most of them Baoulé) were expelled by grassroots militia from the Gagnoa area in the Ivorian center-west (Babo and Droz 2008). A large scholarly literature analyzes this difficult history.⁷

As land tensions and partisan struggle intensified, the World Bank pressured Côte d'Ivoire to move forward on a land policy aimed at registration and titling as part and parcel of "second generation structural adjustment" reforms. Politicians and representatives from the regions most affected by land-related tensions (the center-west, southwest, and southeastern coastal zone around Bonoua) became actively involved in formulating and "sensibilizing" populations around reform proposals, seeing promise and risk for themselves and their constituencies in the prospect of a major new land law.

In December 1998, the ruling party, the PDCI, introduced a new land law that would largely supersede the PFR and the PNTGER.⁸ It aimed at titling and registration, and unleashed bitter controversy. In National Assembly debate, the ruling party was split by the proposal to confirm "customary rights ceded to a third party" as property rights that could be registered and titled. PDCI delegates from the West joined the inflamed opposition party, Gbagbo's FPI, in protest.⁹ The FPI saw this clause as a green-light to those who would dispossess autochthonous westerners of their land rights. Suspension of National Assembly deliberations gave the FPI time to compose a counter-

⁷ See note 1.

⁸ Law 98-750 was not the direct or intended result of the PFR or PNGTER. Chauveau (2003:2) explains that although the PFR had been seen as a step in the process of formulating new land legislation, (a.) it did not include a plan to require formal registration of land certificates, and (b.) it was still underway, having just scaled up from 7 to 9 project zones, in 1997. Even so, in 1999, the methodologies and procedures of the PFR and PNGTER were integrated into official procedures for land certification. This was formalized under Ouattara in decree n. 2013-296.

⁹ Stamm (2000) reported that the draft legislation contained a clause that would have revoked the user rights of those who could not prove that their land had been "brought into use" (*mise en valeur*), but that this provision was withdrawn early on.

proposal that (a.) inserted a nationality clause into the law (reserving the right of property ownership to Ivoirian nationals) and (b.) vested the power to confirm the initial allocation of land ownership rights in autochthonous elders at the village level. This satisfied the FPI and other members of parliament from the West who had opposed the first version of the law, and were intent on ensuring that guardians of autochthones' interests would have a strong hand in determining how the new law was implemented at the local level. Some observers remember that some Ivorian legislators were very concerned to block or preempt large-scale sales or concessions to foreign (non-African, corporate) investors. Meanwhile, the law received some support from deputies who wanted to create a path to registration and titling to facilitate private acquisition of land and investment in agriculture.¹⁰

Law 98-750 is remembered as having passed unanimously, and if it did so, it passed in a very divided parliament.¹¹ Some deputies apparently began to renounce it as soon as it was passed. One analyst reported that "The Baoulé lobby opposed it" (Boni 2015). If this is true, it is not surprising: the law dramatically weakened the position of in-migrants to the center-west and south-west, be they Baoulé, Ivoirians from the north, or foreigners. Implementing decrees (*décrets d'application*) were promulgated on 13 October 1999.

There was an upsurge in assertiveness of autochthones around land rights in the center-west and Far West. A dramatic expression was the November 1999 expulsion of Ivoirien northerners (Lobi) and Burkinabe from Tabou.¹² This was followed by the military coup d'état of 24 December 1999, mounted by junior officers claiming to represent disaffected northerners. A new military regime under General Robert Guëi was installed. The violent expulsions of non-indigènes from the West and widespread social destabilization set-off by the passage of the new land law contributed

¹⁰ Some who were present in the parliamentary debates at the time report that they believe(d) that some MPs were eager to acquire titles and invest (author's interviews in Abidjan 2015).

¹¹ Strangely, the precise record of parliamentary debate does not seem to have yet been located or analyzed by researchers, and commentary on this exact point remains highly imprecise. I plan to pursue this in future research.

¹² See Babo and Droz 2008.

indirectly to this outcome. Guëi was displaced by Gbagbo less than a year later in the flawed presidential election of October 2000.¹³

¹³ Akindes 2004.

III. Land policy under the Gbagbo Regime: Scales tipped decisively in favor of autochthones

The 1998 land law overturned a status quo in which the government enforced the principle that working the land ("*mise en valeur*" of the land) was the source/origin of land use rights.¹⁴ The new law mandated first registration of all unregistered rural land (approximately 98% of the national territory) in the name of autochthonous owners -- this was to happen throughout the national territory within a period of 10 years. It reversed Houphouet's legacy of enforcing the primacy of user rights in the most dynamic zones of export-crop production in the center-west, southwest, and Far West, and thus represented dramatic inversion of the *rapports de force* between in-migrants and autochthones in these regions. At the end of the 10 registration period, all unregistered land was to become the property of the state.

Much commentary holds that Law 98-750 was not implemented or never implemented.¹⁵ This statement is true in a narrow sense: By 2008, only a miniscule number of land certificates had been issued for rural landholdings. Implementation more broadly understood, however, entailed concerted activism on the part of the Gbagbo regime to prepare the ground for implementing the 1998 law, and to seize the possibilities for an autochthonous rights revival that the law seemed to authorize. Under Gbagbo, government policy aimed at transforming *rapports de force* between indigenes and migrants. Its thrust and intent were visible in four domains: (a) court cases, (b.) the delimitation of village boundaries and the setting up of land-rights based political hierarchies within and among villages, and issuance of *Certificats Fonciers* (land certificates), and (c.) efforts to pursue political and administrative decentralization. Each is discussed below.

The scope of these efforts was limited in geographical and financial terms, largely due to the politico-military crisis of 2002-2006 and its aftermath, followed by the final defeat of the Gbagbo regime in 2011. Even so, we see in these efforts a concerted attempt to use the Law 98-750 to affirm autochthonous land rights and embed these in a larger political and legal order that gave primacy to the local.

¹⁴ Chauveau et Colin 2014: 6 inter alia. See Dagrou, 2007, p. 112, n. 133.

¹⁵ Zalo 2006:4; Dagrou 2007: 167; Colin 2013.

(a.) Seven court cases

As Dagrou (2007: 53-6, 112-13) recounts systematically, the autochthony-affirming content of 98-750 was stridently asserted in a series of court cases between 2002 and 2006. A June 2002 court case in Cour d'Appel de Daloa ruling reads that "given the law 98-750 holding that only *les populations autochtones riveraines* (in a locality) have use rights, we can deduce that such rights can never result from a simple "*mise en valeur*," and above and beyond that, a non-Ivoirian foreigner who, under the terms of the law just cited, is not destined or is not fit (*n'a pas vocation*) to become the owner of a parcel of rural land." ¹⁶ In 2002, the Tribunal de première instance at Abengourou ruled on the "*nullité absolue*" of a sale contract that has not been notarized. The Cour Suprême followed up, issuing in December 2003 an Arrêt confirming that no customary landholder has the right to cede property rights to a third party, even if the sale is notarized, further closing the door on legal recognition of past sales to non-autochthones. The Daloa court specified in June 2004 that "customary rights in no way proceed from the *mise en valeur* of the land."

In April 2005, a Sassandra ruling, confirmed in Daloa, went to the Cour Suprême which ruled that *mise en value* confers no customary use right (much less property right), and that the true property holder in the disputed case is the one who exercises customary rights "*sur la parcelle de ses ancêtres par voie de succession, comme la consacre la loi n. 98-750 du 23 december 1998.*" In June 2005 the Daloa court proceeded to nullify *notarized* land sales and expel occupants from litigated parcels. In April 2006 the very active Daloa court also ruled that informally documented sales (*acte sous-seing privé*, presumably what are called "*petits papiers*" in the land literature) are "absolutely nulle."

