

BRIEFING NOTES

to improve our understanding and ability to ask the right questions and take effective action on land matters in West Africa

“Land Tenure & Development” Technical Committee

To what extent has the land reform in Madagascar achieved its aims?

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Land reforms may be enacted through various components, such as:

- the legal (re)definition of rights to land and the holders of these rights,
- the allocation, withdrawal and/or redistribution of rights,
- statutory frameworks for legal recognition of these rights (or for registering/formalising rights),
- the administrative and governance arrangements required to implement the reform.

The reform initiated in Madagascar in 2005 focused on the last two elements in order to legally recognise family farmers' de facto land rights and register them in new property titles, known as land certificates. This is done through local land offices, which are a new structure managed at the commune level.

This paper considers three questions: How is this reform innovative? What has it achieved in the 15 years since its inception? And have land tenure governance and institutions in Madagascar really changed?

The impacts that the reform has had on households are discussed in a second Briefing Note entitled “Who are the beneficiaries of land certification in Madagascar, and what effects did it have from 2005 to 2021?”

The foundations of the reform: legal recognition of local rights and decentralised land management

Legal recognition of local rights to agricultural land through untitled private property. This represents a major break with the previous system, which was based on colonial arrangements. Before 2005, all untitled land was attributed to the State according to the principle of presumed State ownership. There was no legal recognition of rights to the land that over two million farming households worked on, exchanged and transferred to their descendants. This situation was reversed when the principle of presumed private ownership was intro-

duced in 2005, and the State then had to assume that all untitled land is a priori privately owned. A new legal category of untitled private land (PPNT) was created to ensure that the new appropriation regime reflected local rules, thereby giving land occupants a first level of legal protection even if they have no formal documents attesting to their land rights.

New legal proof of land ownership through certificates. Titles are no longer the only legal document that provides proof of land ownership. Titles and certificates share some common features (both register private property rights held by one or more individuals, and are transferable by sale, mortgage or inheritance), but have very different competent structures and issuing procedures.

A new decentralised land management structure: communal land offices. Prior to 2005, the deconcentrated State services had sole responsibility for registering private property rights (land registration, issuing titles). The reform introduced land offices that operate at commune level and can issue land certificates under the new PPNT category.

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A new formalisation procedure. Registration and certification procedures are similar in that both are initiated at the landholder's request and are subject to a fee, but otherwise differ in four key respects.

1. The origin of registered rights.

Titles are issued when the land administration decides to allocate a piece of land deemed to part of the State's domain to a private individual. Private property is created "from above". Conversely, certificates are issued in order to register existing property rights that are socially recognised at the local level. Private ownership is enacted "from below".

2. Certification relies on local skills and knowledge deployed by decentralised actors

– local land office agents and representatives of the commune working in conjunction with the head of the relevant *fokontany* (the smallest administrative entity), *RaiamandReny* (notables or dignitaries) and all the neighbours of the parcel concerned. Although these actors are less trained and skilled than the land administration agents responsible for registration, they are easier to mobilise and often more familiar with the local distribution of rights. This gives them greater legitimacy in establishing social consensus on the rights held by different actors, which is the key to securing rights.

3. Certification is more accessible than registration

as applicants do not have to provide formal proof of their rights (attestations, private deeds, etc.), and because it recognises "*petits papiers*" (such as deeds of sale or sharing, certificates of productive use signed by

witnesses, the *fokontany* chief and sometimes the mayor).

4. Because it is local, **the certification procedure is much cheaper and faster than the process for obtaining titles:** certificates cost €10 to €15 compared with an average of €600 for titles, and the certification procedure takes 6 to 12 months while titles take an average of 6 years.

Undeniable but uneven progress

Certificates are on the way to supplanting titles. In 2022, some 17 years after the reform started, 546 local land offices had been established and nearly 1,370,000 certificates issued (with the process accelerating from 2018 onwards, see Figure 4 page 6). This far outstrips the number of titles issued over the previous century (estimated at 680,000).

One third of communes have local land offices (Figure 2 page 5) that currently cover the most densely populated and accessible parts of the country, in accordance with the aim of reaching the greatest number of people in the shortest possible time. Experience in other African countries suggests that it takes over a decade to roll out a registration programme, so this partial coverage does not constitute a problem provided the goal is still to create new offices. However, it does reinforce territorial inequalities in access to public services, and is a patchy response to popular demand for greater security of tenure. Efforts to establish local land offices in areas where land tenure is a highly pressing issue (urban settings, or longstanding rice fields on the great plains) are also beset by legal and political obstacles

such as incomplete titles, unfinished legal procedures, and a land administration keen to retain its hold over urban land.

