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Rural land plans: Establishing relevant systems for identifying and recording customary rights

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The aim of this paper is not to compare knowledge and information on all the issues raised by the use of the “rural land plan tool”, known in French as *Plan Foncier Rural* (PFR). Our contribution will focus on what these experiences teach us about the more general question of *identifying and recording customary rights*, in terms of how they contribute to the securing of these rights. In fact, this is one of the main concerns in the implementation of PFRs, although they are obviously supposed to take account of the legally sanctioned rights encountered in the field, and to contribute to other objectives like rural development and improvement¹.

This contribution is structured as follows:

The first three sections aim to characterise the systems for identifying and recording customary rights implemented in the name of PFRs, by:

- Describing the general aims and content of PFRs
- Giving a brief presentation of experiences in different countries
- Characterising the nature of the “PRF tool” and its specific procedure, and discussing whether or not it is a “neutral” tool that can be used in combination with other procedures.

The next two sections attempt to:

- Provide a quick summary of previous and ongoing experiences, in terms of how they contribute to securing land tenure;
- Identify the main problems encountered in implementing the tools for identifying and recording customary rights: problems relating to the limitations of these tools, those arising from difficulties in managing their range and socio-political effects and finally, organisational and institutional difficulties.

These last two points pick up the central issues of the debate about methods of registering customary rights.

1. We would like to thank R.M. Hounkpodote, H. Edja and J.-P. Colin and others who took part in the workshop in Ouagadougou, and who contributed to the improvement of a first version of this text. The assessments contained therein remain our responsibility.

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1. Identifying and registering customary rights

1.1 The aims of PFRs

“Rural land plan” projects (PFR or PFMR in Guinea) have been conducted in several countries over the last decade. Côte d’Ivoire was the first to start, in 1990, with Guinea and Benin following suit in 1993-1994, and Burkina Faso, the last to date, in 1999.

All the PFRs share the following characteristics:

- They were designed to respond to the recognised inadequacies of existing legislation and its effective marginalisation of local so-called “customary” rights, despite the fact that most land and natural resources are actually managed according to customary practices.
- Their main aim is to contribute to securing customary land rights, thereby helping to manage and reduce conflict over land tenure and promote rural development. At the very least, this would entail: 1) identifying all locally recognised rights, using surveys with local people to investigate their respective claims to land; 2) topographic mapping to demarcate the plots thus identified (which areas might be used for particular purposes, such as grazing lands for herds); 3) recording by an official agency; 4) putting in place local structures (village land commissions) responsible for keeping documentation on land tenure and ensuring that it is put into practice.
- To contribute to securing customary rights in law, according to different ways adopted and changes made by each country and its legislation. This entails codifying the documentation produced by PFRs, in the form of land tenure certificates or possibly ownership titles.

1.2 Experiences from different countries

While all the PFRs, apart from the Ganzourgou PFR in Burkina Faso, were launched as pilot projects, the fact that they have been implemented in different institutional contexts has led them to evolve in unexpected ways.

Côte d'Ivoire

The exercise has been taken the furthest in Côte d'Ivoire,² both in terms of the area documented and its integration into a national framework. By the year 2000, around a million hectares had been covered, with rural land plans completed for over 300 villages and work under way in another 300 villages. The PFR originally developed out of a project to identify lands that could possibly be made available to young farmers, and was a pilot project until 1995-1999 (information differs on the official end date of this phase), during which time it was also supposed to contribute to the process of formulating new legislation. In 1997, before this legislation was adopted, the PFR was extended from 5 to 9 pilot zones, so that it could be put into practice at national level as the "securing of land" component of the National Village Land Management Programme (PNGTER), jointly with the components "rural equipment" (PNER) and "agricultural framework and training" (ANADER).

The turning point for the PFR in Côte d'Ivoire came in December 1998, with the promulgation of a law on rural land rights and the state. The mass of documentation collected by the PFR had very little impact on preparations for this law, one of the reasons being that the PFR was not really in a position to build on its full potential. Moreover, the draft presented by the Minister of Agriculture, who masterminded the PFR, made no mention of the fact that the law would oblige holders of land tenure certificates to register them. It should also be noted that at the time the law was promulgated, PFR operations had ground to a halt in certain areas where the issue of land rights was causing serious conflict between indigenous and migrant populations.

