

Ivory Coast

The implementation of the law relating to the Rural Land Domain

February 2018 / land certificates

SUBJECT OF THE DOCUMENT

Confronted with the growth of land conflicts in the Rural Land Area and aware of the need to find sustainable solutions to the management of rural land, the State of Côte d'Ivoire has passed Law No. 98-750 of 23 December 1998 relating to rural land.

For various reasons mainly related to the political instability experienced by the country from 2000 to 2010, the implementation of this law started very slowly, but it has now become a priority of the government's rural development policy; and that is notably translated into the creation of the Rural Land Agency (AFOR).

The main purpose of the Rural Land Law is to legalize the holding of customary rights on rural land through the issuance of land certificates following an official survey. In recent years, the implementation of this law has entered a phase of significant scope both qualitatively and quantitatively.

The main issues that arose in applying this law were:

- The ability of applicants to apply, including non-indigenous, women and non-Ivorian
- the good co-ordination of all the actors intervening in the course of a procedure of apparently complex investigation under the coordination of the departmental director of agriculture and the president of the rural land management Committee (the sub-prefect),
- the administrative capacity to perform these functions, particularly those of the investigation commissioner, and the management of the computerized rural land management system (SIF),
- the ability of technical operators to control their operations under satisfactory cost and completion conditions,
- obtaining a good adherence to the operation confirmed by the existence of a low rate of litigation, that is to say a high rate of issuance of land certificates compared to requests.

This document aims to provide answers to these questions through the professional experience (feedback) of a technical operator in his intervention for the issuance of land certificates. According to the law, the technical operator is an authorized surveyor or a land works firm associated with an authorized surveyor. This paper relates to the activities of GEOFIT / CETIF / Cabinet Kouamélan. GEOFIT is a company of studies and topographic and land works in Nantes, in France, and having a recognized international experience. CETIF and Cabinet Kouamélan are institutions of study and topographic works and partner land in Abidjan in Ivory Coast.

It should be noted that this professional experience predates the creation and establishment of the Rural Land Agency (AFOR) which will result in significant improvements in the implementation of the procedures for applying the Rural Land law.

THE OFFICIAL PROCEDURE FOR ISSUING LAND CERTIFICATES

The intervention of the technical operator took place within the framework of the official procedure of issuing the land certificates. This procedure is defined by decree (and currently includes) the phases presented in the table below.

PHASES OF THE OFFICIAL PROCEDURE FOR THE ISSUE OF LAND CERTIFICATES

1. The application for a land certificate made by the applicant,
2. The completion of a formal investigation following the request made. It should be noted that this official survey includes two sub-surveys:
 - (a) An inventory of the customary rights exercised over the parcel of land by a sworn investigating commissioner,
 - b) A delimitation of the property concerned (the land parcel) legally and technically by a technical operator.
3. A validation process of the official investigation including (i) the publicity of the investigation, conducted by the investigation commissioner (ii) the approval of the investigation by the village rural land management committee and (iii) the validation of the survey by the rural land management committee of the sub-prefecture,
4. The issuance of the land certificate by the Prefect of the department concerned.

The process of this procedure involved several actors, as in the table below (in chronological order):

ACTORS OF THE PROCEDURE FOR THE ISSUE OF LAND CERTIFICATES

1. The applicant for land certificates,
2. The sub-prefect who opens, conducts and coordinates the procedure, upon receipt of the application for a land certificate,
3. A sworn investigating commissioner for the customary rights and publicity procedures, which in our case was attached to the departmental agriculture office concerned,
4. An authorized technical operator (in this case our group),
5. The departmental director of agriculture for the supervision and coordination of the activities of the commissioner-investigator, the organization and the organization of the validation sessions of the rural land management committee of the sub-prefecture and the preparation of the land certificate,
6. The village rural land management committee for the follow-up of the official survey and its approval,
7. The rural land management committee of the sub-prefecture for the validation of the official survey,
8. The prefect for the signature of the land certificate

Basically, it can be noted that the procedure includes all the essential phases for the instruction and validation of land certificate issuing operations.

As far as the implementation of this procedure is concerned, it should be noticed that it involves a large number of players, more or less legitimate, more or less efficient. Our own practice will bring important information concerning the implementation of this procedure.