(b.) Village Boundaries, village hierarchies, and issuance of CFs

In 2002, the PNGTER (Programme National de Gestion des Terroirs et d'Equipement Rural) was extended for the 2002-2010 period. This program, run by the Ministry of Agriculture and the

¹⁶ See also Boni 2015.

prefectoral corps, took up the project of delimiting and demarcating village territories. Although Law 98-750 did not lay out procedures for village delimitation, delimitation was a precondition for the formation of village land committees (CVGFR) with authority to assign land rights within territorially-demarcated units. For the Gbagbo government, the stakes in village delimitation were three-fold: formalizing and officializing the primacy of autochthonous land rights; creating official village hierarchies which gave primacy to state-recognized autochthonous villages; and giving state recognition to "naturalized" village origins and boundaries. Village and landholding mapping methodology was adapted from the procedures developed in the 1990s under the PFR.¹⁷ Issuance of land certificates followed from this and was underway in Gbagbo's last four years in power.

The first part of this sub-section describes describes this procedure, and the second analyzes the patterns that emerged.

i. Gbagbo regime demarcation and registration procedure. The point-of-departure in delimiting village territories was the existing structure of territorial administration, in which the "village territory" is the lowest-level administrative jurisdiction. Its political and administrative center is the state-recognized village (*village propre*, or *village érigé* [erected] by the government), and the lowest-ranking agent of the territorial administration (subordinate to the *sous-prefect*) is the chief of the officially-recognized village. The village territories demarcated in the PNGTER exercise measured between 1,000 and 3,000 ha. in size (2,000 ha. = 7.6 mi²) and typically contain multiple, hierarchically-ranked settlements. The officially-recognized village is the seat of power with the village territory and other settlements, often referred to as *campements* (camps) in Ivoirian parlance, are politically and administratively subordinate to (*rattaché à*) it. Administrative ideology, and protocol is based on the idea that village territories are customary, historical, or natural political homelands of some set of original inhabitants. In zones of in-migration, the *campements* or *villages rattachés* are settlements created by non-autochthonous "outsiders" who settle with the permission

¹⁷ See Varlet et al, 2014: 42, 47. Law 98-750 did not specify how village boundaries were to be delimited. So on this, PNTGER program operated in a *vide juridique* that was not filled until the Ouattara regime issued décret 2013-296. On the PFR process, see Colin et al., 2009; Lavigne Delville 2014.

of the indigenous local land authorities and the administrative chief. The in-migrants create their own, separate settlements within the village territory, but at a distance from the *villages propres*. A land ownership hierarchy is thus embedded in officially-recognized village hierarchies.

One of the stakes in the PNGTER delimitation and registration exercises was recognizing or reforming pre-existing village hierarchies in the project zones. A *campement* or *village rattaché* that is granted proper village status (*érigé en village*) is "liberated" from its former overlords, now holds land autonomously in its own right, and has its own village territory. Conversely, to lose village status and to be demoted to the status of a *village rattaché* is to be subjected to the authority of another group, and to have land access only with the permission of those who do control land with the village territory.

In the PNGTER project zones under the Gbagbo government, the state-led process of village delimitation, hierarchization, and land certification pivoted on the pervasive and long-maintained "political-administrative distinction between "autochthones," on the one hand, and "allochtones de nationalité ivoirienne" and "allogènes non-ivoiriens," on the other hand (Chauveau and Colin 2014). The hierarchical structuring of villages and appointment of village chiefs was pre-decided, usually following the status quo but, as we shall see, not always. In advance of village surveys, sous-prefets organized the formation of *Comités Villageois de Gestion de Foncier Rural* (CVGFR, or Village Land Management Committees), presided over by the *sous-prefets*, who were to act as repositories of local knowledge about village histories, village boundaries, the allocation of customary land rights within village territories, and the granting of derived land rights to village outsiders. According to the PARFACI report (Varlet 2014: 73), 90-100% of the members of the CVGFR constituted in the 2006 exercise were autochthones, including members of the *chefferies* (sa Colin 2013: 436). This is one indicator of the government's decision to throw its weight behind autochthones and a neocustomary vision of landownership.

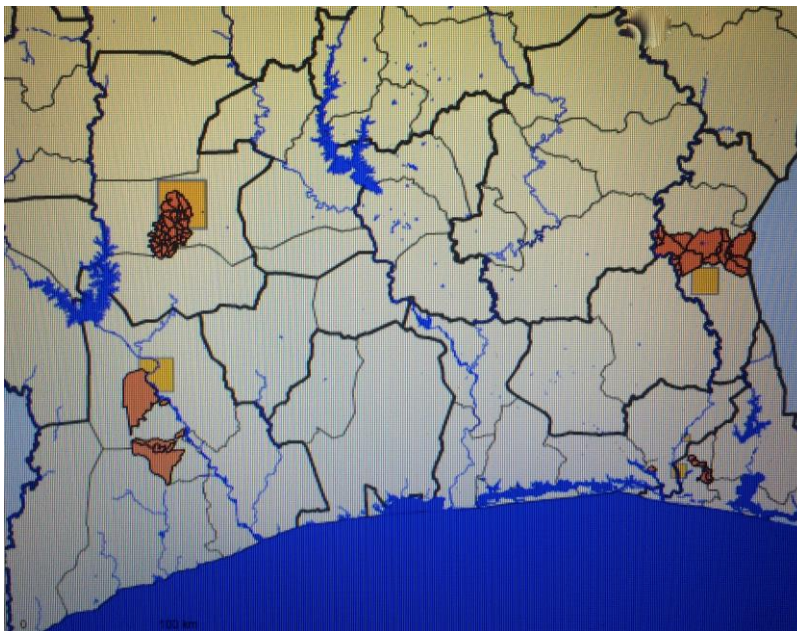
With CVGFRs in place, an *enquêteur* appointed by the state was brought in to develop an official *historique de la constitution du village* using a 16-item questionnaire (see Appendix 1), working in the presence of the CVGFR and other knowledgeable persons, and officializing the *procès-verbal* with the signatures of all CVGFR members. The next step entailed actually defining village

boundaries, publicizing the proposed boundaries in the village (and in neighboring villages, the sous-préfecture office) to collect objections and endorsements, resolving disaccords, officializing village boundaries, placing boundary-markers, and publishing an official map of the village limits.

Issuance of Certificats Fonciers and Certificats Fonciers Collectifs (CFCs) were to follow. CFCs were envisioned as instruments that would document extended family holdings, but would have a life span of only 3 years. Then the land has to be divided up and registered and titled as individual private property.

The four project zones covered in 2006, totaling approximately 150 villages, were in Abengourou, Daloa, Bonoua/Alépé, and Soubré. (See Figure 1.)

Figure 1. Map of the Four Zones of PNGTER Village Demarcation



Source: Republique Côte d'Ivoire, Direction Foncier Rural, www.foncierural.ci, 15 Nov. 2015 (being redrawn for published version)

ii. Analysis of Gbagbo regime delimitation and registration. Table 1 compares and contrasts the four zones. Project zone settlement histories are summarized in Appendix II. What does this information

reveal about the government's choice of pilot zones, and about the political or partisan logic, if any, that guided demarcation and land registration?

