



Registering and Administering Customary Land Rights

Current Innovations and Issues
in Francophone West Africa

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GRET

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- I. Securing Rights Over Land and Natural Resources
 - what “secure rights” are, how to enforce them, current thinking in francophone West Africa
- II. « Rural Land Tenure Maps » (*plans fonciers ruraux - PFR*): Experience and Issues
- III. Expand the PFR approach and include it in the law. The Beninese Experience



I. Securing Rights Over Land and Natural Resources





- *Most rural people's rights to land and resources are "illegal" or at the least informal*
 - secure rights are necessary for production
 - securing rights helps avoid conflicts
 - a democratic state has to support citizens' properties
- *-> Issues of productivity, social peace and citizenship*



- *Debate on the type of rights to be considered in a context of legal pluralism : what outside deeds and titles ?*
- *Land rights administration has to be fair and transparent*
- *-> Issues of governance*



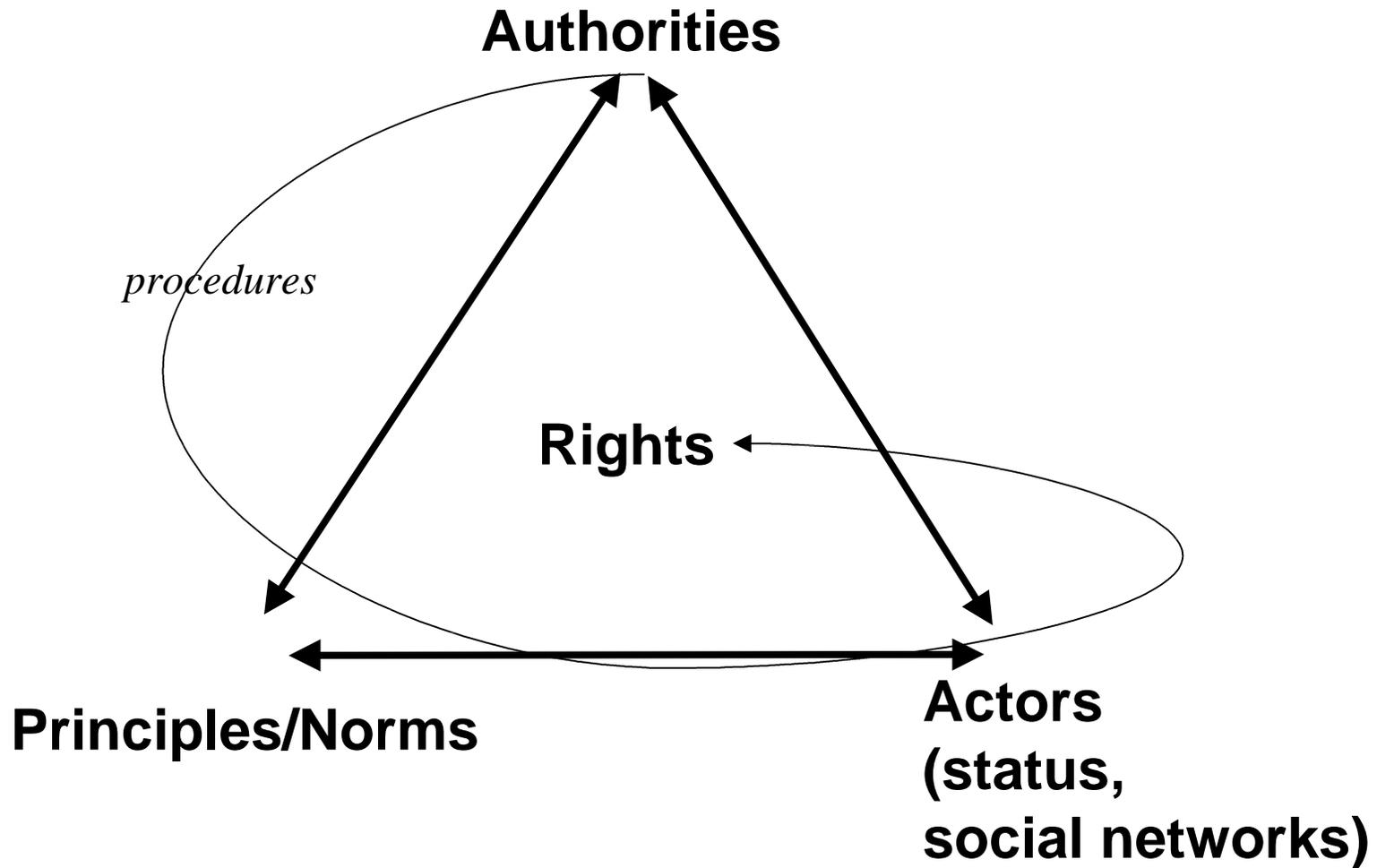
Issues

- What kind of rights ?
- What kind of “security”?
 - Frequent confusion between the *nature* and the *security* of rights
 - The « level » of security needed depends on farming process
- How to ensure it ?



Rights, Rules and Regulation

- Rights as Socially Authorised Actions
 - not rights to land, but rights “to do” or “not to do” this or that on a specific plot or with a specific resource
- Rights Depend on Rules or Principles
- Allocation, Transfer, Arbitration: Authorities and Procedures for Administering Rights





“Customary” Rights and Regulation

- rights are allocated by *authorities* (at village, lineage, and family levels), depending on principles, context and social status and networks -> *negociability, socio-political process*
- the content of the rights allocated may vary depending on the context -> *flexibility*
- a mixture of *individual rights and collective regulations* (at different levels)



– Bundles of Rights

- *Operational Rights*

- access, withdrawal, cultivation, investment

- *Administration Rights*

- management, inclusion/exclusion, transmission, alienation

– for each resource, a specific set of rights, allocated to individuals and/or groups



- **“Operational” Rights**

- **Access:** the right to enter a given space
- **Withdrawal :** the right to gather natural products
- **Cropping:** the right to plough, seed, and harvest the product of one’s work
- **Investments :** the right to transform the space (trees, terraces, etc.)

- **Administration Rights**

- **Internal Management:** the right to distribute and regulate use of the land
- **Inclusion/Exclusion:** the right to determine who shall hold operational rights