We present below our experience of the different questions asked.

APPLICATIONS FOR LAND CERTIFICATES

Based on the law, anybody, any moral entity or informal group of persons without any restriction, as well as any legal body, may apply for a land certificate to the extent that the applicant can claim to have customary rights. There are actually two types of applications (i) applications for individual land certificates (issuance to natural persons) and (ii) applications for a collective land certificate (issuance to a group of natural persons, the list of natural persons the group being attached). We will see below what the land certificate is and how to understand the phrase "hold customary rights".

The land certificate

In the sense of the law it is an official recognition of the possession of customary rights by the beneficiary, it is not a title of the legal right, but it is not far...

It allows access to land ownership through a procedure that is supposed to be quasi-automatic, simplified and inexpensive (in fact, procedural adjustments are still to be put in place), but only Ivorian natural persons (alone or in group), public entities and the State of Côte d'Ivoire can access it. Other holders of land certificates have access to long-term (emphyteutic) leases issued by the State after registration of land in its name (which confers ownership of these lands to the State). In Côte d'Ivoire, land ownership is obtained through a registration in the land register held by the State of Côte d'Ivoire, a registration that takes the form of a land title, the beneficiary of which can prove possession by the obtaining a certificate of property ownership.

So in practice, the land certificate is synonymous with a certificate of ownership ... this is quickly perceived by the applicants; so, this reality has consequences on the formulation of the applications for land certificates.

Customary rights

The law does not specify what customary rights are involved, but implicitly, in the spirit of the law, these are land management rights strong enough so as to be able to derive into modern property rights, within the meaning of the property regime defined by the Ivorian civil code. It is known that traditional customary rights in most parts of the country, are not known to correspond to modern property rights, in the sense that "abusus", alienation or the possibility of selling and buying land don't really exist. But the evolution of today's agriculture, towards an increasingly commercial agriculture, impacts traditional customary rights, gradually integrating them with the notion of land ownership in the legal sense.

As a matter of fact, the law recognizes the transfer of customary rights, which in practice is known to be very similar to a sale of land in the legal sense of the term, even though there are often obligations, often personal and more or less durable vis-à-vis the assignors of customary rights.

The expression of the applications for land certificates

When the people of a village are offered the possibility of obtaining land certificates, there is a phase of internal discussions and understanding of what is involved in the process, and these discussions, in fine, allow the populations to formulate applications for land certificates.

The first question is who can apply for a land certificate, the first reaction of the village is very Malthusian, the traditional chiefs try to take advantage of this new action to regain control of rights that tend to escape them, and then try to limit the demands to large groups, lineage or family groups.

According to our experience, the reaction of the populations is different according to whether is the operation takes place in the South or in the North of the country, according to the reality of the collective powers of the traditional chiefs, and within the same region, according to the development of the commercial agriculture.

In practice, applications for land certificates are evolving very rapidly towards requests that are very close to the socio-economic management of agricultural land. In the example of the department of Agboville which is presented below, in one of two villages (the village of Gouabo), the list of applicants has evolved in a few weeks, from a collective request for the whole village to more than a hundred requests, collective and individual. In the departments of Korhogo and Ferkéssédougou, some villages limit to collective requests corresponding to large family groups, in others we find all kinds of requests (individual, small family groups, large family groups, lineage groups.).

In the case of Agboville, out of 271 land certificates issued, 120 are collective land certificates, but they are requested by small family groups: 497 natural persons for 120 applications. In the lists of natural persons of collective land certificates, there are 209 women and 288 men, as can be seen, the gender is well represented at the level of these certificates (see table presented next page). However in flat, it should be noted that managers (administrative representatives in fact) of these groups are almost exclusively men: 118 men for 2 women (Abbeys). These land certificates are very interesting because they are not large family groups more or less ineffective in the socio-economic management of land, but small family units very close together of 4 people on average with harmonious agreement. These collective land certificates avoid the unnecessary fragmentation of land ownership during inheritance or various land actions. It is the group of natural persons who owns. Like any group, this entity is alive and its composition in individuals can vary and adapt, but these variations must be officially registered (they also result in a simple transfer of the holders of the group property certificate, carried out before concerned public administration: Ministry of Agriculture and Ministry of Homeland (Interior)). As groups of natural persons, according to the rural land department of the Ministry of Agriculture in charge of the management of the Rural Land Domain, these groups have access to the registration of their parcel (with land title) without having to proceed to a fragmentation, which avoids the fragmentation of land parcels.