Table 1. Comparison of 2005-2006 Village Delimitation Cases

regions	"villages propres" delimited 2005-6 (n.)	n. of <i>villages rattachés</i> named; n. of campements	timing of in-migrant influx	in-migrants, % total population *	source of migrants' derived land rights	level of land rights contestation, c. 1990	village hierarchy of 1990s confirmed?	department-level electoral wins (by party)**
Abengourou. 3 sous-prefectures	25	6 <i>villages rattachés</i> , 211 camps. 25% of total are <i>rattachés</i>	1920s-1940s	40%	chiefly hierarchy; uncontested sales; tenancy and wage labor relations	very low	accentuated	PDCI (2000 leg.), FPI (2000 pres., 2010 pres.)
Bonoua/Alépé 2 sous-prefectures	4	2 <i>villages rattachés</i> , 13 camps. 50% are <i>rattachés</i>	1900, 1950s-1960s	over 40%	self-settled w/ government's post-hoc ratification in 1980s	medium	confirmed (autonomy of some in-migrant villages is confirmed)	FPI (2000, 2010)
Daloa 1 sous-prefecture	39	0 <i>villages rattachés</i> , over 222 camps.	1960s and 1970s	30-40%	lineage heads and state agents, weak <i>tutorat</i> relations	very high	accentuated	FPI (2000, 2010)
Soubré 1 sous-prefecture	5	24 <i>villages rattachés</i> , over 375 camps. 80% of total are <i>rattachés</i>	1970s, 1980s	80%	state agents, w/ village chiefs' consent; weak <i>tutorat</i> relations from 1980s which had fallen into disuse	very high	inverted: existing village autonomies overturned	PDCI (2000, 2010)
Total 7 sous-prefectures	73	32 <i>villages rattachés</i> over 602 campements						

* First three rows from Bouquet 2011: 201. ** By departmental results for 10 Dec. 2000 legislatives, 2000 presidential, and presidential (2nd round) of 31 Oct. 2010, Bouquet 2011: 65, 73, 158, Bassett 2011: 475.

The project areas were all politically-accessible areas in southern Côte d'Ivoire (given the absence of the government in the North due to the political-military crisis) in which the FPI had either partisan control or a political foothold in a pro-FPI minority. The last column of Table 1 shows that two of the targeted zones, Bonoua/Alepe and Daloa, were areas of high partisan support for the FPI. In Abengourou split its vote in 2000 between the PDCI and the FP1, but voted for the FPI in 2010. Soubré was a PDCI stronghold. Here, the PNTGER project built upon the support base of a local pro-FPI autochthonous minority. Three of the four were PFR project zones, so groundwork for village delimitation and land adjudication had already been laid. Northern departments were absent from the list: the Gbagbo government could not access the rebel-controlled North until after 2006; it

was a region hostile to the FPI; and it was a region in which there was resistance to land certification.¹⁸

The project zones were heterogenous in terms of critical settlement history variables: the timing of in-migration, demographic balance between ethnic insiders and outsiders, and level of contestation over land rights, as summarized in Table 1. In general, timing of in-migration is earlier in the East, having taken place in the colonial period, than it is in the West. In the West, the migratory in-flows were more recent -- they happened in the postcolonial period -- and the demographic weight of the in-migrants (ethnic outsiders) is higher. Levels of contestation over land rights were also much higher in the West than they were in the East (as discussed above).

A review of approximately half of the 150 village dossiers prepared by PNTGER in 2005-6 offers evidence of the government's commitment to give "*pouvoir décisif aux autochtones* in the Abengourou, Soubré, and Daloa project zones.¹⁹ In Bonoua/Alépé, the land use rights of long-settled in-migrants are shored up. The village *enquêtes* confirm the heavy insistence on documenting first-comer rights, and confirming their primacy through the public process of documentation and recording (in writing) individuals' consent to the official record. *Enquêtes* clearly differentiated between land-owning villages and subordinate, subordinate, non-owning villages (officializing status of "village without land" or "village installed within the territory of village X" in Abengourou and Bonoua-Alépé, and of *village rattaché* in Daloa and Soubré). In "landless villages" and *villages rattachés*, male household heads signed (or gave fingerprints) to foreswear any claim customary land rights of ownership. This officialized hierarchical relationships among villages and among residents of the village territories.

It is remarkable that in Soubré, this effect was achieved through inversion of the prevailing administrative status quo. In-migrants' status was demoted in order to elevate the autochthones. Administratively-recognized, autonomous villages established in the 1980s, mostly Baoulé, were demoted to the status of *campements* subordinated to officially-recognized Bakwé village. One

¹⁸ Varlet et al., 2014.

¹⁹ The phrase in quotes is from Chauveau et al 2012: 29. About 75 PNTGER village dossiers were consulted in Abidjan in 2015 and 2016. The DFR holds a collection.

marker of the in-migrants' reversal-of-fortune was the renaming of villages: Baoulé or Northern-sounding village names replaced by Bakwé names.

Because *enquêtes historiques* of villages aimed at establishing autochthony or first comer rights, settlement history was critical. Each village dossier contains answers to the 16 questions that made up village history survey (*enquête*). Recorded answers are short and tend toward the formulaic. The official village histories locate the origins of almost all of the autochthonous villages deep in the pre-colonial period -- going back to 1600, 1700, or 1800. Histories include accounts of relocations, especially for villages in the West (which are attributed to the search for better sites) and the date at which the settlement was *érigé en village* (or officially granted "village" status) by the colonial or Ivoirian administration.²⁰ Village histories record non-political and naturalized accounts of village limits, referring to a river, creek, *bas-fonds*, or the long history of *entretien des pistes*, roads, or boundaries between villages. Mentions of disputes, boundary changes, administrative divisions, etc. do not appear. Agreement on village boundaries through this process was followed by investment in actually demarcating the villages. Approximately 5,000 geocoded *bornes* were set in place under the Gbagbo regime.²¹

Official village histories tell the story of the land rights that the Gbagbo government sought to affirm in its implementation of Loi 98-750. They recounted "usable histories" that supported the government's vision of Law 98-750.

In December 2007, a new Programme National de Sécurisation Foncière (PNSFR) was launched to spearhead an ambitious expansion of the village delimitation and land registration program. with World Bank and EU funding. It elaborated a plan for mass communication and *sensibilisation* about Law 98-750. In 2009, Desiré Zalo, then-Director of the Direction du Foncier Rural (DFR), reported at a Abidjan conference that 150 villages (out of a total of 11,000 in Côte

²⁰ There is silence around the history of French wars of pacification and forced regrouping and resettlement of populations in the West. See Dozon 1985. *Enqueteurs* recorded the respondents' information about when the sites were *érigé en village*. Answers from Daloa included, for eg., "By the *Commandant de Cercle* in 1915," and in Soubré or Bonoua, "By sous-préfet or préfet so-and-so in 1985....."

²¹Zalo (2006). Numbers averaged about 25-50 per village territory.

d'Ivoire) had been delimited so far, that 340 were in the process of delimitation, and that 400 were scheduled for delimitation in 2010.²²

The final balance sheet for village delimitation and land certification under the Gbagbo government was as follows: approximately 170 village delimitations (covering 1.1 million hectares of territory) were completed,²³ and 198 CF had been issued.²⁴ Of these CFs, 135 (68% of the total) were issued in Abengourou and Agnibilikrou, 19 in Soubré (10%), and 18 in Daoukro (10%). The remaining 25 CFs were scattered around the south. Only 4 CFs (2%) were issued in Gbagbo's home region.²⁵ Most of the certified parcels are small- to medium-sized by smallholder standards. Approximately 95% of the certified parcels in Abengourou and 75% of the parcels in Soubré were under 10 hectares. A few CFs for very large holdings were issued to political dignitaries in the West.

The Abengourou region, the only region in which more than a few CFs were issued, was surely easiest place to certify parcel ownership, given the generally low levels of land tension, long and uncontroversial settlement histories (see Table 1), relatively wealthy landholders by Ivoirian standards (Gastellu 1980, 1989), and the historically high level of literacy and rural prosperity which characterize this region.²⁶ Chauveau and Colin commented in 2014 that land certification was easiest and progressed furthest where it was least needed, either to mitigate conflict or promote land transactions. Daloa and Soubré make this point by way of counter-example: conflict levels were high and land certification stalled.

(c.) Decentralization under the Gbagbo Regime

²²Club Union Africaine- CI, 2009.