Varying levels of activity in local land offices.

Local land offices vary greatly in the number of days they are open and the number of certificates issued each year. These differences are not necessarily a problem if they reflect the way that the offices have adapted to the local context (available resources, number and seasonality of applications), but it should be noted that 34% of them had ceased all activity by 2019 due to a lack of financial support and commitment from the municipal team. These closures are problematic, because they prevent new certificates from being issued and information being updated when certified plots are transferred through inheritance, sale, etc.

Lower than expected demand for certificates

Demand for land certificates has been lower than the designers and advocates of the reform expected, despite their comparative advantages over titles in terms of cost, time and accessibility (simple procedure and local offices). This may be due to opportunistic uptake and real or perceived levels of insecurity.

Opportunistic uptake. Demand for certificates seems to be largely driven by information and promotion campaigns – over 75% of certificates were issued in the context of projects to support land certificates, and the process has really taken off since 2019. These donor-subsidised operations aim to cover the operating costs of land offices, and also charge only €2 or €3 for a certificate, com-

pared with €10 to €15 charged by the commune.

Actual or perceived insecurity of tenure. Citizens recognise the legal value of certificates, welcome the accessible certification process, and often visit local land offices for information and advice. But this does not necessarily mean that they want to apply for certificates, as they still value social recognition and “*petits papiers*” – especially when the rights they hold do not correspond to individual private title (over undivided land, for example).

On the other hand, rights holders will seek legal protection – regardless of any promotional campaigns – if they find themselves in situations where recourse to local and customary authorities is no longer sufficient, or is even a source of insecurity (such as widows who certify plots of land that they have inherited from their husbands or purchased jointly, in order to avert the risk of being dispossessed by their in-laws).

Three potential weaknesses in the reform

Dependence on the level of municipal effort and extra-municipal funding.

The local land offices’ ability to operate is largely determined by how committed mayors and their municipal teams are to providing citizens with a sustainable local land service.

Municipalities also have very limited financial resources, often working with a total annual budget of under €10,000. The revenues generated by land certificates, small transfers from the State and land taxes (an unpopular option limited by rural poverty levels) barely cover the costs of ensu-

ring that local land offices fulfil their public service mission. Donor support has proved indispensable in creating and operating local land offices: only 3% were created autonomously by the communes, and 45% received donor support in the period 2018–2020. Plans to convert communal land agents into territorial operatives who report to the mayors but are paid by the State would significantly ease the communes’ budgetary problems.

Outstanding issues in updating the land information system.

Property documents and information on land plans and registers will only provide effective legal protection if they are updated when rights are transferred (through purchase/sales, inheritance, etc.). But the procedure for transferring certificates (updating documents and information systems) is hampered by fiscal and institutional issues such as the cost of registering land transactions (tax registration can cost more than the land itself), who benefits from the tax revenues generated by land transactions, and which bodies should validate them. These issues could negate any progress made in securing legal recognition of rights.

The reform has had a rough passage due to divergent views within the State apparatus and between land governance actors.

The decentralisation of land management has given communal teams new powers over local land governance, but the resulting redistribution of powers has generated tensions within the State apparatus and between land governance actors. The central land administration has taken various initiatives to limit the communes’ authority over land management (particularly in terms of registering transfers), control the certification process and impose new

technical standards. The enactment of a new PPNT law in 2021 consolidated the central government’s position and challenged the foundations of the reform.

This law works against the realities on the ground: restricting and freeing the boundaries of land defined as PPNT severely limits the spaces that are recognised as having been appropriated by families, are certifiable and managed by the communes, while extending the scope of land that the State classifies as state-owned, which is therefore managed by its deconcentrated services.

In 2022, various protest movements led by civil society, elected officials and development actors (operators, multi-actor networks and donors) led to a new law on PPNT reaffirming the initial orientations of the reform and the communes’ competences. Appropriated land is once again legally recognised as PPNT, but can only be certified if it has been used productively for over 5 years.

The new law greatly reduced the scope of PPNT, which is recognised as having been appropriated by families and managed by the communes, and extended the scope of land managed by the State and its deconcentrated services.

