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EDITOR'S NOTE

Translated by Hanna Rousse, reviewed by Victoria Weavil

Introduction

- ¹ In Ivory Coast, as in many French-speaking countries of West Africa, social tensions are often related to a crisis of the rule of law. These socio-legal conflicts are given different names according to their subject matter, or the time and place of their formation : law crises, the weakness of the State apparatus, the unsuitability and failure of institutions, etc. Yet in most cases, these conflicts come from a common phenomenon : legal pluralism¹, or rather legal overlap.
- ² Legal pluralism cannot be defined without understanding the nature of the legal rule. According to the *Lexique Juridique*, it is “a general, abstract and bending rule within social relations, which is sanctioned by the public authority”². A typical legal rule is one that is emitted by state institutions, either directly (primary and secondary legislation etc.) or by delegation (*intra legem* customs, *secundum legem*, internal regulations, regional and international directives etc.). Indeed, because of its sovereign power, the State would not admit legal rules that are independent of its own territory. The State will therefore try to either control or remove them. However, the latter is more difficult to implement and, in most cases, legal pluralism will remain in a more or less limited form. Legal pluralism is usually divided into two forms : weak pluralism and strong pluralism. Weak pluralism deals with *intra* or *secundum legem* non-institutional

norms, *i.e.* recognised by or in interpretation of the law. Wherever they come from, these norms are all formally recognised by the main legal system, which is in principle the State law. Conversely, strong legal pluralism leads to the implementation of non-institutional customs and norms, *praeter* or *contra legem*, meaning in the silence of the law or against it. However, in order to analyse the Ivorian situation, this binary opposition must be overcome.

- 3 Indeed, in Ivory Coast, several types of linkages between rules seem to coexist. If institutional law makes it possible to regulate the linkages, it is usually unable to control it. The coexistence of different sources of norms (mainly local custom) and their implementation by the locals calls into question the omnipotence of the law. This can be illustrated through an analysis of land management³ in both rural and urban areas⁴.
- 4 Land is very important issue in a country like Ivory Coast because the macroeconomic weight of agriculture⁵. On a microeconomic level, land represents not only access to financial resources, but also access to food and housing, three fundamental elements for human survival.
- 5 Finally, from a social perspective, land is considered as “the land of the ancestors”. In a society firmly entrenched in traditions the legitimacy of this identity criterion seems far stronger than that of a simple nationality “paper”⁶. The legitimacy of belonging to a native community is built on parentage, as opposed to the recent invention of a national legitimacy built on a virtual national tie.
- 6 Because of high land pressure, land management raises social, economic and political conflicts. While successive governments encouraged agricultural settlement for economic development, customary landowners viewed an attempt to steal their traditional heritage and violate their ancestral rights.
- 7 The struggle between executive, legislative and judicial branches, and customary owners has led to a heterogeneous mechanism. The rejection of the principle of “customary ownership” is defeated by an administrative *laissez-faire* and an accommodating judicial interpretation. Without updating legal texts, the State has left to locals, in practice, all latitude to “cope” with this heterogeneity. This “self-help” system allows potential buyers to directly contact customary owners, who are of course themselves free to supply the land market.
- 8 However, over the years, the issue of land has become the object of many violent conflicts not only between individuals but also between communities. The State has therefore given up the wait-and-see attitude it had adopted since the country’s independence (in 1960). In 1998, the State decided to stop removing or reducing customary rights and chose to adopt a pragmatic attitude by reorganising legal pluralism within a statute that includes customary norms.
- 9 Nevertheless, however brave that decision might be, it only deals with one aspect of land management : rural land. Indeed, Statute n° 98-750 of 23 December 1998⁷ is not applicable to urban land.
- 10 As for urban land, the legislator does not seem keen to negotiate with local customs. Or at least, they are not close to recognising it in an official statute. Legal pluralism therefore remains *de facto* pluralism, because customary land rights in urban areas have remained trapped in a legal gridlock. Though officially inaccessible, these rights

actually govern the majority of the land market in urban areas and are the object of a specific collaboration between owners of customary rights and the administration.

- 11 In both urban land and rural land practices, normative regime do not only coexist but are complementary. Even if this complementarity seems now to be inescapable, it threatens the security of land transactions. In the context of weak economic control⁸ and an unstable socio-political situation, legal pluralism in land transactions is one more potential factor of social disruption. Reflecting upon the diversity and variability of legal pluralism is therefore a key issue in the domain of Ivorian land management.
- 12 The analysis of land transactions shows that legal pluralism has been treated unequally between urban and rural areas and between regulation and practice. The following section will tackle this diversity of legal pluralism through studying the various ways of access to land (I) and land conflicts (II).

I. The plural modes of land access

- 13 In land law, State performs legal pluralism differently in the case of rural areas which are governed by legal regulation (A), and urban areas which are ignored by public authorities. (B).

A. Legal pluralism in access to rural land

The village of Djrogobité

Usually, we grow trees for rubber and palm oil. We also sell land because a lot of people want the fields in order to build houses or grow crops.

The procedure is simple : it is a sale between a client and a seller, without any help of a notary because the legal procedure is too expensive for the landowner who is selling his property. So we close the deal and the client takes care of the legal procedure. Sometimes, buyers request the kind of notification that a notary produces. In such a case, we go to a notary. But the buyer is the one who pays.

We would rather not register the land by ourselves because the procedure is too long and costly. We deliver a village certificate to the buyer. With this certificate, the buyer take steps to obtain the legal papers.

On the question of implementing either the law or traditional customs, the answer is still pending. The government should have taken decisions on this matter after the country became independent. Right now, we are almost running out of land, especially since the highway of the third bridge is taking over our fields.

Selling the same piece of land to several people used to be quite common around here, under the former village chief in particular. He sold altogether 180 lots to several people without any written document. These are issues that we, the new team, deal with on a daily basis.

The village of Andokoua

We have owned the land of our parents for ages.

We used to grow crops on it. But today, due to economic development, we sell our land to build houses.

In order to do that, we use an informal procedure. This means that when someone has chosen his lot and offers to buy it, the landowner turns to me. I deliver to the buyer a village certificate, and then he has to go to the Ministry for the remaining documents.

Personally, I am informed of the legal procedure, but this was not the case of my parents' generation, who was illiterate. So they were not able to understand the benefits of registering their land. However we are aware of the heavy bureaucratic burden and the cost of the proceedings. We can hardly go through the whole procedure. So the buyer pays for the identification and registration of the sale.

