



Securing rural land transactions in Africa. An Ivorian perspective

Jean-Philippe Colin*

UMR 201 Développement et Sociétés, Institut de Recherche pour le Développement (IRD), BP 64501, 34394 Montpellier Cedex 5, France

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ABSTRACT

A good deal of research has highlighted the surge and development of rural land sales and tenancy contracts in West Africa. However, the commoditization of land, especially through sales, does not appear to be obvious, as land transactions appear to be a major source of tenure insecurity and land conflicts. This issue is linked with the broader issue of identification and recognition of both the land rights that are being transferred and people holding them. This article deals with tensions and conflicts in land transactions in Côte d'Ivoire and discusses how these transactions might be secured in a context where most transactions occur outside the legal framework. The 1998 Law aims to organise a rapid transition towards private property rights through a nationwide certification and titling program. Due to the socio-political situation, it was only in 2010 that the first certificates were issued and even independently of current political turmoil, there are grounds for doubting the effective implementation of the law. The objective of this article is to consider the issue of securing land transactions in the pre-certification/titling context, drawing from the author's intensive field research on land transactions in Côte d'Ivoire. A first section describes the main types of rural land transactions in Côte d'Ivoire. The second section outlines the sources of tensions and conflicts arising from these transactions. The third section assesses the practices that have emerged spontaneously in rural areas to secure transactions. The fourth section considers the needs and conditions for a public intervention regarding the security of land transactions.

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Introduction

Land markets are seen nowadays as playing a defining role in the development process, by helping to improve the allocation of resources in contexts where production factors and management capacities are unevenly distributed (Deininger and Feder, 2001; De Janvry et al., 2001). Increasing empirical evidence shows a surge and development of rural land sales and tenancy contracts in West Africa; however, land transactions, especially sales, appear to be a major source of tenure insecurity and land conflicts (Mathieu, 2001; Mathieu et al., 2002; Berry, 2002; Lavigne Delville et al., 2002; Benjaminsen and Lund, 2003; Chauveau et al., 2006; Colin and Ayouz, 2006; Hagberg, 2006; Lentz, 2006; Derman et al., 2007; Colin and Woodhouse, 2010). This issue is clearly linked with the broader issue of identification and recognition of both the land rights that are being transferred and people holding them. One of the key arguments put forward by public policies aiming at formalising customary land rights is precisely that such recognition through formalisation is a condition for the development of dynamic and secure market transactions.

The issue of land rights formalisation has been and still is largely debated (see Bruce and Migot-Adholla, 1994; Le Roy et al., 1996;

Platteau, 1996; Deininger and Binswanger, 2001; Benjaminsen and Lund, 2003; Peters, 2004; Fitzpatrick, 2005; Kuba and Lentz, 2006; Van Den Brink et al., 2006; Sjaastad and Cousins, 2008; Colin et al., 2009a; Lavigne Delville, 2010). The views differ on many points, such as the respective roles of state and local communities in the process of formalisation and enforcement, the nature and content of the rights to formalise, their individual or collective character. However, the issue usually remains framed within a land title or certificate registration paradigm, i.e. the record of rights and duties that an identified legal entity holds over a given piece of land, whereas recording dealings can be seen as an alternative to such procedures (Mathieu, 2001; Arruñada, 2003; Fitzpatrick, 2005; Kanji et al., 2005; Comby, 2007). A system of registration of rights requires a previous and complete purge of property rights, so that registered rights are considered as conclusive – they are rights *in rem*, valid against all people; there is no legal uncertainty regarding who the right holder is and the precise nature of the right. A deed recording system simply makes private contracts public, producing only contractual rights, valid specifically against the partner in the transaction (Arruñada, 2003). The deed recording system is sometimes viewed as less costly but also less effective than the title registration system (see references in Arruñada, 2003), but empirical evidences shed very serious doubts with respect to the effectiveness of registration systems in a number of empirical situations (see cases and references in Colin et al., 2009b).

* Tel.: +33 6 13 04 38 05.

E-mail address: jean-philippe.colin@ird.fr

In Paul Mathieu's words, "(the) progressive securing of land rights [might come] through a progressive and pragmatic formalisation of the transactions, rather than through a full registration of rights (. . .)" (Mathieu, 2001, p. 34, translation by author). In contexts where land insecurity is largely rooted in land transfers through market transactions, the formalisation and recording of land transactions may indeed be seen as the best low-cost and pragmatic way to substantially improve the security of land rights, with "private conveyances recorded in a recording system which attests to the effectiveness and date of the transfers, without requiring an endorsement of the content of the conveyances by the administration" (Comby, 2007, p. 44, translation by author; see also Lavigne Delville, 2006). As stated by Fitzpatrick (2005, p. 469):

"Registering dealings as an alternative to registering titles is an attractive policy option in circumstances where a titles registration procedure is likely to involve conflict or unsustainable levels of funding. It also focuses attention on the stage when customary tenure systems are most likely to need external assistance to maintain tenure security, namely when individualized dealings with outsiders have emerged and multiplied".

