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# The "Plant & Share" Contract in Côte d'Ivoire. Incomplete Contracting and Land Conflicts<sup>1</sup>

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**Abstract.** This paper tackles the broad issue of contract incompleteness, property rights and conflicts in the context of rural Côte d'Ivoire. Since the beginning of the 2000s, a new type of contractual arrangement is developing rapidly: the "Plant & Share" contract. The central principle of this type of arrangement is that the landowner (usually an autochthon) provides the land to a farmer (usually a migrant) who develops a perennial tree crop plantation, i.e., supplies the seedlings, the fertilizers and the labor until production starts. When the plantation starts to produce, three types of sharing arrangements (usually by half, exceptionally 1/3 for the landowner and 2/3 for the farmer) occur, depending on what is shared: (i) the plantation (the landowner retaining his/her ownership right to the land bearing the farmer's part of the plantation); (ii) the plantation and the land (i.e., thru the contract, the farmer builds an ownership right not only on the plantation, but also on the land bearing his share of the plantation); (iii) the production (the land remaining the property of the landowner and the plantation being de facto co-owned by the assignor and the taker). Like most institutional arrangements in rural Côte d'Ivoire, P&S contracts remain usually "informal" in the sense that there is no legal validation of the transaction by a public authority. Beyond their "informal" nature, P&S contracts are quite incomplete. Some elements of the arrangement are rarely or never specified explicitly: the length of the contract, the right to transfer the plantation, the technical process involved in the creation of the plantation, etc. In their current form, P&S contracts therefore convey a real potential for conflicts between landowners and farmers. The aim of the paper is to provide insights into the rationale for the rapid spread of this new institutional arrangement. Its incompleteness is discussed as well as its potentially conflictive features. The paper also shows how this contract, in spite of its incompleteness, constitutes an alternative to much more conflictive land "sales" that currently dominate the land transfers market in the country. A discussion of the socio-political embeddedness of contractual practices is thus provided. Aside from the authors' long time field research investment in Côte d'Ivoire, the paper draws on data coming from two sources: a survey realized by F. Ruf in 2001 (600 farms), and a survey realized by J.-Ph. Colin in 2008 (269 farms).

*"To increase our economic understanding of contracts, it is necessary to get one's hands dirty and discover how particular contracts actually work in practice."* Benjamin Klein (2002)

## Introduction

There is a growing interest among institutional economists for agrarian contracts and land markets in developing countries. As a contribution to this budding field we propose a qualitative analysis of a new contractual arrangement in rural Côte d'Ivoire, the "Plant and Share" contract. Through such a contract, a settler gains access to long-term use rights, or even to ownership rights on land, by establishing a perennial plantation on an assignor's land in exchange for rights on part of this plantation. The paper focuses on the radical "incompleteness" of such contracts, linking it with property rights and conflict issues.

This type of institutional arrangement has been described in Togo (Antheaume, 1982; Gu-Konou, 1986) and Ghana (Hill, 1956; Amanor & Diderutuah, 2001)<sup>2</sup>. In Côte d'Ivoire, the first cases of P&S were observed at the beginning of the 80s in Centre-West and South-West regions (Ruf, 1982; De Fina, 1995; Koné, 2001; Léonard & Balac, 2005), and in the 90s in the South-East (Koffi, 1999). Recent research highlights a dramatic extension of P&S (Ruf, 2001; Colin, 2008a). Ruf's survey was realized in 2001 in 5 sites of Southern Côte d'Ivoire, on a sample of 600 farms. Colin's study was realized in 2008-2009 on 10 sites of Southern Côte d'Ivoire, on a sample of 269 farms; it also included interviews of state representatives (*préfets*, *sous-préfets* and *directeurs départementaux* of the Ministry of Agriculture). Even if these studies did not specifically focus on this type of contract, they provide

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<sup>1</sup> We wish to thank our colleague Jean Daudelin for constructive comments on a preliminary draft.

<sup>2</sup> Such arrangements are also known in France, with the *bail à complant* for vineyard (with a first mention in the 10<sup>th</sup> century), or in Indonesia for cocoa (Ruf & Yoddang, 2004).

material for a first analysis of this type of institutional arrangement and open avenues for future investigation<sup>1</sup>. On the basis of that material, the paper aims to provide insights into the rationale for the rapid spread of this new institutional arrangement and to discuss its incompleteness as well as its potentially conflictive features. Through an analysis of the socio-political embeddedness of contractual practices, the paper also shows how the P&S contract, in spite of its incompleteness, constitutes an appealing alternative to the much more conflictive "sale" contracts that currently dominate the land market in the country.

The paper is organized as follows. A first section offers some key points regarding the Ivorian context. The second section describes the P&S contracts – underlining their incompleteness, identifies the actors they typically involve, and proposes a tentative interpretation of their current rapid spread. A third section deals with the actual or potential conflictuality of P&S arrangements. The following section offers a discussion of the P&S arrangements as incomplete contracts. The conclusion sheds some light on why, despite their incompleteness and significant conflict potential, P&S contracts as alternative to sales are viewed by the actors as an institutional innovation that might reduce inter-ethnic conflicts in Côte d'Ivoire.

## 1 The Ivorian context<sup>2</sup>

The smallholder coffee and cocoa plantation economy in Southern Côte d'Ivoire<sup>3</sup> developed in sparsely populated areas and its rapid expansion since the beginning of the 20<sup>th</sup> century can be explained by the mass influx of migrants coming from regions which were ecologically unsuited to coffee and cocoa, such as the savannas of the center and northern Côte d'Ivoire, Upper Volta (now Burkina Faso), and Mali. The relationships between autochthons and migrants (Ivorian or foreigner) thus fundamentally structures the land issue in Southern Côte d'Ivoire.

The initial land access of those migrants was placed within a broader process of integration into the community, by way of of "*tutorat*", a type of tutorship relationship (Chauveau, 2006). Through this traditional patronage relationship, an autochthon<sup>4</sup> granted land rights<sup>5</sup> (on uncleared forest taken from the village or lineage land "reserve") to a migrant, according to a principle of moral economy, namely, that all individuals should get access to the resources necessary for their subsistence. The migrant, in turn, had a "duty of gratitude" towards his *tutor*, expressed through everyday civilities and gift offers after harvest and on important social occasions, such as funerals.

The deepening and increasing monetarization of the migrant's "duty of gratitude" then led to the development of informal land sales, with the land transfer maintaining, at least in the transferors' mind, a strong relational dimension<sup>6</sup> (Colin & Ayouz, 2006). Latter on, new institutional arrangements governing the migrants' access to land have emerged, including fixed leases, sharecropping, and recently, "Plant and Share" contracts (P&S).

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<sup>1</sup> Due to the studies design, the quantitative data presented in this text should not be considered as statistically representative of the situation in Southern Côte d'Ivoire, but rather as indicators regarding P&S contracts. Ongoing and future research should allow to deepen the study according to the lines defined in this paper, and also to produce quantitative representative data. Data coming from Ruf (2001) appear as "2001Survey", those coming from Colin (2008a) as "2008 Survey".

<sup>2</sup> This section draws heavily on Colin & Ayouz (2006) regarding the analysis of land "sales".

<sup>3</sup> Southern Côte d'Ivoire corresponds to "*la zone forestière*" (the forested area) in French, i.e. to the Southern half of the country in an agro-ecological environment favorable for coffee and cocoa plantations. Today most of the forest has been substituted by these plantations.

<sup>4</sup> Autochthons designate the native people in a given region.

<sup>5</sup> The *tutorat* relationship only concerns long-term transfers of administration rights, especially for coffee or cocoa plantation development. It does not concern renting, sharecropping and other short or middle-term transfers of land use rights.

<sup>6</sup> It is still common practice for the seller to seek favors from the purchaser a long time after the transaction has been concluded, such as requests for loans (where repayment is far from guaranteed) or contributions at times of significant expenditure (such as funerals and medical care). In other words, the fact that money intervenes in the land transfer does not result in a final, definitive, and indisputable sale. Payment does not bring an end to the relationship; it often establishes or perpetuates it.

Until the Rural Land Law of 1998 was adopted, private property rights legally applied only to registered land (a tiny proportion of national territory), while unregistered land (almost all arable land) was constitutionally the property of the state, albeit with recognition of customary tenure on a personal and non-transferable basis. The aim of the 1998 Land Law is to facilitate a transition towards individualized rights to private property (individual freehold tenure). The law, passed unanimously in a context of strong politicization and ethnicization of the land question, stipulates that foreigners cannot own land in Côte d'Ivoire. The foreigners who acquired land in the past are supposed to have their use rights protected by long-term lease contracts over land titled in the name of the autochthon (or his heir) who gave or "sold" the land. It must be emphasized that, as a result of the socio-political crisis in the country, the new law has yet to be implemented.

The monetarization of the settler's "duty of gratitude" through land "sales" should not be confused with the emergence of perfect market transactions. First of all, the actual contents of the transferred rights often gave rise to conflicting interpretations: was it a purchase of the land or a purchase of the right to plant tree crops, with an expiration date implicitly determined by the lifespan of the plantation? Was the buyer acquiring all the transfer rights? Secondly, the social embedding of transactions through the institution of *tutorat* frequently renders the sale incomplete, thereby not fully releasing the purchaser from all obligations towards the seller. In other words, the fact that money intervenes in the land transfer does not imply a final, definitive, and indisputable sale. Payment does not bring an end to the relationship; it often establishes or perpetuates it (Colin & Ayouz, 2006; Chauveau & Colin, forthcoming).

The massive development of land "sales" has to be put in the perspective of unbalanced public regulation of the relationships between autochthons and settlers. Under the Houphouët Boigny regime, the colonial regime's tendency to favor migrants' over indigenous claims was maintained, especially with the presidential slogan "the land belongs to those who make it productive" and the stance of the prefectural administration to radically consolidate the immigrants' position (the Baoules – Houphouët Boigny's ethnic group – in particular, but also the Voltaics) vis-à-vis autochthonous attempts to collect land rents. In certain contexts (particularly in the South-West), the fact that the autochthons were completely submerged demographically by the wave of migrants also contributed to the multiplication of those "sales" (Schwartz 1979; Léonard and Balac 2005). The risk for autochthons to lose all control over uncleared land without compensation resulted in an increase in monetary land transfers in the Mid-West and South-West regions, which largely opened up to the plantation economy at that time. Holding back forest reserves for future needs became a risky strategy (Ruf 1988; Chauveau 2000). By "selling" forest to migrants, the autochthons could attempt to secure some immediate profit, but also to enforce their status of tutor, with the expected advantages (Dozon, 1985). The trend was so massive that there was no room for a contract more favorable to the autochthons.