- **Transmission:** the right to determine how and to whom the above rights are transmitted or are transferred
- **Transfer:** the right to freely dispose of all the above rights (including via sale)





Local rights evolve with State involvement, economic and social changes

– Legal Pluralism

- Competition between Authorities for the Power to Allocate Rights or Arbitrate Conflicts
- Space for Contradictory Claims and Unsolved Conflicts Where Debate on the Rules to be Applied, and/or the Legitimate Authorities

– Access to Land through the State Remains a Socio-political Process, Involving Social Networks



- Hybrid Rights and Processes
- Changes in the balance between individual rights and collective regulation
 - diverse trajectories, not a single path toward individualisation and commoditisation
- “Customary Regulation” when local norms and/or authorities prevail
 - regardless of the nature of rights : individualized or not, marketable or not
- Diverse contexts : customary regulation, hybrid regulation, no regulation...





Securing Rights

- security is not ownership
- all kind of rights
- try to secure property *and* cultivation rights together
- Securisation as Enforcement of Rights
 - tenure security when rights are not contested without reason, and are reassessed in cas of undue contestation
- Inside/Outside Securisation: mixing social norms and state support



- -> Securisation as a process
- -> An emphasis on rules and arbitration
: An Issue of Regulation
- -> Formalising rights or clarifying
regulation processes?





Current Approaches in Francophone West Africa

- Legal pluralism is a medium/long term reality
- Contexts are highly diverse, and evolutive
- > Starting from existing rights and norms
- > Taking into account flexibility and negociability
- > Making land regulation fairer and more predictable, without making it rigid



Build the Bridge Between Legacy, Legitimacy and Practices

- Legal Pluralism is a Medium/Long Term Reality
- Contexts are Highly Diverse, and Evolutive
 - > Start from Existing Rights, Norms and Regulations
 - > Take into Account Flexibility and Negotiability
 - > Make Land Regulation Fairer and More Predictable, Without Making It Rigid
 - > Support Hybrid Local Level Mechanisms, Combining Inside/Outside Validation





A set of measures

- *Law*
 - Include a positive view of local management in the law
 - Eliminate the main sources of conflicts in the law (e.g. access to title through only administrative way, without having first negotiated the rights from the farmers)
 - Provide room for the negotiated transfer of management rights to local organisations (at Commune or village level)
 - Create new legal land statuses and procedures for local/customary rights (certificates, community control over natural resources, sales contracts, etc.)