Conclusion

Several lessons can be learned from the land reform in Madagascar:

- Local people do not equate a lack of formal documentation with insecure land tenure. Under certain conditions, pre-existing informal or semi-formal arrangements can ensure a satisfactory level of tenure security. The new law of

2022 broadly meets and reaffirms these conditions, but events in 2021 show that the situation can change rapidly if the administration or government is prepared to challenge local land rights in the pursuit of a specific political project.

- Demand for legal documents depends on perceived insecurity of land tenure, and the social feasibility and financial cost of the procedures (especially in cases of undivided ownership).
- Land tenure reform is a necessarily slow process, as it takes time to deploy the necessary mechanisms (local land offices, certificates) and ensure that they are sustainable (continuity of service, updates by registering transfers) in contexts where the State is fragile and resources are severely limited.
- The direction that a reform takes is shaped by opposing visions and power relations that may evolve over time. Issues around governance and power may take precedence over technical aspects of the reform.
- International aid mechanisms should take account of these issues. In addition to designing and financing (in the long term) legal and technical tools, it is also important to support governance at the local and national levels, encourage debate, and ensure that everyone involved in these debates has the information and skills they need to do so effectively. ●

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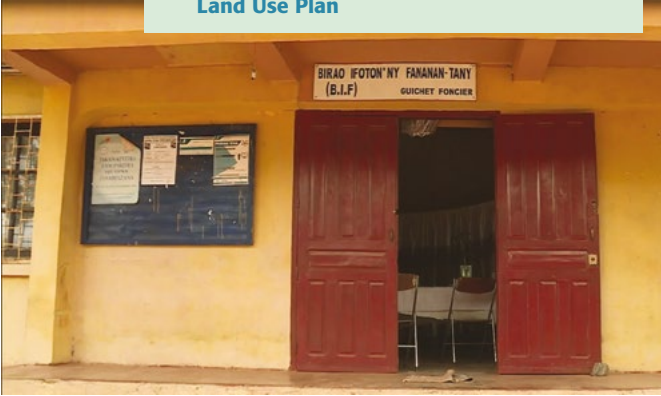
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This paper is not intended to promote a particular technique or tool, or encourage the application of similar technologies in Southern contexts. The aim is to provide some insight into their origins and the conditions for their implementation in very specific contexts, remembering that efforts to secure land tenure in Africa should support the local management and State regulation of existing practices. This may require different types of tools that need to be invented on a case-by-case basis.

FIGURE 1:
Local land office and communal land agents registering certificates on the Local Land Use Plan



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FIGURE 2: Number of certificates issued and local land offices created each year (OATF data, 2020)