Through the institution of *tutorat*, migrants who gained access to the land by "purchasing" forest remained – or should have remained, in the view of the autochthons – under obligation to the autochthons who granted them access. However, it is widely documented that purchasers – in particular those from Côte d'Ivoire – tended (at least until the 2002 civil war) to reject any obligation towards the seller and to claim ownership of the land. Thus, for decades, the relationship between purchasers (or purchasers' heirs) and sellers (or sellers' heirs) has often been fraught with tensions, leading sometimes to open conflicts (Amon d'Aby, 1960; Raulin, 1957; Chauveau & Richard, 1977; Ruf 1988). Depleted land reserves and the economic crisis have exacerbated the conflicts surrounding past transactions, in particular with the return of "town-dwelling" autochthons (unemployed or school drop-outs) to their villages of origin, and with young autochthons who face great difficulties in gaining access to land blaming their elders for having squandered the family's land patrimony. These conflicts can occur a long time after the initial transaction, in particular during the passing of generations in the seller's family group, as young family members challenge past transfers and refuse to be bound by the arrangements concluded by the previous generation. To the extent that the transactions have brought together immigrant purchasers (nationals or not) and autochthon sellers, these conflicts take on a strong political dimension, and are considered by analysts as one of the factors explaining the civil war that broke out in 2002.

## 2 The rise of Plant & Share contracts in Côte d'Ivoire

### 2.1 A dynamic trend

According to the 2001 study, 8% of the interviewed farmers were involved in a P&S contract on at least one of their plots. In the 2008 study, that proportion reached 19 % of farmers. Yet, the relative importance of P&S arrangements varies widely between and within regions. The contract remains unknown in some villages and is widespread in others, involving for instance 20 % of the area and 40 % of the farmers in Damé, in Agni country.

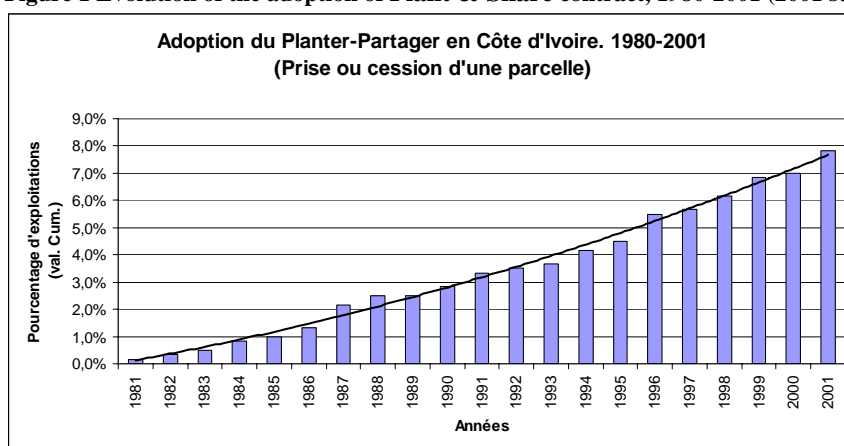
Even if the results of the 2001 and 2008 surveys are not representative of Southern Côte d'Ivoire and cannot be directly compared because of different sampling procedures, they reveal the relative importance of P&S in different regions and its progression in the 2000s.

**Table 1. Relative importance of Plant & Share contracts**

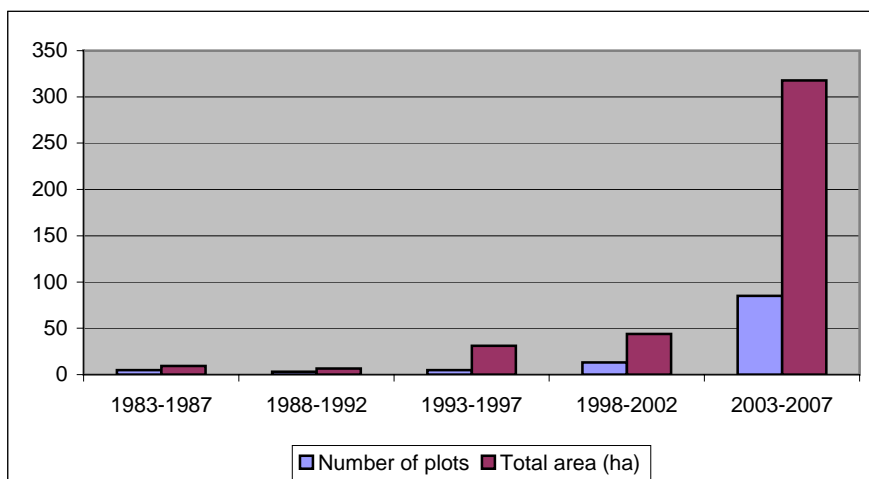
Region	2001 Survey			2008 Survey		
	Number of planters	Number of planters having assigned or taken a plot under P&S contract	%	Number of planters	Number of planters having assigned or taken a plot under P&S contract	%
Lower Coast	-	-	-	34	1	3 %
South-East	97	18	18,6 %	67	27	40,3 %
Centre	-	-	-	12	0	0 %
Centre-West	219	16	7,3 %	69	11	15,9 %
West	-	-	-	27	1	3,7 %
South-West	284	13	4,6 %	60	11	18,3 %
Total	600	47	7,8 %	269	51	19 %

Even if the overall importance of P&S remains modest, these surveys point to a dynamic that started in the 80s and has strengthened enormously since the beginning of the 2000s (Figures 1 & 2): according to the 2008 survey, 5 % of the plots under P&S (2.2 % of the area under P&S arrangements) have been planted in the 80s, 12.3 % in the 90s (11.4 % of the area), and 83.3 % in the 2000s (86.3 % of the area)

**Figure 1 Evolution of the adoption of Plant & Share contract, 1980-2001 (2001 survey)**



**Figure 2 Evolution of the number of plots and area under Plant & Share contracts (2008 survey)**



In the 2008 survey, most plantations under P&S contracts are cocoa plantations (Table 2).

**Table 2. Crops under Plant & Share contracts (2008 survey)**

	Area	Number of plots
Cocoa	303.9 ha (72.6 %)	92 (80.7 %)
Hevea	112 ha (26.8 %)	20 (17.5 %)
Oil palm tree	2 ha (0.5 %)	1 (0.9 %)
Cashew tree	0.5 ha (0.1 %)	1 (0.9 %)
Total	418.4 ha (100%)	114 (100%)

This data, however, underestimate the use of this type of contract: oil palm plantations under P&S, marginal here, are often mentioned in the Lower Coast (Akindes & Kouamé, 2001).

## 2.2 The actors of Plant & Share contracts

Our surveys captured P&S contracts among smallholders, or in a few cases between smallholders and extensionists (*encadreurs*) working for agro-industrial enterprises developing hevea or oil palm tree cultivation, and taking advantage of their relation in the villages to develop their own business. The planters as well as the State representatives interviewed also mentioned the frequent case of *cadres*<sup>1</sup> who take land under P&S contracts in order to develop hevea plantations (we interviewed a group of such *cadres*)<sup>2</sup>. Agro-industrial enterprises are also starting to use this institutional arrangement<sup>3</sup>.

The 2008 survey shows a clear dichotomy between autochthons as assignors and Ivorian or foreign migrants as takers:

- Autochthons assigned 74 % of the plots under P&S contracts, Ivorian settlers who got access to land by "purchase" or gift 26 %. None of the foreign settlers assigned land under P&S contracts (even if many of them control land that they "purchased" or were given),
- Foreign settlers take 51 % of the plots, Ivorian settlers 44 %, and autochthons only 5 %.

People assigning land under P&S contracts are usually well endowed, with a median area of 20 ha, compared to 9 ha for the landowners who do not assign land under such arrangements.

<sup>1</sup> In Côte d'Ivoire, "*cadres*" designates people living in urban areas, most often in Abidjan, and in stable employment, particularly as executives in public institutions or private companies.

<sup>2</sup> These past years hevea cultivation has been expanding dramatically, leading to a real "hevea fever" (Ruf, 2008) among peasant smallholders as well as among *cadres*.

<sup>3</sup> As an example, the AgroElite firm started the plantation of 1,380 ha of hevea in the *département* of Dabou, with one third of the planted area that should go to the landowners (*Notre Voie*, 12/1/2008).

## 2.3 The different Plant & Share configurations<sup>1</sup>

### 2.3.1 Three types of Plant & Share contracts

The general principle of a P&S arrangement is that the landowner, called here the assignor, provides the land to a farmer, here the taker, who develops a perennial tree crop plantation (cocoa, hevea, oil palm tree), supplying the seedlings, the fertilizers and the labor until production starts (from 3 to 6 years depending on the crop)<sup>2</sup>.

When the plantation starts to produce, three types of sharing arrangements occur, depending on what is shared:

- Plantation sharing, which is the dominant arrangement: the plantation is shared between the taker and the assignor, for the lifetime of the trees. The assignor retains his/her ownership right to the land bearing the taker's share of the plantation. The taker therefore holds a right over his share of the plantation, not over the land that bears it. Once the plantation is divided up, each one runs his part of the plantation independently.
- Plantation and land sharing: when the plantation starts to produce, the takers' share is made up not only of part of the plantation, but also of the land that bears it. Through the contract, the taker therefore acquires an ownership right on the land itself.
- Production sharing: what is shared is not the plantation (or the plantation and the land), but the production itself. The taker runs the whole plantation for the lifetime of the trees, giving the assignor a share of the production. The land thus remains the property of the assignor. The ownership of the plantation, however, is less clear (see infra).

**Table 3. The importance of the different types of P&S contracts (2008 survey)**

	Plantation sharing		Production sharing
	Only the plantation	Plantation and land	
Area	339.9 ha (81.2 %)	13.5 ha (3.2 %)	65 ha (15.5 %)
Number of plots	92 (80.7 %)	3 (2.6 %)	19 (16.7 %)

Two focal points organize the sharing between the assignor and the taker:

- Half-and-half division dominates plantation sharing (90 % of the plots) as well as production sharing (75 % of the plots).
- One-third (assignor) / two-thirds (taker)<sup>3</sup> division is less frequent (9 % of the plots under plantation-sharing arrangements, 19 % of the plots under production-sharing arrangements).

Cocoa plantation are shared by half (98 % of the plots); hevea or oil palm plantations are also usually shared by half (64 % of the plots), but may also be shared under the one-third/two-thirds principle (36 % of the plots).