In addition, in the case of Agboville, non-Ivorian natural persons or group of natural persons benefited from land certificates (ie 10% of the land certificates issued).

Beneficiaries of Land Certificates / Gender - Agboville, Ivory Coast - EU DP4 Project / 2014-2016

Sub-prefecture	Village	LC Total	ILC			CLC			CLC categories			Enumeration Women/Men of CLC			Beneficiary women total			Beneficiary men total		
			W	M	ILC TOTAL	W	M	CLC TOTAL	Mixed CLC	Men only CLC	CLC TOTAL	Women	Men	TOTAL	number ILC	number CLC	TOTAL	number ILC	number CLC	TOTAL
AGBOVILLE	OFFA	140	4	73	77	1	62	63	35	28	63	131	162	293	4	131	135	73	162	235
RUBINO	GOUABO	131	7	67	74	1	56	57	31	26	57	78	126	204	7	78	85	67	126	193
AGBOVILLE DP4 TOTAL		271	11	140	151	2	118	120	66	54	120	209	288	497	11	209	220	140	288	428

LC : Land certificate

ILC : Individual Land Certificate

CLC : Collective Land Certificate

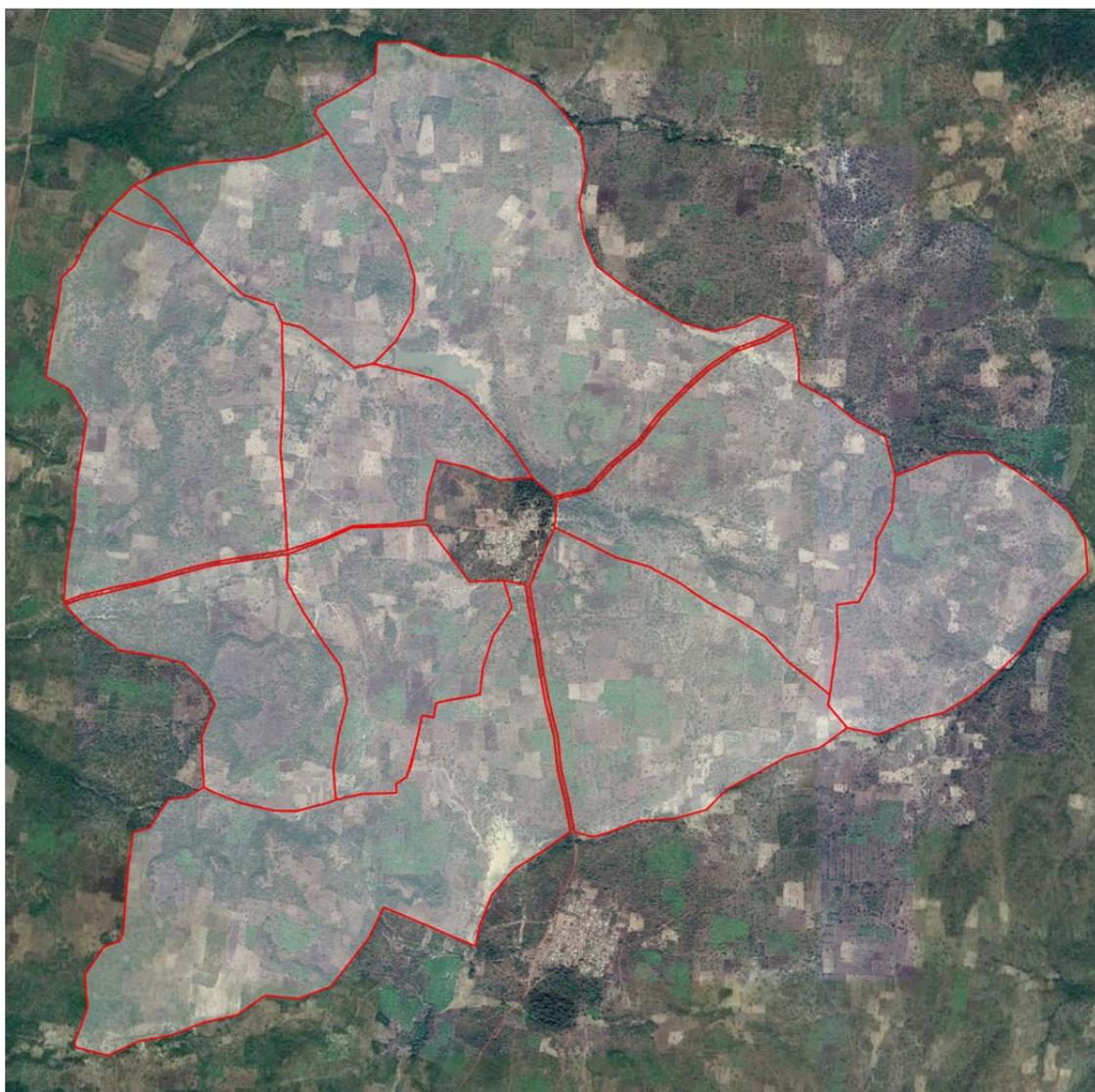
W : Women

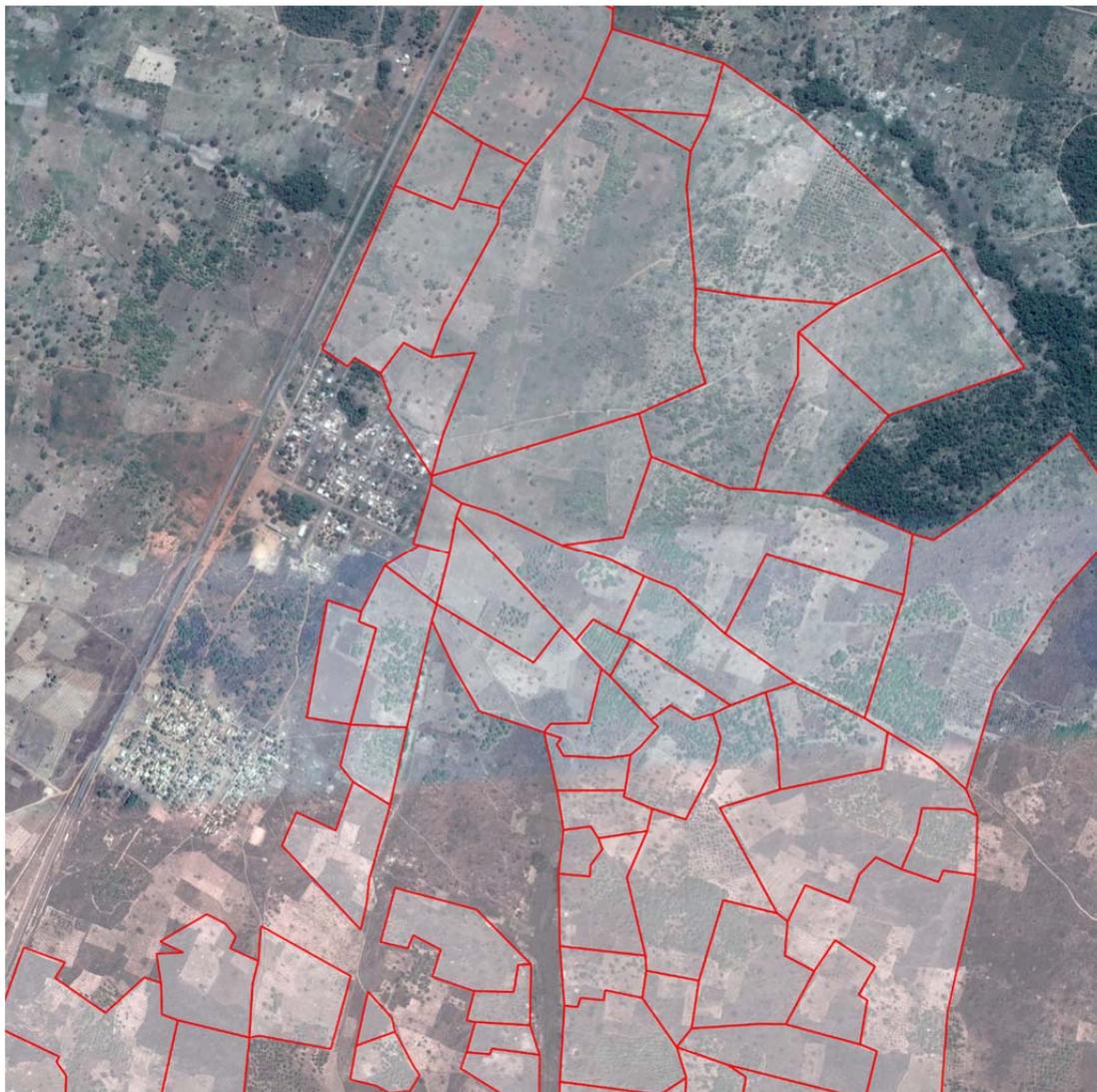
M : Man

Nbr : Number

In conclusion, applications for land certificates are expressed in a satisfactory manner for applicants and village rural management committees, provided, however, that firstly, these groups are provided with socio-technical support for the formulation of these applications and secondly that concerned populations are allowed sufficient time for the formulation of these requests.

The following plans present the land tenure of two villages in northern Côte d'Ivoire, one made of customary landholdings only collective, the other mixed (individual or collective) taking into account in particular the land pressure of cashew plantations.





THE BENEFITS OF THE ADMINISTRATION

The actors of the administration participating in the procedure of issuing land certificates are, as indicated previously: the sub-prefects, the commissioners-investigators, the departmental directors of agriculture, the village committees of rural land management, the committees of rural land management of sub-prefectures and prefects. We also mention the coordination of state projects when they exist.