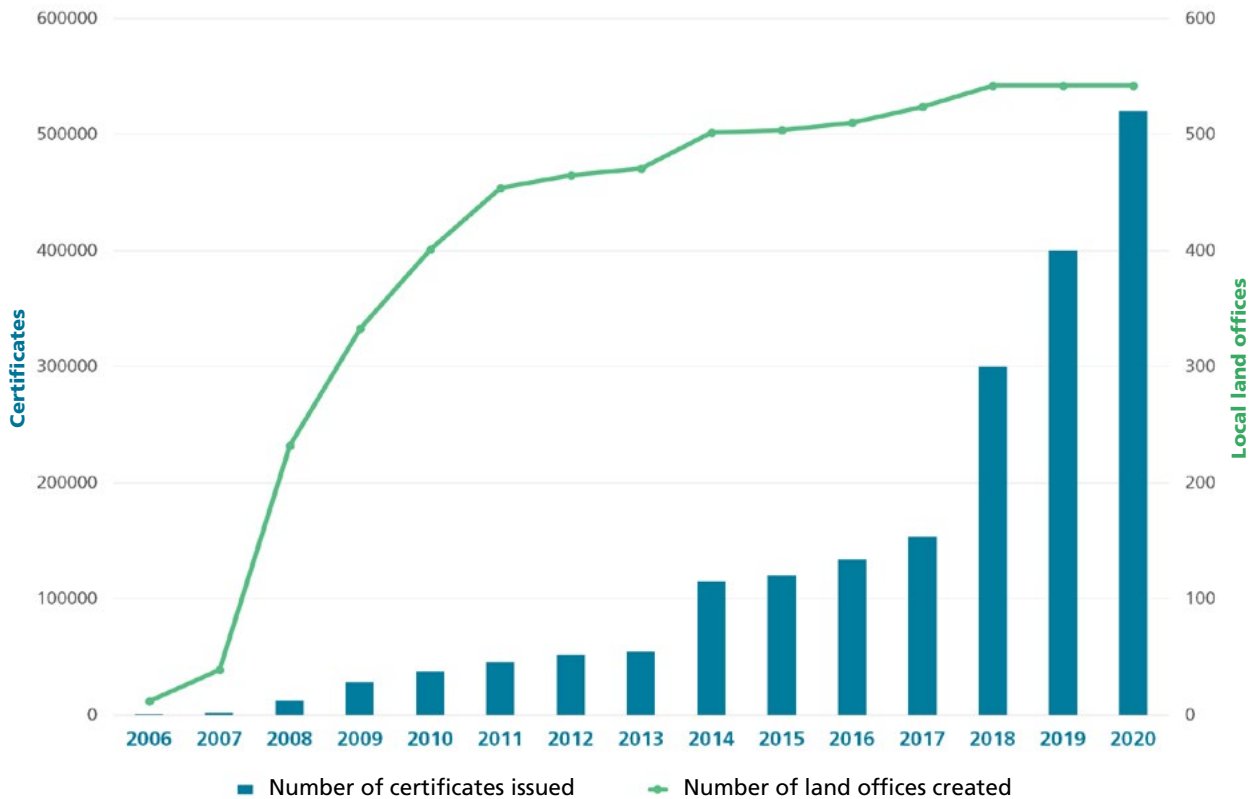


FIGURE 3:
Map of functional and inoperative local land offices

(OATF data, 2020 – produced by R. M. Rabeantoandro, 2021)

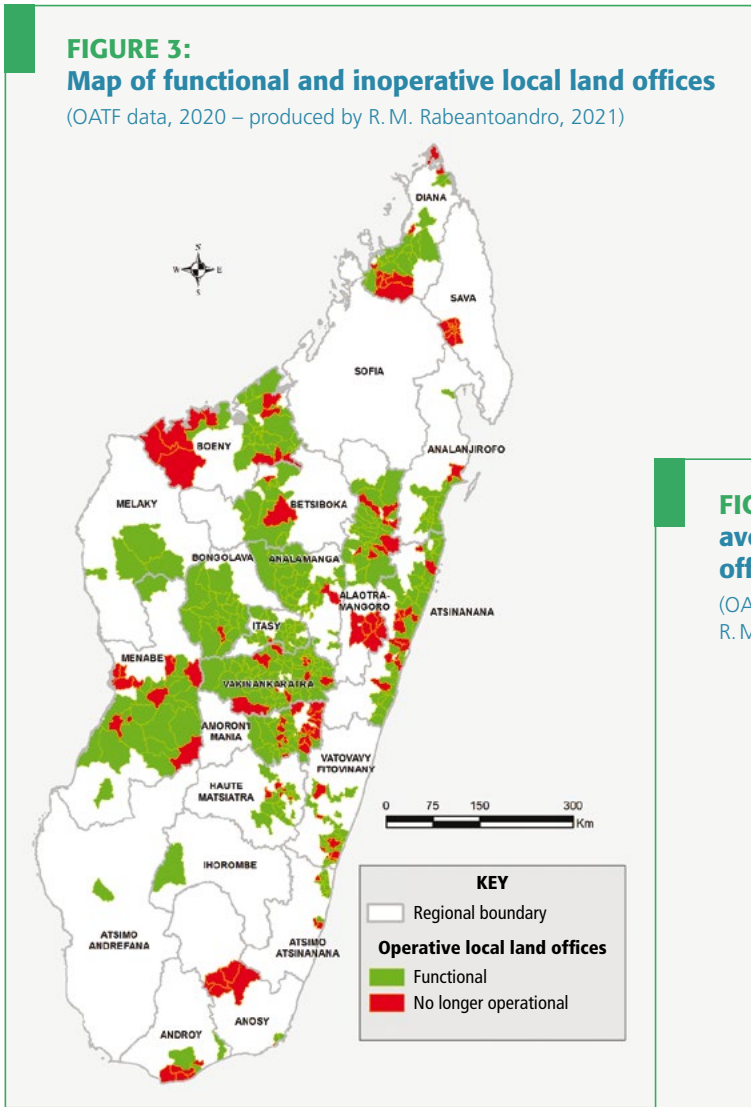


FIGURE 4: Regional level of certification – average number of certificates issued by land offices in each of the region’s communes

(OATF data, 2020 – produced by R. M. Rabeantoandro, 2021)