Most importantly, the PFR's role in managing operations was most seriously undermined by the new legal requirement introduced by the 1998 legislation that all customary land rights must be formally registered within ten years. Released from its remit of managing operations, which was passed to the Ministry of Agriculture, and with the task of documenting rights made easier (reduced to the minimum required for producing land tenure certificates), the main task of the PFR, since 1998, has been to help with demarcation and registration of village territories (PNGTER June 2000). Once the land survey process was privatised there was no real

2. Documentation: Ministry of Co-operation, 1996; Bosc *et al.*, 1996; Okoin, 1997; Chauveau *et al.*, 1998; Republic of Côte d'Ivoire, 2000; Balac, 2000; Steering Committee, 2000; Stamm, 2000; personal communications.

justification for maintaining the PFR set-up. The operation has effectively been suspended as its scope has been increasingly restricted and due to various factors, donors have been hesitant to continue their support.

Burkina Faso

The situation in Burkina Faso³ is very different, as the PFR was initially a much less ambitious undertaking covering just three Departments in the Province of Ganzourgou (36 villages on 150 000 ha of land). Its main aim is to clarify and document the current land rights situation in the area covered by the former Volta Valleys Improvement (AVV) programme, which created villages on neighbouring village lands from 1975 onwards. The area is now marked by serious disputes between indigenous land owners, those migrants installed by the AVV (which never issued the promised titles to occupy the land) and new migrants. This PFR is seen as a project with limited objectives; addressing both a specific problem in a zone struggling with the legacy of conflict over land caused by a previous State intervention, and its insertion into a legal framework; aiming to develop a tool for clarifying rights in the context of existing law (the RAF), and having a short lifespan (1999-2002).

It is hoped that greater security of tenure will be achieved by using documentation to clarify rights, and by encouraging the parties concerned to comply with existing legislation (*Réorganisation Agraire et Foncière* – RAF). However, results are very mixed and vary according to local situations. The programme will not achieve all it set out to do within the lifetime of the project, and so far, the documentation gathered has not resulted in the desired agreements in a significant number of villages where customary land owners and AVV migrants will not back down from their original position. New migrants either have their position formalised or are registered as being “in disputed zones”, depending on their situation. Applications for official title to occupy land are no more numerous than they were before the implementation of the PFR.

Benin

The PFR in Benin⁴ seems to have followed a course lying between the two experiences described above. It began in 1994 in direct response to the PFR

3. Documentation: Jacob, 2001; ERGECI-Development, 2001; personal communications.

4. Documentation: Ministry for Co-operation, 1996; Hounkpodote, 2000; Republic of Benin, 2000; co-ordination cell 2000.

in Côte d'Ivoire, but was subsumed into a Natural Resource Management Plan (NRMP), of which it represents only one sub-section, "Land Tenure Operations", of a specific component relating to the development of five "catchment areas" (in conjunction with "Forest Development", "Fauna and Rural Eco-development", "Training and Institutional Support"). Although the project approach is limited both geographically (it covers about 50 000 ha in 5 zones: Dékanmé, Aplahoué, Ouessé, Ouaké, Boukoumbé) and in terms of the scope of its intervention, the NRMP and the PFR co-ordination office nevertheless have an explicit mandate to help prepare legislation regarding land rights and management.

Subsequently, the PFR has been subject to organisational and financial uncertainties: as certain donors have pulled out, similar projects have been implemented parallel to the PFR, the "catchment area" approach has been transformed into a "village land management" approach (the NRMP is now the NRLMP [Natural Resource and Land Management Plan]) and operations have been privatised. Some of the original five pilot sites have been suspended and resumption of work by private operators is uncertain while work will start at a new site in Sinende.