These actors perform administrative management, technical coordination and more operational activities related to the commissioner-investigators and the management of the computerized land management system (SIF).

The sub-prefects

In general, the services of the sub-prefects were satisfactory for the technical operators. But improvements are needed, including:

- At the level of the organization of the administrative activities too often carried out with delay: treatment of the requests for land certificates, procedure of openings of the official

inquiries, various convocations (of the meetings between villages) and sessions of sensitization. These activities should be simplified and better planned,

- In terms of logistics, the material and financial resources available to the sub-prefects are often insufficient or made available too late.

The commissioner-investigators and the departmental directorates of agriculture

At our level, that of the technical operators, the services of the commissioners-investigators were very insufficient: carried out with very important delays, without known planning, and of very variable quality.

The services of the commissioners-investigators are linked to those of the technical operators (it is mainly the census of the customary rights, the delimitation of the parcels and the publicity of the surveys). Good coordination between the commissioner-investigators and the technical operator is essential for the proper conduct of the official investigation both from a technical and socio-legal point of view. For example, a census of customary rights not done, an absence of the commissioner-investigators for the delimitation of parcels or territories, disrupts the schedule of intervention of the technical operator. An official publicity of one month, can last five to six months following delays of the commissioner-investigator in the opening and closing of the advertisement. In practice this coordination proved to be non-existent. The departmental directors of agriculture were supposed to set up and facilitate this coordination, but, with some exceptions, this was not done, sometimes even their interventions were negative for the smooth running of the services of the commissioner-investigators. To solve this problem, the rural land department proposed and made sure that the commissioner-investigators were made available to the technical operators, which from our point of view is a very good measure.

As for the sub-prefects, the logistical means of the commissioner-investigators were very often insufficient, which did not allow them to exercise their activities properly. This logistical problem is also solved by the action taken by the rural land management.

Village Rural Land Management Committees

These committees are created by decision of the sub-prefect on proposal of the village. Problems of competence and coordination with village customary chiefs have sometimes arisen, but overall the major problem of these committees has been the weakness or lack of means of operation, particularly to ensure the travel of their representatives to the scene of investigations and delimitations. The technical operator has been obliged to contribute to these trips, financially or by providing physical means of transport. These committees are responsible for approving official investigation files after the advertisement. Amendments to the technical file may be requested from the technical operator by the committee after publicity, if disputes or objections have arisen and have led to requests for modification during their resolution.