- *Local regulation framework* to ensure inside/outside validation of rights
 - Clarify the institutional framework for local land governance and management (at village/camp, Commune and district levels)
 - Make decisions less easy to question (local authorities first, write paper for each case)





- *Stabilise legitimate rights and agreements*
 - Help to formalise negotiated agreements between stakeholders (local convention turned into Commune rules; written contracts for land sales; delimitation of herders' routes or village limits)
 - When useful/possible, register local rights themselves and create land administration bodies (mainly peri-urban areas, areas with (emerging or established) land market, weak local regulation, etc.)



- A three step approach
 - 1/ Removing main contradictions in the law
 - 2/ Helping to clarify legitimate rules and conflict resolution mechanisms and giving them legal support
 - legal and institutional innovation
 - simple tools (registers, forms for land transactions, local conventions)
 - 3/ When useful/possible : register local rights themselves





- Three Main Operational Approaches
 - Negotiating and formalising rules and authorities for land and natural resources management (local conventions, delegation of management, delimitation)
 - Registering rights over land (plans fonciers ruraux)
 - Securing land rights transfers (procedures for sales and derived rights)
- that are still under experimentation, and not fully incorporated into the legal framework



II. Rural Land Tenure Maps (Plans fonciers ruraux PFR) as a tool for registering customary rights





Rural Land Tenure Maps

- Identify and map rights as they are lived
- Give them legal acknowledgement
- Ensure that land tenure information is updated
 - orthophotoplans, systematic surveys and inquiries, establishing maps and registries
 - “land tenure certificates”
 - “village land tenure management committees”

Annexes

EXEMPLE DE DOCUMENTS DU PFR COTE D'IVOIRE

REFERENCE DU GESTIONNAIRE TERRIEN

Nom et Prénoms : SILUE Nale
Parcelle n° : Dix (10)
Terroir : STRASSO

REFERENCE DES RIVERAINS

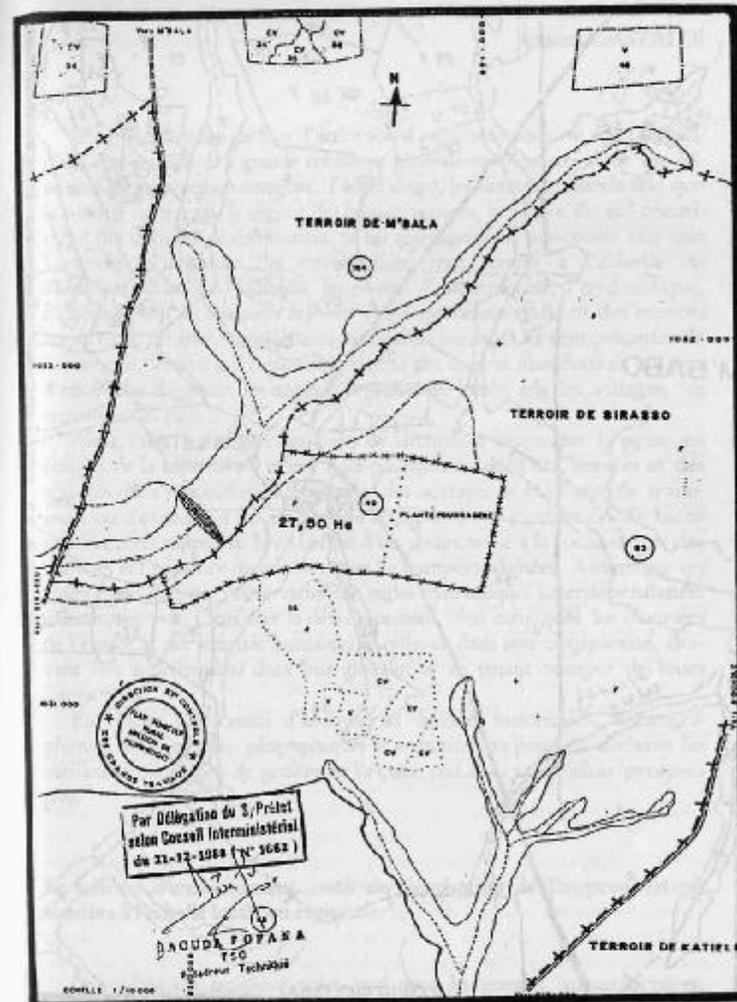
N° Parcelle	Terroir	Nom et Prénoms	Statut	N° Déco	Village d'origine
09	SIRASSO	SILUE Donissangui	G.T	1460	SIRASSO
14	SIRASSO	SILUE Donissangui	G.T	1460	SIRASSO
164	M'BALLA	SILUE Kagninen	G.T	204	M'BALLA