It is in this rapidly changing context that the pilot study for the code for rural land and the national domain is being conducted, which refers in its preamble to the need to take account of the progress made by the PFR and its extension on a national scale, subject to the explicit demands of the communities.

Guinea

We do not know enough about the PFR in Guinea⁵ to be able to give even a brief account of the current situation there. However, we can note that it differs from the others in one respect, in that it was introduced after a new land code based on recognition of private land ownership came into force in 1992. This code institutionalised land plans (by 1996 there were 2 pilot zones of 100 000 ha) and further plans will be implemented. This could have enabled the PFR to encourage moves to secure customary rights by applying for title to them, but this does not seem to have happened, and customary rights still carry no real weight even when they have been recorded on land plans. However, this is not the fault of the actual mechanism of the plans (Republic of Guinea, 2000). While there is still policy support for the PFR,

5. Documentation: Ministry for Co-operation, 1996; Bloch, n.d.; Republic of Guinea, 2000.

and registration of land under the plan confers presumed ownership, it is now combined with other methods of securing tenure, such as written formalisation of transactions and other agreements, and strengthening mechanisms for negotiation and conciliation within and between villages.

1.3 The nature of the “PFR tool”

Is it a specific procedure?

In the early days of the PFR it was thought that it could in itself constitute a coherent procedure, which could be put forward as an alternative both to the centralised model of securing land rights through top-down legislation and to the centralised model of rural development through financially non-contributory projects.

This led to the development of the “PFR procedure”, which combines different objectives, and which was designed to be implemented in a linear manner:

- The objective of producing information constitutes the first phase of identifying and clarifying rights and land assets;
- The objective of securing all existing socially recognised rights simultaneously opens up a second phase of documentation, publicity, registration and putting the registration into practice. This phase can result in two main alternatives, depending on: a) whether the PFR is introduced when new legislation is being formulated (as in Benin, and Côte d'Ivoire before the 1998 law was passed), in which case it can also support the formulation of this legislation by providing mapping and information about the nature of rights; or b) whether it is introduced to support the implementation of existing legislation (as in Burkina Faso) or new legislation (as in Guinea, and Côte d'Ivoire since the 1998 law), in which case it simply facilitates the formalisation and legal ratification of the customary rights registered;
- It is then possible to pursue the “rural development” objective, building on agro-socio-economic information of phase 1 and the formalisation of rights insured in phase 2.

There has been some confusion as to whether a PFR is an agency or a procedure. This is probably due to the fact that, except for the recent one

in Ganzourgou, these PFRs were originally pilot projects overseen by very different public agencies that were mostly funded by donors and governments. Most had to scale down their ambitions once the initial enthusiasm for a new institutional setting had waned, and it became clear how difficult it is simultaneously to pursue three main objectives and the multiple operations that each entails (particularly when they are not always properly equipped to achieve these objectives: see d'Aquino in Bosc et al., 1996; d'Aquino, 1998; Chauveau et al., 1998).

A neutral tool?

The PFR was thus conceived as a "tool" whose primary purpose was the identification and preliminary registration of rights and land assets. Most PFR activities focus on these aims, which do not include automatic legal ratification of the rights registered. The specificity of the PFR tool lies in the fact that it is intended to capture and "externalise" the procedures used to ratify such rights. This means that once these rights have been recorded and registered, the PFR aims to replace local procedures for endorsing them with another, legal procedure, which is not the responsibility of the PFR, and which can be more or less centralised according to the prerogatives and methods allocated to village "land commissions".

For its promoters, the main interest of the "PFR tool" lies in its presumed "neutrality", as it is only supposed to take stock of the current situation without intervening in disagreements or replacing the authorities responsible for legalising locally recognised rights.

However, studies of PFRs show that there is little evidence of this neutrality, demonstrating instead that the "PFR tool" is selective about which rights are registered, and that it unintentionally contributes to the reconstitution and redistribution of land rights. Moreover, its very "neutrality", in the sense that it does not itself offer a procedure for legally ratifying rights, far from providing security for those involved, can cause uncertainty over the agreements registered and actually make them unsustainable. These points are fairly clearly demonstrated in the summary of the PFRs' experiences and their current situation.

