La loi de 1998 sur les droits fonciers coutumiers dans l'histoire des politiques foncières en Côte d'Ivoire

*Une économie politique des transferts de droits entre « autochtones » et « étrangers » en zone forestière**

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Abstract

To acknowledge customary land rights and to render them more secure are key issues of land policy in African countries. The recent (1998) land law in Côte d'Ivoire seems to be an apt response to these challenges, in a context of frequent and violent land conflicts between local and migrant cocoa farmers in the forest belt of the country. The settlement of these migrants took place under a patron-client type of relationship (called "*tutorat*") between them and the customary "landowners", who conceded land administration rights to numerous "strangers" not originating from local communities – nationals as well as foreigners. These conflicts occurred well before the civil war, which broke out in 2002. They were particularly acute in the western part of the forest belt, where a huge pioneer front has expanded since the 1950s and 1960s.

The main provisions of the recent law, not yet formally implemented, are as follows:

(i) Customary rights are considered as a valid basis for registration, where land rights have not yet been formalized.

(ii) The law does not recognize land property for foreign settlers.

(iii) Regarding Ivorian farmers, land rights that are in accordance with "tradition" (by first occupation of the land) are privileged, in distinction to the rights of land administration that were previously transferred to strangers not originating from local communities. In practice, the land rights of an Ivorian settler (or his heirs) must be recognized by the native *tuteur* (or his heirs) who first transferred the land rights to the stranger.

(iv) Then, the holder of a "land certificate" has to register it within three years in order to obtain a private property title; if necessary, by dividing the land of a joint family.

From a lawyer's point of view, the recent law seems to be significantly innovative compared with previous legislation introduced since the colonial period, legislation that was based on a very centralized land title registration system.

The aim of this paper is to suggest an alternative analysis in politico-economic terms of what is referred to as the innovative dimension of the recent law. This analysis is based on the idea that, historically speaking, the key issue in policies relating to customary land rights since the colonial period, including the recent law, has been not so much to make the customary rights more secure, but to enforce the power of the national elite over land transfers - in the customary sphere - between autochthons and migrants. This issue was particularly acute in the western part of the Ivorian forest belt, where forested land was abundant and where the main part of the country's cocoa has been produced since the 1970s (and Côte d'Ivoire is by far the world's largest producer of cocoa).

In this paper, I describe the main historical periods from the colonial period onwards by drawing parallels between:

- the legal production of the state regarding customary rights;
- the political economy of the relationship between the state and the different components

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* ***The 1998 law on customary land rights in the history of land policies in Côte d'Ivoire. A political economy of right transfers between "autochthons" and "strangers" in the Ivorian forest belt.***

(autochthons or settlers) of the peasantry;

- and the informal and political way in which the state and the national elite have shaped the customary institution of *tutorat* in order to control, politically and economically, the benefits of agricultural growth.

The main conclusions are:

1) A historical perspective confirms that the control of the national elite over land transfers between autochthons and migrants was actually the key issue in policies relating to customary land rights since the colonial period. The recent law does not depart from this trend and goes so far as to explicitly introduce the distinction between "traditional" holders (autochthons or those who came first) and "non-traditional" holders ("strangers", settlers or those who came later, nationals as well as foreigners).

2) Historically, in the most common situation, a more favourable position was given to strangers. The two main reasons have always been that, among the different categories of peasants, (i) the migrants were credited with the major input for the rural development of the country and (ii), being directly dependant on the political elite for the protection of their land rights, they were politically submissive. Seen in this perspective, the recent law represents a departure from this trend. The reason is to be found mainly in the politicization of the land issue. The politics of land has been a recurrent issue in the Ivorian political arena since the colonial period. The failure of the patrimonial and clientelistic mode of governance in the management of the economic crisis, and the return of a large number of young men to their rural homeland to cope with the crisis (particularly in the western region) explain the dramatic break with the previous political compromise concerning the protection of the settlers' land rights.

3) However, the 1998 law is not entirely innovative. Basically, it takes up again the provisions of the 1955 and 1956 colonial decrees, which were buried after independence. In that period, as in the present one, a more protective policy regarding the autochthons' land rights was implemented in order to cope with acute land tensions between autochthons and rural migrants. Just as today, these land tensions were highly politicized in the national (then "native") political arena. The dwindling colonial power was confronted by harsh opposition between, on one side, the planters' trade union and political parties anchored in areas with high emigration and, on the other side, ethnic associations and political parties representing the main areas of migrant settlement (particularly the western part of the forest belt). In the same way, western groups that experienced a strong sense of land dispossession recently interpreted the 1998 law as revenge against both the strangers and the post-independence political elite who encouraged the colonization of "their" forests.

4) Historical analysis makes it clear that legal provisions drawn up by the political elite in order to favour one part of the peasantry or the other, according to the period (the settlers or the autochthons in the colonization areas), had little effect. The "legal production" of laws and decrees clearly expresses the preferences of the political elite. But this does not suffice to enforce them. A locally-centred, political and clientelistic action, and not a legal action, was decisive. In a permanent context of "decentralised despotism" (in Mahmoud Mamdani's words), the legal-administrative action makes itself felt in the form of what Albert Ley, a French lawyer, called the "*pratique administrative 'coutumière*'" (customary administrative practice). It was less a matter of enforcing the law than of regulating by means of political pressure the local customary institutions and conventions relating to land - above all, the institution of "*tutorat*" between those who came first and latecomers. At present, the political manipulation of the law by politicians and most civil servants repeats the "customary administrative practice" process - this time, however, to serve the opposite political alternative.

5) Broadly speaking, making customary land rights more secure depends less on the technically legal aspect than on the political dimension inherent to public policy. As John Griffiths suggested, the social working of the law matters as much as the contents of the law. Therefore, one cannot interpret the 1998 law on the domain of customary land rights merely as an innovative attempt to secure "informal" rights, for this is only in part true. The rebounds that occurred during the

drawing up of the law clearly show that the provisions and rationale of the law reflect the main and antagonistic components of the political agrarian history of Côte d'Ivoire, particularly the state regulation of the customary social institution of "*tutorat*". The issue at stake in the implementation of the law concerns not only the improvement of legal mechanisms to secure customary rights in general. The implementation of the law will open a Pandora's box of political regulations with which the political elite have imposed their rule regarding the balance of entitlements to land access between autochthons and strangers. This concerns the local anchorage of the state authority and legitimacy, no more and no less. The tragedy is that the current context of political competition is not suited for searching new and clear compromises on the political economy of agrarian change.

6) Finally, one is tempted to think that the more urgent question is: What to do with the 1998 law ?