



Legal framework for agroforestry and reforestation in Côte d'Ivoire's rural domain: risks and opportunities

This analysis describes the legal framework governing access to: (1) land from the rural domain for (agro)forestry activities; (2) ownership of planted trees; and (3) related environmental services, including those resulting from carbon sequestration.

It aims to identify the legal issues that may support or hinder the development of (agro)forestry projects in land from the rural domain and to provide the different investors interested in such projects with relevant information to assess the corresponding risks and opportunities.

To address the alarming degradation of its forests, Côte d'Ivoire has committed to restoring its forest cover to at least 20% of the national territory by 2030. To achieve this ambitious goal, the Ivorian Government has developed various policy and legal instruments, such as the REDD+ strategy (reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries) ; the National Policy on Forest Preservation, Rehabilitation and Expansion (PPREF); and the Forest Code enshrined in Act No. 2019-675 of 23 July 2019. Each of these instruments explicitly pursues this goal.¹

Improved land tenure security in the rural domain,² the principles of which were recently reinforced by Act No. 2019-868 of 14 October 2019 amending the 1998 Rural Land Law,³ is an essential condition for achieving the reforestation goal.

Land tenure insecurity in Côte d'Ivoire is a major risk for agroforestry and reforestation activities (hereinafter described collectively as “(agro)forestry”). Once this insecurity is removed, the development potential of these activities will be considerable and could certainly be of interest to the private sector, which plans to support the State's efforts in this area.

This is especially the case for private actors in the cocoa sector, who are working together through the [Cocoa and Forests Initiative](#). As part of this initiative, top producer countries, led by Côte d'Ivoire, and companies in the chocolate industry have joined forces to combat deforestation and promote reforestation efforts, namely through the development of agroforestry, i.e., the integration or maintenance of forest trees on cocoa farms.

Private actors in the timber sector, who are concerned about ensuring long-term supplies and need secure areas in the rural domain for their operations, also stand to benefit from such activities, in addition to reforestation efforts already carried out in classified forests.

Scope of the analysis and definitions

Scope of the analysis

In addition to the legal texts already adopted by Côte d'Ivoire, which are binding on all stakeholders, the Government still needs to define a number of legal provisions. These include the time limits for registering land covered by land certificates, the terms of sale of trees by their owners, and carbon rights.

Details of the provisions still to be adopted are set out below in each of the relevant sections.

¹ The National Policy on Forest Preservation, Rehabilitation and Expansion provides for the successive achievement of objectives that take into account, among other things, “the rate of 20% of forest cover desired for our country.” The National REDD+ Strategy states that “the vision of the Ivorian Government via the REDD+ mechanism is to stabilise and sustainably reverse the trend of natural forest loss from 2017 onwards and simultaneously restore forest cover in a progressive manner to reach 20% forest cover by 2030.” Article 2 of the Forest Code sets out the aim of “supporting efforts to restore forest cover to 20% of the national territory”.

² Côte d'Ivoire's forest estate is divided between forests of the rural domain and State forests (classified forests as well as parks and reserves).

³ Act No. 98-750 of 23 December 1998 on rural domain was amended by the Acts No. 2004-412 of 14 August 2004, No. 2013-655 of 13 September 2013 and No. 2019-868 of 14 October 2019.

Definitions

Customary rights: rights to continuous and peaceful (i.e., permanent and conflict-free) occupation of land in the rural domain, which can be recognised by a land certificate.

Customary rights holder: a person who holds customary rights to rural land which can be recognised by a land certificate.⁴

Land certificate: an administrative document recognising that a person or group of persons holds customary rights to rural land.⁵

Registration: the process by which a piece of property is recorded in the land register in the owner's name to receive a land title. The State, public authorities and Ivorian individuals may apply for registration on their own behalf. Legal entities other than the State and non-Ivorian persons may ask to register in the name of the State and subsequently apply for a long-term lease of 18 to 99 years in accordance with contract law.⁶

Investor (within the context of this analysis): any natural or legal person investing in kind or in cash in an (agro)forestry project located on someone else's land in the rural domain.