We would rather use the customary procedure, because once the plot of land has been given to the buyer, the chieftaincy has nothing to do with it any more. If we had to carry out all these proceedings (identification and registration), the final cost of a plot of land would be too high.

About multiple sales of the same plot of land, yes I know several cases and this is a real issue for us.

- 14 Ivorian land law has undergone different types of pluralism. The colonial era established the basis for a pluralism referred to as “strong”, because of the lack of accommodation between various forms of normativity (1). The reform initiated by the Act of 1998 was designed to favour such an accommodation. However, its implementation suffers from recent conflicts (2).

1. A “strong” pluralism originating from colonial times

- 15 Historically, the colonial power established the basis for the State’s monopoly on land in Ivory Coast. The decree of 23 October 1904 (organised the land in French West Africa [FWA]). The decree of 26 July 1932 reorganised the land property regime in FWA. The one of 15 November 1935 created the notion of “free land without owners”⁹. The aim was to set up a private property system, through the appropriation of land by the State.
- 16 However, wishing to and being able to have two different concepts. The removal of customary land rights essentially remained unimplemented. Inspired by other legal branches such as civil status or family law, the colonial authorities first attempted to impose an “assimilation” regulatory framework, which was an adaptation of the French law of colonial times. Such an assimilation. They soon realised that assimilation turned out to be ineffective.
- 17 Later on, the colonial authorities made a more pragmatic attempt to organize the relations between rules and practices through a legal dichotomy : ordinary law and local law. This dichotomy aimed at separate personal rights into two groups : on the one hand the rights of natives and related persons coming from other French colonies, and on the other hand those of persons from Metropolitan France or from Western countries¹⁰. This legal dichotomy (ordinary law /local law) resulted in a classification

between citizens and subjects. This divide between nationals admittedly resulted in a legal incapacity to exercise political rights, but it also made it possible for natives¹¹ to preserve their customary rights¹².

- 18 Nevertheless, this dichotomy did not provide an effective solution to the land issue. The land rights given to native subjects were merely rights of use. The legal dichotomy did not bring any practical solution to the question raised by Bourdillon, who expressed the need of coherence between land management and the property rights defined in the civil code. He questioned : “if [...] property rights and land management differ from their definition in the civil code, isn’t it illogical to decide that these rights will be acquired, kept or modified under the rules established in the Code ? Before allowing them into the minutes of public acts or on the mortgage registrar, would it not be more convenient to modify them, or to grant them legal value and effects for which these minutes and registrar were created ?”¹³. Indeed, how could the provisions of civil law, which obey completely different principles, be applied to customary land rights ?
- 19 This question was not acknowledged by the colonial authorities until the end of their colonial mission, when they decided to recognise custom as a basis for legal rights in a decree from 1955¹⁴ (which served as a basis for the 1998 statute referenced earlier) as part of a gradual transformation of land management. Through this decree, they recognised transferrable customary property rights. However, as was noted above, it was the end of the colonial era. About a year later, in 1956, the “Framework Statute/umbrella Law”¹⁵ was passed. It granted colonies their autonomy, and led to their independence four years later, in 1966. Because of this political turmoil, the 1955 decree was never truly enforced.
- 20 However, this decree did exist, and one might have hoped that the legislator in Ivory Coast would use it as a model. This was not the case, however. On the model of the colonial land policy enforced before the 1955 decree, the new Ivorian authorities continued to deal with the land issue through the allocation of land property by entering the land register. This policy is difficult to understand, since customary rights were still widely applied on the Ivorian territory. Merely 2 or 3 % of land was actually registered and managed consistently with government legislation¹⁶.
- 21 While completely understating or ignoring customary rights, land management legislation stubbornly envisaged legal rights as the only relevant tool for rural land management. These failing land regulations were rare, scarce and weak in terms of their content (comprising only a few decrees, government decisions and notices, most of which were from the colonial era). In practice, this left room for the use of customary law and the creation of new efficient land management practices.
- 22 Beyond the failure of land law, at least in the early years following independence, certain statutes allowed for the exercise of land customs through the prohibition of retroactive legislation. This is the case for family law, for instance : in particular, provisions on marriage and inheritance allowed former subjects (now all citizens of the new independent state) to choose between customary or state law, which was nothing other than the previous colonial law¹⁷. However, this option did not matter in post-independence estate practice. Even though the principle of non-retroactivity of law gradually ceased to be used in the following years, people never completely gave up on the legitimacy of their ancestral rights.
- 23 The public administration did not renounce these ancestral rights either. It took an understanding attitude and many court decisions were rendered in favour of

customary rights¹⁸. According to Mescheriakoff, “this public administration mimics almost exactly that of the former colonial power, whereas in the meantime it cannot help but having this strange feeling that everything is the same, but different”¹⁹.

- 24 A *de facto legal* pluralism was therefore established in rural lands on a long-term basis. Together with land pressure and the lack of workable land, this led to legal uncertainty, which was more and more difficult for the State to ignore. As a result, at the end of the 1990s, the Ivorian State was forced to recognise social and political tensions arising from conflicts related to rural property. To take action, it tried to regulate rural land through a new law in 1998.

2. The attempt at a new combination of pluralism through the Act of 1998²⁰

- 25 In 1998, the legislator decided to regulate legal pluralism. Therefore, the 1998 law ascertained the existence of lands upon which customary rights are implemented, before any other prior transformation of rights or enforcement of modern legislation. It recognised the existence of such lands in a comprehensive way, by gathering them under one name : “customary estate”, which is itself included in a broader category : “rural land estate”.
- 26 For the first time, the Ivorian legislator recognised a land estate mainly characterised by a geographical criterion (“rural”)²¹, although it was created to include the customary land estate. A fundamental element of the 1998 law is that it makes customary rights the basis of legal rights. As soon as customary rights are viewed as consistent with traditions, they give rise to a property right (the land certificate), which can be either individual or collective (in order to respect communal customary rights). But the State does not renounce its initial aim : to exclusively enforce state law. Its strategy is only changing²².
- 27 The State simply chose to transform customary rights into legal rights at the end of a transition procedure without abolishing customary rights through ineffective provisions. The article 8 of the 1998 law states : “the recognition of peaceful and continued customary rights gives rise to the issuance by the public authority of an individual or collective land certificate allowing the opening of a registration procedure pursuant to clauses and conditions established by decree”²³.
- 28 A land certificate only grants property rights to its holder for three years. This may seem strange inasmuch as property rights are in principle definitive. However, in that instance, it expires if the land is not registered²⁴ within a three-year period. As a result, once established, temporary land certificates are intended to change into definitive property titles when they are filed in the land register. However, Dareste argues that registration spells the end of customary law : “This operation looks eerily familiar to a partition or an allocation of shares for the native who leaves the community. Hence registration is probably incompatible with the organisation of the tribe and of its collective property, whose main features (subsistence to a chief, periodical sharing of land, absolute inalienability of the common land) are inconsistent with the principles set out in the French Civil Code and French laws”²⁵.
- 29 The objective remains the same : to establish an individual private property right on the basis of which future land use transactions and other acts would be established. The 1998 law allows latitude for sharing the land in accordance with local custom before the final registration of ownership. Land certificates establish land property based on

traditional custom, before they are transformed into permanent titles upon registration. This is supposed to allow for a soft transition to institutional law through the combination with customary law and institutional law following a legal scheme.

