



# 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*



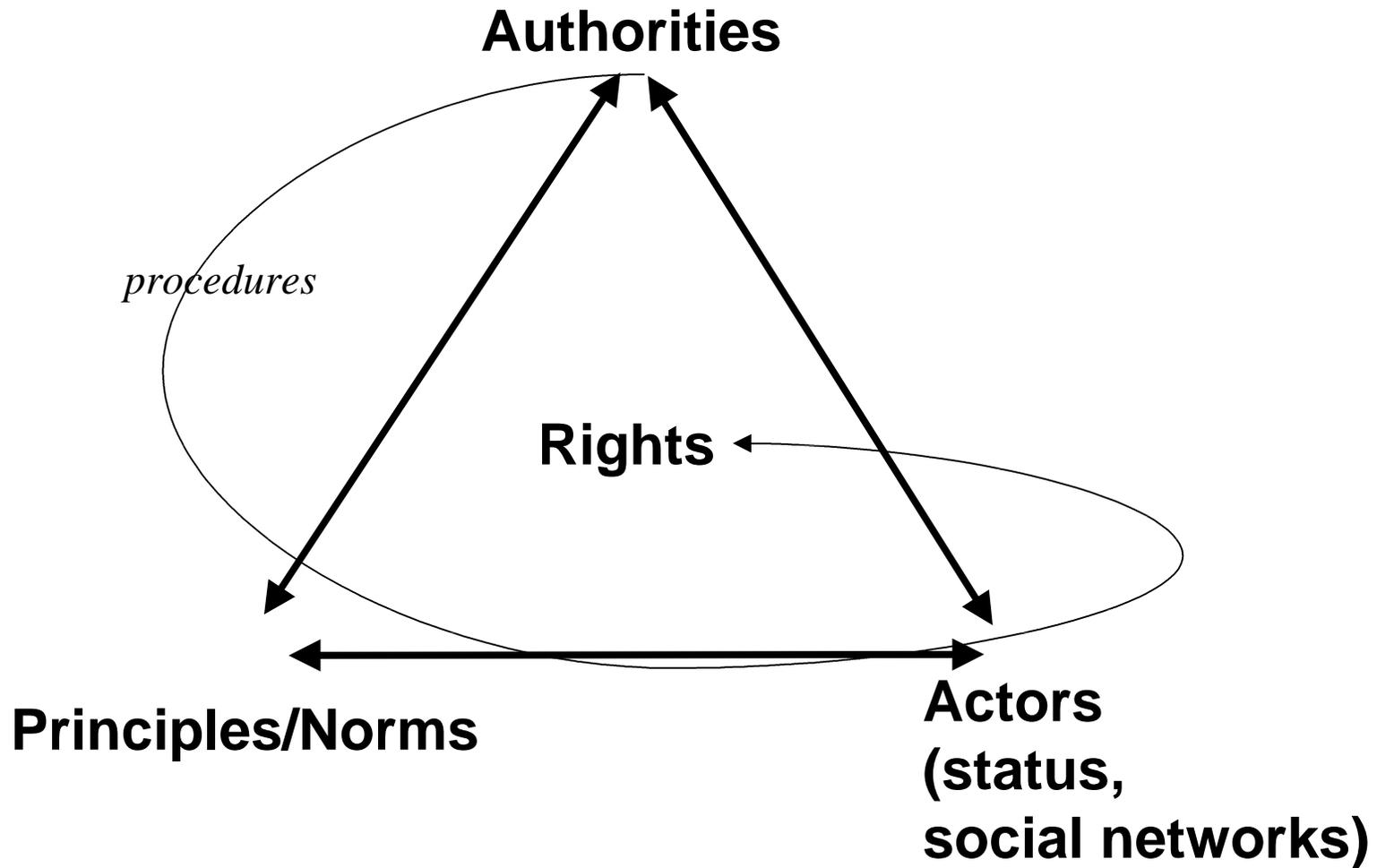
## Issues

- 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

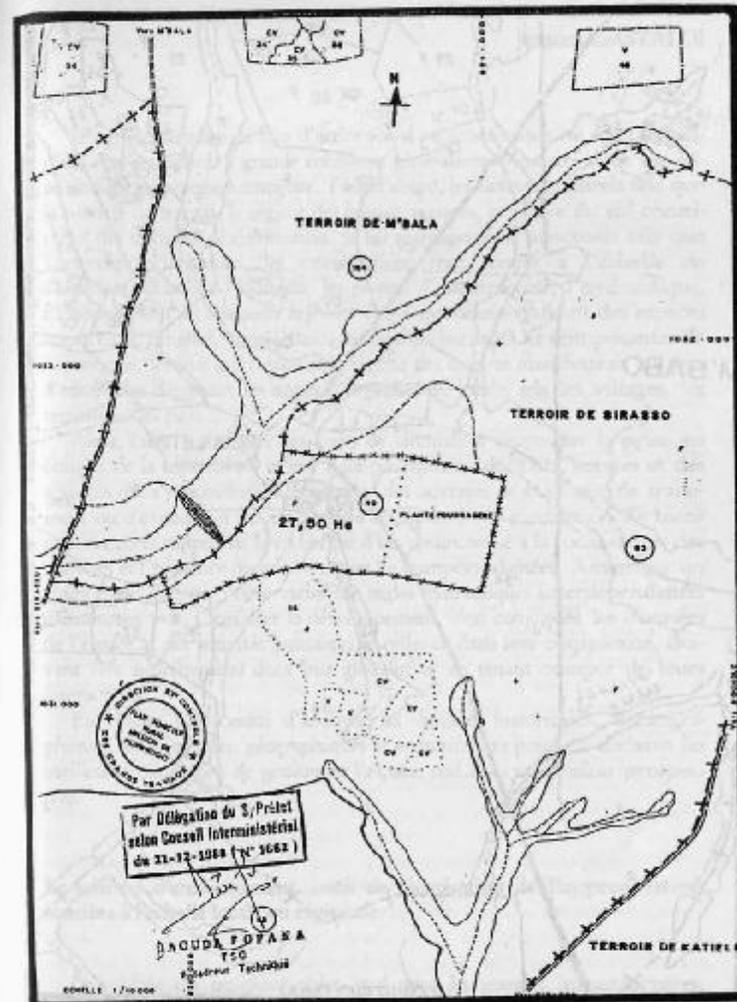
N° Parcelle	Terroir	Nom et Prénoms	Statut	N° Déco	Village d'origine
09	SIRASSO	SILUE Donissangui	G.T	1460	SIRASSO
14	SIRASSO	SILUE Donissangui	G.T	1460	SIRASSO
164	M'BALLA	SILUE Kagninen	G.T	204	M'BALLA

Le Chef de Bureau Régional

*[Signature]*

DAOUDA FOFANA  
 TSC  
 Encadreur Technique

EXEMPLE DE DOCUMENTS DU PFR COTE D'IVOIRE





- 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



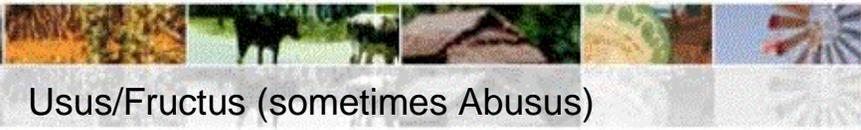


# The Nature of Rights

- (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

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# 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