Land title: a definitive and undisputable title granting rights to a property (developed or undeveloped land). It guarantees the owner permanent and lasting occupation, illimited in time. The land title is a property right in its own right.⁷

1 Access to land for (agro)forestry activities

The rural domain is considered a national heritage to which any natural or legal person may have access.⁸ Access may be granted to an owner, a tenant, a beneficiary at no charge, or to a customary rights holder. These four cases are described below.

1.1 Access by ownership

According to the Ivorian Constitution and the Rural Domain Law,⁹ only the State, public authorities and Ivorian individuals are allowed to own land in the rural domain by means of a land title, which is granted following registration.

This means that foreigners and legal persons (even Ivorian) cannot own land in the rural domain, unless they acquired the land before 23 December 1998, i.e., before the above-mentioned Rural Domain Law entered into force.

⁴ Articles 7 and 8 of Act No. 98-750 of 23 December 1998 on rural domain law as amended by Act No. 2014-412 of 14 August 2004.

⁵ See the [Rural Land Agency \(Agence Foncière Rurale, AFOR\) website](#) for more information (available in French only).

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⁸ Article 1 paragraph 2 of the Rural Domain Law.

⁹ Article 12 paragraph 1 of the Ivorian Constitution, repeated in Article 1 paragraph 1 of the Rural Domain Law.

1.2 Access by leasing

Any natural or legal person, Ivorian or foreign, may lease rural land for farming, logging or other uses, so long as the lessor holds at least a land certificate. In this case, the land certificate acts as a guarantee of access to the land.

It should be noted that a land certificate can be held by a non-Ivorian natural person,¹⁰ unlike a land title (see § 1.1 above). In accordance with Act No. 2019-868 of 14 October 2019, the time limit to register land subject to a land certificate (which can then be converted into a land title) must be set by decree. This time limit used to be three years, but was repealed by the above-mentioned act. The registration procedure must also be set out by decree.

The lease agreement will determine its duration and the parties' rights and obligations, and it must be created in accordance with the legal requirements for a lease. Otherwise, the investor runs the risk of being evicted.

Once the lease agreement has been legally created, all parties must fulfil their respective commitments, or risk contractual liability (legal action may be taken against them). The lessor undertakes to make the land available for the period agreed upon in the contract. In return, the investor agrees to pay the rent on the agreed dates.

1.3 Access as a beneficiary free of charge

This type of situation may be rare, but the law does allow for it. The owner of a plot of land or the holder of a land certificate may decide to grant use of the land to an investor, without expecting any financial or in-kind compensation.

When land is made available free of charge, the landowner or certificate holder makes a commitment to the investor. If this commitment is not honoured, he or she may be held in breach of contract. The commitment would be to make the land available to the investor for (agro)forestry activities during the designated period.

1.4 Access as a customary rights holder

To be recognised as a customary rights holder, the law stipulates that customary rights must be exercised on the land in question in a continuous and peaceful manner, that is, permanently and without conflict.¹¹

The customary rights holder uses the land and enjoys its fruits. The holder can only transfer rights to this land if a land certificate exists. Indeed, as of 14 October 2019, land without a land certificate cannot be sold.¹² Currently, such land cannot be leased either, as leasing conditions have yet to be set out by decree (Article 17a paragraph 2 of Act No. 2019-868 of 14 October 2019 amending the Rural Domain Law).

¹⁰ If the foreign person acquired these customary rights before the entry into force of Act No. 98-750 of 23 December 1998 on rural land.

¹¹ Article 6 (new) and Article 8 of Act No. 98-750 of 23 December 1998 on rural domain.

¹² Act No. 98-750 of 23 December 1998 on rural domain, as amended by Acts No. 2004-412 of 14 August 2004, No. 2013-655 of 13 September 2013 and No. 2019-868 of 14 October 2019 (Article 17bis).

2 Ownership of planted trees

The question of ownership of planted trees is strongly tied to land ownership, and can therefore be analysed alongside the latter. Aside from being helpful to investors, clarifying the ownership of planted trees can also alleviate legitimate fears that producers may have regarding the ownership of these trees and the benefits that can be derived from their planting efforts. This will go a long way towards encouraging them to develop (agro) forestry activities on their land.

2.1 Who owns a tree planted on land with a land title?

Ownership of planted trees is determined based on whether or not an agreement exists between the parties involved in accordance with Article 27 paragraph 2 of the Forest Code: “Ownership of a newly established forest or a planted tree lies with the landowner or the person who established or planted it under an agreement with the landowner”.