- 30 However, this process was difficult to implement, because the 1998 law had a slow start. Two decades after its entry into force, it is still at an early stage. To this day, only a few villages have managed to benefit from procedures leading to the establishment of land certificates²⁶.
- 31 This timid enforcement can mainly be explained by the authorities' unwillingness to fully engage in a large-scale operation that is considered as potentially, perhaps even highly, conflictive. It must be said that since the colonial era, the State had pragmatically and resolutely promised not to impose laws and regulations by force. It urged the local authorities to engage in functional and negotiated solutions, on a case-by-case basis. Faced with the obligation to preserve the public order and the need for its local administration to be accepted, the State has simply favoured social cohesion against the respect for the principle of legality. Public authorities have often prioritised pragmatic solutions rather than compliance with the law. This strengthened *de facto* legal pluralism.
- 32 The public authorities and farmers are not the only ones to be affected by the land issue. Fund backers suffer from the uncertainty of the land issue situation which is crucial for the economy. They keep asking the Ivorian State to work on securing land transactions by enforcing the 1998 law²⁷. They requested the funding of land certification operations, as well as the creation of a Rural Land Agency that would help expand the outreach of the 1998 law.
- 33 The land issue in rural areas is obviously connected to the management of *de facto legal* pluralism by the legal pluralism of the 1998 law. Conversely, in urban areas, the law completely ignores the combination with customary law with state law that public authorities practice.

B. Normative pluralism in access to urban land

- 34 Access to urban land leads to a clash between two forms of normativity. The legal framework does not include custom. As a result, the State is the main supplier of land (1). However, customary holders, as providers of land, have largely retained the right to initiate allotment. This situation leads to complex operations involving the public authorities and the village (2).

1. The legal framework: the State as the main supplier of land

- 35 The legal framework dates back to the first years of independence. Paulais posited that urbanisation issues in Côte d'Ivoire since 1979 resulted from "the power balance between the two actors of urban development, i.e. the State and the (customary) populations that were (theoretically) excluded from the land reallocation process"²⁸. The Ivorian economic capital, which is the genuine urban centre of the country, displays an uncontrolled urbanisation in which the limit between the legal and the illegal is not clearly defined. Certain areas that are deemed precarious are sometimes given equipment (water, electricity, discharge culverts), whereas alleged "legal" areas

are still claiming them. Nonetheless, the authorities have tried to control urbanisation, or at least they did so at the beginning.

- 36 Resolutely turning to Western criteria for development, the first government of the Ivorian State (and the next ones) attempted to remove customary rights on land. To that end, the authorities have relied on a multitude of decrees, the most important of which were the colonial decree of 1932 on the reorganisation of the land property regime, as well as decree no. 71-74 on State-owned and private land procedures²⁹. However, given that the risks of uprisings relating to the complete removal of customary land rights were too high, the establishment of non-transferrable personal land rights seemed reasonable. The State's objective in this case was to transfer all lands belonging to deceased customary owners to its own private estate. For living owners, a gradual dispossession of land was planned through a purging procedure, which would have led to a collective compensation for villagers.
- 37 In the late 1980s, the State became the main actor of land management. It assumed this function from beginning to end that is from the constitution of a land reserve to the commercialisation of housing within developed and equipped neighbourhoods. To this end, it created not only construction companies³⁰ but also companies tasked with supplying the land market³¹. The State itself has carried out a "purge" of customary lands³² by integrating them into its own estate before presenting them to the land market. It has become the main provider of building plots and not only of homes. At the end of the 1980s, the financial crisis caused by the decrease in the price of raw materials led the State to gradually withdraw from the direct system of production. It then adopted the same stance as in rural areas: it left people the possibility of concluding real estate transactions freely.
- 38 Nevertheless, on the legal and regulatory front, the State did not give up its prerogatives on urban lands and refused to acknowledge customary rights by continuously relying on the 1971 decree that makes them non-transferrable. When the authorities finally decided to slightly update their regulations on urban land in 2013, they stubbornly undertook to rework in depth the administrative procedure of land acquisition, without even mentioning customary rights.
- 39 As a matter of fact, the 2013 regulation³³ is even blinder than the 1971 decree on the issue of customary rights. Admittedly, the 1971 decree³⁴ did make customary rights non-transferrable, but at least it recognised their existence. Hence, it could be understood that lands "registered on behalf of the State" actually stemmed from "non-transferrable" customary property rights³⁵.
- 40 Conversely, in the 2013 regulation³⁶, lands are already registered on behalf of the State or are on their way to being so, without mentioning the customary origin of the property. From a legal point of view, this can be explained by the fact that lands sold by customary owners originate from lots registered on behalf of the State. The villagers divide the "lots" between themselves after a so-called "villager allotment"³⁷. However, even though this allotment is initiated by villagers, it can only be carried out and approved after the registration of all the lots on behalf of the State. The latter is therefore the only party able to deliver property titles on the lots coming from the villager allotment.