Rural land management committees of the sub-prefectures

These committees are created by decision of the prefect for each sub-prefecture of his department. They are made up of twelve members having deliberative vote divided equally between 6 members of the administration and 6 members representing the populations of the sub-prefecture concerned. These committees are responsible for the validation of official

surveys carried out to respond to land certificate applications. Representatives of the administration are in addition to the sub-prefect of the Ministry of the Interior who chairs the committee: the Ministry of Agriculture, the Ministry of Water and Forests, the Ministry of Economy and Finance, the Ministry of infrastructure and the Ministry of Urban Planning. The meeting of such a validation committee requires financial means (transportation of members, per diem) that the chairman of the committee (the sub-prefect) does not always have on time, which causes significant delays in the meeting of these committees. Apart from the problems of stewardship causing delays of validation, their functioning seemed satisfactory to us. The technical operator may be required to intervene if changes to the technical file are requested by the committee following objections or complaints.

Prefects

The role of the prefects consists of supervising the progress of the procedure and signing the land certificates issued by the departmental director of agriculture after validation of the official surveys by the rural land management committees of the sub-prefectures. Land certificates are often signed after significant delays.

Project coordination and rural land management

The project coordinators, temporary institutions related to the implementation of specific projects of the State of Côte d'Ivoire, have the function of mobilizing and managing external financing, according to specific procedures for external financing, or according to the procedures where the financing consists of budget support to the State Treasury of Côte d'Ivoire. The constraints of the administrative financing procedures related to conventional modus operandis result in delays in financial mobilization and payments that are not compatible with the performance needs of the operators, administrations and populations financially supported by these projects, in terms of deadlines and of amounts.

The rural land department of the Ministry of Agriculture provides support to these project coordinators as project managers for these projects. In practice, the rural land management department does not have the technical resources for this project management, particularly with regard to the technical supervision of the products delivered by the technical operator: considerable delays for technical supervision, unjustified observations, considerable delays by this direction in the procedure of payment of the delivered products, in conclusion unsatisfactory technical services of the direction of the rural land.

THE COMPUTERIZED SYSTEM OF RURAL LAND (SIF) ADMINISTRATION

The existing

In order to better manage all the Land Certificates issued on its territory, Côte d'Ivoire has a Land Information System.

The principle of SIF appeared with the adoption of Law No. 98-750 of 23 December 1998 on the Rural Land Area. The signing of a contract with a private consulting firm helped to launch the first stages of system design resulting in a first version of the application in 2004. This first version was then the subject of many contributions, improvements and corrections to finally achieve a functional version in 2010.

However, the political crisis that occurred in Côte d'Ivoire in 2010 resulted in premature abortion of the system through a general blackout of servers that were positioned at the Rural Land Directorate in Abidjan. If the rehabilitation of this SIF is a track envisaged by Côte d'Ivoire, because presenting costs much more limited than the complete overhaul of the system, the problems are not only related to the failure of the servers. Indeed, the rehabilitation of the existing system will not provide a solution to the problems described in the following paragraphs.

Centralization

The current system is based on 3 levels, each level proposing a different solution. Overall, these three levels could be described as follows:

- A departmental level allowing the instruction of the various files and the collection of all the administrative information on the application for land certification (alphanumeric information, land documentation, changes ...)
- A regional level allowing the integration of spatial data raised by the technical operators. This level also makes it possible to centralize the data collected by the departmental level
- A central level based at the Ministry of Agriculture and allowing the centralization of all data collected by the regional level

The dichotomy between alphanumeric information (departmental level) and cartographic information (regional level) poses serious problems of coherence between the different databases. Thus, many of the Land Certificates observed in the departmental SIF have no parcel delimitation.

In addition, the exchanges and synchronizations of the various databases are mainly physical. The logistical means required for this centralization are therefore significant and are a hindrance to the centralization of data.

The establishment of a single WEB platform would allow each stakeholder to have the same level of information and ensure overall consistency of data.

The intervention of the different actors

The current system is relatively compartmentalized at the Ministry of Agriculture and more specifically at the DFR. The land certification process in Côte d'Ivoire is a multi-stakeholder process. The system must therefore be open and allow the transit of information and data between these different actors.