Le Chef de Bureau Régional



DAOUDA FOFANA
TSC
Encadreur Technique

EXEMPLE DE DOCUMENTS DU PFR COTE D'IVOIRE



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- An innovation

- in design (take into account customary rights)
- in methodology (land rights identification and survey methods; recording of rights)
- in law (“land tenure certificates”)

- Pilot projects since 1990 in Ivory Coast, and then Benin, Burkina Faso, Guinea (French Agency for Development and WB financing)
- Ivory Coast : 1998 land law creates land certificates, but obliges to quick transformation into title
- A draft land law in Benin (1999-2001) with PFR as a tool

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Interests and current limits

- Obvious Interests
 - a pragmatic approach, based on what exists
 - end the dead end of classic cadaster and titles
 - a response to land tenure insecurity, at plot level
 - an operational and relatively inexpensive methodology (cadastral survey: +/- USD 7-10 per ha)
 - (at least partly) decentralised management of land tenure information
 - can be used in different policy frameworks



- Limits of pilot projects
 - a very “agricultural” vision
 - difficulties in common spaces and with CPRs
 - a too positivist vision of rights
 - “one plot, one rights holder”, whereas overlapping rights are frequent
 - conflicts, manipulations, anticipation strategies during surveys
 - the limits of pilot projects anticipating changes in the law
 - what is the future of identified rights?



- Registration possible only if rights are not (too) conflictual
 - not possible in highly conflictual areas
 - conflict resolution mechanisms necessary before and during surveys
 - negotiation on the rights to be registered maybe necessary before surveys
 - > *registration is a tool and not an end*
 - > *registering rights do not in itself solve the issue of tenure governance and administration*



- Questions regarding “fields of validity”
 - where is it possible? (stable farm land, not too many conflicts over rights)
 - where is it useful and pertinent? (outside actors, an existing and poorly regulated land market, regulatory bodies in crisis)
- *> not useful and possible everywhere -> an option, within a broader framework*



Two Major Stakes

- nature of rights, rights identification and recording procedure
- land rights administration : viability stakes





The Nature of Rights

- (collective, family, village, etc.) holdings and individual properties
- bundles of rights
 - rights as “socially authorised actions”
 - different “bundles of rights” held by individuals or groups
 - allocation of operational rights by those who hold inclusion/exclusion rights and internal management rights

“Customary Landowner”



Usus/Fructus (sometimes Abusus)

transfer of land use rights

temporary land use rights

Users

family rights holders
married women
installed migrants
renters, borrowers

Land Chiefs : ritual powers and arbitration

transfer rights
transmission rights
inclusion/exclusion rights
internal management rights

Investments rights
cropping rights
withdrawal rights

lineage segment/elder

Chief of Household
lineage right holder

settled foreigner

Derived rights holder
(various statuses)

youths

married women

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Who is acknowledged as “owner”?

What happens to the other rights holders?

- ? Land Chief performing rituals and arbitrating conflicts
- ? Lineage Head without land tenure prerogatives
- ? Lineage Segment Head managing a lineage holding and adjustments among production units
- ? Production Unit Head holding cropping rights that are lasting and can be transmitted over the heritage of the lineage segment
- ? “Installed” Farmer, with lasting cropping rights, as long as the lodger[?] does not need them



- Thinking in terms of “ownership” leads to selecting one level of rights and increasing these rights, to the detriment of other rights
 - at the risk of increasing precariousness instead of security
 - and causing conflicts instead of resolving them
- One must therefore
 - take the nature of local rights seriously
 - simplify, in a rational way, the complexity of rights enough so that information can be processed, but without altering it
- *A Theoretical and Methodological Challenge*





Administering the Rights

- Systematic registration
 - administrating land certificates is as cumbersome a procedure as classical cadastres ... and even more demanding for agents
- Need for decentralised, not too expensive and fair processes
- Updating failures may cause the system to collapse : the dilemma of capacities and costs
 - near the users means more offices, more agents and fewer computers
 - economies of scales make it less accessible for people



