

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

Who are the beneficiaries of land certification in Madagascar, and what effects did it have from 2005 to 2021?

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et Emmanuelle Bouquet¹, January 2022

The key pillar of a land reform undertaken in Madagascar between 2005 and 2021 was the introduction of certificates that could be used to register private land rights (see Briefing Note, “To what extent has the land reform in Madagascar achieved its aims?”).

Political leaders, NGOs and donors expected the reform to deliver on various fronts when it was launched in 2005, anticipating that it would: i) reduce insecurity of tenure (which was assumed to be widespread) and promote social peace; ii) stimulate access to credit; iii) encourage investment; and iv) activate land markets. The certification procedure conducted by communal land offices was also intended to reach as many people as possible, and to improve on the long and costly registration process that is mainly the preserve of the elite.

Unlike other land reforms based on the systematic certification of all plots free of charge (in Mexico) or at very low cost (in Ethiopia), certification in Madagascar is demand-led, with fees set by the communal authorities. This “demand-led” system is supposed to allow landowners to follow their preferred option, but does raise questions about the risks of exclusion.

With the new land law of 2021 marking an important change of course, it is worth looking back to see what can be learned from the 15 years that led up to this point. Is land certification accessible to all types of household (migrant/indigenous, poor/affluent, etc.) and individuals (women/men, young/old, etc.)? And how has it affected households that have obtained certificates?

IS CERTIFICATION INCLUSIVE?

● **Progress to be consolidated**

While certification is by no means widespread in Madagascar, it is much more common than registration among rural households. Nearly a third of communes had a local land office in 2022, and an average of 40% of households in these mostly rural communes had land certificates (the fact that they only relate to 10% of plots will be discussed later).

● **Demand for certification is patchy and weaker than expected...**

Broadly speaking, people are well-informed about certification and trust the process. Requests for certificates are prompted by three types of logic:

- A long-term outlook and desire to protect the interests of future generations.
- A need to confirm property rights. People from certain social categories (migrants, women, the very poor) may fear that local and customary rules will be used against

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them. If a dispute arises, having a certificate enables them to refer to a legal register and an authority outside the community (in the case of migrants) or the family (brothers or in-laws in the case of women).

- A response to information campaigns and drives to promote certificates.

Many households have not applied for certificates. There are two main reasons for this:

- **The first is lack of demand.** Social recognition, local authorities and “*petits papiers*” (deeds of sale, affidavits, and certificates of productive use, which may or may not be endorsed by a local authority) are seen as sufficient forms of security against possible threats from local actors (family, neighbours). Prior to 2021, the State was not perceived as a threat to informal local rights.
- **The second reason relates to households and individuals who do not hold full private property rights at their level.** For example, they may have use and management rights but not the right to sell (as is often the case with family plots obtained through undivided inheritance). “*Petits papiers*” such as affidavits stating that a set of siblings has inherited a piece of land say nothing about the rights of each brother and sister. Tensions could arise if one sibling applied for an individual certificate, as this would freeze property rights, decouple access to land from family obligations, and allow the individual to sell their plot without prior authorisation.