For example, the interactions between the DGI and the Rural Land Department are an integral part of the process, each issued Land Certificate to be the subject of an application for registration within 3 years of its issuance. In return, the SIF needs to know the new Land Titles in order to update its own database and avoid the issuance of Land Certificates on registered land.

Currently, exchanges are only in paper format and are relatively rare. This method leads to difficulties in updating the various databases and does not allow to have a global vision of the

land occupation either at the level of the DGI or at the level of the DFR. For example, in 2015, out of 486 CF sent to the DGI, only 7 cases returned to the DFR.

In the same way, the private technical operators provide the DFR with the result of their work of compartmental delimitation. There are currently no specifications on the organization of the digital data that must be submitted to the DFR which causes difficulties for their integration into the system. Conversely, technical operators must have access to land tenure in order to ensure that the boundaries drawn in the field are consistent with existing parcel boundaries.

The valorization of the information of the SIF thus passes by a communication on its contents while preserving a complete control on what can and must be diffused. The integration of the various organizations and partners thus appears as one of the components for the proper use and sustainability of the system. For example, it could allow:

- At the DGI to have a dedicated interface listing the Land Certificates awaiting registration, allowing to download the necessary documents for this registration, to notify the DFR on the registered Land Certificates, to have a secure messaging between DFR and DGI ... etc.
- To the OTA to have a dedicated interface listing the files waiting for parcel delineation, to download the parts necessary for this delimitation, to have coordinates and information on the neighboring parcels, to deposit the parcel delimitation obtained on the server SIF and to notify the agents of the State, to have a secure messaging between OTA and Administration ... etc.
- To the general public: To have a cartographic Internet portal allowing him to visualize the various Land Certificates and to consult a restricted part of the information, for the holders of certificates to download the parts of their file, to get in touch with the Administration ... etc.

Outsourcing

Although having its own IT department, the Ministry of Agriculture and more specifically, the DFR, are not entities specialized in the maintenance of servers. The 2010 outage, while totally unpredictable and peculiar, demonstrates the potential for an Administration to be a server management entity.

Many private and public companies exist around the world and specialize in hosting servers. Contracts offered by these companies guarantee confidentiality and data security. Any server failure is the full responsibility of the host who must return it to service in a very short time. Under these conditions, the outsourcing of the SIF server appears as a solution capable of guaranteeing the security of the data in all circumstances and releases the DFR of this responsibility.

Given that SIF data are sensitive national data, hosting could be considered with local structures such as SNDI (National Society for Computer Development).

CONCLUSION

In practice, without questioning the administrative and legal provisions of the formal investigation on the merits but rather in form, many possible improvements can make this official survey more feasible in terms of quality, cost and time.

Its acceptance by civil society is very satisfactory, even in fairly conflict-ridden areas with a high proportion of non-indigenous people.

In order to better meet the needs expressed, it is necessary to design more massive programs with better-studied funding (currently only two possibilities for farmers: free but still rare and random or covering all costs).

Public Operations

As a technical operator we have realized to date about 4,000 technical dossiers of land certificates (63,000 ha) within the framework of medium-sized interventions financed by the public authority (free operations for the beneficiaries). We presented the problems encountered.

At the level of these public operations, the fact that the technical operator has to work with a multiplicity of actors does not make it possible to be efficient, both in terms of deadlines, costs and quality of work.

The provision of the commissioner-investigators to the technical operator proposed and put in place by the rural land department is a major improvement.

From the point of view of the interlocutors, it is desirable that for the technical operator, these interlocutors be limited (i) to AFOR for all aspects of project management and project management and (ii) to sub-prefects for the administrative aspects and for the management of relations with the populations.

In such a more condensed and coherent working context, operators could provide satisfactory services for the population and the State of Côte d'Ivoire in terms of cost, quality and time.

Private Operations

In parallel with these public operations, we carried out operations on private financing: individual requests from individual investors (about 100 technical files) or group requests from farmers (500 technical files, strong growth in the number of grouped applications).

The observations made at the level of public operations also apply to these transactions, with some differences that are as follows:

- extremely high costs for individual applications mainly related to their dispersal and geographical isolation,
- still high costs (costs related to the implementation context) but accepted at the level of group requests from farmers resulting in a default rate close to zero.