2. Assessment of experience

2.1 Brief assessment of experiences

A multifaceted tool

The experiences described above show that the PFR is a multifaceted and evolving tool, both in terms of its objectives and of its operations in practice. The brief review (1.2) of experiences from various countries shows that implementation of the “PFR tool” varies from country to country, not only in how it is expected to contribute to the legal ratification of customary rights, but also in how it has been implemented and the range of objectives being sought.

For example:

- A PFR may be viewed as the application of a tool in the context of a project with a defined lifespan and scope, or as one element of a more ambitious nationwide procedure;
- Its objectives of documentation, securing rights, and rural development, can be differently prioritised;
- The objective of formalising customary rights can slot into the framework of existing, previous or recent legislation. In a transitional situation, it should support the formulation of new legislation that is being developed;

The objective of securing rights cannot be viewed in the same way: it depends on (a) whether local commissions are simply a continuation of the technical operation to register rights, or whether they originate from recognised local structures or different social groups with accepted powers over land; (b) whether they are simply responsible for putting the registered rights into practice or have the powers to manage them; (c) whether they are funded or not.

Any comparative evaluation of experience with PFRs should take account of these parameters, and doubtless others too, as they affect the way in which local players perceive the “externalisation” of procedures proposed by the PFR for recognising their rights.

The multifaceted and evolutionary nature of PFRs is not in itself a negative characteristic, as these are desirable qualities for an intervention tool. The problem is that in most of the cases mentioned here, the hierarchy of objectives and priorities for accomplishing operations seems to evolve in response to problems and emergencies as they arise, rather than as part of a rational plan.

Results still need to be confirmed

In all cases, it is indeed difficult to conclude that the PFRs have achieved a major advance in securing the rights registered in any of these countries, for reasons that will be explained in part II below. There are widespread deficiencies in the way that local commissions set up by PFRs function and in how rights are passed on and transferred.

For example:

- The Ganzourgou PFR aims at increasing security of tenure in an area characterised by chronic conflict, but may not even reach this limited objective (Jacob, 2001). The PFR's contribution to security of tenure is however noted. Certain groups, such as herders, have been reassured thanks to the PFR's mediation (a function which is not actually included in its remit). It is significant that the feasibility study for a pilot operation to secure land tenure in western Burkina Faso (Tallet et al., 2001) did not recommend the PFR option, except in terms of what it can do in topographical mapping and guidance for carrying out land surveys, on the grounds that this tool is not appropriate given the highly conflictual situation in the region.
- By contrast, the Ivorian PFR started as a project to identify spare land on which young farmers could be settled, and developed the ambitious objective of becoming a tool for formalising all customary rights and supporting the formulation of new legislation on land tenure (Bosc et al., 1996; Chauveau et al., 1998). During the course of the project however, it had to abandon its ambitions for generating rural development: it came up against strong resistance in areas where there was most conflict, precisely where its contribution to clarification of rights was most needed. Moreover, its achievements in terms of topographical mapping and land surveys for mapping out village territories have been diminished by the fact that the new legislation on land tenure owes little to the experience gained by the PFR (Republic of Côte d'Ivoire, 2000).

- The PFR in Benin seems rather uncertainly to combine a project whose objectives include rural development with making a contribution to the formulation of more appropriate land tenure legislation (Ministry of Co-operation, 1996; Hounkpodote, 2000). Although we do not know whether the pilot study for the land tenure Code (Republic of Benin, 2000) used information from the PFR concerning the acceptance of different types of rights, it does refer to rural land plans as a means of securing tenure, and guarantees that people whose rights have been recorded and registered as part of the rural land plan will obtain a land certificate, which carries a “presumption of proof of acquired rights that will be sufficient until proven otherwise before a judge” (which hardly differs from the provisional concessions subject to the rights of third parties made by previous Ivorian legislation, which were criticised for their ambiguity in terms of securing tenure). Moreover, we note in the PFR areas the positive development of local use of written documents (with no legal value) between partners engaged in transactions or land contracts (renting, pawning, etc.).
- Although the PFR in Guinea was built onto new legislation to promote decentralised management of land resources, it does not seem to have produced any more convincing results in securing tenure. The recent policy announcement on rural land tenure merely reminds the public that “the government recognises the legal value of the land plan, and is committed to taking measures to strengthen it so that registration with the land plan confers a presumption of ownership” (Republic of Guinea, 2000).