The agreement between the parties can therefore stipulate that ownership of the trees planted by an investor reverts either to the investor or to the owner, i.e., the land title holder.¹³

Where the parties agree, there may be a difference between ownership of the land and ownership of that which is above and below the ground. The owner of a plot of land may therefore be different from the owner of the trees planted on it.¹⁴

In the absence of agreement between the parties, ownership of the tree reverts to the land title holder if, for example, he or she was unaware of the project (which is implied by Article 27 of the Forest Code). In this case, the land title holder can ask the investor to remove the planted trees. However, if the land title holder wants to keep the planted trees, he or she is required to compensate the investor (Article 555 of the Civil Code).

But if the land title holder was made aware of the project by the investor and allowed it to proceed, the trees will not belong to the land title holder. Ownership of the planted trees then reverts to the investor (as implied by Article 27 paragraph 2 of the Forest Code). In this case, the land title holder who wants to reclaim a plot, whether or not he or she wants to keep the planted trees, is required to compensate the investor (Article 555 of the Civil Code).

The above analysis also applies to for compensatory reforestation, which is carried out to offset the timber removed from selective logging areas. So, depending on whether an agreement exists between the parties, ownership of the trees lies either with the land title holder or with the operator who planted the trees.

This type of situation will very rarely arise in the years to come, given the current very low level of land registration in the country.

¹³ The agreement between the parties does not have to be in writing.

¹⁴ Article 552 paragraph 1 of the Civil Code states: “Ownership of the land includes ownership of that which is above and below ground.” The distinction is clear when the text mentions ownership of the land, which encompasses ownership of that which is both above and below ground. Ownership of that which is above and below ground are only accessory to ownership of the land itself.

Teak logs from a first thinning ►
Photo: Romuald Vaudry



2.2 Who owns a tree planted on land with a land certificate?

As per the previous case, an (agro)forestry project investor can be the owner of the trees he or she plants, or whose planting he or she finances, if the investor has, for example, gained access by leasing the land subject to a land certificate and has agreed with the lessor that the trees planted are the investor's property.

If no specific agreement exists between the parties, the rules that apply to land with titles also apply to land with land certificates.

Given various initiatives, both recent ([REDD+ project in the La Mé region](#)) or ongoing (Côte d'Ivoire Rural Land Policy Improvement and Implementation Project – PAMOFOR;¹⁵ [Côte d'Ivoire Land Partnership – CLAP](#), etc.) to issue land certificates, this situation is likely to become increasingly common in the future.

2.3 Who owns a tree planted on land subject to customary rights?

This issue is key, because this is currently the most common situation, as very little rural land is covered by a certificate or title.

There is no legal certainty regarding the ownership of trees planted on land subject to customary rights. If the investor has planted trees on land for which another person enjoys customary rights, the investor is exposed to risk. The lack of a contract means that the investor can be evicted at any time, even if he or she is allowed to claim compensation for the plantations in question (Article 555 of the Civil Code). The conditions for transactions other than transfer (and in particular leasing) have yet to be determined by decree.

This risky situation severely limits investment opportunities.

¹⁵ See the [Rural Land Agency \(Agence Foncière Rurale, AFOR\) website](#) – PAMOFOR for more information (available in French only).

2.4 What is the consequence of ownership of the planted tree?

In Ivorian law, owning a piece of property means having the right to benefit from the full use and enjoyment of the property, provided that one does not use it in a way that is prohibited by laws or regulations.¹⁶

This means that someone who owns a tree can use it, keep it and enjoy the fruits generated by it. The tree owner can also sell the tree or give it away free of charge, in compliance with the regulations in force, which have yet to be clarified, particularly with regard to the terms of sale.

Case study: land certification – a pillar of intervention for the La Mé region REDD+ project

The La Mé region REDD+ project ran from 2017 to 2020. In addition to supporting the delimitation of village territories, the project sought to secure land certificates (individual or collective) for 3 500 ha of wooded areas in six different villages.

The project helped agricultural operators (especially non-Ivorians) to ensure more secure access to land through the signing of lease contracts with land certificate holders (most often indigenous people).