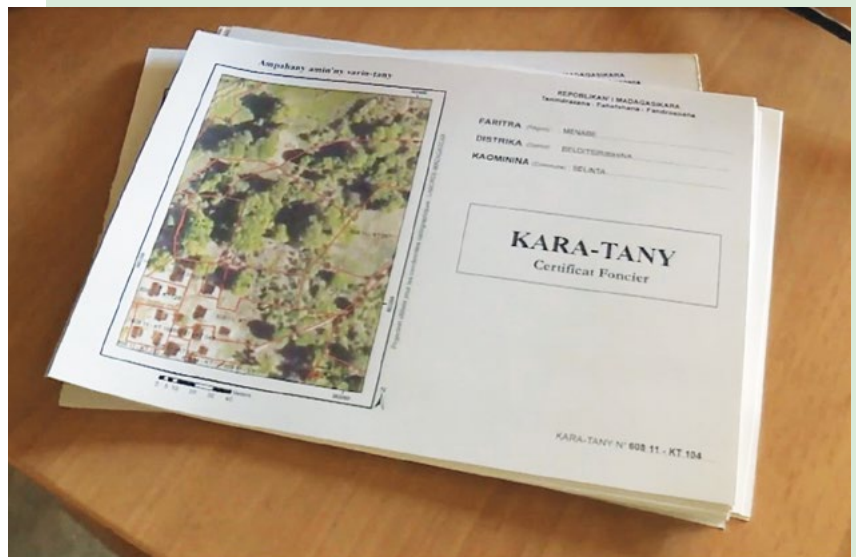


FIGURE 1: Example of a land certificate

● ... but a broadly inclusive process

These modest operational results are partly due to demand for certificates being lower than expected, and partly to unfulfilled latent demand.

This is dampened by two exclusionary factors: cost, and the social and/or family environment. Rights holders will only certify their plots if the process is affordable. Communes need to charge an average fee of €10–€15 per certificate to cover the operating costs of local land offices,² although prices can drop to €2 in the context of promotional operations, which generally increase demand for certificates. The other constraint to certification is the fact that the family or wider group may recognise private ownership at its own level, but refuse individual appli-

cations for certificates (see previous paragraph).

The statistics available in 2015 do show some positive trends in access to certification by different social groups (Rakotomalala and Burnod, 2015 – see Figure 2 page 5):

- Over time there is a discernible increase in certification among the poorest households, who might be deterred by the cost of the process.
- Certification rates are the same in households that have completed primary education and households with no education, which are consequently less comfortable with administrative procedures. Certification rates doubled in households where members have completed secondary education.
- In some communes, households headed by migrants – who do not have the same capacity as indige-

² As a reference, the wage of a daily agricultural labourer is about €1.

nous people to rely on local recognition and longstanding tenure to secure their rights – have equal or greater access to certificates than local people. It is also encouraging to see that they have not been prevented from obtaining certificates and that this process has not triggered any major conflicts.

- Women have equal or greater access to certificates than men, as heads of household or individual plot owners.
- On a less positive note, plots that belong to several individuals (siblings, couples) are often certified in one person's name even though the law allows several names to be registered. For example, plots belonging to a couple are often registered solely in the husband's name.

● Certain plots have been prioritised

The vast majority of farming households (90%) hold land, often a small area divided into several parcels (average farm sizes in Madagascar range from 0.5 to 1.5 hectares, depending on the region). Many households only certify some of their plots, possibly because of financial, social and/or family constraints, or because demand for different types of plot varies.

Priority is given to:

- rice fields, because of their strategic socio-economic and patrimonial importance (income and food security; family identity and unity);
- purchased plots, to protect purchasers from possible claims by vendors or their descendants.

See Figure 3 p. 6.

Has certification produced the expected outcomes?

● Little effect on investment and access to credit

There are no mechanical links between certification and credit on the one hand, or certification and investment on the other. Households invest in plots of land regardless of whether they are secured through social recognition, "*petits papiers*", certificates or titles. Indeed, the absence of documentation may encourage households to consolidate their land rights by visibly investing in a plot over time (developing or continuously cultivating it, etc.). Certification may also be used ex post to secure the purchase of a plot or protect investments made in a piece of land.

Access to credit in rural areas is mainly limited by the lack of suitable credit on offer (in terms of proximity, interest rates, procedures, etc.), households fearing that they will be unable to pay off their loans, and last but not least, the need for land guarantees. The main sources of credit are loan sharks, the family and then microfinance institutions, which prefer to use physical collateral that can be easily seized and resold (bicycles, oxen, bags of rice). Land guarantees are rarely used (1% of credits), and certificates and "*petits papiers*" are deployed to the same extent when required.

● Little effect on activity in the land market

Rural communes have long had active land markets. Households wishing to buy, sell or rent plots or sharecrop seem unconcerned by a lack of titles, certificates and legal documentation. Certification seems to have had little

impact in accelerating land transactions, on people's willingness to sell, buy, transfer or lease land, or on sale and rental prices.