Main technical achievements

The main achievements of PFRs can be divided into three categories:

- *The use of topographical mapping to identify rights which are then transcribed and registered by the PFR.*
In general, PFRs have shown that it is technically possible to use topographical mapping to record locations and surface areas on a large scale. This was by no means certain when the pilot projects started, when the principle of exhaustive land mapping on a regional or national scale was inconceivable with the techniques usually used (cadastral surveys and centralised registration).

- *Keeping the cost of operations to a reasonable level.*
Initially, cost was a major challenge to PFRs, but actual estimates show that the pilot operations are economically feasible at national level. Results obtained prove that the cost per hectare is reasonable (from 5000 to 7000 FCFA per ha in Benin and Côte d'Ivoire). However it appears that operations in Benin have contributed to a rise in cost (from 4500 to 7000 FCFA: Co-ordination cell 2000).
- *Wealth of qualitative information contained in land surveys.*
PFR agents have systematically gathered a considerable amount of qualitative information, which constitutes a database on the state of land tenure systems in contrasting situations. However, the quality of this information does of course vary, notably because of the constraints the teams are under (see 4.1.). But on the whole the data have not been used to their full potential, either to improve the reliability of the methods of transcription of the rights concerned or to contribute to the formulation of a new land tenure code.

In the end, despite the progress that has been made, there is no guarantee that the information on land tenure will be used to its full potential, that the rights recorded will be reliably transcribed, that the agreements registered will be stabilised on a sustainable basis or that they will be put into practice. This is because of three main problems:

- the limitations of the tools used by PFRs to identify and register rights, which will be discussed below;
- difficulties in managing the scale and socio-political effects of these tools;

These first two problems explain the difficulties of getting a "snapshot" of "all existing rights", as the PFRs had intended.

- institutional and organisational difficulties.

2.2 Limitations of PFR tools

Identification and registration of rights based on cadastral surveys

Inevitably, the identification of rights by PFRs is to a certain extent pre-determined by the form of registration that will eventually be used to record them, which is cadastral: one plot, one right of appropriation (possibly one title of ownership) and one holder of rights (an individual or a collective)⁶.

In reality, rights are made up of a collection of claims (rights of use, exploitation, improvement, assignment, transmission and inheritance, transferral and alienation). These may be split between different holders and, as is often the case in Africa, may be managed by different authorities or pertain to different management units. Also, a single plot can be used for different purposes, sometimes according to the season, which has further implications for rights of use and exploitation. The situation is further complicated by the sensitive issue of the reliability of procedures for transcribing and ratifying socio-land information. This causes a number of problems, which are outlined below:⁷

Over-simplification and selective registration of rights

From the beginning the PFRs' ambition was to make an exhaustive identification of all existing rights. There is no doubt that this ambition should be downgraded in order to take into account practical constraints, on the basis of the following points:

- It is generally observed that the only rights over land identified and registered are rights of appropriation, attributed to a "land manager", which already denotes the holder of the property rights, even when the rights identified are collectively owned. However, in Benin, the PFR is planning to introduce a second phase of identification of temporary rights, and in Côte d'Ivoire, new legislation makes provision for claimants of land certificates to declare the "occupiers in good faith", while leaving the holders of certificates the freedom to judge for themselves.

6. The cadastral tool is not limited to this simplified use and does not in itself only involve rights of property.

7. We refer to the following studies: Basset, 1995; Balac, 2000; Bosc et al., 1996; Chauveau et al., 1998; d'Aquino, 1998; Lavigne Delville (ed.), 1998; Lavigne Delville, 1999; Lavigne Delville (ed.), 2000; Lavigne Delville, et al., 2001; Toulmin, C. & Longbottom, J., 2001.