Most often, the plantation- or production-sharing contract is valid for "as long as the plantation produces", with the understanding that the taker should not renew it progressively without the assignor's agreement. When the contract duration is (exceptionally) specified, it varies from 50 to 70 years for hevea, from 25 to 70 years for cocoa, and from 25 to 30 years for oil palm plantations.

In one of the sites investigated (Damé, in Agni country in South-East), the person taking a plot with a P&S contract also has to give some cash money to the assignor ("*for the drink*") at the time the

<sup>1</sup> This section draws on the 2008 survey.

<sup>2</sup> The land is the only assignor's contribution in 101 contracts over 114 for which we got information. When there is a contribution from the assignor, it remains modest: some machetes and files, exceptionally cocoa seedlings, some fertilizer or agro-chemicals.

<sup>3</sup> The taker is then in a symmetric relation to the landowner when compared with the situation of a laborer paid with a share of the product (*aboussan*). The *aboussan* (one-third sharing) contract is traditionally used as a form of labor contract in producing cocoa plantations (with no responsibility in terms of plantation management). On plantations producing low yields or in context of higher pressure on the labor market, the share can rise to one-half (*abougnon* contract). Hence, whereas the *aboussan* receives one-third of the product, the taker under a P&S contract retains two-third of it.

arrangement is made. This payment, most often relative to the size of the plot, varies around a local "standard" of Fcfa 30.000 to 40.000 Fcfa<sup>1</sup> per hectare.

Sometimes, once the plantation is shared, the assignor offers the taker to continue working his share with an *aboussan* contract, "in order to prevent the landowner's part of the plantation from turning back into bush."

### 2.3.2 *Incomplete contracts*

In any P&S contract, there is no ambiguity regarding the taker's commitment to establish a plantation of a given tree crop on the assignor's land and to maintain it until it starts to produce. The fact that the plantation, the land (exceptionally) or the production will then be shared according to a predefined percentage is also explicit<sup>2</sup>. However, several major elements of incompleteness can be identified.

From the actors' perspective, the most significant areas of incompleteness regard the content of the property rights, the identity of the rights holders, and the taker's duties. Specifically, there is uncertainty about:

- The right of the assignor to assign the plot to the taker, in a context where property rights on land are not formalized, with the attendant risk of a challenge to the P&S contract by a third party.
- The taker's bundle of rights, in the plantation-sharing configuration<sup>3</sup> – especially the right to sell or mortgage his share of the plantation, and the right to transfer the plantation through inheritance or inter vivos gift. For instance, the fact that these points are never made explicit generates uncertainty regarding the taker's right to continue running the plantation if the assignor dies (risk of the taker's right being contested by the assignor's heir), or uncertainty regarding the taker's heir to continue running the plantation if the taker dies (risk of the right of the taker's heir being contested by the assignor). When questioned about their perception of the taker's transfer rights, the actors generally consider that the right on the plantation created by the taker can be transmitted through inheritance (92.5 % of the interviewed, without significant difference between takers and assignors). However, selling the plantation is contemplated only in 40 % of the cases (without distinction between takers and assignors).
- The taker's "duty of gratitude" which is not specified in the contractual arrangement (written or oral). We saw that the land transfers between autochthons and migrants usually occur through a tutorship implying a "duty of gratitude" of the migrant. In the case of P&S contracts, one often finds this duty expected by the assignors and recognized by the takers<sup>4</sup>.

*"He has to help me from time to time, and if I have problems."* (Agni landowner, assignor of land with a P&S contract in Damé)<sup>5</sup>.

*"He is my tutor, if he runs into trouble I have to help him, I can't run away."* (Burkinabè taking land with a P&S contract, Damé).

The fact that it is not made explicit is in line with a tutorship relation (it would be quite out of place to do otherwise), but the point is that many tensions come from tutors' perception of migrants' ungratefulness if they don't "do enough." The concern to maintain a personal relationship with the taker explains why some assignors condition the transmission of the taker's

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<sup>1</sup> 1 Fcfa = 0.00153 € around 0.0012 US \$.

<sup>2</sup> We did interview some planters who were already working a plot of land without a clear specification of what will be shared. As stated by this Senoufo school teacher assigned in Ménéké (South-West) and who had started creating a plantation: "We have not make this explicit but I guess that it will be the plantation only and not the land that will be shared".

<sup>3</sup> In the case of the production-sharing configuration, the property right of the assignor on the plantation is not made explicit by the actors but seems to be a matter of a shared understanding of co-ownership (see infra). Future investigations should allow exploring more explicitly this crucial issue.

<sup>4</sup> In our survey, it is mentioned in 59 % of the transactions (50 % of the assignors, 85 % of the takers).

<sup>5</sup> The excerpts from interviews quoted in the text come as mere illustrations of positions noted in numerous interviews with same or close formulations.



plantation through inheritance to their acceptance, or exclude the sale of the plantation by the taker:

*"He may mortgage or inherit his share of the plantation, but he cannot sell it, because my relations with the buyer wouldn't be the same as with him. With him, if I lost someone in the family, he can say 'my patron is into trouble' and come help me."* (Bété landowner, assignor of land with a P&S contract, Doboua).

Other potential clauses of the arrangement that are only exceptionally made explicit include the conditions under which the plantation is to be established, the specific conditions of the sharing, and the duration of the contract:

- The technical process of establishing and maintaining the plantation until its sharing, for instance choice of the seedlings (hybrid or not), fertilization, etc. The only specification typically made is the prohibition of cassava as a food crop that might be associated with the young plantation<sup>1</sup>.
- The timing of the planting, once the taker gets access to land.
- The possibility or not, for the assignor, to cultivate food crops in the young plantation, or to get a part of the taker's food production on the plantation (or of its value, if it is marketed).
- The concrete conditions of the sharing of the plantation: when to share it (while the norm "when the production starts" is explicit, how to define this start is not), who will delineate each one's share?
- What happens to the contract if the plantation is accidentally destroyed (especially in case of fire).
- The contract's duration, i.e. when the taker will have to turn the land back to the assignor. The shared principle is that the taker retains his share of the plantation (or the right to harvest it, in the case of production-sharing P&S) "as long as the plantation produces", but here again contracts lack clear criteria of what is a plantation which "no longer produces."

### **2.3.3 Property rights structure and decision making in Plant & Share contracts**

The three configurations of P&S contracts lead to distinct property rights structures. A key element of this structure is the dissociation, or not, of rights to land and rights to the plantation (on trees).

- In a plantation and land sharing P&S contract, there is no dissociation in the land and trees ownership rights. Once the sharing is realized, the taker operates as the owner-manager of his share, with a cost of land acquisition corresponding to the cost of establishing the assignor's share of the plantation. His (informal) property right on land bears of course the uncertainty that prevails in all land acquisitions by migrants in Côte d'Ivoire.
- In a plantation-sharing P&S contract, there is a clear split, for the taker's plot, between property right on land (kept by the assignor) and on the trees (held by the taker) – even if many of these rights remain unspecified, especially regarding transfer. The cost of establishing the assignor's share of the plantation can be interpreted as a land rent paid in kind and at once by the taker, for the use of the land bearing his own share of the plantation.
- In a production-sharing P&S contract, there is also dissociation of rights, but less clear: the land remains indisputably the property of the assignor. However the residual rights claimant over the plantation is not explicitly identified. The empirical elements we have suggest that there is co-ownership of the plantation between the assignor and the taker. A strong indicator is that the income to be earned at the time of clearing the oil palm plantations under P&S

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<sup>1</sup> The first years of the plantation of the perennial crop, it is usual to associate food crops: the intercropping optimizes the use of land and saves on labor investments in the maintenance of trees.

contracts is understood by all actors, without any doubt, to be shared between the assignor and the taker, in the same proportion as the production beforehand<sup>1</sup>.

The taker's situation can therefore be characterized as follows: the plantation and land sharing P&S contract corresponds to a full ownership of land and plantation; the plantation-sharing P&S contract combines full ownership on plantation and long-term land tenancy; the production-sharing P&S contract corresponds to a co-ownership of the plantation.

The P&S contract could be interpreted as a form of sharecropping, sharing being at the core of these two types of institutional arrangements.

- The convergence between P&S and sharecropping is neat regarding production-sharing P&S – the difference with more usual forms of sharecropping lying in the fact that the taker himself produces the biological capital (the plantation) that he later exploits.
- The convergence is less evident in the case of plantation-sharing P&S, if sharecropping is defined (according to the usage) as a form of land tenancy in which the payment for the use of land, the rent, is a percentage of the output obtained in the crop season. Here the level of the rent does not vary with the production, as the rent paid at once corresponds to the cost of creating the assignor's share of the plantation.
- P&S contracts including the sharing of the plantation and of the land wanders even further away from sharecropping, as this arrangement leads to a transfer of property rights in land.

Whatever the type of P&S contract, the taker controls decision making regarding the establishment of the plantation and, in the case of production sharing, regarding its management. In this latter case, the taker cannot be assimilated to a simple laborer.

The following table sums up the main features of the different configurations of P&S contracts, once the sharing realized and considering the taker's position. It also includes the comparative cases of owner-cultivation and of tenancy for non-perennial crops (in these cases, the taker with a P&S contract is considered as a potential wage laborer or tenant).

**Table 4. Property rights and decision making in P&S, owner-cultivation and tenancy situations**

		Plant & Share arrangements			Owner-cultivation	Tenancy	
		Production sharing	Plantation sharing	Plantation and land sharing		Fixed-lease	Share-cropping
Taker's status		share-partner	long-term tenant	owner-operator	laborer (may be a share-worker: <i>aboussan</i> or <i>abougnon</i> )	tenant	share tenant
Ownership	land	A	A	T	A	A	A
	plantation	A & T	T	T	A	-	-
Decision making regarding production		T	T	T	A	A	T(A)
Inputs provider	labor	T	T	T	T	T	T
	monetary cost : creation plantation	T	T	T	A	-	-
	monetary cost : production	T	T	T	T	T	T(A)
Taker's share		1/2 or 2/3 product	1/2 or 2/3 plantation	1/2 or 2/3 plantation + land	If share-worker: 1/3 or 1/2 production	-	1/2 or 2/3 product

T: taker; A: assignor (landowner)

<sup>1</sup> In West-Africa, oil palm trees are used not only to make oil with their fruits, but also, once the trees have been cut down, to produce palm wine with the sap and, after distillation, a strong alcohol called *koutoukou* in Côte d'Ivoire.