This article deals with tensions and conflicts in land transactions in Côte d'Ivoire and discusses how these transactions might be secured when most of them occur outside the legal framework. This discussion, as well as the uncertainty regarding the implementation of the 1998 Land Law in the radically new Ivorian political situation (see *infra*), will contribute to the 'title registration versus deed recording' debate. Land transactions insecurity is explored through what Lavigne Delville (2006) calls 'normative insecurity' (when the land practices do not fit the local system of norms nor the legal framework) and 'contractual insecurity' (when key terms of the transaction are not explicitly stated). The issue of conflict resolution and more broadly of potentially competing authorities in charge of arbitration or enforcement – clearly a key element in the security of land transfers – will remain outside the scope of this paper due to a lack of empirically sound work.

The central element in the emergence and development of land transactions in the forested area of the country (Southern Côte d'Ivoire) is the mass influx of migrants coming from the savannas of the centre and northern Côte d'Ivoire, Upper Volta (which then became Burkina Faso), and Mali, regions that are not ecologically suited for coffee and cocoa production. The development of land transactions took place between natives ('autochthones') and migrants ('stranger' farmers, in the local sense of 'non-autochthones', Ivorian or not¹), and then possibly could take place between 'strangers' (in particular upon their return to their villages of origin), but not, or only in very rare instances, between natives. Since the colonial era and until the rural Land Law was passed in 1998, the Ivorian legal framework defined private ownership rights over registered lands (a tiny portion of the rural lands) and a land tenure regime that rendered the State the owner of unregistered lands (virtually all agricultural land). Customary rights were recognised, but as personal and non-transferable rights. Land transactions remained informal. Tensions and conflicts between autochthones and migrants induced by land transfers were kept under control during the colonial period as well as during the first decades of independence to the detriment of the autochthones, as public policies tended to favour settlement by migrants in order to stimulate economic development (Chauveau, 2002; Colin and Ayouz, 2006).

The 1998 Land Law was passed in the post-Houphouët-Boigny era marked by 'the return of autochthony' and the debate on

'ivorité'. As a first step, the law prescribes the registration of all lands and the provision of individual or collective land certificates recognising customary rights, regardless of how the current landholders gained access to this land, and regardless of their nationality at this stage in the process. The rural land surveys establishing the customary property rights must be validated by village land committees. Within three years, these land certificates must be transformed into individual ownership titles, which can only be issued to Ivorian nationals. Land certified in the name of foreign users should be titled in the name of the State, and beneficiaries of previous land transfers who cannot obtain land certificates or land titles should have their use rights recognised and formalised in long-term land leases.

Concerns have been expressed with respect to the implementation of this law, to the extent that it excludes foreigners from land ownership and implicitly privileges autochthony as the main source of legitimate entitlement to ownership rights, opening up the possibility of excluding even Ivorian immigrants from legal registration (Chauveau, 2002, 2009; see *infra*). A coup d'état in 1999 and the outbreak of a military and political conflict in 2002 impeded the implementation of the 1998 Law. Socio-political developments after the signing of the Ouagadougou Agreement in 2007 led the Ministry of Agriculture to start the certification process on a few pilot sites; the first land certificates were issued in February 2010. After an interruption during the post Presidential election violent conflict at the beginning of 2011, issuance of land certificates timidly resumed – up to February 2012, only around 200 land certificates had been issued.² The major political change induced by the rise to power of Alassane Ouattara might portend a new shift in the local balances of power between autochthones and migrants in land issues, back in the favour of the latter, but might not lead to a radical questioning of the 1998 legal framework. The implementation of the law was prioritised during a governmental seminar on July 5 and 6, 2011. In an interview to *Le Patriote*, on April 25, 2012, President Ouattara remained clearly supportive of the project of the 1998 Law to secure land rights through the issuance of private property titles, insisting that titles are needed in order for peasants to access credit. He emphasised the fact that procedures had to be simplified in order for the law to be implemented more rapidly. Another governmental seminar on June 25, 2012, reiterated the government's intention to implement the law. Thus, the political rupture does not fundamentally lead to a questioning of the 1998 legal framework, even if some amendments to the law or to its implementing decrees can be anticipated. The issue of the potentially conflictive implementation of the law is clearly still topical. One may wonder whether the end result (in line with what might be seen as the implicit aim of the law) could not be a selective implementation of the law, mobilised 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) (see *infra*).

By focusing the issue of securing transactions on uncertified land, this paper tackles empirical situations that are likely to persist if the 1998 Law is to be really implemented, due to the difficulties and thus delays one can anticipate regarding this implementation (see *infra*). It may also contribute to a broader reflection on how to secure land rights, should major amendments be implemented towards deed recording rather than systematic rights registration.

The paper draws on the author's intensive field research on land transactions in Côte d'Ivoire, including a study carried out for the

¹ On 'stranger farmers' in West Africa, see Lentz (2006).

² Personal communication, Mr. Zalo, Director of rural land and land registry, Ministry of Agriculture.

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