- The identification of rights separates them from the system of authority that ensures their social recognition and thus their local security, while the socio-tenure information gathered does little to clarify how community, collective and individual rights become established. The way village land commissions are represented and invested in by dominating interest groups also needs to be closely monitored (cf. 3.2).
- Because the process of identifying rights is selective, it is done to the detriment of the rights transferred or assigned to farmers who do not belong to local village communities.
- Customary transfers of land tend to be under-reported and, when they are registered, they become disconnected from the social clauses that remain in force after the land has been assigned.
- Rights over natural resources other than agricultural use are either ignored (produce that is harvested, hunted or fished) or highly under-identified (grazing lands). The result is that these uses are tacitly conferred on the “land manager” to the detriment of certain groups of users (particularly herders and women), while the fragmented use of topographical mapping means that much grazing land is not identified.

Limitations of transcribing rights

- The essentially cadastral nature of registration implicitly predetermines who can hold rights of appropriation. One example of this is the fact that people who manage land are pre-identified in the demographic census, and socio-economic surveys are carried out before the socio-land surveys and mapping exercises. Moreover, the ability of the cadastral tool to identify spatially identifiable resources is generally under-exploited.
- The transcription of rights is fraught with inherent difficulties that must be recognised. It is not easy to reproduce in English translation the exact content of local categories of rights or the conditions for making them sustainable (“gifts”, “loans”, “sale and purchase”). Moreover, the practical constraints of registration require a process of codification that further weakens the actual content of rights.
- Because “disputed areas” are not usually registered, they constitute a kind of “rights-free zone”, which clearly is not the case in reality.

Limitations of procedures for ratifying the information gathered

The information on rights gathered under these conditions is further distorted during the process of ratification if certain precautions are not taken (d'Aquino in Bosc et al., 1996, and d'Aquino, 1998):

- Ratification does not rely on social and tenure information gathered during surveys ("primary agreements" between registered players at the time of the investigative reports), but on information interpreted and transcribed by the PFR teams. This distinction is especially important considering the consequences of using the results in procedures involving the States' authority to ratify.
- The process of ratification is usually restricted to a publicity phase, which is used to ascertain whether rights are subject to challenge by third parties in the customary domain alone ("intrinsic" or local validation, as opposed to "extrinsic" validation of customary rights in the context of legislation). However, on the whole this phase is not subject to much codification, is only partial, and while the information gathered from it will be kept, a systematic report is not always made. It seems then that this publicity phase cannot be considered, without some precaution, as a phase of intrinsic validation of customary rights in so far as it is not possible – even if the information is well circulated in advance with the support of administrative authorities – for all interested parties to be present when the publicity is carried out. Permanent ratification of customary rights will only be possible during a follow-up and implementation phase, required to complement the publicity phase.

Even if we assume that the phase of "intrinsic" or local ratification of rights is entirely reliable, it does not provide any greater security for local players involved in land tenure in terms of getting their rights recognised by the legal authorities. The "extrinsic" validation of customary rights, generally announced by the promoters of the PFRs as the final awaited product, is suspended, pending the implementation of legal procedures. This waiting period can deepen the confusion felt by local players, and reinforces the difficulties resulting from the socio-political dimension of all procedures of identification of customary rights, which we will examine below.

2.3 Difficulties in understanding and recognising customary rights

Using a “technical” tool to identify rights

The PFR objective of formalising and recording customary rights echoes a long-standing concern in the history of land tenure policies in Africa that dates back to colonial times. This objective has taken on a new life and scope as various local groups, governments and donors increasingly focus on formal recognition of customary land rights as a precursor to more decentralised management that aims to provide greater security for customary users.

However, this widespread concern does not mean that everyone has the same interest in and expectations of operations to identify and record rights. In practice, the apparently technical PFR tool is used in areas of pre-existing tensions and conflicts marked by power struggles. This is notably the case where increasingly mobile and diverse players are competing for access to dwindling resources, whose exploitation is becoming more and more privatised and commercialised.