## 2.4 The rationale for P&S arrangements in the context of Côte d'Ivoire

Deciphering the rationale of the recent popularity of P&S contracts in Côte d'Ivoire would require a full paper. Here, we limit ourselves to a few major issues that enable us to sketch a basic interpretation of this development.

The rise of P&S contracts in the 2000s has to do with the dynamic play of cash constraints and access to land and labor in Southern Côte d'Ivoire, but it can also be traced to socio-political factors although *not* directly to legal changes affecting land tenure. The perspective of implementation of the 1998 Law (which excludes foreigners from land ownership) can indeed be ruled out as a significant determinant of the rise of P&S contracts, as its content is largely ignored in the countryside.

***P&S contracts as alternatives to land sale.*** In the context of very tense relationships between autochthons and settlers induced by the former's perception of having being dispossessed of their land, the emergence of P&S (in the plantation-sharing and production-sharing configurations) clearly appears as an alternative to sales that allows the autochthon landowners to overcome the constraints they face (see *infra*) without loosing their land rights. This becomes crucial in the context of growing land scarcity, but also where the previous "selling off of forest" to strangers is vehemently denounced by autochthonous youth and *cadres*. To the economic dimension is thus added a socio-political dimension. From East to West in Southern Côte d'Ivoire, a relation is systematically and positively established by autochthons as well as by settlers, *sous-préfets* or agents of the Ministry of agriculture, between the rise of P&S contracts and the reduction, or the a perspective of a reduction, of land sales.

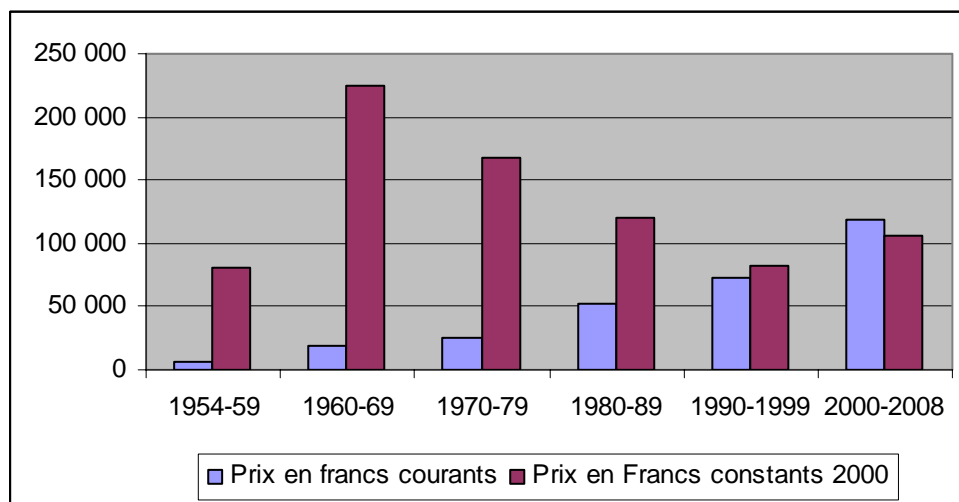
*"The landowner won't be any longer destitute. Because with land sales, the landowner becomes like a beggar. With Plant-and-Share, he will always have land to maintain his family"* (Guéré, Zro).

*"To buy a land is the root of conflicts. People do not any longer want that here. Plant-and-Share is good for both. You have for you, he has for him. He eats, you eats. So we think it is a good contract"* (Kroumen, Ménéké).

*"Everybody knows that we should not any longer sale the forest. So the Plant-and-Share option is the fashionable one: you have one, I have one; you have two, I have two. The Plant-and-Share option is the best, except if you are too greedy regarding money [if you want immediate cash]. I think that this option will prevail on the others"* (Kroumen, Ménéké).

Considering the current price of land, P&S contract is also a good deal for a landowner. In constant Fcfa, the price of land has decreased since the 70s, at least up to 2005. This evolution can be related to the unfavorable evolution of cocoa prices (Ruf & Agkpo, 2008).

Figure 3. Evolution of land price, Fcfa per hectare (2008 survey)



A landowner who would try to finance the creation of a cocoa plantation by selling part of his land would have to sell more than three hectares to plant one hectare, whereas by assigning land under a P&S contract, he delegates a long-term use right on one or two hectares in order and gets one hectare planted while keeping the ownership of the land – planting one hectare of cocoa requires around 400

working days until the production starts, i.e. Fcfa 480.000, and Fcfa 25.000 for inputs, whereas the price of land is around Fcfa 150.000 F/ha.

***P&S contracts as alternatives to land purchase.*** Considering these figures, it seems that the takers would have interest to buy land. However, the comparison between buying or taking in P&S and investing one own's labor cannot consider the same figures, because of the issue of labor valorization in the actors' perspective. The cost of creating a cocoa plantation corresponds mainly to labor cost, and actors tend at under-valorizing their own labor (i.e., do not valorize it at the opportunity cost on the labor market) and at over-valorizing cash<sup>1</sup>. Settlers may also accept or propose P&S contracts because they lack cash to buy land. On a different and fundamental register, they may enter into such an arrangement above all because they face the autochthons' growing reluctance to sell land, and because they consider this arrangement as the best device to avoid autochthons' acrimonies when, some years after the sale, they see their former land bearing productive plantations. Reducing assignors' frustrations means reducing future risks of conflict and eviction... As stated by a group of Ivorian *cadres* who took land under a P&S contract: "*Why didn't we rather buy land? Because later there are too-much problems, there is a risk of bitterness and of palavers when production starts.*" Settlers who suffered violent eviction during the recent crisis are particularly sensitive to that point. Another related element is that in a context of high socio-political instability, some migrants prefer to reduce the risk of loosing the cash investment that would represent the purchase of land; in the case of a P&S contract for a cocoa plantation, the migrants would "only" loose their own work if they are chased away by the autochthons.

***P&S contracts as a response to labor constraint among autochthonous landowners.*** In the whole Southern Côte d'Ivoire, autochthonous landowners face a structural restriction on family labor, because most of them are old and have sent their children to school, or they have been to school and do not engage directly in agricultural production. Migrants, on the other hand, benefit from their access to the pool of labor of their native villages and show, as many migrant populations do, a strong productive dynamism. The history of the smallholder plantation economy in Côte d'Ivoire is the history of migrants' quest for land and of autochthons' quest for labor. In that context, P&S contracts are appealing to autochthonous landowners, because it saves them the labor investment involved in the establishment of a plantation.

***Financing constraint and credit market failure.*** The financing constraint comes from the unfavorable evolution of agricultural product prices (especially of cocoa) and the lack of a formal credit system<sup>2</sup>. P&S arrangements allow landowners who cannot develop independently their land to get new plantations: "*if I don't have sufficient resources, I give land to the one who does....*" (Chief of village of K.) The constraint bears first on the financing of labor, especially for autochthonous landowners. It also bears on the financing of inputs, especially regarding hevea and oil palm plantations. The dynamic of diversification of the smallholder plantation economy with these crops is therefore one of the factors explaining the emergence of P&S contracts, with arrangements between landowners and *cadres*, extensionists, etc. The combination of the cash constraint and of a low land price makes very attractive P&S contracts for landowners. The financing constraint also bears on migrants, restricting their possibility to buy land and therefore making P&S arrangements attractive.

***Transaction costs on the labor market.*** From the landowners' perspective, P&S contracts save not only on labor costs, but also on search and monitoring costs that would be incurred on the labor market. Since the 2000s, the Ivorian rural economy – first and foremost the autochthonous landowners – faces a general restriction on labor supply, especially regarding permanent labor that can be mobilized in the creation of new plantations<sup>3</sup>. In a context where it is not easy to find labor and to keep it, the ability of P&S contracts to attract and "anchor" labor reduces search costs. These contracts also

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<sup>1</sup> On this point, see Thaler (1991).

<sup>2</sup> Informal credit rates rise up to 100% a year.

<sup>3</sup> One usually distinguishes, in Côte d'Ivoire, the following types of labor contracts: permanent laborers (mainly paid on an annual basis), temporary laborers (paid on a daily basis or piecework) and laborers employed on perennial plantations for their maintenance and harvest, paid with part of the production (*aboussan*, *abougnon*). Permanent laborers are the ones usually employed for the creation of new plantations, as employing temporary labor is much more costly, and *aboussan* or *abougnon* only work on plantation that are already producing.

reduce monitoring ones, as the perspective of getting half or two-thirds of the plantation constitutes a strong incentive for the taker.

**P&S contracts versus wage labor.** In the takers' perspective and compared to wage labor, P&S contracts are seen as a way to get a better and more secure income, and to build a patrimony (at least in terms of use rights) that will be transferred to their children.

**Technical know-how.** In the case of oil palm and above all hevea plantations, another component of the landowners' incentive structure is that though a P&S contract, they can get a plantation already in production for a crop they have most often never cultivated themselves. In such a case, the complementarity between the assignor and the taker is organized on the basis of land on one side, and labor, financing and know-how on the other.

All these advantages of P&S contracts for landowners are accentuated when they are not living locally but in town a –situation made increasingly frequent by the succession of generations.

**Avoiding the risk incurred in the creation of a plantation.** For landowners – and especially those without a strong involvement in agricultural production – P&S contracts remove the risk incurred in the creation of a plantation. In case of failure, they get the land back, without having to compensate the taker (see infra).

**The cognitive dimension of institutional innovation.** Information regarding this new contractual relationships and its interest for the landowners is spreading in Southern Côte d'Ivoire. As for any innovation, its diffusion comes hand in hand with the circulation of information and imitation. As stated by a Yacouba who settled in Guéré country, "*In the region of Bloléquin, they are already doing that. Here, it is not yet developed, but the idea is starting to mature. One guy already started, it is launched.*"

**A rentier rationale.** A major explanation of the dramatic rise of P&S contracts is the fact that such an arrangement neatly fits the rentier strategy of numerous landowners, especially in the Western part of Southern Côte d'Ivoire, where there is no strong tradition of agricultural production. With such a contract, landowners get a plantation in production that they can then entrust to *aboussan* laborers and thus be a "planter" without any real personal involvement in the production.

The following table sums up the main factors that explain the choice, in terms de governance device, between one the one hand, assigning land under a P&S contract, selling land (in order to get cash to create a plantation) or directly use the land with wage labor (assignor's perspective), and on the other hand, taking land with a P&S contract or working as laborer or buying land (taker's perspective)<sup>1</sup>.