- Sustainability must be a condition for implementation
 - needs for and interests of people in updating the data ?
 - what are the real costs for them (access, legal and illegal costs)?
 - what are the required skills and means for land administration?
 - How can land rights administration be financially sustainable ?
 - *Viability when relatively high land value and market transactions ?*



III. Include the PFR in Law

The Beninese Experience





In Benin

- A pilot PFR project by the PGTRN (Projet de gestion des terroirs et des ressources renouvelables) (1993-2003)
- A rural land tenure bill in preparation
 - “customary” land is counted as “private” land
 - villages may ask for PFR surveys leading to land tenure certificates
 - rural land tenure management on « Commune » and village levels
- Inter-disciplinary work to prepare implementation of the law (2002-2003)
 - socio-anthropologists, lawyers, surveyors (PGTRN, GRET, FIEF)

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The framework

- a coherent set of legal statuses (state and local gvt public and private domain, private land with title or with land certificates, etc.)
- PFR only outside estate lands and private land (simple rights of “occupation” acknowledged on state public domain property: river banks, etc.)
- a single map for all legal statuses





- Securing rights and transfers of rights, to boost productivity
 - the certificate can be contested but it meets the needs of the majority of the rural population, it opens access to credit, it allows for simple bridge to title
 - written contracts for derived cultivation rights may allow « strangers » to grow trees





- Local Land Tenure Governance
 - rural land tenure management is clarified, with or without PFR
 - a decentralised institutional framework :
Commune (local elected gvt) and village
 - clarified procedures for conflict resolution
 - Commune (and village) have a right to define the rules for natural resource management
 - a procedure to improve the security of sales and delegations of rights, with or without certificate
 - village ask for PFR operations -> when needed



The issue of identification and transcription of rights

- Control of land and resources belongs, most often, to family or village groups
 - the sons of X who cleared or bought the plot
 - the descendants of Y by matrilineal transmission
 - Z as individual owner who cleared or bought the plot
 - all the people living in the village W
- The various right-holders within the group do not have the same rights

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- > identify who is the (individual or collective)
« right holders » (and its head if it is a collective)
- > identify the concrete rights held by these
different stake-holders
- an empirical question, using recent typology of rights
 - *Operational Rights*
 - access, withdrawal, cultivation, investment
 - *Administration Rights*
 - management, inclusion/exclusion, transmission, alienation