Unlike rental or sharecropping contracts, most sale-purchase transfers are documented with "*petits papiers*" validated by the district chief (*fokontany*), and sometimes endorsed by a representative of the commune. Buyers can now further secure their purchases by certifying newly acquired plots.

However, certification can only secure transactions if the information is updated over time. Some buyers and agents have been unable to complete transfers of certified plots due to a lack of transparency around transfer procedures and related costs; and there have been similar issues registering transfers of inherited certified plots.

● Certificates and conflicts: Strengthening the role of local institutions

Overall, certification does not seem to have had much impact on the number of conflicts over plots in rural communes. Previous figures show that between 2% and 10% of plots are disputed, usually by family members. In some cases certification has helped end disputes, while in others it has rekindled or unintentionally provoked them.

Most land disputes are initially managed at the family level, then dealt with by local dignitaries and *fokontany* chiefs if they remain unresolved. A few cases are taken to the communal authorities, and on rare occasions a case will go all the way to the courts. Although disputes still follow the same course, mayors have become more involved in conflict resolution since land management was

decentralised, giving advice and mediation in accordance with the training provided when local land offices were created.

The local authorities and courts apply the principle of anteriority when conflicts arise between parties who hold a certificate and a title to the same parcel. This means that owners of certified land are protected against claims by holders of titles that were issued after the certificate for that particular plot.

● A local service

One outcome of the reform that was not mentioned in the initial objectives has been the provision of free information and advice on land tenure. The majority of households in communes with a local land office are aware of its existence and have visited it at least once seeking information. Unlike the land services, local land offices are very accessible: they can be reached

on foot and people are not afraid to go in and ask for information.

See Figure 4 p. 6.

CONCLUSION

Certification is an inclusive, low-cost process that is open to people with very different economic profiles. The systematic census of plots during promotional campaigns should continue, and applicants should be made aware that all beneficiaries can be registered – husbands *and* wives, all siblings, and all members of wider groupings.

As in many other contexts, the land reform in Madagascar has not led to radical changes in investment, the use of credit, or land markets. But it has provided effective legal protection, improved access to information and strengthened the role of local land management institu-

tions, which are key aspects in securing land tenure.

These achievements could be consolidated and sustained by further efforts to:

- update certificates in real time as transfers take place (sales, inheritance). Land policies and government guidelines should pay more attention to this key step;
- recognise the role of “*petits papiers*” and supporting documents (minimum information required, signatures of witnesses to be affixed, field checks by the *fokon-tany*, etc.):
- these are the only formalised means of protection for landholders in the two thirds of communes that do not have a local land office,
- in certain cases they can be used in combination with certificates (especially in transfers or family holdings). ●

These pedagogic factsheets were produced with the support of the Technical Committee on “Land Tenure & Development” and the “Land Tenure Policy Elaboration Support” mobilizing project financed by the Agence Française de Développement. These factsheets can be downloaded in their entirety from the www.foncier-developpement.org web portal.

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

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 2: Access to certification by different socio-economic groups