**Table 5. Main factors influencing the choice to enter a P&S arrangement**

<b>Assignor's perspective</b>	
P&S rather than owner-manager	<ul style="list-style-type: none"> <li>Offsets credit market failure and lack of savings.</li> <li>Limits transaction costs on the labor market (search and monitoring costs).</li> <li>Avoids the risk incurred in the creation of a plantation.</li> <li>Offsets a lack of technical know-how (oil palm and hevea)</li> <li>Fits perfectly with a rentier rationale</li> </ul>
P&S rather than land sale	<ul style="list-style-type: none"> <li>Allows to keep the ownership right on land, reduces intra-family conflicts induced by land sales.</li> </ul>
<b>Taker's perspective</b>	
P&S rather than wage labor	<ul style="list-style-type: none"> <li>Much better income.</li> <li>Allows the constitution of a patrimony in the guise of a plantation.</li> </ul>
P&S rather than land purchase	<ul style="list-style-type: none"> <li>Offsets credit market failure and the lack of savings.</li> <li>Reduces the risk of conflicts with autochthons induced by land transfers.</li> <li>Avoids the risk of loosing a cash investment, in case of land grabbing by autochthons.</li> <li>Offsets the drop in land supply on the sale market.</li> </ul>

<sup>1</sup> These alternatives do not consider long-term leases which might allow growing perennial crops, as this type of contract is currently unknown in Ivorian smallholder plantation economy. It is supposed to be introduced at the time the 1998 land law will be applied, as this law provides for such contract in order to secure the use rights of the foreigners who will not be allowed to get a land title (see supra).

### 3 Plant & Share contracts as locus of conflicts<sup>1</sup>

Tensions or conflicts were mentioned in 6 % of the plots under P&S arrangements. This is not a particularly high incidence contractual difficulties, but most contracts are recent and all interviewees consider that there are risks of conflict in the future. The survey also identified some contractual devices that were implemented in order to prevent conflicts.

#### 3.1 Tensions and conflicts induced by uncertainty regarding the rights of the assignor and of the taker

**"Fraudulent" assignation of land.** The first risk of conflicts mentioned by all actors (takers as assignors) is the fraudulent assignation of land to a taker by a "false assignor" – most often a young member of the family owning the land.

**The landowner's relatives disputing the contract.** The questioning of the transaction by a member of the assignor's family is also seen as a major risk. We did not document direct cases but this problem (largely encountered regarding land "sales") is mentioned in all sites (including by the agents of the Ministry of Agriculture), with the highest intensity in the Centre-West and South-West regions, where relations between autochthons and migrants are very tense.

**Being chased away by the assignor.** Another recurrent takers' fear in the Centre-West and South-West regions is the risk of being abusively chased away as soon as the plantation starts producing.

**Questioning the contract after the death of one of the actors.** As for other types of land transfer (sales, gifts), contestation is feared in the case of the death of the assignor (his heir denouncing the P&S contract) or of the taker (the assignor questioning the rights of the taker's heir). The conflict may lead to a full rejection of the contract, or to a contestation of the limits between each one plantation.

**Assignors' fear of a contestation of their ownership right on land.** A symmetric grievance expressed by the assignors is the risk that the taker may take advantage of their death to take over the land bearing his part of the plantation, arguing that he had bought it.

#### 3.2 Tensions and conflicts induced by the conditions of establishment and sharing of the plantation

Even if P&S contracts never specify the technical process involved in the establishment of the plantation, the actors do not see this as a notable source of conflict. This can be related to strategies employed by the assignors to reduce the risk of insufficient investment by the taker, in terms of quality or timing; we will come back to these strategies.

The mode of plantation-sharing is often denounced by the takers, who argue that the assignors always choose the best part of the plantation. In the case of production-sharing, the problem most often mentioned is the diversion of production by the taker, which normally leads to a sharing of the plantation, each party then running his share.

*"With the yomientchê [name for P&S contract in Agni country], they were sharing the product. But there was no trust, the guy [the taker] was not clear. We are not in the bush but someone told us that the guy was harvesting more than what he presented us. So my brother got angry and he decided to share the plantation." (Agni, Damé)*

From the assignors' perspective, the risk of opportunistic behavior on the part of the taker's at harvest time is indeed a major factor in the choice between plantation-sharing or production-sharing contracts.

*"Sharing the product is better because they [the takers] work well; they have more strength than we have. However, you need to trust them because they might swindle. If there is no trust, or if you want to cultivate directly yourself, then you share the plantation." (Agni assignor, Damé)*

Another potentially conflictive issue relates to the food crops initially associated with the plantation. The usual perception is that the landowner has no right to use the land for food-crop production without the agreement of the taker – as stated by a Baoulé taker in Aniassué, "otherwise, we would

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<sup>1</sup> This section draws on the 2008 survey.

*come to blows.*" In the terms of a Bété from Doboua who assigns land under a P&S contract, the fact that he would use the land to grow food crops without the agreement of the taker "*would create a lack of trust between us and curb his enthusiasm for work.*" Tensions on this issue are more often mentioned in Bété and Kroumen countries, where relationships between autochthons and migrants are very tense. As mentioned during a meeting with Bété notables in Doboua:

*"Here there is an opposition regarding the sharing or not of the food production. In the landowner's mind, all the production coming from the plot has to be shared, whereas the taker thinks that only the perennial crops will be divided up, and that he can plant food crops for his own consumption or even to sell them. Some of the takers are chased out because of that."*

This problem directly relates to the fact that P&S arrangements are relatively new and are not yet stabilized though locally shared conventions.

### 3.3 Contract duration

The P&S contract is usually concluded "when the plantation dies." When one discusses with the actors what this means precisely, the answers give a glimpse of possible diverging interpretations (linked or not to opportunistic behavior) and thus, when the contract reaches its end, for potential disputes between the taker, who might want to continue exploiting the plantation, and the assignor who would like to get the land back:

*"The contract ends when the production is too much reduced", "If before it was 10-15 bags and now it is 1 or 2 bags, he has to give me back my land", "When the trees die, when the plantation turns into bush", "If before it was 10.000 cacao trees and now it does not reach 1.000 trees, that means the plantation is dead."*

The implicit or explicit principle is that there will be an easy convergence in the actor's appreciation ("*If we both see that we don't earn any longer*").

Some landowners express the fear (largely anticipated as these contracts are just at their beginning) that the taker might prolong excessively the length of the contract – a fear that can be related to the fact that numerous landowners almost never visit the plantation:

*"As long as there are cocoa trees, you harvest! Even if it is in 20 years or 30 years, if there is still cocoa, it is for you. Now if there is no any longer cocoa, I get my land back. But there are some [takers], when they will see that cocoa trees are weakening, they will start renewing the plantation little by little. They are not stupid, they will put new seedlings and so they will be here until who knows when!"* (Agni assigning land under a P&S contract, Damé).

### 3.4 The limits of the "informal formalization"

In the Ivorian rural context, a legal formalization of the contracts is made impossible by the lack of legal recognition of land rights. The presence of witnesses when the arrangement is concluded is the most common securization device (97 % of the contracts). In addition, the formalization of the contract with "informal written receipts" locally designated as *papier* (paper) constitutes an almost systematic non-legal securization device<sup>1</sup>: 73 % of the contracts have been the object of such a *papier*<sup>2</sup>. However, formalizing the contract in such a way does not reduce the different sources of incompleteness, for three main reasons.

- Landowners usually postpone the issuance of the paper until the time of the sharing of the plantation<sup>3</sup>.
- Only a small fraction of these *papiers* (16 %) are "validated" by some authority (village chief, *sous-préfecture*, local services of the Ministry of Agriculture<sup>1</sup>). Moreover, the intervention of

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<sup>1</sup> These *papiers* are increasingly used to secure also land purchases and, much less frequently, land leases (Koné & Chauveau, 1998; Lavigne Delville, 2003; Colin, 2004; Colin & Bignebat, 2009).

<sup>2</sup> Compared to 78 % of purchase contracts and 4 % of short-term tenancy contracts (2008 survey).

<sup>3</sup> The taker bears the cost of these *papiers* (from some thousands to some tenth-thousands of francs): money given to the witnesses, to the village chief; transportation cost of the witnesses; cost charged by the agents of the Ministry of Agriculture, etc.

an authority does not give the paper a legal value: formally, the *sous-préfecture* only authenticates the signatures and does not validate the contract as such. Nevertheless the actors see these "stamped papers" as elements of proof that they might bring (often with success) in case of litigation, including before the local administration or a court<sup>2</sup>.

- Lastly and not least, these papers remain largely incomplete. They usually mention the identity of the parties, the name of the witnesses, the crop to plant and the area that each one will get or the percentage of production that will be shared. On the other hand, they do not specify the modalities of creation of the plantation, the planning of the planting, the specific mode of plantation-sharing or the transfer rights of the taker. The duration of the contract, if mentioned at all, is usually "until the plantation dies." And no paper mentions the taker's "duty of gratitude."

As a matter of fact, these *papiers* aim much more at securing the existence as such of the contract, than at explicating and making enforceable their clauses. The following examples illustrate the lack of specification of most *papiers*<sup>3</sup>.

**Box 1. A Plant & Share *papier* (Tabou)**

Mr. T.N. recognizes that he gave forest to Mr. N. (19 ha), 13 ha pour the taker and 6 for the assignor.		
Signature of the assignor	Signature of the village chief	Signature of a notable

**Box 2. A Plant & Share *papier* (Tabou)**

Transfer of forest	
Mister T.K., President of the youth of X., recognizes having given ten hectares (10) of forest to Mister S.Y.	
We agreed that the 10 hectares will be planted by Mister S.Y., who, when the production will start, will share equitably the ten hectares between Mr. T.K. and him, that is to say that each one share will be 5 hectares.	
	X, the 11/20/2007
Donor's signature [sic]	Taker's signature
Donor's witness:	Taker's witness
The village chief, T.L.	S.B.
The <i>Chef de terre</i> K.H.	D.N.

Exceptionally, *papiers* are more elaborate, especially for contract written with the help of an agent of the Ministry of Agriculture or of a *sous-préfecture*. The following example uses a standard formulation suggested by the agent of the *sous-préfecture* in charge of land issues, and makes explicit each partie's share, the time the taker will have to maintain the plantation before sharing it, and the duration of the contract. It includes an original clause suggested by this agent in view of the conflicts caused by the questioning of P&S contracts by assignors' relatives:

**Box 3. A Plant & Share *papier* (Aboisso)**

LAND MANAGEMENT CONTRACT
Mister B. B., born in 1930 in TONKON, planter domiciled in KOHOUROU, recognized having transferred his plot of land of 09 ha 50 Ares, located in KOHOUROU <i>sous-préfecture</i> of Aboisso to Mister T. A. born on January 05, 1970 in KOHOUROU planter domiciliated in KOHOUROU
Mister T. A. agrees to cultivate Hevea on the land of mister B. B.
THE CLAUSES OF THE CONTRACT ARE THE FOLLOWING
1. The sharing after planting will be done equitably: 04 ha 25 Ares;
2. After the planting, the taker commits himself to maintain the entire planted parcel during five (05) years;

<sup>1</sup> Solicited to get an *attestation de plantation* (a paper recognizing that a plantation exists) and realize a topographic plotting of the plantation.