Family Property Rights

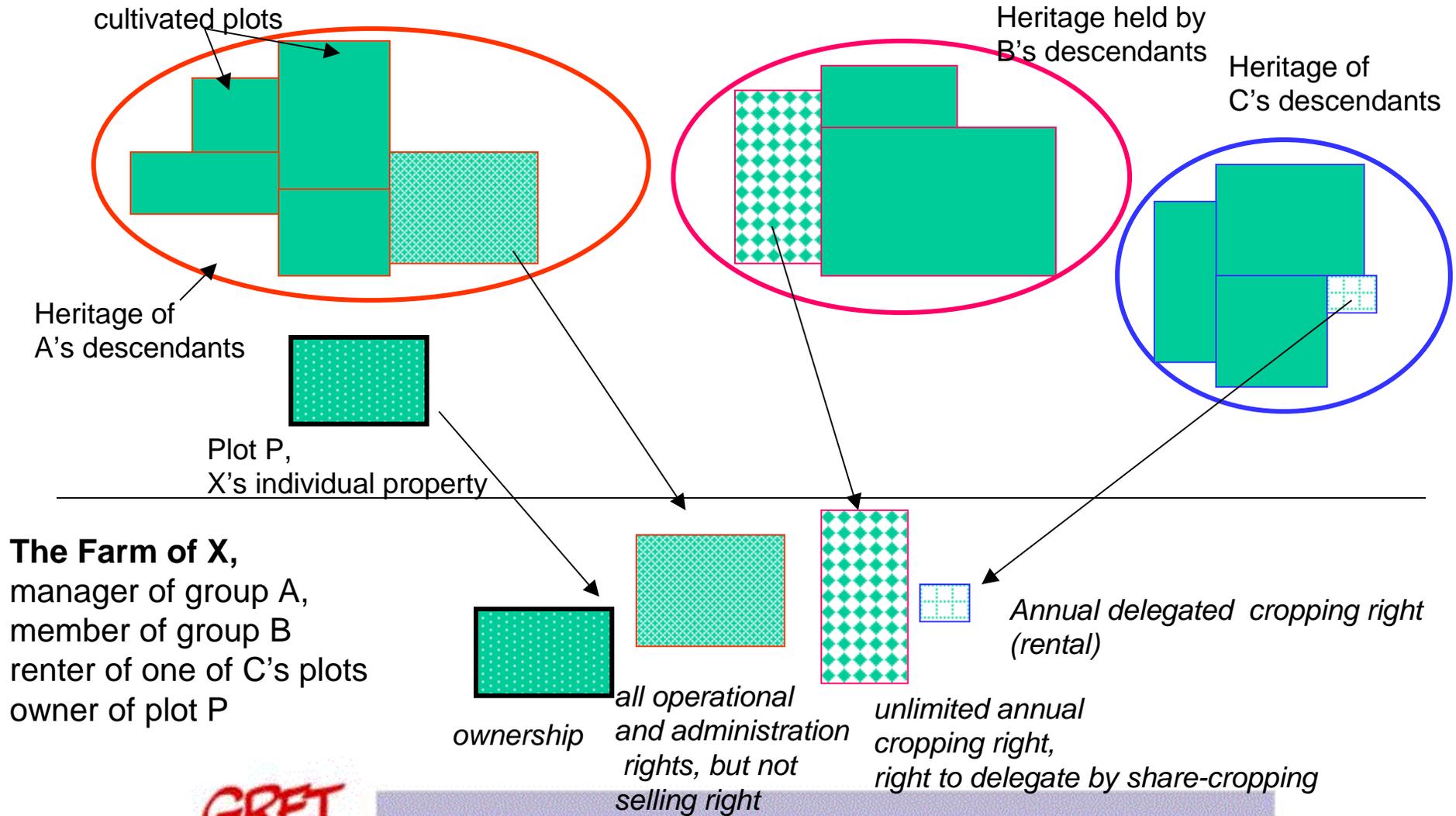
Rights Held	Family Group Concil	Head of Fa- mily Group	Right-holder within the Family Group
<i>Operational rights</i>			
Right to cultivate a individual plot for annual cropping (but not for tree planting)	-	+	+
Right to cultivate tree crops	-	+	-
<i>Administration Rights</i>			
Right to delegate cultivation rights through a share-cropping arrangement	-	+	+
Right to delegate cultivation rights through renting	-	+	-
Right to lend	-	+	-
Right of allocating plots within the Family Group	-	+	-
Rights to sell	+	-	-
Rights to bequeath	-	-	-

Exemple, in south-east Ivory Coast





Land holdings and Farms





Derived Rights

- Operational rights may be delegated by a family right holder
 - In a given place, a set of institutional agreements that can be identified, with specific rights and duties
- > identify the agreement and the specific clauses
- > encourage written contracts during survey



Survey Methodology

- *Preparation*
 - Explain the process and the methodology
 - Create Village Committee (if it does not exist)
 - Identify with the Committee the general rules that makes consensus in a given place (or help negotiate these rules)
 - Identifiy common spaces and common resources and the rules that govern them
 - Map limits, state and local gvt public and private domains, titled lands