- 41 It is therefore not wrong, strictly speaking, to identify urban areas as only State-owned lands. However, as we will see in the next paragraph, the question of ownership raises the issue of property rights, and at that level, there is complete confusion.
- 42 Admittedly, even though the new procedure chose to ignore the confusion on the matter of property rights, it has the advantage of making it possible to prevent confusion on two other issues: the confusion over the competence of the administrative authorities when allocating land³⁸, the confusion created by different steps of the procedure when the land has been allocated to multiple owners³⁹. The significant innovation of this decree lays in creating the Definitive Concession Order (DCO). With the DCO, the said 2013 regulation establishes a single window approach, with one single request and one single withdrawal of act (which is the property title). Hence, once filed, the DCO request follows the procedure and only arrives in the owner's hands once it has been registered and given a property title. In this way, the procedure prevents overlaps, which were common in the former procedure, and secures the land ownership process. However, it does not prevent double or triple land villager certifications on the same lot. It appears to be a race against the clock: the best informed will introduce the first DCO request, and will ultimately obtain full property of the disputed land.
- 43 To sum up this legal framework on land appropriation, one must remember that the "purging" process of customary rights before the sale of land withstands the State's disengagement. Besides, land for sale is almost already allocated and therefore part of a set registered on behalf of the State. Hence, besides notary transactions between private persons owning legal property titles, the State remains – after independence – the main provider of land in urban areas. Indeed, whoever the actual seller might be – a customary owner or an institution like the AGEF – it is still the State that delivers the land title, at the end of an administrative procedure.
- 44 Even if in the texts this administrative procedure does not mention any link with the villager procedure, in practice⁴⁰ the latter does exist, to the point that customary owners become the main providers of urban land.

2. Allotments: the prevalence of customary holders

Testimony: interview with a civil servant

Actually, I took part in solving the problem when I had to help my aunt who had purchased a plot of land. She had bought the plot a long time ago, under the Andokoi chieftaincy.

We had to deal with issues concerning the regularisation of the deed of purchase of the land. Because of the last events (the war), she gave me her file so that I could regularise the administrative situation of the sale. Thanks to her daughter who lives in Europe, she wanted to start the development of the plot of land.

She had bought the land in 1998. We had given her a deed of purchase signed by the village chief with witnesses, some of which are now deceased. The problem is that the chief, who had delivered that deed because he was the chairman of the commission for land attribution, was removed and died soon after.

So that was a problem for us because we had decided to obtain a formal letter of attribution, recognised by the State, and then start the proceedings to create an ownership title, meaning a title deed for the plot of land. So we had to get in touch with the customary authorities that were in place again, meaning the new authorities. So that is what we did.

Unfortunately, in the meantime, the chief who had signed the document and several of the witnesses had died. Everything was so complicated ! ! ! !

So we had to use compelling arguments. Unfortunately for us again, the document that should have helped us move forward had been lost because of the mess created by the war.

We had to involve people from the village community who were influential enough to raise the issue to the new chief.

They told us that they had to proceed to the identification of the plot because, there, each family has its own plot. So the chief named two people, who went to identify the land with us in order to figure out if that land truly belonged to only one person. Then, we came back and we confronted this information with a notebook that they have and in which all the attributions are usually written down. Because when they carry out an attribution, they keep a registry in which they put all the information.

Fortunately, in our case, they identified the lot as belonging to the family of our deceased seller. And they found the sale in the village's registry.

Recently, they informed us that the prefect of Abidjan had carried out the regularisation of all the sold lots and therefore that the fees were set, varying between FCFA 200,000 for Attiés villages and FCFA 250,000 for Ebriés villages.

We were asked to pay 200,000 : 100,000 for the seller's family and 100,000 for the village funds, before obtaining the deed signed by the village chief.

As long as you don't have this deed, you cannot obtain an attribution letter from the Ministry.

- 45 In order to thoroughly understand this administrative practice, one must remember that in urban areas, the State had gradually disengaged to leave a margin for populations to manage on their own, even though after independence it had initially decided to support the land and housing market⁴¹. The entry into force of the 2013 regulation⁴² (which does not recognise customary rights) did not change this situation : an overwhelming number of building land buyers have to deal with customary owners, for lack of sufficient State reserves.
- 46 Nonetheless, the administrative authorities in urban areas are much more careful than those in rural areas. They make sure that "customary lands" can only be offered on the market after their registration. However, this registration differs from the practice in place before the State's disengagement. Here, customary landowners take the initiative and decide to offer "their" land for a "villager" allocation, rather than an administrative allocation initiated by the State. The villager community provides for an

expert surveyor and negotiates the partitioning of the land with him/her before delivering an allotment file to the Ministry of Construction and Urban Planning. Once approved, the whole allotment is registered on behalf of the State and then unofficially transferred back to the villager community. The latter then takes care of allocating the different lots on the basis of customary criteria. This means that the State, at the request of the villager community, registers one whole area (A) and then proceeds to allot it by dividing it into dozens or often hundreds of lots (A1, A2, A3...). The reallocated lots are not individually registered, but are part of a set registered on behalf of the State. As a result, the State owns a property right on this set of lots. However, this right is effectively exercised by customary holders, who obviously claim they are “owners” too. Because of this double claim, villager allotments are filed on two registers : one held by the State and one held by the village authorities. These registers allow customary holders to deliver villager sale certificates to potential buyers for the lots sold. When customary owners sell their lots, they collect the sale price but then send the buyer with the villager certificate to the State in order to establish the property title. This certificate is used to check that the lot has not been already allocated in the register held by the administrative authorities. Only then can the first administrative property document be delivered to the buyer.

- 47 In this context, the State exercises its land property rights as if it were a lease. Here, however, the lessor (the State) has an extremely tolerant attitude toward its tenants, who exercise an effective right of use on the rented land. A great majority of individually sold plots of land in urban areas originate from villager allotments registered on behalf of the State.
- 48 As a result, even though the State officially supplies the land market and sells lands by delivering the definitive title of property to the buyer, the customary holder is unofficially the one who “sells” the land, by choosing the future buyer and receiving the sale price. A sale is therefore completed in two steps, involving three actors : the buyer, the villager owner, and the State. Although the State presents itself as the main provider of land in urban areas, people know that in order to buy land they have to ask those who really supply the land market, meaning customary owners.
- 49 There is thus a real articulation between customary law and institutional law in the administrative practice of the land allocation procedure. However, this articulation, albeit functional, does not offer sufficient legal certainty for land transactions.

II. Settling the conflicts originating from pluralism in land matters

- 50 The competition of “customary” law and “modern” law led to clashes within African society. These tensions resulted in incompatibility between the two frameworks, both in rural areas (A) and in urban areas (B).

A. Land conflicts and settlement in rural areas

- 51 Appropriation – making land appropriate for use, within a larger approach to ownership – results in conflicts that originate from legal pluralism, between

traditional, communal, private, and exclusive appropriation (1). These conflicts are subject to several administrative and judicial dispute resolution methods (2).