<sup>2</sup> This practice shows that even in countries without a legally enforceable system of property rights, one can rely on such "informal contracts" to enforce (imperfectly) expectations and promises.

<sup>3</sup> The phrasing of these contracts respects the terminology of the French originals.



3. The duration of the contract is seventy (70) years from the date of the planting.

Note: once the contract concluded, no termination can be contemplated before term. However, if due to the assignor or to his entitled relatives, it becomes impossible for the taker or his relatives to exploit the plantation for any reason, the assignor or his entitled relatives have to refund the taker or his relatives for all his expenses.

Aboisso, May 23, 2005

The taker

The assignor

T. A.

B. B.

Witnesses [three names and three signatures]

[signatures authenticated by the *sous-préfecture*]

In case of conflict, the actors usually appeal to village authorities (village chief, notables) or to customary authorities of a higher rank (such as the king's court, in Akan country). If these recourses are unsuccessful, they present the case to the *sous-préfet* or to the *gendarmerie* (country side police force), whose intervention relates then to a type of "informal intervention of formal institutions", as it is not normally in their attribution to deal with contractual problems. Some *sous-préfets* have instituted conciliatory commissions aiming at searching for amicable agreements. Appealing to the court remains exceptional, due to the cost of the procedure, of its duration and of the uncertainty regarding the outcome.

### 3.5 A demand for public intervention

The survey showed the perception of the limits of the "informal formalization" ("*The heirs often grab the strangers' land because often all they have are these insignificant papers*", Gban, Booda) and highlighted a real demand for the securization of P&S contracts: 92 % of people interviewed expressed the need for a public intervention in that matter, beyond the mere "validation" of the *papiers* by a public authority.

The problems that might be avoided through public authority's provision and validation of some kind of model contract are of course directly related to the difficulties, real or expected, that we have just mentioned. Two main arguments are put forward by the actors: (i) such formal contracts would eliminate the tensions at plantation sharing by making the latter's conditions explicit; (ii) it would secure the taker's rights (the main objective being to protect him from the contestation of the transaction by assignor's relatives) as well as the assignor's rights (by preventing land appropriation by the taker). More generally, a contract legalized by the state is seen as a credible device for conflict reduction.

Other advantages of a formalization and legalization of the contracts are mentioned less frequently: clarification of the sharing or not of food crops initially associated with the young plantation; reduction of the delays in the planting or an unsatisfactory work investment of the taker; less conflict within assignors' families by preventing transfers considered as illegitimate; elimination of contestation regarding the duration of the contract.

Actors' suggestions regarding the specific clauses to be made explicit reflect these sometimes contradictory expectations (we put in italics the clauses that come back most frequently).

Some suggestions are made by assignors as well as by takers:

- *Each party's share should be specified.*
- *What will be shared should be specified: only the plantation, the plantation and the land, the production.*
- A third party (such as the agents of the Ministry of Agriculture) should be invited to implement the sharing of the plantation (if it is the plantation that is to be shared).
- When the plantation does not succeed homogeneously, the sharing should ensure that that each one's share includes a "good" and a "bad" part of it. This suggestion mostly comes from takers, but it is also formulated by assignors who see it as a way to reduce tensions: "*What came out well and what came out with less success should be shared in the same way, because then it is good for everybody*" (Gban, Booda).

- What food crops are allowed or not should be specified.
- The right of the assignor to plant (or not) food crops on the plot, or to benefit from the taker's production.
- The taker's right to sell (or not) the plantation (plantation-sharing P&S contract).

The takers insist particularly on the following clauses:

- The contract should be signed before the work starts.
- *The name of each party's heirs should be noted, and the contract should be signed in front of them.*
- The minutes of the assignor's family council allowing the transaction to take place should be annexed to the contract, in order to reduce the risk of future contestation of the contract by assignor's relatives.
- *The right of the taker's heir on the plantation should be recognized and made explicit.*
- When there is an initial cash payment (such as in Damé), it should be mentioned in the contract.
- The fact that once the plantation is shared, the taker no longer has any obligation towards the assignor, – making explicit the wish to move from tutorships to a mere contractual relationship.

The assignors, on the other hand, ask for:

- An explicit right to evict the taker from the plot if the work is not satisfactory;
- An explicit prohibition, for the taker, to progressively renew the plantation.

It is notable that the contract duration, the technical process involved in the creation of the plantation and the planning of the planting are never brought up as suggested clauses. As a matter of fact, the actors' suggestions aim fundamentally at securing the rights transferred through a P&S contract, rather than reducing the uncertainty that affects the taker's investment.

#### **4 P&S arrangements as incomplete contracts: a preliminary discussion**

The incompleteness of P&S contracts is not exceptional: incompleteness is the rule in real world contracting. From a Transaction Cost Theory perspective, incompleteness comes from bounded rationality, radical uncertainty and the complexity of the environment, which rule out any full anticipation of future contingencies (Brousseau & Glachant, 2002; Fares & Saussier, 2002). Those elements translate in high transaction costs incurred in accurately describing and writing all contractual feature ("ink costs") or going to court. The potential for exchange hazards is obvious if there is asset specificity, long-term investment, measurement difficulty and uncertainty, as a lock-in effect exposes the owners of specific assets to economic dependency and to his partner's opportunism (Williamson, 1985). P&S contracts organize production, i.e. the creation of resources, through long-term<sup>1</sup> site-specific investments. They illustrate what Ayres & Gertner (quoted by Hart & Moore, 1999) call "obligationally incomplete" contracts<sup>2</sup>, i.e. arrangements that do not fully specify the obligations of the parties and "leave a lot out", and that even fail to specify *verifiable* obligations of the parties (Bernheim & Whinston, 1998). Furthermore, these arrangements are at best "informally formalized"

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<sup>1</sup> Three to 5 years in plantation-and-land-sharing P&S, 25 to more than 50 years in production-sharing or plantation-sharing P&S.

<sup>2</sup> The Theory of Incomplete Contracts does not consider such contracts: "*Some contracts are manifestly incomplete in the sense that they leave something out or are ambiguous. (...) Incompleteness like this is very common in reality, but unfortunately it is very hard to model. It would seem necessary to assume that the parties are boundedly rational in the sense that they do not foresee even relatively obvious events. In contrast, in this paper, we have assumed that the parties are constrained in contracting only by the fact that complicated states of nature cannot be verified. (...) the parties' obligations are fully specified in all circumstances*" " (Hart & Moore, 1999:134).

through *papiers* whose content is largely deficient and without direct legal validity. P&S contracts evidently are not perfect-contingent-claim contracts!

What interpretation can be given to this incompleteness? How to explain that actors (and specifically the takers) venture in such deals<sup>1</sup>? The empirical elements we have at hand allow us to bring forward some preliminary answers that will be mobilized as research intuitions in further research.

We have identified four types of P&S contracts incompleteness:

- a) Incompleteness coming from uncertainty regarding property rights. This incompleteness may be exogenous to the bilateral contractual relationship (with the questioning of the contract by some assignor's relative). It may also be endogenous, with the risk of arbitrary eviction of the taker by the assignor, the (exceptional) lack of specification of what will be shared (only the plantation or the plantation and the land), the lack of specification of the assignor's rights regarding initial food crop production or regarding the taker's "duty of gratitude", the lack of specification of the taker's transfer right on the plantation (in plantation-sharing configurations).
- b) (Endogenous) incompleteness coming from the lack of specification regarding the specific investment: process of realization of the plantation, timing of the planting, concrete mode of plantation sharing.
- c) (Endogenous) incompleteness coming from the lack of anticipation of major events such as an accidental destruction of the plantation.
- d) (Endogenous) incompleteness coming from the lack of specification of the duration of the contract.

The party potentially injured by incompleteness of type (b) is the assignor; in the other cases, it is mainly the taker - especially the non-autochthonous smallholder taker, in the current socio-political situation where non-autochthons' situation is quite shaky. If the taker is a *cadre* (especially a *grand cadre*), he might be in a less precarious position if he has links with public authorities, or even be in a position of strength.

Yet, the P&S contract is not particularly complex and it should be possible to specify its most important clauses without much trouble, except in the case of the assignor's right to assign land under such arrangement, and of the taker's "duty of gratitude." The contract could easily specify beforehand, for instance, what is going to be shared (including or not the land itself), the assignor's rights regarding food crops, and what would happen to the contractual relationship in case of an accidental destruction of the plantation. The technical process followed for the creation of the plantation and the timing of the planting could also be made explicit in a schedule of conditions (type of seedlings, quantity and type of fertilizers and agro-chemicals, etc.). The time of the sharing and the length of the contract could be defined on the basis of simple indicators based on physical quantities of the product (such as "the plantation will be shared when the total production will reach x kilograms or tons", or "the plantation will be considered as not any longer productive when production will come down under x kilograms or tons"). In practice however, actors do not proceed in that way, and this is the main puzzle that we try to resolve here.

In the following discussion, it is important to keep in mind that P&S contracts relate an assignor who is most often an autochthon, and a taker who is most often a non-autochthon (Ivorian or foreigner) smallholder, but one who may also be a *cadre* (autochthonous or Ivorian from another region). These actors' profiles translate into strong potential differences in terms of human capital, labor and financing endowments, as well as in terms of position in the socio-political field. It is also important to adopt a dynamic perspective (Poppo & Zengler, 2002), on two accounts. First, as the P&S contract is a new institutional arrangement, most actors do not have experience regarding this arrangement and cannot refer back to a shared contractual framework. Second, the assignor might have no experience in the cultivation of the crop considered in the contract (hevea or oil palm) and therefore also lack critical technical knowledge – even the productive lifetime of a hevea plantation and the yields that might be

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<sup>1</sup> As we do not have currently adequate empirical data, we will not deal here with the issue of under-investment as a possible consequence of the combination of contract incompleteness, opportunism and asset specificity.

expected are generally ignored. One must thus anticipate the effects of future learning on contractual practices.