²³ In November 2013, Min. of Ag. Mamadou Sangafowa Coulibaly reported that 171 villages had been delimited and 305 CF delivered (apparently out of a 5000 requests/initiations of the process). "CI: Sangafowa Coulibaly: "La loi sur le foncier n'a pas été changée," *Frat.Info (Abidjan)*, 1 Nov. 2013, accessed allafrica.com 5 April 2015. Varlet et al. (2014: 17, 39) reported that 1,100,000 ha of village land was delimited in the 10 years of the PFR and PNGTER projects.

²⁴ According to the Direction Foncier Rural's tally consulted in April 2015 for n. of CF issued by end of 2010.

²⁵ That is, 2 in Lakota, 2 in Issia. The government was ready to issue CFs in Daloa in 2009 and 2010, where 44 villages had been *enquêtés* and 21 were *bouclés*, or completed). However this was aborted in Oct. 2009 when the CVGFRs of the three targeted villages in Gboguhé sous-préfecture all resigned en masse on the grounds that the 10 year period of Loi 98-750 had expired and they feared that the state would use this as a pretext for expropriation of their land (Club Union Africaine 2009: 14, 19).

²⁶ See also Morris MacLean (2010).

The Gbagbo regime's land agenda was integrated into a broader vision of state restructuring that would promote localism, *autochtonie*, and ethnic prerogative. The government undertook to remold *chefferie* law to create a chieftaincy hierarchy that would be comprised of already-existing, first-level *chefs de village* (members of the CVGFR), complemented by second-level chef de tribu, third-level chefs de canton, and fourth-level chefs de province (at the departmental level). Gbagbo's Minister of the Interior, Désiré Tagro, undertook consultations "with kings and traditional chiefs" to promote the official effort to "bringing back the old structures" (*remet en scène l'ancienne organisation*).²⁷

An elaborate plan for reorganizing territorial administration furthered this vision of restoring local prerogative and valorizing communal initiative. In 1997, a "strategy for decentralization and development (*aménagement*) of the national territory" had been adopted by the Côte d'Ivoire Donors' Roundtable. It formalized the goal of total "communalisation" of the country -- ie., conversion of all *sous-préfectures* to *communes*, so that each would have its own elected government. This idea lay dormant until 2001, when the Gbagbo government introduced a decentralization strategy to be enacted through a series of laws and decrees in 2001, 2002, 2003, 2005, and 2008 that went even further than the 1997 proposals in enlarging and deepening the scope of decentralization (Traoré 2010). A 2001 law (implemented in 2003) suppressed the old "communautés rurales" and created new political jurisdictions -- including villes, departments, districts, and regions -- and new administrative hierarchy. As Traoré (2010:9) describes it, this "marked the massive creation of new communes and new departments... In effect, by decree, the number of departments increased from 56 to 80 and the number of communes in the country went from 198 to 1,008, thus achieving the almost complete communalisation of the national territory." Communes -- some of them large villages -- were given financial autonomy and a mandate to organize collective life, promote local development, modernize the countryside [*le monde rural*], and manage land and other local resources.²⁸ This "émittement territorial" (breaking up of the national

²⁷Djé Abel, "CI: Chefferie traditionnelle -- Boga Joachim (chef de tribu): 'J'ai de grandes ambitions pour ma tribu,'" *Notre Voie*, 5 nov. 2014, allafrica.com/stories/201411060997, accessed 24 august 2015.

²⁸ Ahmed M. Troaré, "CI: Découpage Administrative -- Entre politique et réalité de terrain," Nord-Sud (Abidjan), 15 déc. 2008, at fr.allafrica.com/stories/20081215557.html. Access 22 avril 2015.

territory into ever smaller units) was supposed to create 10,000 jobs for new *agents municipaux* to be hired by local elected politicians (Traoré 2010: 2).

Possibilities for effective realization of Gbagbo's vision of a new state architecture -- one in which the local powerholders were strengthened, ethnic institutions were valorized, and resources and prerogative were devolved to the local level -- were undermined by the broader crisis of state and economy after 2003.²⁹ Gbagbo lost the disputed October 2010 national elections to Ouattara. In April 2011 Gbagbo was finally dislodged from power through military action by the Ouattara-aligned *Forces Nouvelles* rebellion assisted by international action.³⁰

IV. Land Politics Under Ouattara: Tables Turned

Under the Ouattara government, the tables were turned. Ouattara's election in 2010 and installation in office in April 2011 represented a clear victory for those defending the rights of immigrants in southern Côte d'Ivoire, and clear renunciation of the autochthony-promoting vision of Gbagbo and the FPI.³¹ The new government acted decisively to recentralize state power and to use possibilities inherent in the 1998 land law to achieve a new set of objectives.

Chauveau et Colin (2014) describe an initial impulse on the part of the Ouattara government to discard the 1998 land law, or to revise it completely. In 2013, the government announced that Law 98-750 still stood, but with two reforms.³² One prolonged the period of application of Law 98-750 to 2023. The second revised the nationality code to make naturalization easier. The FPI (absent from the legislature due to a boycott of legislative elections) and elements of its strong regional constituency in the West protested the nationality law in the strongest terms. Laurent Fologo, an FPI

²⁹ Ibid. This source reported that at a June 2008 seminar in Abidjan, delegates to a conference on local government complained that no money had been allocated to the local level, and that many new local units existed on paper only.

³⁰ See Banegas 2001, Bassett 2011, Straus 2011.

³¹ Ibid and note 1.

³² CI: Sangafowa Coulibaly: "La loi sur le foncier n'a pas été changée," *Frat.Info (Abidjan)*, 1 Nov. 2013, accessed allafrica.com 5 April 2015.

firebrand, excoriated the Ouattara government for undertaking to "by the wave of a magic wand [through naturalization law], expropriate the land of Ivoriens."³³

Implementation of the 1998 land tenure law remained a priority of Ouattara's backers in the EU and World Bank, surely because they subscribed to the general consensus that land problems had played a key role in fomenting devastating civil conflict in Côte d'Ivoire, and because they saw registration and titling as clearing the way for large-scale investment in agriculture. Chauveau and Colin (2014:11-12) criticized the donors for maintaining "a naive faith in land titles" and seeing the land cadastre "as the holy grail." Donors pledged about 10% of the estimated cost of delimiting all of Côte d'Ivoire's 11,000 villages, setting up CVGFRs, and issuing the estimated 300,000 CFs that would be necessary to complete the task. As part of this effort, the EU- and World Bank-funded PRSFR was resurrected in 2011 as the Programme d'Appui à la Relance des Filières Agricoles de Côte d'Ivoire (PARFACI). This *relance* called for the "improvement of the legal framework, training of actors involved in implementing the [land] law, securisation of village lands by delimitation of terroirs villageois, the creation of a digital cadastre (Système d'Information Foncière),³⁴ and the relaunching of the implementation (*mise en oeuvre*) of the 1998 land law.

Yet during Ouattara's first mandate (2011-2015), the Ivoirian government did not embrace these priorities. Ambitions for general land certification and private land titling were restrained. Much land-related conflict still simmered in the rural areas. In the West, where 3,000 persons were killed in land-related violence in 2010-2011, the flames of civil war had barely subsided. Land-related violence continued throughout 2012, 2013, and 2014. Activism to implement (or indeed, to revoke) Law 98-750 could have stirred-up conflict that would be difficult to contain in southern Côte d'Ivoire. In northern Côte d'Ivoire, to promote Law 98-750 would have been to antagonize core loyalists.³⁵ The overriding objectives of the Ouattara government in 2011-2015 were to tamp down

³³"CI: Foncier rural - La loi expliquée à la presse," *Notre Voie*, 5 Nov. 2013, at allafrica.com, accessed 30 avril 30, 2015; and "CI: Lois sur la nationalité et de foncier rural -- Fologo allume Ouattara," *Notre Voie*, 27 août 2013, posted at Allafrica.com, accessed 30 avril 2015.