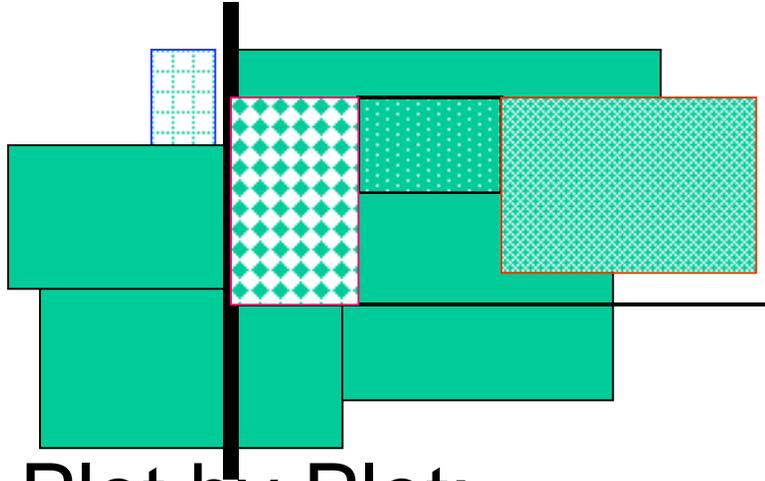


- Why identify local norms?
 - identify and publicly acknowledge a certain number of acknowledged principles and general rules, that give meaning to generic categories and allow for shared rules in case of conflicts
 - negotiate how specific questions are to be handled
 - a real ex.: how to deal with old fields in the former village setting ? Are former holders or new cultivators to be registered as « owner » ?
 - *No everything, but the issues that are known to be problematic*
 -



- *Field surveys*

- Let people choose which level of collective rights is recorded (the law provide procedures for changes, afterwards)
- The survey procedure has to mix
 - the origin of rights, as explained by the right-holder (that's what gives legitimacy)
 - the nature of rights held (with limitations when they exist)
- *Neighbourghs and witnesses* to testify the accuracy of plot limits and rights held
- A inquiry PV, signed by right holder and witnesses



- Plot by Plot:

- identification of the “manager”—in title or by delegation—, of the group for which he manages it, and the administration rights held
- identification of the farmer, his links to this group, and the origin and nature of the rights he holds



Identification, Transcription, Validation

- **Identification:** the survey record must faithfully transcribe the statements given during the survey and the agreement of witnesses. The statement must be read before the survey record is signed.
- **Transcription:** the diversity of rights must be able to be transcribed in quite generic categories, but more exact than “owner” and “user”. *An operational typology to stabilise*
 - ex. manager of a lineage property, head of a production unit using a portion of a lineage holding, individual owner, etc.
- **Publicity:** the content of the survey PV and the transcription of maps and files
 - ***Very important steps to ensure accuracy and legitimacy of records***

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Land Certificates

- The law does not have to define the type of rights that may be legalised.
 - it only states that the rights identified by the procedure are legalised
 - the detailed rights or the generic type can be written in the certificate itself
 - in case of need, Village Committee refers to the local rules and/or to the survey PV
 - local conflict resolution will manage problems of interpretation
 - *it can work for individual, lineage rights as well as common property resources*



- in a given certificate, write either the precise content of the rights held or the general type (with references to local norms)
- in case of objection, the survey PV is the reference, and local arbitration is required first
- Law, files and certificates provide a (more or less) detailed framework
 - with room for local specificities: local norms, survey PV
 - enough for outsiders
 - leaving local disputes to local arbitration



Land administration and sustainability

- Village heads ask for rural land tenure maps -
> not everywhere, generalisation when people ask for it
- Highly decentralised administration, under the responsibility of communes
- Two levels: village and commune





The role of CVGFs (village land committees)

- CVGFs are technical bodies. Links with arbitration mechanisms
- All transfers have to be recorded
 - derived rights contracts recorded at village level
 - permanent transfers (gifts, sales, inheritance) are recorded at village level, implies new certificates issued by the mayor, and changes in the Commune files
 - changes in plot limits are marked on the filed and updated regularly



- People will ask that data be updated for sales, but not perhaps for inheritance, but local knowledge can help
- More or less work depending on the frequency of land transfers
 - few in places with lineage land and few sales,
 - frequent where there are individualised rights and frequent sales
- Assumption that people are more willing to pay where there is more work for CVGFs and Commune Land Boards

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- Still a lot of points to clarify (methodology for surveys, files, etc.),
- Questions on land administration
 - complexity
 - reliability and accountability
 - financial balance

 - ***Land administration need experimentation and M&E***





Conclusions

- *PFR offer concrete and effective answers in peasant areas, where local regulations are weak*
- *They can be a powerful tool to bridge legitimacy, legacy and practices, if*
 - *incorporated in a larger legal and institutional framework focused on these issues*
 - *procedures and methodologies are accurate*
- *Land administration with PFR has still to be experimented*

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- *Need for socio-anthropological inputs in conception* (identification of issues, inquiry methodology, transcription of rights) *and implementation* (training of field teams, M&E)
- *A progressive implementation, in an action-research strategy : a learning approach at every step* (in survey methodology, in land administration framework; for survey teams, for CVGF members, etc.)
- *A need for strong monitoring with research teams*

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