The issuance of land certificates also enabled the development of innovative rural reforestation models in collaboration with four private operators. These operators were offered the opportunity to sign agreements with the land certificate holders to 1) secure the operator's supplies, and 2) reassure landowners regarding future timber sales with a minimum predetermined price.

The cost of such collective certification processes can vary between CFA franc 15 000 and 20 000 per ha (i.e., between EUR 22.80 and 30.50 per ha). Based on this experience and the many related benefits, such operations could be widely scaled up to facilitate reforestation, as well rolling out sustainable agroforestry systems.

These operations could be financed through public-private partnerships involving cocoa and timber stakeholders, as will be the case for the CLAP project.

¹⁶ Article 544 of the Civil Code stipulates that "ownership is the right to fully enjoy and dispose of a thing, provided that it is not used in a way that is prohibited by laws or regulations".

3 Ownership of related environmental services

In the context of the Cocoa and Forests Initiative and efforts to restore Ivorian forest cover, private investors interested in developing agroforestry activities on cocoa plantations do not necessarily want to be owners of the land and the trees planted. Nevertheless, some of them expect to benefit from having trees in the plantations. What are the legal means for them to benefit from the related environmental services? To answer this question, these benefits must be analysed in terms of the environmental services resulting from planting trees associated with cocoa farming.

To a lesser extent, this issue arises for reforestation projects, since the purpose of timber sector investments is often to harvest mature trees.

3.1 General considerations

In stipulating that ownership is the right to fully enjoy and dispose of a thing, Article 544 of the Civil Code clarifies three attributes regarding that thing:

- The right to use the thing (*usus*), i.e., the right to make direct use of a possession.
- The right to enjoy the thing (*fructus*), i.e., the right to the fruits of whatever the thing produces without its substance being altered.¹⁷
- The right to dispose of the thing (*abusus*), i.e., the right to sell or destroy the thing.

Dismemberment of ownership is possible,¹⁸ and it is this arrangement that best suits the relationship between producers and investors.

So, for an (agro)forestry project, in line with any agreement between the parties and in compliance with the law, one could imagine a situation where:

- Producers have the right to sell mature trees at the end of the agreement, and to harvest non-timber forest products from the plantation in the interim.
- Investors can benefit from the intangible fruits of the environmental services provided by the (agro)forestry plantation, such as carbon sequestration, which is achieved by maintaining the planted trees during the time of the collaboration. Investors are then considered usufructuaries.¹⁹

The above-mentioned bipartite agreement could also be concluded between three parties, namely the investor, the landowner (or land certificate holder) and the cocoa farmer, assuming that the latter two are different persons and have, for example, already entered into a lease agreement.

¹⁷ These fruits may be natural, industrial (linked to an agricultural holding or harvest), or civil (rent from a lease).

¹⁸ For example, a person may have the right of use and the right of disposal, without having the right of enjoyment.

¹⁹ Usufruct is the right to enjoy things owned by someone else (such as the owner would) on the condition that the substance of the thing is not destroyed (Article 578 of the Civil Code). Usufruct is established by law or by human will, i.e., by agreement (Article 579 of the Civil Code). Usufruct may be established over any kind of movable or immovable property (Article 581 of the Civil Code). And movable property may be considered intangible according to Article 529 of the Civil Code.

3.2 Forest carbon

As mentioned above, investors can be the beneficiaries of the carbon sequestered by the trees planted (or maintained through their investment) in cocoa plantations. So they gain access to the possibility of benefiting from the corresponding carbon credits, under the conditions set out in the regulations in force, and especially homologation procedures. These carbon rights may be shared with the lessor under the conditions set out in the agreement signed with the latter.

Part of this regulatory framework is currently being drawn up, such as the draft decree to “determine the management rules for REDD+ projects and programmes and related greenhouse gas emission reductions²⁰” and its draft implementing regulation relating to the approval of REDD+ investments in Côte d’Ivoire.

Article 7 of the above-mentioned draft decree describes the rights of the State and private persons as follows, depending on the type of emissions reduction project implemented.

The legal title certifying emission reductions resulting from REDD+ investments²¹ is owned by the State, when these REDD+ investments are implemented:

- In the public (parks and reserves) and private (classified forests) domain of the State.
- In the rural domain on behalf of the State under an international programme in which the State is participating on its own behalf and which allows persons with real rights, including customary rights, to obtain a share of the carbon or non-carbon benefits provided for under this international programme.