³⁴ Varlet et al. 2014:17.

³⁵ On opposition to 98-750 in the North, see Varlet 2014: 105.

civil unrest, protect its partisans in the rural and urban areas, and maintain control over the national territory.

Under the first Ouattara government, the political possibilities inherent in Law 98-750 were used most concertedly to promote state-building objectives, rather than the donor's objectives of land titling and promotion of land markets. The government's priorities were visible in three domains. First, in the domain of land certification, the government developed the legal/bureaucratic machinery (*dispositif legal*) required to respond to individual demands for land certification and titling, rather than pushing for state-led titling (except in two local zones). Second, the main thrust of the village delimitation process was redefined. Under Gbagbo, the process had been led by PNTGER and the Ministry of Agriculture, and was aimed at allocating and securing autochthones' land rights. Under Ouattara it was placed under the control of the Ministry of the Interior and harnessed to the "redeployment of the state" and rebuilding of the territorial administration in war-torn western Côte d'Ivoire.³⁶ Third, in the domain of decentralization, Gbagbo strove to create a decentralized system anchored at the grassroots in local autochthonous communities and CVGFRs. The Ouattara government undertook a decisive recentralization of authority.

(a.) Land Certification, 2011-2015

i. Demand-driven certification. Throughout almost all of national territory, the Ouattara regime adopted a laissez-faire approach to land certification, waiting for demands for land registration to percolate up from commercially-minded actors and investors. Demand-driven land certification was highly localized and concentrated in zones of new inward investment. Large-scale investor logics pushed some land certification. Foreign corporate investors covered the costs of issuing Certificats Fonciers Collectifs (CFCs) to a few villages adjacent to land concessions destined for palm oil and sugar plantations, in order to clarify boundaries. In Aboisso, the Ministry of Agriculture promoted the certification of outgrowers' plantations on palm oil schemes (with costs of the CF deducted from

³⁶ Decree 2013-296 of 2 mai 2013 standardized the village delimitation procedure.

producers' income by the millers).³⁷ There is a similar case in Tabou. Yet the main drivers on the demand-side were what Tarrouth and Colin (2016) call *cadres acquieures*, or the acquiring salaried class. Of a total of 720 CF covering a total of 41,500 hectares issued between 2011 and April 2015,³⁸ 400 (47%), accounting for a land area of 10,500 ha., were for parcels within an 80-100 km radius from Abidjan -- in Agboville, Lagunes, Alépé. The average parcel size in Agboville was 28 ha. Much of the investment is going into the creation of hévéa plantations (*plantations des cadres*).

ii. State-led certification. State-led land certification continued in two local areas. Most was concentrated in EU- and WB-funded project zones in Abengourou and in the Soubré dam project zone. In Abengourou, an EU-funded registration project aimed at issuing 30,000 CFs in sous-prefectures delimited by PNTGER in 2006. By April 2015, 204 CFs had been issued in Abengourou and Agnibilekrou, (with average parcel sizes of 9 and 47 hectares, respectively), with costs of certification covered by the international donors. The Abidjan hinterland (the zone of demand-led certification) and Abengourou-Agnibilekou (the zone of state-led certification) accounted for over three-quarters of all CFs issued as of April 2015.

There was a secondary zone of land-certification in the conflict epicenter around Duékoué in the Far West. The government's land certification project was financed by the African Development Bank (ADB). By April 2015 about 30 CFs had been issued in the Duékoué and surrounding villages. By September 2015, about 150 applications (*dossiers*) were in various stages of processing.³⁹ The Duékoué projects were surely aimed at stabilization and reestablishing order in this zone.

Critics of the government's slow progress overall on the certification front argued that the lengthy (33 steps from the beginning of the certification process to the actually issuance of a land

³⁷ Esp. the projet "Une parcelle d'hévéa, un certificat foncier," lancé en Sud Comoé (Aboisso) 19 nov. 2014 by the Min. of Agriculture. Costs of 180,000 CFA per planter were to be deducted by the factory from the planter's earnings. With a land title, planters will be able to access bank credit.

³⁸ This is of a total of 841 issued since 1998. As of April 2015, certificats fonciers had also issued for three large holdings in Bouaké, average size 1,200 ha each, and 5 large holdings (average size 273 ha) in San Pedro.

³⁹ The April 2015 total for the West includes the 5 large holdings in San Pedro. Information about dossiers being processed in Duékoué is from the author's September 2015 interviews with former and current DRF agents in Abidjan.

title) and costly registration process discouraged smallholders from seeking certification (Varlet 2014: 36, 43). There was some urgency to the matter: under Law 98-730 and its 2013 extension, land not immatriculated in 2023 will be considered "*sans maître*" or ownerless and will become property of the state.

(b.) Village Delimitation in the Far West

During Ouattara's first mandate, the goal of using village delimitation to institutionalize the primacy of autochthonous land and political rights was dropped. Processes of village delimitation and land registration were disassociated.⁴⁰ Under Ouattara from 2011-2015, security and state-building logics drove the agenda. Village delimitation was employed as a tool for rebuilding the territorial administration in the war-torn West.

In 2013, a government ordinance specified procedures for delimiting village territories.⁴¹ A shift from the term *terroir* to the term *territory* signaled a move away from the land use and tenure concerns of the PFR and Gbagbo periods, and toward a preoccupation with administrative-territorial control. The Ministry of the Interior replaced the Ministry of Agriculture as the lead agency. With financing from the BAD, the government undertook village delimitation in the Far West. A large part of the effort was focused on the critical Liberia-Côte d'Ivoire border crossing in the sous-préfecture of Toulepleu, where 27 village territories were delimited during Ouattara's first mandate.

Village delimitation was accompanied by the appointment of village chiefs. An urgent priority was to empower local chiefs who could arbitrate land conflicts (backed-up by the prefectural corps) between war refugees and those who had occupied the land in their absence.⁴² Village

⁴⁰ An exception was Agboville where delimitation was to be resumed. The Agboville Prefect announced that campements would be elevated to village status. (@bidi@n.net, Abidjan.net, AIP, "Region: L'opération de sensibilisation sur la délimitation des terroirs villageois lancée à Agboville," 29 december 2013, accessed 2 Avril 2015).

⁴¹ ie., Law 2013-296 du 2 mai 2013.

⁴² See HRW 2013, Radio France Internationale, "CI: Human Rights Watch alerte sur le risque de conflits fonciers," 10 october 2013 (reposted in allafrika.com, accessed 5 avril 2015).

demarcation and the appointment of chiefs were measures aimed at reestablishing order, securing "local cohesion," and encouraging the return of the refugees.⁴³

(c.) Recentralization under Ouattara

A September 2011 ordinance reorganizing the territorial administration was followed in March 2012 by the suppression of 1126 communes,⁴⁴ thus reversing Gbagbo's policy of *communalisation totale*. "[The government] believes that 1126 communes were created for political reasons and that they are not economically viable. The remaining 197 communes will stay."⁴⁵ Villages were reattached to existing communes. *Notre Voie*, the FPI newspaper, reported bitterly that a Gbagbo regime "policy that had been greeted enthusiastically by populations, offering them chance to "take their own destiny in hand," had been "killed in embryo... Under Ouattara, Côte d'Ivoire has turned its back on decentralisation."⁴⁶

Districts with their own governors, another product of Gbagbo's restructuring of the national political and administrative structure, were also eliminated. In a 2013 meeting with the prefectural corps held at the presidential palace in Abidjan, Ouattara announced that he was not convinced that the district level of government was needed. The press announced "the death of the districts."⁴⁷ According to press reports, this was welcomed by the prefects who had viewed the district governors as compromising their mandate.⁴⁸

A new *chefferie* law, passed in 2014, retained the four tiered chiefly hierarchy in some regions, but not others. In Gagnoa, all of the hierarchical structure disappeared, leaving only the

⁴³ Norweigan Refugee Council 2012; International Crisis Group (2014); Mitchell 2014.