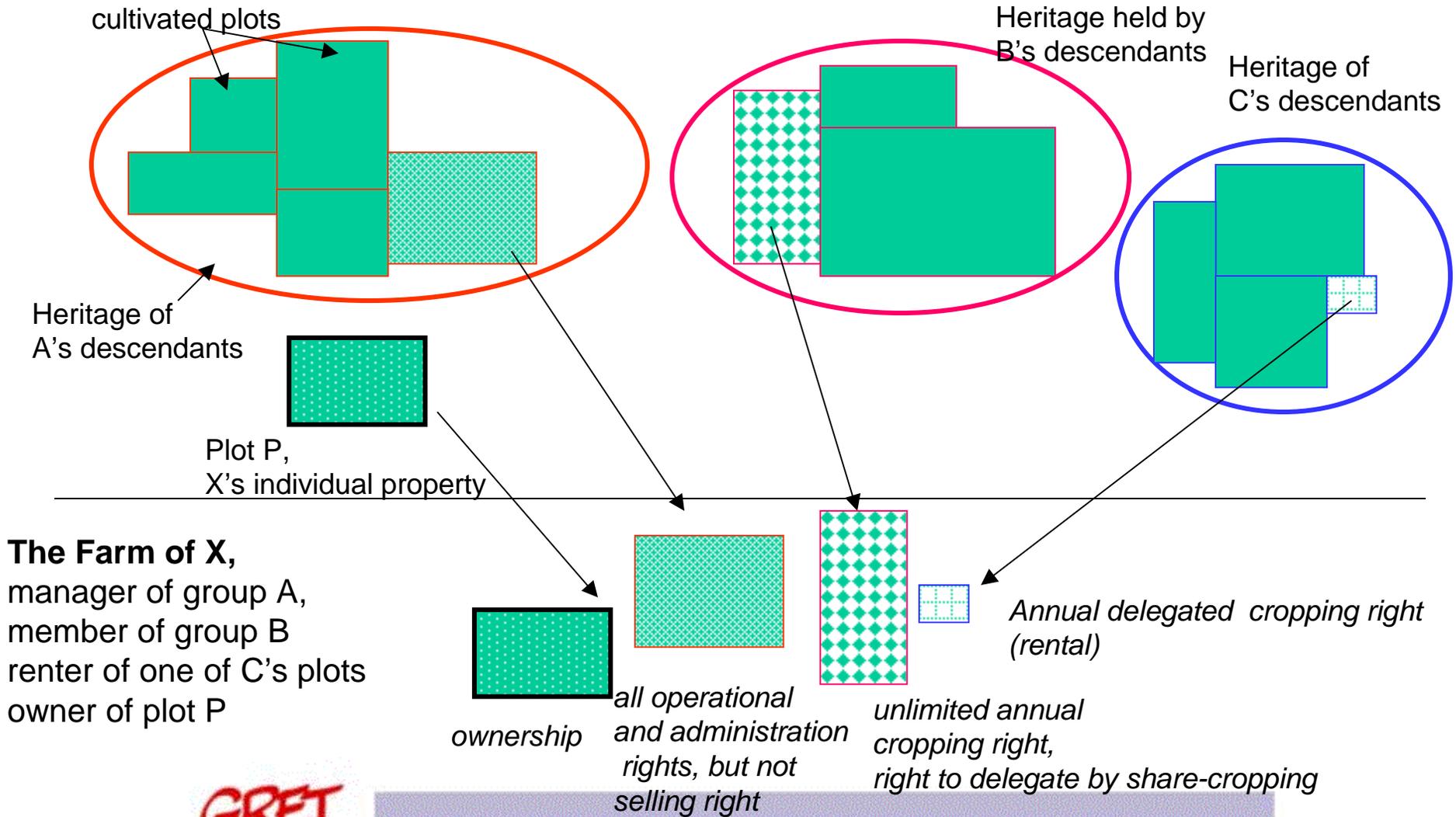
<b>Rights Held</b>	<b>Family Group Concil</b>	<b>Head of Fa- mily Group</b>	<b>Right-holder within the Family Group</b>
<i>Operational rights</i>			
Right to cultivate a individual plot for annual cropping (but not for tree planting)	-	+	+
Right to cultivate tree crops	-	+	-
<i>Administration Rights</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



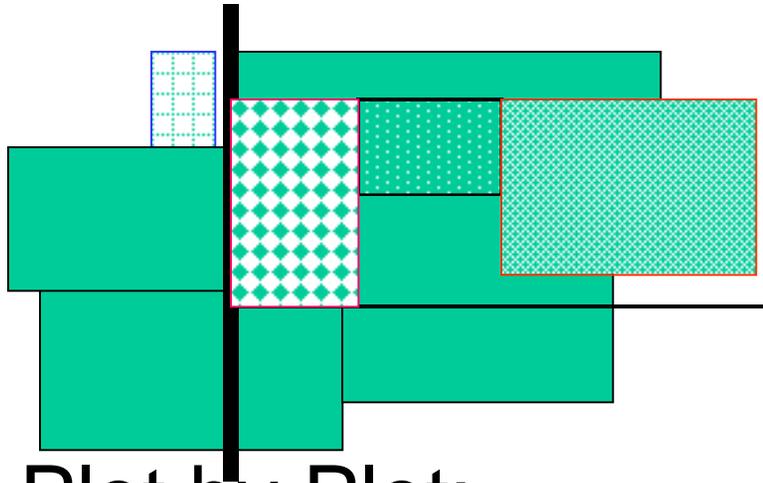


- Why identify local norms?
  - identify and publicly acknowledge a certain number of acknowledged principles and general rules, that give meaning to generic categories and allow for shared rules in case of conflicts
  - negotiate how specific questions are to be handled
    - a real ex.: how to deal 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





- 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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