We now discuss exogenous incompleteness rooted in uncertainty regarding property rights (endogenous incompleteness regarding property rights is dealt with in subsequent sections) and cognitive frames, we then focus on endogenous incompleteness, and conclude with a discussion of P&S arrangements as an extreme version of relational contracting.

#### 4.1 Incompleteness rooted in uncertainty regarding property rights

Exogenous incompleteness coming from uncertainty about the right of the assignor to contract is not contemplated in economic theories of contracts, as property rights over the resources affected by the arrangement are assumed to be well-defined and enforced by both Incomplete Contract Theory as well as by the Transaction Costs Theory. And yet, this type of uncertainty is critically important here.

This problem does not come from the informality of property rights as such: numerous studies have shown that customary land tenure can adequately secure land rights (Platteau, 1996; Lavigne Delville, 1998; Deiniger & Binswanger, 2001; World Bank, 2003). However, in Southern Côte d'Ivoire, customary (or neo-customary) land systems have turned out clearly dysfunctionnal, in a context characterized by increased land pressure, by the monetarization of agricultural production and of access to land, and by the massive arrival of migrants. Tensions and countless conflicts between autochthons and settlers illustrate that dysfunction, especially regarding rights transferred to migrants. The questioning of a land transfer by assignors' relatives may come from a concern to keep the land for direct use by family members, but it can also correspond (as very often in the Centre-West, West and South-West) to an opportunist strategy of land or plantation grabbing in order to sell or resell it (including to their former users)<sup>1</sup>. The uncertainty over the right of the assignor to delegate rights, and its consequences for the migrants – which we underlined in the case of P&S contracts – are thus not specific to this contractual arrangement and concern as much, or even more, the "gifts" and "sales" of land rights (Colin & Ayouz, 2006; Chauveau & Colin, forthcoming). In this context, from the taker's standpoint, the risk of contestation of the assignor's right to delegate use rights on land can be likened to the risk of a "radical hold-up", in the Western-movies sense of the expression (the grabbing of the plantation). This risk highlights a type of indirect transaction cost (not rooted in the bilateral relationships as such) empirically well identifiable.

The taker may try to secure his rights by trying to verify the extent and quality of the assignor's land rights. For that purpose, the best procedure would be the issuance of a minute of the assignor's family council attesting that the contract is known and accepted – we saw that this was the first measure expected by the takers from State intervention. Concretely however, only the "*grands cadres*" can impose such a procedure, thanks to the value, for the assignor, of contracting with such partners (who can develop oil palm and hevea plantations), and also thanks to the asymmetric socio-cultural and socio-political relationship they have with the smallholder assignors. Those *cadres* also systematically impose a topographic plotting by the agents of the Ministry of Agriculture, and usually also involve the *sous-préfet* in the contractual process. For the other types of takers (Ivorian or foreigner settlers), the right of the assignor to contract is essentially unverifiable, as the latter's intra-family relationships always remain a black box. To reduce uncertainty, however imperfectly, the taker has to rely on available information about the reputation of the assignor and of his family, on the presence of witnesses and on the issuance of a *papier*, once the plantation is shared (see *infra*).

More importantly, the taker will try to keep as good a relationship as possible with the assignor, in order to be seen as a "good stranger," and therefore benefit from the assignor's (and notables') support in case the contract is contested by the assignor's relatives. For these actors, taking a plot under a P&S contract thus represents taking a sizable risk. Such a risk-taking strategy can be explained by the lack

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<sup>1</sup> We saw that the questioning of the taker's right may also come from the assignor's opportunistic behavior. Such a practice (for which we had echoes mainly in the Centre-West and South-West regions) may be above all explained by the fact that the assignor, in urgent need of cash, wants to sell the land or the plantation. He has otherwise no interest in chasing the taker, because he would have then to take charge of the work, or to find laborers with all transaction costs induced (whereas these landowners look typically for a rentier position).

of alternatives they face and by the fact that they mostly invest domestic labor, when P&S contracts concern a cocoa plantation.

## 4.2 Plant & Share contracts as new contractual devices: the role of cognitive frames

Incompleteness may come from the fact that boundedly rational partners just do not anticipate some contingencies or even the future stages of the long-term contractual relationship (Macaulay, 1963; Bernheim & Whinston, 1998) – all the more so since the contractual relationships is in relatively early stages of development, as is the case for P&S arrangements. In the terms of a Kroumen who assigned land under a P&S contract in Tabou, discussing about the length of the arrangement: *"These are things that I have not considered. Right now, we are just at the beginning of the contract."* Similarly, for Burkinabè settler in San Pédro region, *"The challenge for the migrant is to get land to plant cocoa. He does not take into account all the problems which may arise later on."* Perhaps much of the fuzziness that has initially characterized the object of the sharing (the land and the plantation, or only the plantation), can be traced to this type of determinants of incompleteness.

One can also interpret as the result of a learning process the fact that the increasingly precise specification of some contractual terms (such as the timing of the planting) or the introduction of contractual devices aiming at overcoming agency problems. A good illustration can be found in the spatial organization of the planting and the sharing. In plantation-sharing contracts, two systems are used. In one system, the taker creates two plantations on two different plots, one for the assignor and one for himself. This system, which contains the seeds of an under-investment of the taker on the assignor's plot<sup>1</sup>, seems to have characterized in some regions the initial contracts but now appears to be falling into disuse. The norm today is rather that the taker creates a plantation on a single plot with the assignor choosing his part when production starts and the plantation is shared.

## 4.3 Endogenous incompleteness

The elements of incompleteness now considered correspond to issues that are clearly perceived, albeit rarely explicated, by the actors involved. Economic theories of contracts trace this type of incompleteness to the fact that contracting parties use noncontingent contracts and fail to specify obligations in unlikely states of the world to save on transaction costs (Williamson, 1985). They lower the "ink costs" of fully contingent contracts, the search and negotiation costs involved in specifying a large number of unlikely possibilities, or the prohibitive measurement costs in assessing performance so that a breach can be demonstrated to a third-party enforcer (Brousseau, 1993; Brousseau & Glachant, 2002; Klein, 2002). Our analysis of P&S contracts largely supports this view but also points to other factors as sources of incompleteness.

### 4.3.1 Fuzziness as a strategy of tension reduction and relationship maintenance

More precision in the conditions of the coordination is often felt to reduce the risks of tensions. Conversely, however, actors may instead (often?) view the search for full clarification of contractual terms as costly in relational terms. One might indeed create more rather than less problems by trying to envision in detail all potential conflictive issues. In other words, in the actors' perception, it may always be possible to solve problems as they emerge over time, and more more advantageous, in the short-term, to reach an agreement by avoiding any subject perceived as delicate – such as the concrete mode of plantation sharing, the taker's transfer rights, the assignor's rights regarding food crops. Such an outlook could also explain why takers seldom exert pressures to quickly get a *papier*. This type of incompleteness is thus anchored in a relational conception of the contractual relationship (see *infra*).

Macaulay (1963:64) had already mentioned such a rationale in business relations in the U.S.:

*"Detailed negotiated contracts can get in the way of creating good exchange relationships between business units. If one side insists on a detailed plan, there will be delay (...). In some cases they may not be able to agree at all (...) and as a result a sale may be lost to the seller and the buyer may have to search elsewhere for an acceptable supplier. (...) Such planning indicates a lack of trust and blunts the demands of friendship, turning a cooperative venture into an antagonistic horse trade."*

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<sup>1</sup> It can be noticed that this potential under-investment was (is) coming from the spatial organization of the contractual relationships, rather than from a risk of hold-up (in the economic sense of the word).

The lack of clarification of some points may also come from the fact that the bilateral relationship is such that one of the actors (the potentially the injured party, typically the taker) considers that it would be completely out of order for the taker to ask his to ask the assignor, because he is also his tutor, to make every clause explicit.

#### **4.3.2 Strategic incompleteness**

Because it is enmeshed with tutorship, the incompleteness may also be somehow imposed on taker and sought by the assignor. This leads to what could be called strategic incompleteness, in the sense that fuzziness may be instrumentalized, especially when one of the actors is not in a position to ask for more explicit clauses. Strategic incompleteness may well explain (in parallel to other, non opportunistic, reasons, see *infra*) the delays imposed by the assignors in the issuance of *papiers*.

#### **4.3.3 Uncertainty & flexibility**

Under radical uncertainty, excessive specification of the contract may create rigidities. As stated by Macaulay (1963:64):

*"(...) carefully planned arrangements may create undesirable exchange relationships between business units. (...) the greater danger perceived by some businessmen is that one would have to perform his side of the bargain to its letter and thus lose what is called "flexibility." Businessmen may welcome a measure of vagueness in the obligations they assume so that they may negotiate matters in light of the actual circumstances."*

In other words, increased specification in long-term contractual relations creates rigidity. The trade-off between opportunism and adaptation has been well explored by the Economics of contracts: general contractual terms might favor ex post adaptation of contractual terms after certain contingency is realized, while at the same time increasing the risk of opportunistic behavior (Nicita & Pagano, 2005).

The clause relatives to the duration of the P&S contract – the determination of the time when the taker will have to reconstitute the land to the assignor – best illustrates this point. We saw that the rule is "When the plantation ceases to produce", or "does not produce enough any longer." Due to agro-ecological factors, it is not possible to determine this term ex ante for any of the crops considered (hevea, cocoa or oil palm tree, even if in the latter case the margin of uncertainty is much reduced). It should be noted that the sources of uncertainty here do not lie in unpredictable exogenous shocks, but in bio-technical considerations<sup>1</sup>.

The usual absence of an ex ante definition of the timing of the planting may also be explained by the actors' awareness that events independent of the taker's work may delay the realization of the plantation – a planting does not always succeed and sometimes it has to be renewed. The risk for the assignor that this lack of specification may induce the taker to delay the planting is reduced by the shared interest in an early production start, and also by his postponing the issuance of the *papier* (which is supposed to secure the taker's rights) until the sharing of the plantation, i.e. by the latent threat of eviction "if he really drags things out too much ."

*"Often the problem when we do Plant & Share is the taker does not develop the land, he drags things out and even gives up. What would you do if you have already given him a papier?"* (Gban assignor, Booda).

One find here two classical responses envisioned by Transaction Costs Theory to contractual problems raised by contractual incompleteness: taking hostages (Williamson, 1985) – if we interpret as such the delay in the issuance of the *papier*, and threatening termination of the business relationship for non-performance of the unwritten contractual understanding (Klein, 2002: 62).