⁴⁴ Ordonance 2011-262 of 28 sept. 2011 relative à l'organisation de l'administration territoriale created 31 regions and 108 departments. As of mid-2015 the regional level had not yet been funded.

⁴⁵ Marcelline Boneton, "CI: Abengourou -- Les populations déapprouvent la suppression de 1126 communes," *Notre Voie*, 25 avril 2012, at fr.allafrica.com/stories/201204251331.html, accessed 17 mai 2015. See also Dje Kim, "CI: 1126 communes supprimées par le Gouvernement," *Le Nouveau Réveil* (Abidjan), 8 mars 2012, at allafrica.com/stories/201203081124.html, access 14 mai 2015.

⁴⁶ Guillaume T. Gbato, "CI: Suppression de plus de 1000 communes créées par Gbagbo," *Notre Voie*, 8 mars 2012, fr.allafrica.com/stories/201203080396.html.

⁴⁷ CI: Décentralisation -- Ouattara annonce la mort des districts et s'en va au Nigeria et Togo," *Koaci.com*, 13 sept. 2013, at Koaci.com/cote-d'ivoire-decentralisation-annonce-mort-districts-nigeria-togo-85557.html, accessed 15 mai 2015.

⁴⁸ *ibid*.

chefs de village. The Varlet report (2014:54) explained that the goal of the government was to "stabilize the chefferie." Chiefs remain representatives of the state at the local level (village and canton), nominated by sous-préfets (sometimes after a local election), appointed officially by the Ministry of the Interior, and removable only with the permission of the administration. As for the village level land committees, the CVGFR, the conventional wisdom in the administrative services responsible for land certification in 2015 was that these were not permanent local institutions. "They will die along with the CFs" (ie., when the CF is transformed into a land title).

In Ouattara's first term in office, the implementation of land policy is serving a state logic of extending territorial control, more than the market-making logic envisioned by the IFIs, or the smallholder securisation logic that is of most concern to NGOs. A great deal of land conflict continued to simmer in the localities of Côte d'Ivoire: conflicts between communities over "autochthonous rights," between communities and the state, between investors and communities, between autochthonous landholders and those claiming to hold ceded land rights.⁴⁹

Conclusion

The adoption of a new land law in Côte d'Ivoire in 1998 has been interpreted as a decisive commitment to building a true land market. The argument here is that in fact, for the last two decades, the goals of freeing markets and facilitating transactions among market actors have often been tangential to the domestic political drivers and to the most immediate effects of reform. The Ivoirian case underscores the extent to which the politics of land titling and registration implicates, and is even defined by, political questions, rather than purely technocratic or narrowly market-focused ones.

Under Gbagbo and during Ouattara's first term in office, land law reforms, in both content and implementation, were instruments in larger political struggles for control of the national territory and the national trajectory. Land law reform revolved around questions of citizenship rights (autochthony vs. user rights), state structure (decentralization and political status of the local

⁴⁹ Varlet 2014, p.101, 110.

community), and state sovereignty (state control over population and territory), rather than politically neutral market-making as imagined by some international promoters of land law reform. The Ivoirian experience is a useful point of reference for understanding land politics in cases such as Kenya and Uganda, where many of the same tensions and issues animate national and subnational struggles over land policy and land rights.

A counter-trend is visible across a zone of a radius of about 100 km. from Abidjan, where registration and titling is driven by private investors who want to acquire land, mostly for *hévéa* plantations and mostly about 28 ha. in size (as described above). Much of the land in this zone had been extracted from the customary tenure domain in the 1930-1980 period, for the creation of foreign and state plantations.⁵⁰ JP Colin was describing this process when he observed in 2013 that Law 98-750 was accelerating processes of class formation in the agrarian sector "through selective implementation of the law... on a case-by-case basis in order to secure land transfers benefitting national elites (through purchase) or national or foreign agro-industrial firms (through long-term leases on certified and then titled land) (Colin 2013: 431). It does indeed square with the market-promoting vision embraced by the liberal promoters of land law reform. The question going forward is whether this will remain an enclave phenomenon, or whether the tendency will defuse into zones that are now under neo-customary forms of tenure, or whether larger processes and perhaps land conflicts will swamp or dwarf processes of privatization and commodification.

A more immediate question has to do with the future of Law 98-750 itself. Under current law, holdings not certified by 2023 become the property of the state. Many insiders in Côte d'Ivoire believe that this will never happen, that the law will be amended, and that the current provisions are only there to pressure smallholders to seek CFs. One could cite the disciplinary tone of the député (MP) in Divo SP, N'Guessan Denis, who told people, "immatriculez vos terres avant 2023, parce que si vous ne le faites pas, elles deviendront la propriété de l'état."⁵¹

⁵⁰ Affo Yapi 1987.

⁵¹ Frat.Mat Info, "CI: Divo -- les députés expliquent les lois votées aux populations du canton Abohiri [Region Loh Djiboua, near Divo]," AllAfrica, 2014, accessed 5 April 2015.

It is possible that 2023 will arrive, and that the vast majority of small-scale landholders in Côte d'Ivoire will find themselves in the same legal position they were in in 1995, before the land law reform process began. Yet in contrast to 1995, the government's control over most land across the national territory will be extended, strengthened, and more firmly rooted in law.⁵² State actors would be able to grant long-term leases to investors throughout most of the national territory. In this situation, the security of most small-scale users' land rights will be determined by the political character of the regime in power, and the more general balance of state-society relations at the time. These larger political forces have gone far in determining the character of land law and policy so far.

Reference List

Affo Yapi, Simplicie. 1987. *Les Planteurs Absentéistes de Côte d'Ivoire*, ORSTOM Collection Travaux et Documents n. 210 (Paris: Editions de l'ORSTOM [Institute Français de Recherche Scientifique pour le Développement en Coopération]).

Akindès, F. 2004. "The Roots of the Military-Political Crises in Côte d'Ivoire." Nordic Africa Institute Research Report n. 128, Uppsala.

Alden Wily, Liz. 2015. Vers une remise a plat? Bilan critique du droit foncier rural et forestier en Côte d'Ivoire, UK and Belgium: FERN (May). Avail. at www.fern.org

Babo, Alfred. 2010. *Les jeunes, la terre et les changements sociaux en pays baoulé (Côte d'Ivoire)*. Paris and Dakar: Editions Karthala, AfriMAP, et Le Centre de Recherches sur les Politiques Sociales (CREPOS).

Babo, A. et Droz, Y. 2008. "Conflits fonciers, de l'éthnie à la nation: Rapports interéthnique et 'ivoirité' dans le sud-ouest de la Côte d'Ivoire." *Cahiers d'Etudes Africaines* 48 (4), n. 192: 741-63.

Bah, A. 2010. "Democracy and civil war: citizenship and peace-making in Côte d'Ivoire," *African Affairs*, 109:437,

Banegas, Richard and Burno Losch. 2002. "Côte d'Ivoire au bord de l' implosion, " *Politique Africaine* 87 (Octobre): 139-161.

Bassett, T. 2003. "'Nord Musulman et Sud Crétien': Les moules médiatiques de la crise ivoirienne." *Afrique Contemporaine* 206 (2): 13-27.

Bassett, T. 2011. Briefing: Winning Coalition, Sore Loser: Côte d'Ivoire's 2010 Presidential Elections," *African Affairs*, 111/440 (July): 469-479.

⁵² This point is underscored by Alden Wily 2015.