1. Tensions between various forms of appropriation

- 52 Even though the land crisis in Côte d'Ivoire can be considered independently, it does reflect one of the many aspects of the crisis within the Ivorian State. In fact, this crisis originates from the clash between rights that govern traditional African societies and those that govern the policies of "modern" societies.
- 53 In terms of land, institutional and customary rights clash on numerous matters. Indeed, according to the Western perception of land, it is obvious that besides any emotional attachment that an individual could feel for a lot, land is above all a market good, a capital, private, or public property.
- 54 Conversely, land is not a good in the traditional African approach. It is characterised by three elements that make it inalienable. Firstly, it owns itself and is lent through a deal with the first occupant for basic living needs. Land is sacred and considered as a nurturing mother. As such, it cannot be sold as a common market good. Because of the protection by spirits, any lack of consideration could attract their wrath. Secondly, land is a common heritage, the symbol of ancestral unity and of a common future. It is evidence of native identity ; it establishes the rights of the living members through the community and guarantees the right of posterity, still through the community. Integrated into the family estate of the first occupant through the approval of spirits, the land remains inalienable⁴³. Thirdly, the rights that the land has granted to the ancestor must be respected by the community formed by the progeny of this ancestor. These are rights of use, which are admittedly reinforced and unlimited in time, but which are not property rights. They cannot be definitely sold to another individual. A change in customary property can only be made if the progeny of the first occupant decides to break the deal established by their ancestors, by carrying out breaking sacrifices. They then leave this land to settle somewhere else. The newcomer must make a pact with the land and its protective spirits. If the pact is accepted, the candidate becomes the new customary owner. According to the customary approach, land ownership always involves the consent of the spiritual forces that inhabit it.
- 55 As we can see, the legal and customary approaches point to different directions. Therefore, the notion of "private property" is different from de facto ownership that is based on the pact which governs the land practice in rural areas. The legal definition of a "person" is essential for the recognition of legal rights, and systematically sets aside the group or the community, as envisaged by custom. Institutional law provides legal and virtual entities that are separate from individuals. By contrast, the customary "community" embodies individuals who are united through an immutable link. In State law, the land can be divided into a multitude of lots owned by legal persons. The customary land estate is not a good but a common right of use on an undivided inheritance. Even though the legal entity is based on the Constitution, and although the legal person's right is established thank to the property title - everything is set out in writing and guaranteed - customary rights are based on a non-verifiable spiritual pact.
- 56 Hence, differentiations and clashing points add to the conflict. These conflicts between a traditional approach and a modern one lead to two primary cases. One the one hand, there are conflicts between natives and "foreigners", meaning those who are not

natives. On the other hand, there are conflicts between natives, in particular between customary inheritors and legal inheritors. This plurality often leads to strategic exploitation by the actors who use these norms (statutes, custom or new uses strengthened by practice) depending on whether or not they are favourable.

- 57 In these two primary cases, both administrative and judicial resolution will mostly take legal pluralism into account.

2. Administrative and judicial resolution methods

- 58 Generally speaking, land dispute resolution follows a three-step process. The second and third steps will be reached if, and only if, the conflict does not find a definitive solution in the preceding step. As we might expect, the first step is customary resolution. Here, the traditional institutions in question⁴⁴ try to solve the conflict on the basis of local custom.
- 59 If the attempt at dispute resolution is unsuccessful, the parties can turn to the decentralised administration, in particular vice-prefects. Vice-prefects are a well-known institution by rural populations (probably the best-known institution). They are called “commanders” after the subdivision commanders from the colonial era (from which they derived). The vice-prefect represents the State in its district, has a general police mission, and ensures that public policies are implemented. In the Ivorian rural context, these two missions tended to clash since independence. How could public policy, in particular the implementation of texts that made customary rights non-transferrable, be made compatible with policing obligations that were contrary to this objective? Faced with these two primary missions, in the majority of cases, the decentralised administration gave in to the comfortable pragmatism of policing, at the expense of the rule of law. In 2010, the Bloléquin Agreement, drafted and approved by the administration, eased land conflicts and consolidated the intrusions into protected forests in western Côte d’Ivoire (in spite of numerous legal prohibitions). With this agreement, the decentralised services of certain ministries delivered “usage” certificates of “plantation” or of “recognition of contracts” that did not actually have any legal value. Priority was given to the functionality of solutions rather than their consistency with the law. This allowed the vice-prefect to retain their mediating position as an alternative to legal settlement.
- 60 Legal settlement is indeed the third and final step. The parties to the conflict are aware that a tribunal will render a binding decision and will give a definite solution once and for all. However, the principle of negotiations still applies to legal settlement. Decisions rendered are not necessarily in line with institutional law. In the great majority of cases in rural areas, judges face situations for which legal texts do not provide. The parties do not possess any legal documents, but at most “diverse constituent elements of evidence” or “commencement of evidence”. In order to transform these documents into “property evidence”, it is necessary to carry out legal and mental gymnastics that are not accessible to all judges. In their quest for evidence, judges call on the ministry of agriculture (in order to establish a map of the disputed lands, their size and limits) as well as “guardians of tradition” in order to determine the customary rights attached to the disputed land. The truth is that judges do not have any choice: in rural land matters, customary rights are exercised on almost all lots. These conflicts, which oppose either natives and “foreigners” or natives between themselves, can take two different forms. In the first kind of dispute, between natives and “foreigners”, the issue

is the nature of the transaction : a “sale” according to “foreigners” or a “loan” for natives. In the absence of a notarial deed, judges render their decision with the sparse legal elements at their disposal (testimonies, authentic contracts, non-administrative acts provided by the ministry of agriculture, etc.) on the basis of local custom and especially on their own perception ; that is, with a margin of appreciation large enough to create a diverse range of solutions. As a result, some decisions are based on custom - that is, the “loan” - whereas others consider that there is sufficient evidence to determine that there was a “sale”. Others settle for establishing the rights of use of the land.

- 61 In the second case, the dispute is between natives. These disputes usually concern inheritance clashes between the customary inheritor (supported by the community) and the legal inheritors. Likewise, the solutions are diverse and none of them establishes precedent because each is decided on a case-by-case basis.
- 62 Land issues are also numerous and complex in urban areas.

B. Land conflicts and settlement in urban areas

- 63 In urban areas, even though the diversity of conflicts concerns a mix between legal norms (1), the resolution of land conflicts gave prevalence to institutional documents (2).