#### **4.3.4 Monitoring and enforcement costs**

Contractual incompleteness may also be related to the monitoring costs that would be incurred if the contractual clauses were fully specified and enforced. This factor undoubtedly plays for those of the assignors – and they are numerous – who are fundamentally in a rentier rationale and who rarely visit the parcels (which can be far away from the village). According to our survey, one out of two landowners do not intervene at all at the time of the establishment of the plantation, and when they do,

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<sup>1</sup> Another option that we will consider later would be the introduction of some simple quantitative indicator.

it is usually just to prohibit intercropping with cassava, not to keep an eye on/survey/monitor the planting process.

Determining a precise planting schedule would imply a follow-up by the assignor. The imprecision of the general clause "we will share the plantation at the time production starts" might be removed by introducing some simple quantitative indicator ("we will share when the production will reach x kilograms"), but then the assignor would expose himself to risk of fraud from the taker and would have to exercise a time-consuming control. The same can be said regarding a simple quantitative indicator that could be used to determine the term of the contract (e.g., "you will get the land back when production will go down to x kilograms"). Rather than establishing such indicators, the actors rely on what they see as shared norms (see *infra*).

The risk of takers' opportunistic behavior during the establishment of the plantation (under-investment in the assignors' future share of the plantation) and the potential monitoring costs that its reduction implies are greatly reduced by the way most plantations are created today (see *supra*), with the planting of only one parcel, the sharing of that parcel at the time when production starts, and the selection by the assignor of his share of the plantation.

*"In Plant & Share arrangements, if the plots are not together, the one who does the planting has no motivation to work on the landlord's plot. As we do now where is the same plot that we will share, the work is well done"* (Kroumen, Ménéké).

Delaying the issuance of the *papier* reduces the risk of excessively dragging the planting out, but also constitutes a kind of test of the technical ability of the taker:

*"I have not yet given him a papier because I am waiting to see how he works"* (Agni, Damé).

Symmetrically, the lack of *papier* is sometimes explained by the fact that the taker does not ask for it, waiting for the success of the planting:

*"I have not yet asked for a papier because there are too much dead cocoa trees, I am ashamed to go to my landowner to make a papier"* (Baoulé, Damé).

#### **4.3.5 Asymmetries in human capital endowments**

In the case of P&S contracts for hevea (and sometimes oil palm tree) cultivation, the assignor's frequent lack of competence prevents the full specification of contractual terms in a schedule of conditions for the establishment of the plantation. This is clearly an issue of human capital endowment and not of bounded rationality or transaction costs. The assignor has to rely on the taker's presumed ability and on the presumption of converging interests. There is of course a risk of adverse selection. The contractual device consisting in the sharing of just one planted parcel and the assignor's choice of his share satisfactorily deals with the risk of moral hazard regarding the investment by the taker.

#### **4.3.6 Complexity**

Even if there is no deficiency in assignors' technical abilities (as in the case of cocoa production), the question remains of what is a "good" plantation, i.e. a satisfactory taker's work. A simple criterion such as yields cannot be utilized as yields depend on the conditions of the realization of the plantation, but also on its maintenance once production starts. Such an evaluation cannot rely on a numerical measure of quality but instead on the actors' pattern recognition, i.e. on the subjective evaluations of the acceptability of performance (MacLeold, 2002).

#### **4.3.7 Common knowledge**

Common knowledge may dispense with the requirement to formally describe the criteria defining certain characteristics or behavior as "standard" or "fair" (Brousseau & Glachant, 2002) – what Macauley (1963) labeled mutual but tacit understanding about an issue, which might remain unmentioned in negotiations<sup>1</sup>. Common knowledge of course intervenes mostly in P&S contracts for cocoa plantations, regarding contractual elements such as "we will share the plantation once the

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<sup>1</sup> In the French traditional tenancy practices, a usual contractual term is that the tenant commits himself to cultivate "as a good father should".

production starts", the lack of a schedule of conditions for the realization of the plantation, or a contractual term defined as "when the production stops."

*"The length of the contract, it is hard to say, but we will both know it will be the time"* (Agni assignor, Aniassué).

The fact that the actors do not feel it necessary to clearly define their contractual commitment because of this perception of converging expectations nevertheless open the way to tensions or conflicts regarding the term of the arrangement, grounded or not in actors' opportunism (there may be good faith in diverging appreciation of the norm "the taker will give back the land when the plantation will not any longer produce enough").

#### **4.4 A relational governance of contractual relationships**

The P&S arrangement can be seen as an extreme version (in terms of incompleteness) of relational contracting, i.e. of business-oriented contracting embedded in social relationships and grounded in values and agreed-upon processes found in social relationships (Macaulay, 1963; Macneil, 1978, 2000). In Furubotn & Richter's terms:

*"Relational contracts can be understood as contracts that do not try to take account of all future contingencies but are nevertheless long-term arrangements in which past, present, and expected future personal relations among the contractual parties matters (Macneil, 1974, 753). Therefore, such contracts are, to a degree, implicit, informal, and nonbinding. Self-enforcement, in a concrete sense, plays an important role here. Actually, most transactions concluded under relational contracting are more or less firmly embedded in a structure of relations that transcends the discrete transaction"* (Furubotn et Richter, 2005:173).

Furubotn & Richter's quote of Hadfield (1990) is also illuminating and fits quite well with the P&S contract case:

*"(...) incomplete contracts often exist deeply embedded in an ongoing relationship. The parties are not strangers; much of their interaction takes place "off the contract", mediated not by visible terms enforceable by a court, but by a particular balance of cooperation and coercion, communication and strategy."*

A relational perspective highlights contextualization as the key factor for the understanding of the contractual relationship, and implies that one examines, beyond the sole contract, the relations in which that relationship is embedded (Macneil, 1985)<sup>1</sup>. We will not discuss here the issue of whether relational contracting is purposefully enacted in order to minimize transaction costs and provide flexibility in the contractual relationships as compared to more complete contracts, or if it would be better seen as a by-product of the general working of the social matrix. What is nevertheless evident is the well-recognized role played by the expectations of pay-offs from future cooperative behavior in encouraging cooperative behavior.

The relational dimension of P&S contracts allows the development of this arrangement in conditions of major incompleteness (and contribute to explain this incompleteness), but its efficiency in terms of opportunistic-behavior prevention and conflict avoidance is not guaranteed, as we saw. The principle according to which "we will always manage to work out things in case of trouble" quickly finds its limits when one of the actors (or both) manifests opportunistic proclivities (which can be related to a high discount rate).

#### **4.5 Mapping the incompleteness of Plant & Share contracts**

The key elements of incompleteness that have been sketched out can be synthesized using the dimensions of the contractual relationship proposed by Macaulay (1963:57):

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<sup>1</sup> Macneil (2000:888-892) distinguish his own relational approach from a transaction costs approach by the fact that his own starts "from an overall grasp of the essential relations of which the transactions are an integral part", whereas transaction costs analysis starts by looking at the transaction alone. He nevertheless recognizes that "such a process carried out with the utmost of thoroughness would ultimately result in uncovering all significant aspects of the enveloping relations and their interplay with the transactions being studied".



- the type of issues dealt with through the contract: the definition of the performances (what each is expected to do or to refrain from doing), the effects of contingencies, the effect of defective performance, and their agreement that the contract be legally enforceable (in our case, this point just corresponds to the production of an informal *papier*);
- the degree of planning by the parties: the contractual terms may carefully and explicitly planned; there may be a mutual but tacit understanding about an issue; the actors may have two inconsistent unexpressed assumptions about an issue; or they may never have thought of the issue.

In the context of our study, the issue of rights and duties has also to be included.

**Tableau 6. Mapping the incompleteness of P&S contracts**

	Rights & obligations	Definition of performance	Effect of contingencies	Effect of defective performance	"Legal" sanctions
Explicit	Realization of a plantation by the taker, with a specified perennial crop. Sharing when production starts % of each party Contract duration: "until the plantation stop producing enough"	Area to plant	-	-	<i>Papier</i> as a device to secure the existence of the contract (rather than its content)
Tacit agreement	-	What is a "good plantation"	-	-	-
Between explicit & tacit agreement	If plantation-sharing: the land remains the property of the assignor	Planning of the planting (length of time taken by the realization of the plantation)	-	-	-
Between explicit & unilateral assumptions	What is to be shared (plantation, or plantation and land?)	-	-	-	-
Between tacit agreement & unilateral assumptions	Assignor's right to assign land Concrete mode of plantation sharing Taker's transfer rights Assignor's rights regarding food crops Taker's duty of gratitude	What is a plantation that "started to produce" What is a plantation that "no longer produces"	-	Taker's eviction if the planting is excessively delayed if it blatantly fails	Postponing the issuance of the <i>papier</i> in order to mitigate risks of excessively dragging out the planting or of realizing a "poor" plantation
Between unawareness of the issue & unilateral assumptions	-	-	What would happen if the plantation is accidentally destroyed	-	-

## 5 Conclusion: the Plant & Share contract as part of a way out for Côte d'Ivoire?

Aside from a clearly perceived conflictive potential induced by its incompleteness on some contractual clauses, P&S is viewed by most actors (including local State authorities) as a new contractual device that might contribute to a reduction of conflicts in rural areas and to an lessening of the tensions

between autochthons and "strangers." P&S contracts are indeed always contemplated as a promising alternative to the highly conflictive land sales.

With plantation- or production-sharing P&S contracts, the autochthons maintain their ownership right on land and this avoids the major source of conflict. Furthermore, while incompleteness in land "sales" bears on the central issue of ownership rights transfer from the seller to the buyer, in plantation- and production-sharing P&S contracts it bears on what the actors see as much less sensitive issues such as the conditions of the establishment of the plantation.

P&S contracts are felt by autochthons and migrants to be reasonable compromises as they enable landowners who do not have the labor, financing resources, or willingness to develop their land to benefit from the taker's investment<sup>1</sup>. As expressed quite explicitly by a Burkinabé who settled in San Pédro region: "*The autochthons give us plots under Plant and Share contracts because they have no labor force, no equipment, no financial resources, and above all because they do not like working in the fields.*" A key positive feature of P&S contracts is the perception that it represents an equitable deal, especially with half-and-half sharing arrangements, an impression clearly and frequently conveyed by statements such as: "*After 4 years, there will be an equitable sharing of the plantation*" (Agni autochthon, Aboisso); and "*The sharing is done equitatively*" (Guéré autochthon, Duekué). The key question that remains is the possible evolution in this perception of equity of P&S contracts.

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<sup>1</sup> As such, P&S arrangements are also seen as possible alternative to the long-term lease contract, which is supposed to secure the use rights of foreigners who acquired land in the past.

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