Boni, Sothène. "Comprendre l'esprit de la Loi n. 98-750 du 23 décembre 1998 portant Code Foncier rural en Côte d'Ivoire," unpub. ms., UFR de Sciences Juridiques, Administratives, et Politiques de l'Univ. FHB de Cocody, Abidjan, nd., at <https://halshs.archives-ouvertes.fr/hal-01116550/document>). Accessed 10 avril 2015. n.d.

Boone, Catherine. "Property and Constitutional Order: Land Tenure Reform and the Future of the African State," *African Affairs* 106 (Oct. 2007): 557-86.

Boone, Catherine. *Property and Political Order: Land Rights and the Structure of Conflict in Africa*. Cambridge Studies in Comparative Politics, CUP, 2014.

Bouquet, Chrstain. 2011. *Côte d'Ivoire: Le désespoir de Kourouma* (Paris: Armand Colin).

Chauveau, Jean-Pierre. 2000. "Question foncière et construction nationale en Côte d'Ivoire." *Politique Africaine* 78: 94-125.

Chauveau, J.-P. 2002. Une lecture sociologique de la loi ivoirienne de 1998 sur le domaine foncier, IRD, Réfo. Doc. de Travail n. 6, Unité de Recherche 095, sept. (46 pages).

Chauveau, JP, Pierre-Marie Bosc, and Michel Pescay. "Le Plan Foncier Rural en Côte d'Ivoire," (ch. 7.6), in Philippe Lavigne Delville, ed., *Quelles politiques foncières pour l'Afrique rurale? Réconcilier pratiques, légitimité et légalité* (Paris: Eds. Karthala, 1998), pp. 553-582.

Chauveau, JP. 2003. "Rural Land Plans: Establishing relevant systems for identifying and recording customary rights," IIED Issue Paper n. 122 (London: International Institute for Environment and Development [IIED]), September.

Chauveau, JP, JP Colin, Samuel Bobo, Georges Kouamé, Noël Kouassi, et Moussa Koné. 2012. "Côte d'Ivoire: Le foncier au coeur des enjeux de reconstruction," *Grain de Sel*, 57 (janvier-mars), pp. 28-30.

Chauveau, Jean-Pierre et Jean-Philippe Colin, "La question foncière à l'épreuve de la reconstruction en Côte d'Ivoire: Promouvoir la propriété privée ou stabiliser la reconnaissance sociale des droits?" *Les Cahiers du Pole Foncier*, Pôle Foncier Montpellier n. 6/2014: 6

Club Union Africaine Côte d'Ivoire. 2010. Rapport de la cérémonie de remise des premiers CF en Côte d'Ivoire [N=11 in Affalikro], nd (Mars 2010?). www.clubua-ci-org, accessed 6 novembre 2015.

Club Union Africaine Côte d'Ivoire. 2009. "Programme de prévention des conflits fonciers et de consolidation d'une paix durable en milieu rural, financée par l'Union Européene: Rapport narratif intermédiaire 2, (contract n. DDH/2006/123-232, for Jan. 2008-Mars 2009)." nd, www.clubua-ci.org, accessed 6 nov. 2015.

Colin, JP. 2017. "Contractual Practice and Land Conflicts: The "Plant and Share" arrangement in Côte d'Ivoire," *Journal of Agrarian Change*, 17/1 (January): 144-165.

Colin, Jean-Philippe. 2013. "Securing rural land transactions in Africa: An Ivoirian Perspective," *Land Use Policy* 13: 430-440.

Colin, Jean-Philippe, Pierre-Yves LeMeur, and Eric Leonard, eds. 2009. *Les Politiques d'enregistrement des droits fonciers: Du cadre légal aux pratiques locales* (Paris, Karthala).

Colin, J-P, Kouamé, G. and Soro, D. M. 2007. "Outside the autochthon-migrant configuration: access to land, land conflicts and inter-ethnic relationships in a former pioneer area of lower Côte d'Ivoire." *The Journal of Modern African Studies* 45: 33-59.

Crook, R. 1997. "Winning Coalitions and Ethno-Regional Politics: The Failure of the Opposition in the 1990 and 1995 Elections in Côte d'Ivoire." *African Affairs* 96: 215-42.

Dagrou, Théodore. 2007. *Comprendre le Code Foncier Rural de la Côte d'Ivoire*. Abidjan: Frat Mat Editions.

Diaby, Nissoiti. 1996. "Notables et paysans dans la forêt classée, un conflit d'environnement dans l'Est de la Côte d'Ivoire," in *Democratie, Enjeux Fonciers, et Pratiques Locales en Afrique*. Mathieu, Laurent, et Willame, eds. Bruxelles et Paris: Institut Africain-CEDAF (Centre d'Etude et de Documentation Africaines) et Editions L'Harmattan: 164-179.

Dozon, JP. 1985. *La Société Bété* (Paris: Karthala).

Gastellu, J.M. 1982. "Droit d'usage et propriété privée," in *Enjeux Fonciers en Afrique Noire*. E. Le Bris, E. Le Roy, et F. Leimdorfer, eds. Paris: Karthala: 269-280.

Gastellu, Jean-Marc. 1989. *Riches Paysans de Côte-d'Ivoire*. Paris: L'Harmattan.

Human Rights Watch. 2013. Cette terre est la richesse de ma famille: Agir contre la dépossession de terres suite au conflit postélectorale en Côte d'Ivoire. New York: HRW, Oct. 10

Koffi, Atta, Gogbe Tere, and Trotsky Mel. 2013. Décentralisation et crise économique en Côte d'Ivoire: Cas du Conseil Général de Dimbokro," *European Scientific Journal* 9/25 (September), ISSN 1857-7431, pp. 85-109.

Kouamé, Georges. 2010. Intra-family and socio-political dimensions of land markets and land conflicts: the case of the Abure, Côte d'Ivoire," *Africa: J. of the International African Institute*, 80/1: 126-146.

Lavigne Delville, Ph. 2014. "Competing conceptions of customary land rights registration: Rural Land Maps PFRs in Benin -- Methodological, policy, and polity issues," IRD, 2014. HAL Archives Ouvertes, IRD-01113264.

Leonard, Eric, J-P Chauveau et Philippe Lavigne Delville. 2013. "Introduction: Nouveau rapports de force et recompositions des régulations foncière en milieu rural," *Terroires d'Afrique*, n. 5, pp. 3- 10.

Leroy, Marie Lan Nguyen, Amel Bankahla, JP Chauveau, Jean-Philippe Colin, et Bruno Losch. 2012. "La loi foncière en Côte d'Ivoire," *Foncier et Développement, Comité Technique, Notes de Synthèse*, n. 8 (June), 7 pages. (http://www.foncier-developpement.fr/wp-content/uploads/Notes-de-synthese_Numero8_Cote_Ivoire.pdf)

Lesourd, Michel. 2003. "Une remise en cause de l'ethnicité: Le comportement socio-spatiale des Baulé émigrés dans le sud-ouest de la Côte d'Ivoire," in Jean-Pierre Chrétien et Gérard Prunier, eds., *Les Ethnies ont une histoire*, Paris: Karthala.

McGovern, M. 2011. *Making war in Côte d'Ivoire* (Chicago: U. Chicago Press).

MacLean, Lauren M. 2010. *Informal Institutions and Citizenship in Rural Africa: Risk and Reciprocity in Ghana and Côte d'Ivoire* (CUP).

Marshall-Fratani, Ruth. 2006. "The War of 'Who is Who': Autochtony, Nationalism, and Citizenship in the Ivoirian Crisis," *African Studies Review* 49/2 (September): 9-43.