1. A diversity of conflicts caused by a mix between legal norms

- 64 Let us start with the legislator, or rather with the law, because it is, in principle, the focal point for both administrative authorities and judges. The 2013 regulation on the acquisition of land in urban areas only considers lots that are “registered on behalf of the State”, and thus originate from allotments registered on behalf of the State. Neither the regulation nor its implementation decree mention the villager certificate or the role played by the villager community in the process of acquiring rural land. In urban land matters, contrary to rural land legislation, there is a complete denial of customary rights and therefore of legal pluralism. In this case, everything is set out as if people directly addressed institutional authorities in order to buy urban lots. The 2013 regulation only considers administrative acts of property, which are the only documents that offer a guarantee for their holder. As a result, this regulation only offers security to buyers who are aware of the weak conclusive force of the villager certificate. This concerns very few individuals, if we take into account the current practice according to which buyers limit themselves to the villager certificate and only request administrative documents when they are able to begin construction on “their” land. At this level, the 2013 regulation gives weaker security than the one provided for in the former legislation. One might wonder how useful and appropriate it is for the 2013 regulation to ignore customary rights and villager certificates, which in reality originate from a widely used administrative practice.
- 65 This administrative practice, as we have seen, favours the villager community because it delivers villager certificates after the lot has been effectively “sold” by its own members. These villager certificates are the basis for the administrative acts of land property acquisition. Administrative practice therefore establishes a framework that fully embraces legal pluralism through a two-step procedure, which involves an

articulation between the villager stage and the administrative stage. As a result, it evades a legislation it finds unrealistic and follows a logic close to the one established by the 1998 law on rural land, which makes customary rights the direct source for positive rights. In doing so, it unfortunately contradicts with legal provisions on the matter and does not offer sufficient guarantees, even at the administrative level.

- 66 Indeed, the low degree of reliability of the villager certificate, which can be freely photocopied (when there is collusion), leads to multiple sales of the same lot. This is actually the most common conflict ; several people holding a villager certificate over the same lot. As many of them do not go and check with the administrative authorities (which holds the same register as the one held by the villager community), they will not become aware that their situation is abnormal until very late. As a matter of fact, in many cases, the authenticity of the “property right” is questioned where the “buyers” decide to determine the value of the land through another person, or where they are themselves ready to build.
- 67 Nevertheless, those who have made sure to continue the procedure by starting the administrative stage are not completely protected from the issue of multiple sales. There are numerous conflicts between parties who hold an attribution certificate over the same lot. At this level, we could only conjecture that there was collusion on the part of the administration because, in principle, any letter of attribution over one lot removes the land from the group of attributable lots. However, beyond internal collusion, multiple attributions were also caused by confusion within the administrative services of land attribution⁴⁵. In theory, these multiple attributions are supposed to disappear or at least to be considerably reduced thanks to the new process of the Definitive Concession Order and its single window approach. Meanwhile, the candidates to land acquisition have very few guarantees, including at the judicial level.

2. Judicial settlement: the prevalence of State documents

Interview carried out by the author

“Urban land disputes come to tribunals when there are two or more potential owners of the same land.

In principle, a landowner should be able to produce a letter of attribution, a decree of temporary concession and a certificate of ownership. But the letter of attribution is enough to establish a presumption of property.

So, when the case arrives in court, we start by checking the authenticity of the letter of attribution of the parties. The one that has a forged letter is obviously dismissed.

The issue is that sometimes we have two or more authentic letters of attribution, which are all signed by the Minister of Construction and Urbanism. In these cases, the older letter of attribution is considered as valid. The holder of the most recent one is directed to the Administrative Section of the Supreme Court so that the document can be annulled. Then the holder can, if she/he wishes to, sue the administrative authorities that produced the disputed document (but it is very rare). Most of the time, the buyer sues the seller and brings the case in front of criminal courts. We recently held an Ebrié patriarch in custody. We even have notaries who are involved in dirty counterfeiting businesses. But I say that the Ministry of Construction and Urbanism is the one to blame, because too many officers are specialised in forgery. Sometimes, in order to divide up their land, Ebrié and Attié sellers have to sell land all along the process, from the surveyor who establishes the map to the Minister's cabinet, through the operator who funds the allotment construction and the Ministry of construction's intermediaries. In the end, they only have a few lots left for themselves. So, you cannot be surprised when they sell the same land to multiple people. But we, when the case comes to us, we have to apply the law.

When considering two documents, the authentic one prevails over the counterfeit, and the oldest over the most recent. And we assess on the basis of the letter of attribution. This means that if, from a fake letter of attribution, an individual manages to obtain a property title, his title will still not prevail over the one that has an authentic letter of attribution, or the oldest one. If there is fraud, the case will be brought to a criminal court. But in the middle of court proceedings, parties often ask the court to stay the proceedings for an amicable settlement, even if in general, the case is only brought to court when all other remedies have been exhausted."

- 68 Urban areas are also subject to conflicts that will reach a tribunal only if the parties could not find an agreement at the villager and administrative levels. Because conflicts essentially deal with multiple sales or the reconsideration of a sale of land⁴⁶, attempts to settle consist of reparation through the allocation of a new lot to the injured party. When the proposed land has the same value as the lost lot, parties usually reach an agreement. However, when the land is less valuable or when the villager community does not have any other lot in store, the parties turn to tribunals to assert their rights. The same applies to cases of double sales caused by the administration, that is when the land was reallocated even though the first buyer held an authentic letter of attribution⁴⁷. The local administration can offer another lot to one of the buyers.
- 69 When no private arrangement is reached, the case goes to a tribunal. At that level, the parties are aware that they are engaged in a definitive settlement, even though judges do not possess all the legal elements to decide the case. Indeed, for all acquisitions carried out before the entry into force of the 2013 regulation, judges are supposed to rely on the 2003 statute⁴⁸. However, the latter only recognises private land property in urban areas from letters of attribution, that is, from the first administrative document recognising the appropriation process. Hence, even if the villager certificate can be used as evidence of the land transaction, it actually has no legal value in terms of Articles 13 and 15 of the 2005 decree⁴⁹.