Moreover, the legal title to certify emission reductions resulting from by REDD+ investments through collaborative approaches under Article 6²² of the Paris Agreement belongs to the State, unless the State expressly stipulates otherwise.

However, the State may transfer the legal title to a third party by way of an agreement, through the Minister of Economy and Finance.

When emission reductions result from REDD+ investments in the rural domain, but are not covered by an international programme in which the State is participating on its own behalf, the legal title is the property of the natural or legal person who obtained the act of approval under the conditions set out in the draft implementing regulation on the approval of REDD+ investments in Côte d’Ivoire.

²⁰ In climate jargon, “emission reductions” and “carbon credits” (both expressed in tonnes of CO₂ equivalent) mean the same thing and include activities that contribute to atmospheric carbon sequestration. To provide a forest-related example, these terms encompass more than the emission reductions that may be achieved by reducing deforestation.

²¹ Defined as follows in the draft decree: “All activities implemented with the intention of enhancing or contributing to the performance of REDD+ activities”.

²² Article 6 of the Paris Agreement provides for a voluntary system to trade greenhouse gas emission rights between countries. More specifically, emission reductions achieved by one State could be bought by another.

Conclusion



▲ Thinning in a teak forest

Photo: J. Kouao

Although there are still some legal uncertainties in Côte d'Ivoire, this analysis nevertheless identifies the main risks to which the various investors interested in the development of (agro)forestry projects are exposed. It also describes the various opportunities available to them.

Key take-aways from this analysis:

- Only the State, public authorities and Ivorian individuals can own land (i.e., hold a land title) in the rural domain in Côte d'Ivoire.
- Other natural or legal persons who want to access rural land can do so through a lease agreement with a lessor holding at least a land certificate, which acts as a guarantee of access to the land.
- Land covered by a land certificate is no longer subject to a three-year registration time limit. A new time limit will be set by decree. In the meantime, such land can be legally traded.
- The lease agreement will determine the lease duration and the parties' rights and obligations, and must be legally established. Otherwise, the investor runs the risk of being evicted.
- As of October 2019, land without a land certificate cannot be sold or leased, as the conditions for leasing are yet to be determined by decree.
- The investor in an (agro)forestry project can become the owner of the planted trees if this is specified in the agreement with the landowner (i.e., the land title holder) or the land certificate holder.

- The ownership of a tree planted on land that is subject to customary rights is not legally determined. If the investor has planted trees on land for which another person enjoys customary rights, he or she is exposed to legal uncertainty and can be evicted at any time.
- The owner of a tree may use it, benefit from its fruits, transfer it free of charge or sell it, in accordance with the regulations in force, which remain to be clarified, particularly with regard to the terms of sale of trees.
- If the contract between the lessor and the investor contains specific provisions to that effect, the investor may benefit from all or part of the emission reductions (carbon credits) produced by the (agro)forestry plantations, whether created or financed by the investor. However, according to the draft decree discussed in Section 3.2 of this report, if the investment is part of an international programme in which the State participates on its own behalf, the investor will also have to obtain the transfer of ownership from the State.

In light of this legal situation, the following recommendations can be made to investors considering implementing an (agro)forestry project:

- Given the current state of regulation, it is preferable to establish contracts with land certificate holders.
- Avoid investing in (agro)forestry projects only on land that is subject to customary rights. Under these conditions, investors are advised to include the issuance of individual or collective land certificates²³ in their investment models. Several projects in Côte d'Ivoire have demonstrated that obtaining land certificates is very cost-effective when collective operations can be carried out at the level of a single community or cooperative.
- Always clarify the rights and obligations of all parties in land lease agreements as well as in agreements specifying the ownership of planted trees and related environmental services between investors and lessors.
- Wait until forest carbon regulations have been adopted and tested before considering the exploitation of the corresponding emission reductions (carbon credits).

²³ The law provides for two types of land certificates: 1) a collective land certificate, which corresponds to the socio-anthropological reality of village territories where the land is generally family land; or 2) an individual land certificate, which corresponds to the situation of land acquired by non-native and non-indigenous populations, as it is a private and personal investment.



Teak reforestation. Photo: Romuald Vaudry

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Cover photo: Agroforestry plantation, ClientEarth

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