- Mitchell, Matthew I. 2014. Land tenure reform and politics in post-conflict Côte d'Ivoire: A precarious peace in the western cocoa regions," *Canadian J. of African Studies*, 48 (2): 203-221.
- Norwegian Refugee Council. 2012. "Land Conflict and Food Security in the Liberian-Ivoirian Border Region," NRC, October.
- Ruf, François. 2013. Agriculture Contractuelle et boom de l'hévéaculture villageoise en Côte d'Ivoire," *Cahiers Agriculture* 22/1 (janvier-février): 46-52.
- Stamm, Volker. 2000 .The Rural Land Plan: An innovative approach from Côte d'Ivoire, London: International Institute for the Environment and Development (IIED). Report 741722 and Drylands Issue Paper E91. 28 pages. Downloadable at <http://pubs.iied.org/7417IIED/?k=Cote+d%27Ivoire>.
- Takane, Tsutomu. 2002. *The Cocoa Farmers of Southern Ghana: Incentives, Institutions, and Change in Rural West Africa*. Chiba: Institute of Developing Economies, Japan External Trade Organization.
- Tarrouth, Gabin Honneo and Jean-Philippe Colin. Conditions et conséquences des acquisitions de terres par les élites nationales: Le cas des "cadres" en Côte d'Ivoire," *forthcoming*.
- Tarrouth, G. H. and JP Colin. 2016. Les acquisitions de terres rurales par les "cadres" en Côte d'Ivoire: premiers enseignements," *Cahiers Agricoles*, 25/15005: 1-6.
- Traoré, Brahim. 2010. "Processus de décentralisation en Côte d'Ivoire: Quelles stratégies de planification des activités des Conseils Généraux pour un développement local participatif réussie? Cas de Conseil Général Boundiali en Côte d'Ivoire," *Memoire Master Analyse Economique et Développement Local*, Université d'Auvergne (Marseille), at www.memoireonline.com/10/12/6318/m_Processus-de-decentralisation-en-Cte-d-Ivoire-quelles-strategies-de-planification-des-activite0.html, accessed 25 August 2015.
- Varlet, Frédéric. 2013. "Etude de la production de cacao en zone riveraine du Parc National de Taï," *Deutsche Zusammenarbeit (Coopération Allemande) et République de Côte d'Ivoire Ministère de l'Agriculture*, Abidjan, février.
- Varlet, Frédéric et al. 2014. Etude d'impact social du volet d'appui à la mise en oeuvre de la loi sur le foncier rural du PARFACI. RCI, Min. de l'Agriculture, Direction du Foncier Rural, CECAF International and Grain Côte d'Ivoire, Abidjan, août.
- Varlet, Frédéric. 2016. Proposal for a "cellule de suivi et d'analyse pour la mise en oeuvre de l'amélioration de la gouvernance dans l'application de la loi sur le foncier rural." ms.
- Zalo, Léon Désiré. 2006. Présentation de l'avancement actuel de la mise en oeuvre de la loi relative au domaine foncier rural: The current state of implementation of the 1998 ivoirian law on rural land. Report of the Directeur du Foncier Rural et du Cadastre Rural, Min. de l'Agriculture, Côte d'Ivoire, Montpellier: Colloque international "Les frontières de la question foncière." 2006

Appendix I: 16 Questions on Village History

16 Q. on village history

1. What is the name of this village? What does the name mean?
2. Who founded this village? What was his principal activity? (chasseur, planteur...) Where is he buried?
3. Where did he come from? Did he find other people here on this site? Who? Did he pass accords with these people? What linked (*liait*) these persons to the village founder?
4. In which era was the village installed at this place? Have you settled (installed) any people on your terroir?
5. What are the names of the succession of chiefs that led this village?
6. How many lineages claim an common ancestor, and what was the order of their arrival here?
7. When was it *érigé officiellement en village*? By which (whose) authority was it *érigé en village officiellement* (administration de territoire, ARSO, AVB...).
8. Does this village have any *campements*? How many? Can you indicate the origin of these populations? Since when have they been installed here, and by whom?
9. Does the village have any scared sites? (hills, savane, cours d'eau, forets) Can you indicate their location(s)?
10. Does this village have a chef de terre? How is the disposition of lands made (heritage, don, pret, achat, location)?
11. Does the village have any *anciens sites*? What were the reasons for the transfer of location?
12. Was this village created by the fusion of 2 or more villages?
13. What are the names of the neighboring villages?
14. Can you indicate the boundaries of the village lands (river, limte de nettoyage de la piste, un gros arbre, une colline, un bas fonds...)?
15. Are there any boundary disputes with the neighboring villages?
16. Do you have any additional information to add?

"reading made to M. XX qui perriste et signe le lundi 25 avril 2005 à Ettienkro"

Appendix II: PNTGER 2006 Project Zone Profiles

Abengourou. This is a region in which smallholder plantation agriculture under control of autochthonous people is long established. Since the 1930s there have been loans and sales to in-migrants, some of whom founded new settlements, with access mediated within the social hierarchy of the old kingdoms/chiefdoms. (Cite in-migrants' stories of derived rights.) The hierarchy of landowning villages was confirmed in the official enquêtes, which designated some villages as "villages without land" (ie., residents could not claim to be land owners, or to control territory). Many of the landholders now employ in-migrants as workers, rather than mobilizing labor through *tutorat* relationships. Non-indigenes are about 30% of population, reflecting the conscious efforts of local chiefs and lineage heads to limit in-migration and land alienation to about this level. Some acquired land through purchase in earlier decades or generations and these are not massively contested or politicized.⁵³

Of the zones in which PNTGER operated during the Gbagbo administration, the land rights of both autochtones and in-migrants are most secure and least socially-disputed in Abengourou. In the 1990s and 2000s, as violence buffeted Ivoirian politics at the national level and in some regions, there is no mention in media or in the secondary literature that I am aware of that mentions local level violence around land in the Abengourou region.

Bonoua/Alépé. Settlement history here differs from that of the other zones studied here. Some in-migrant villages were autonomously established (self-settled) over the course of the twentieth century, often receiving a very general "permission to settle" from the authorities in neighboring Agni kingdoms, and with the absence of *tutorat* relationship. (Cite in-migrants' stories of how they acquired derived rights.)⁵⁴ In Bonoua, several immigrant villages were *érigés en villages* in the 1980s. This means that the government of FHB was confirming their autonomy vis-à-vis the autochthonous authorities in the region.

Daloa. Here, control over land is highly atomized, with household heads (lineage heads) giving land-access permission to in-migrants in the framework of *tutorat* relationships. There is no superordinate authority over land, such as what one would find where chiefdoms are strong. Large in-migrant populations often exceed 50% of the population, sometimes even outnumbering the autochtones. (cite in-migrants' stories of how they got derived rights) In-migrants live in scattered settlements called "campements" in local parlance (to denote their impermanence), even though many in-migrants claimed to have acquired heritable rights in land over time. Land rights were very actively contested in Daloa.

Soubré. The rights of the autochtones were most tenuous in Soubré. In-migrants clearly organized into named/counted village settlements. Many in-migrant villages were *érigés en villages* in the 1980s, a testimony to the support and protection provided by the government of Houphouët-Boigny, which obviously sought to enhance their autonomy (political and economic) vis-à-vis the autochtones. Many Baoulé and other in-migrant farmers and villages had stopped honoring the *tutorat* in the 1990s. After 1998, they armed themselves as the locals had started putting up roadblocks, etc., to tax them.⁵⁵

⁵³F. Ruf citing Takane 2002 (Abidjan 2015) says that Agni family heads actually sold the land (in contrast to what happened in Ghana), and that rights in E. Côte d'Ivoire have thus been whittled away down to the lineage level or lower. See also Diaby 1996, Maclean 2010.

⁵⁴ See Colin 1990, 2004, and Colin et al. 2007.

⁵⁵ From interviews 9, 11, 13 Abidjan April 2015. See also Lesourd 2003.