- 70 Faced with a conflict in which both parties only hold a villager certificate, judges usually send them to the administrative services so they can finish the procedure. Judges can also decide that they have sufficient “constitutive elements of property evidence” in order to grant property to the party with the older certificate or the one who has started building on the disputed lot. At this level, as in rural land disputes, judges sometimes construe the notion of evidence extensively, while completely ignoring legal provisions on land transactions. This incoherence is probably justified by the extreme confusion over urban land management.
- 71 Beyond conflicts involving a conflict between two or more villager certificates on the same lot, it is common to see clashes between a villager certificate of “sale” and a letter of attribution, or between a letter of attribution and a provisional or definitive concession. In a case in which one of the parties made sure to obtain a letter of attribution, and even if the holder of the villager certificate proves that he/she “bought” the land long before the holder of a letter of attribution, judges will have to assert the rights of the latter⁵⁰. Although all tribunals agree on dismissing claims brought by holders of villager certificates on the basis that these are neither administrative acts nor legal deeds of sale, tribunals⁵¹ are not as unanimous when the dispute concerns the clash of two or more administrative documents. The case is decided in favour of the stage of the procedure leading to the land title⁵², or in favour of the anteriority of the first administrative act (all those then established over the same land are considered as irregular administrative acts by the administrative section of the Supreme Court)⁵³. Even this legal approach is not unanimous, and in certain cases priority can still be given to the hierarchical value of the administrative document⁵⁴.
- 72 Article 54 of the Law on the Supreme Court⁵⁵ establishes the administrative section as the only institution that has jurisdiction on disputes related to administrative acts, whether or not they concern land attribution. Land disputes are therefore well-known by both the administrative section of the Supreme Court and judicial bodies (here, the matters argued relate to prejudice and reparation). Hence, a case will have different solutions according to the judicial body before which it was brought – the Court of First Instance or the Administrative Section. The former tends to favour the state of progress in the proceedings, whereas the latter tends to rule on the lawfulness of the procedure by checking the lawfulness of the original administrative act. Of course, when judges deal with urban land conflicts, they first turn to institutional law before using external norms when the former is not sufficient. However, this consensus does not enable judges to solve all disputes. As an indication of the complexity connected with the plurality of the various forms of appropriation, judges experience difficulty in deciding cases between institutional documents.

NOTES

1. Legal pluralism is defined as a doctrinal vision that takes into account the diversity of law-making methods. It highlights the complexity of the legal phenomenon, as opposed to a law-centred vision that considers that all rules are set exclusively within a legal act.
2. GUINCHARD S. (dir.), *Lexique des termes juridiques*, 19^{ème} édition, Paris, Dalloz, 2012, p. 738.
3. “Land”, from the Latin word “fundus”, in substance signifies “all social relations which are based on land or territorial space” according to the *Thesaurus du Foncier* 1999. In either way, land management is without a doubt a crucial issue in Ivory Coast as land plays a major part in its economy, politics, and society.
4. “Urban” literally means “related to the city”, as opposed to “rural” that relates to the countryside. In Ivory Coast, as in many African states, urban matters mainly concern the capital city, as other smaller cities identify as intermediaries between the city and the countryside. Therefore, as for Ivory Coast, an analysis of urban areas will focus on the district of Abidjan.
5. The “France-Ivory” Coast Chamber of Commerce and Industry, agriculture accounts for about 22% of the country’s GDP and 48% of the working population
6. AKA A., « L’héritage colonial de l’état civil en Côte d’Ivoire : les chroniques d’une défaillance annoncée », *Revue Africaine de Sciences Politique et Sociales (RASPOS)*, n° 4, 2015, pp 7-66.
7. Statute n° 98-750, 23 December 1998 on rural land modified by statute n° 2004-412, 14 August 2004, modified by statute n° 2013-655 du 13 September 2013.
8. If we take into account parts of the country’s informal and therefore shadow economy.
9. Decree of 15 November 1935 on State-owned land management in FWA.
10. AKA A., « L’héritage colonial de l’état civil en Côte d’Ivoire : les chroniques d’une défaillance annoncée », *Revue Africaine de Sciences Politique et Sociales (RASPOS)*, n° 4 », 2015, pp. 7-66.
11. The majority of the subjects are natives.
12. One should recall that it was possible for Subjects to choose Shared Law by becoming a citizen. The obtention of citizenship for subjects was subject to various conditions.
13. Essays by Sir Bernard Bourdillon. Archives of the Bodleian Library.
14. Decree on the reorganisation of private and State-owned land in FWA and FEA (French East Africa), 20 May 1955.
15. This is the said Defferre “Framework Statute”, n° 56-619 of 23 June 1956, allowing the French government to carry out reforms and lead colonised territories towards independence. It was adopted on the initiative of Gaston Defferre, French Minister of overseas territories, and Félix Houphouët-Boigny, who became the first president of Côte d’Ivoire.
16. ASSEMIAN F., *Le droit foncier de l’État ivoirien*, thèse pour doctorat de droit, Paris1, 1991, 693 pages.
17. Hence, in the Boka Ernest case of 1964, after the appeal of the wife and legal inheritors, the Supreme Court decided that travelling to Paris with the sole purpose of getting married clearly showed that the deceased’s will was that modern law should be applied to its succession. As a consequence, the Abbey traditional law could not be applied. Case n° 15 of 11 February 1972 of the Judicial Section of the Supreme Court, RID, 1976.
18. See the *Widow Abbe Amon v N’Dehi N’dabo Marguerite*, of 2 July 2002, of the Judicial Section of the Supreme Court and Case n° 10, *Gbalou Janette v. Meon Sami and others*, of 28 January 1999 of Abidjan’s tribunal of First Instance.
19. MESCHERIAKOFF A.-S., « L’ordre patrimonial : Essai d’interprétation du fonctionnement de l’administration d’Afrique francophone subsaharienne », *RFAP*, 1997, n° 2, p. 121.
20. Act no. 98-750 of 23 December 1998 on rural land, amended by Act no, 2004-412 of August 2004, amended by Act no. 2013-655 of 13 September 2013.