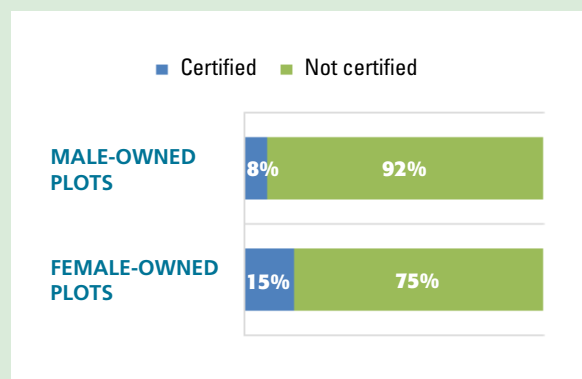
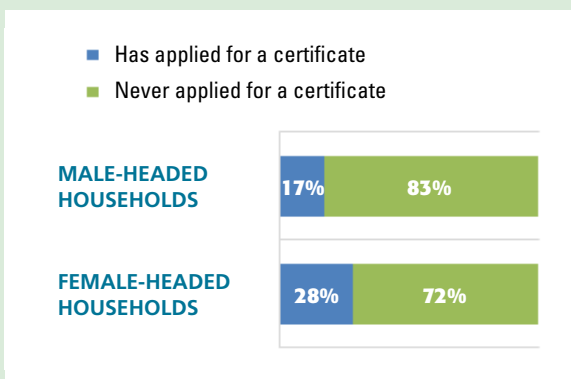
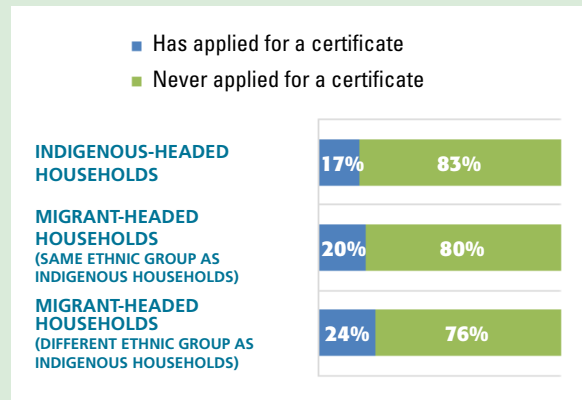
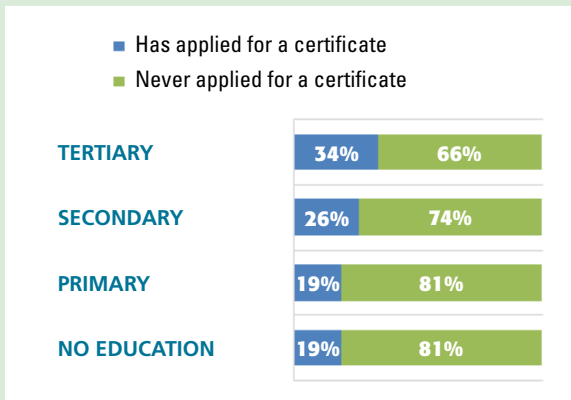
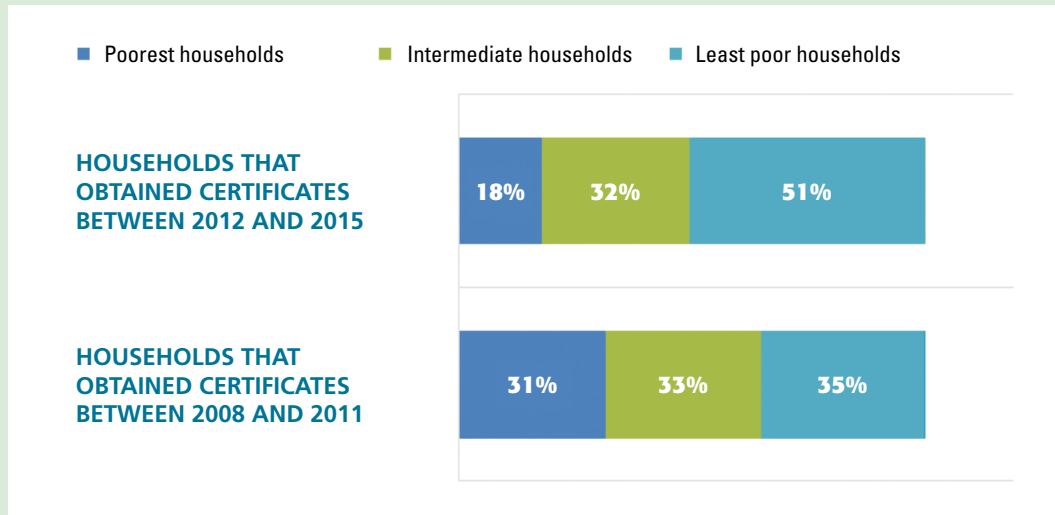


FIGURE 3:
Rice fields and cultivated hillsides in the Highlands region



FIGURE 4:
Local land office