External agencies and identifying and registering rights

In this context, operations to identify and record rights may further complicate the situation, rather than providing a clear picture. Far from clarifying existing rights, these activities often lead the various local land groups to adopt defensive and offensive strategies that most PFRs can generally neither control or identify, nor have the capacity to manage.

- One unintentional but indisputable effect of PFRs is the behaviour of different groups of farmers who adopt various strategies to address their concerns. In most of the regions where PFRs have been implemented, positive expectations of the process tend to be countered by fears, and this ambivalence is particularly well illustrated by the differing reactions of indigenous and migrant groups, and groups of different social status. The condition set by the PFRs of a prior consensus between parties to engage in operations can lead to a constrained or false consensus that is fragile and unsustainable.
- In many cases, PFRs re-ignite conflict over land as old, unresolved disputes are registered and latent conflicts brought into the open.

There may be renegotiation of rights considered up till now to be self-evident, but whose formulation brings to light prerogatives which did not have to arise in the course of daily farming practices. Land may be withdrawn, and opportunistic strategies adopted by certain categories of rights holders who use PFR operations to try to reinforce their rights or get their prerogatives recognised.

- The local follow-up committees put in place by PFRs constitute an important institutional level at which the rights registered are put into practice and managed. However, the composition and function of these groups is subject to the conflicting injunction of having to conform to administrative criteria while at the same time answering both to the representative criteria of land players and to local land committees (generally indigenous).

2.4 Organisational and institutional problems

Quality of information

In the field, teams are usually under great pressure to “deliver” in terms of the number of hectares surveyed, which is used primarily as an indicator of effectiveness to the detriment of the quality of information gathered in PFR evaluations. Moreover, in order to facilitate or accelerate operations, teams can sometimes intervene in land disputes and force through false agreements or impress upon different interest groups the positive aspects of the mechanisms of identification of rights, without being able to clarify the more obscure points that may crop up later on.

In order to achieve sustainable security of rights, identification must be rigorously monitored, which takes time and is therefore costly.

Difficulties of managing documentation

During an exercise to support the management of the PFR demographic-land database in Côte d'Ivoire (Balac, 2000) it was noted that questionnaires disappeared, certain questions on survey forms were left unanswered after villagers refused to take part in surveys, and statements were called into question after one of the parties involved died.

The risks of funding through projects

- Funding depends on donors whose support has proved unreliable and intermittent. The case of Benin illustrates how donors and different agencies intervene on different sites.
- Operations are always susceptible to changes in donor perceptions of what programme priorities should be.
- There is often no funding provision for monitoring and evaluation, which is essential to address problems associated with the tool for identifying rights and to assess the socio-political strategies employed by different groups of players.
- Follow-up operations are essential for all mechanisms for the systematic registration of rights, but these may be subject to separate and uncertain funding.

Should local people contribute to costs?

Without questioning the theoretical validity of this point, it must be acknowledged that payment of a fee for land registration is likely to make some local players reluctant to participate in procedures for identifying and registering their rights, especially those from the poorest groups, who have the least secure rights.

3. The main issues for debate

3.1 “Clarification” through identification does not result in greater security of rights

This linear approach to securing land rights is based on certain logical presuppositions:

- a) that at any given moment, existing rights are the product of the rules and processes governing social recognition of rights, and it is possible to separate the product from the process;
- b) that it is possible subsequently to transcribe these rights into legal categories that give them a definitive validity in the eyes of the State.

This process of “externalisation” and “bracketing off” of existing rights in order to safeguard them is based on the principles of codification, even though the procedure is seen as different from centralised codification through registration, and is supposed to operate in parallel with legislation that is more appropriate to the realities on the ground.

It contrasts with the “procedural” concept of customary land rights, which is based on the results of empirical research,⁸ and which stresses that:

- a) the effectiveness of customary rights of access to and control over resources is partly the result of permanent negotiation over time, aimed at ensuring the recognition and sustainability of rights by local authorities, which are sometimes in competition with each other;
- b) the ratification of customary rights by identifying suitable legal categories is not simply a matter of legal transcription, but also involves a negotiated balance of power between the various players involved, between different local authorities and between local and legal authorities.