21. Admittedly, the notion of the “National Estate” exists and is not very explicit, apart from the fact that it includes certain categories that were not subject to legislation, as for protected forests.
22. CHAUVEAU J-P., *La nouvelle loi sur le domaine foncier rural : formalisation des « droits coutumiers » et contexte socio- politique en milieu rural ivoirien*, IRD, Septembre 2000, Montpellier.
23. Article 8 of Act n° 98-750 of 23 December 1998 on rural land, amended by Act n° 2004-412 of August 2004, amended by Act n° 2013-655 of 13 September 2013.
24. According to the land thesaurus, registration is an administrative process according to which the competent authorities recognise the existence of a property right on a lot geometrically and spatially identified. This leads to the allocation of land property to one sole individual, apart from cases where there is divided ownership. CIPARISSE G. (dir.), *Thesaurus multilingue du foncier*, Rome, FAO, 1999, p. 124.
25. DARESTE P., *Traité de droit colonial*, Paris, *Recueil de législation, de doctrine et de jurisprudence coloniales*, 1931, T. 2, p. 220.
26. According to the editorial published in the journal *Foncier rural* by the director for rural land, the National Program of Rural Land Securement filed 7,422 requests for land certificates, delivered 670 of them, and registered one land certificate. These numbers are obviously very small, twenty years after the law entered into force, especially when the great majority of these operations are funded by international backers.
27. It should be noted that the economy in Côte d’Ivoire is mainly based on agriculture.
28. PAULAIS T., *Le développement urbain en Côte d’Ivoire 1979-1990 : Les projets de la Banque Mondiale*, Paris, Karthala, 1995, p. 41.
29. See Decree no. 2005-261 establishing the conditions of implementation in matters of urbanism and housing of Act no. 2003-208 on the transfer and distribution of State prerogatives to local authorities; and Act no. 97-524 of 4 September 1997 on the creation of a land development concession with its implementation Decree no. 97-620 of 22 October 1997.
30. « Société Ivoirienne de Construction et de Gestion Immobilière » (SICOGI), « Société de Gestion Financière de l’Habitat » (SOGEFIHA) etc.
31. « Société d’Equipement des Terrains Urbains » (SETU) etc.
32. With this procedure, the State takes ownership of customary land after having compensated its holders. This procedure looks eerily like expropriation on the grounds of public interest, but it cannot carry that name as official texts do not recognise customary ownership.
33. Regulation no. 2013-481 on the conditions of acquisition of urban land ownership of July 2013.
34. Decree no. 71-74 on private and State-owned land procedures of 16 February 1971.
35. *Ibid.*
36. Regulation no. 2013-481 on the conditions of acquisition of urban land ownership of 2 July 2013.
37. As opposed to an administrative allotment, which is initiated and operated by the administrative authorities.
38. Consecutive provisions firstly gave the Ministry of Construction and Urbanism the authority to allocate lands (1971 Decree), before transferring that power to local authorities (Act on the transfer of powers of 2003), and then giving it back to the Ministry (2013 Regulation). Because practice is less flexible than theory, and because information is not very well-known by the administrative authorities themselves, different administrative services carry out multiple allotments on the same land.
39. These are very common cases when two or more persons hold administrative acts of attribution on the same lot, but at different step of the procedure. For instance, one will have a letter of attribution whereas the other will hold a temporary decree of concession or a certificate of ownership.

40. This was observed during field inquiries carried out for the report « Formel et Informel en Côte d'Ivoire ».
41. In the introduction, it was specified that this *laissez-faire* allowed potential buyers address customary owners directly, and left a margin for customary owners to supply the land market.
42. Regulation no. 2013-481 on the conditions of acquisition of urban land ownership of 2 July 2013.
43. KOUASSIGAN G.-A., *L'homme et la terre. Droits fonciers coutumiers et droit de propriété en Afrique occidentale*, Paris, Orstom, Berger-Levrault, 1966, p. 283.
44. According to local custom, the land chief, village chief or family chief will intervene.
45. Consecutive provisions first gave the Ministry of Construction and Urbanism the authority to allocate lands (1971 Decree), before transferring that power to local authorities (Act on the transfer of powers of 2003), and then giving it back to the Ministry (2013 Regulation). Because practice is less flexible than theory, and because information is not well-known by the administrative authorities themselves, different administrative services carry out multiple allotments on the same land.
46. In the absence of data on the matter, the observation of land conflicts and the consultation of land conflict cases on the Administrative Section of the Supreme Court's website provide relevant evidence.
47. This situation is common in peripheral areas of the economic capital, where the same lots were allocated at the same time by the city hall and the sub-prefecture to different persons, because of confusion on matters of competence.
48. Act no. 2003-208 of 7 July 2003 on the transfer and allocation of State powers to local authorities.
49. Decree of 2005, implementing Act no. 2003-208 of 7 July 2003 on the transfer and allocation of State powers to local authorities. It provides that "any land ownership transfer is carried out through a notarial deed. No transfer can be carried out if the lot in question was not subject to an allocation decree or a certificate of ownership". In addition to these provisions, according to Article 2 of the 1971 decree, "customary rights are specific to their holder and cannot be transferred to anyone else".
50. Therefore, in a decision dating from 14 November 2001 (*Zarour Hadele v Yapobi Attié Lucien* [unpublished]), which opposed an owner recognised by the village authorities with the holder of a letter of attribution, the Judicial Section of the Supreme Court held that: "Article 1 of Decree n° 71-71 of February 16th, 1971, amending the Decree of July 26th, 1932, provides that 'any occupation of land, in order to be legal, must be justified by the possession of a temporary or definite title of concession delivered by the Ministry of Construction and Urbanism, which can delegate its powers to the Prefect'. This results in the fact that only Mr YAPOBI, holding a temporary title of concession delivered on March 5th, 1997 by the urban estate section acting on behalf of the Parent Ministry, is the owner of a property right applicable to third parties. In contrast, ZAROUR HADELE does not give any evidence justifying occupation of the land".
51. Even though the 1971 Decree imposes the competence of the Administrative Section of the Supreme Court, land conflicts often come to courts of first instance.
52. In a decision of 14 June 2007, the Judicial Section of the Supreme Court held that "GH and BA, who are arguing over the ownership of the disputed land, both have a letter of attribution and a temporary decree of concession; these motives are sufficient for the Court of Appeals to provide a legal basis for its decision."
53. In the *Dame Zarour* decision, the Administrative Section annulled the letter of attribution delivered to Mrs Zarour because of its unlawfulness, as it had been delivered in 1993, *i.e.* eighteen years after a letter of attribution was granted to M. Boka N'Guessan over the same lot: Unpublished case *Dame ZAROUR SAYED KAMELA AHMED v Ministère du logement, du cadre de vie et de*

l'environnement, ARRET n° 15, dated 28 January 1998, Administrative Section of the Supreme Court.

54. In the unpublished case Bello Mamadou (BM) v Ganou Hoble (GH) of 14 June 2007, BM's counsels recalled that "BM was the first holder of the lot and was the first one to occupy and enhance it; the rule in rural land matters is that the first occupier over time is entitled to do so by law". The judges in the Judicial Section of the Supreme Court answered that "the principle according to which the one that is the first over time legally prevails indicates that the priority between creditors holding a guarantee subject to publicity is governed by the order of the publications ; however this is not the case here, the dispute dealing with urban land". The Judicial Section therefore affirmed the Court of Appeal's decision ; it held that "the first judges determined that GH and BM, who are arguing over ownership of the disputed land, both hold a letter of attribution and a decree of temporary concession ; but besides these two documents, GH holds in addition a certificate of ownership which is not questioned ; these motives are sufficient for the Court of Appeals to provide a legal basis for its decision".

55. Act n° 97-243 of 25 April 1997, amending and completing Act n° 94-440 of 16 August 1996 on the organisation and functioning of the Supreme Court.