8. See the following, among others: Griffiths, 1986 and 1992; Shipton & Goheen, 1992; Bassett & Crummey, 1993; Painter et al., 1994; Le Roy et al., 1996; Chauveau, 1997; Lund, 1997 and 1998; von Benda-Beckman & von Benda-Beckman, 1999; Ribot, 1999.

The fact that different groups of players are given some freedom during PFR operations can thus reactivate the procedural nature of customary rights. This often explains the difficulties experienced by PFRs when identifying and registering rights, why so little has been achieved in terms of securing tenure for the long term, and why PFR-type operations have not done much to establish procedures for legally ratifying the rights registered.

The procedural nature of customary rights thus constitutes a major constraint to PFRs, both in terms of clarifying rights by identifying them, and making them more secure through registration and legal ratification.

3.2 How can the process of registration connect with local recognition of rights and with legal arrangements?

On this point, two general questions should be taken into account from the start of the PFR phase in order to identify the possible answers while activities are being carried out (notably by means of monitoring and evaluation).

- The “externalisation” of procedures to ratify rights will be counter-productive if no attention is given to the authorities that legitimise rights. The fact that the mechanism for identification and registration appears to be “neutral”, in that it does not in itself provide a procedure for the legal ratification of rights, far from providing greater security for those involved, can be a source of uncertainty that makes the tenure agreements registered unsustainable. The procedures for identifying and registering rights necessarily lead to pertinent political choices about the local authorities that ensure social recognition of rights: which authorities should be given preference, and according to what criteria; and which symbolic, political and material resources do they need to fulfil their functions successfully?
- If there are no positive incentives to ratify rights in law, the “externalisation” of procedures for ratifying rights will not have the desired effect. What will happen, as is so often the case, is that yet another institutional element will be added to the strategies used to secure tenure, in a context of even greater legal pluralism. What type of incentives should be promoted?

3.3 How better to harmonise registration with local situations and legal mechanisms?

If the “clarification” of rights is a necessary but not sufficient condition for their security, how can the tool for identifying and registering them be improved? And how can it link up with other possible approaches for securing land tenure?

- **It is not always possible to give “external” ratification of rights**, especially where situations over land tenure are highly conflicting. Local demands will be too contradictory to reach stable agreements immediately or rapidly and to permit statements on current tenure statutes (Tallet et al., 2001).
- Control of socio-political effects resulting from the operations also requires that adequate and permanent **information** is given to the populations and that registration should be independently **monitored and evaluated on a permanent basis**, notably where it concerns the village commissions in charge of follow-up and implementation procedures. Such a mechanism thus remains a **difficult procedure** to ensure the reliability and sustainability of agreements on rights.
- It is worth noting that **PFRs are not the only possible tool for the securing of customary rights at local level** (Lavigne Delville, 1999). While the PFRs take the body of customary rights that are socially recognised within village lands as their starting point, in order to identify, map, ratify and register them all, an approach that supports the formalisation of the most “sensitive” rights (especially rights arising from customary or hereditary transfers and transactions) would be more selective, conditions permitting, and leave the way open to local demands as regards registration of the body of rights. Other approaches do not focus on rights as such or on mapping them, but on the conditions of agreement over the rules, of which rights are the result, and on the authorities in charge of putting them into practice. See, for example, the concept of the Land Charter in Mali, and the establishment in Niger, at the request of the land commissions, of titles that do not require identification through topographical mapping.
- **The registration of rights can require a phase of mediation, even of collective negotiation**, which can be delicate and protracted, according to each situation. In the case of very conflicting situations, mediation

(especially to facilitate the agreement over rights arising from customary transfers and transactions between indigenous and migrant groups) is clearly a necessary precondition. Mediation is also a possibility in more common situations, in order to explain and render sustainable the “hidden negotiation” which procedures of registration of customary rights always involve.

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