



**Integrating Land Governance into the Post-2015 Agenda  
Harnessing Synergies for Implementation and Monitoring Impact**

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## **Land certification in Madagascar: formalizing (f)or securing?**

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## Abstract

*Two major innovations have inter alia emerged from the land reform in Madagascar: (i) decentralised land management through the creation of local land offices, and (ii) certification, which enables individuals to register private property provided the community agrees on the legitimacy of the claimed rights.*

*Despite the political crisis and the withdrawal of international aid during this period (2009 - 2013), new local land offices have been created, and now cover a third of the country's communes. These Local Land Offices have had mixed success: 33% are operational 56% are experiencing problems and 11% are inactive. They have the major advantage of breaking the administrative monopoly on land matters, but face some serious challenges in updating their information systems, becoming financially sustainable (via the challenge of land tax collection) and integrating the land governance system (co-arbitrating disputes and managing land with customary authorities, dealing with local practices to secure land).*

*Far from being the preserve of the elite, certification seems to be relatively accessible to women, migrants and those with little education. It is far more popular than registration, but uptake is still low, with just 9% of households in communes with a land office applying for certificates. This highlights the importance of separating the formalisation of land rights from processes that secure land tenure.*

**Key words:** *land reform, Madagascar, certification, impacts*

## 1. A policy based on registering property rights

Since 2005, the land laws that underpin this reform (Laws 2005-019 and 2006-031) have revoked the presumption of state ownership and created untitled private property so that local land rights can be legally recognised. In parallel with registering and issuing land titles, a demand-led system of certification has been introduced to formalise private property (not other sets of rights to land and natural resources) in the name of one or several individuals (not for a group or community).<sup>1</sup> Certification and certificates differ from registration and titles in that they are only intended to register existing, socially validated ownership rights (Teyssier *et al.*, 2009; Rochegude, 2010).

The 2005 land reform breaks the legal, political and institutional monopoly previously held by the land administration. This represents a major step forward in terms of decentralisation, giving the communes new competences to register land rights in local land offices (Teyssier *et al.*, 2009) – but not greater subsidiarity in land management (conflict resolution, validating transactions, etc.)<sup>2</sup>. It was inspired by the local recording system – found in the vast majority of localities and known as ‘*petits papiers*’<sup>3</sup>, although it does not lead to their legal recognition. While the role played by the chiefs of the *fokontany*<sup>4</sup> and *Raiamandreny* (notables or elders) is taken into account, and they are involved in the certification process, no explicit mention is made of the other local customary, religious or economic authorities, whose role and importance in land issues varies from region to region (see also Droy *et al.*, 2010).

## 2. Progress and constraints with local land offices

In terms of change, the most innovative and visible component of the reform has been the decentralisation of land management. A similar budget was deployed to modernise the land services<sup>5</sup>, but apart from overhauling their archives and buildings, this component has not led to any major organisational developments, changes in practice or impacts for users (Comby, 2011; Andrianirina-Ratsialonana and Legendre, 2011; Thinon and Rakotoarison, 2013).

A total of 483 local land offices were created in one third of the country’s communes in the space of six years. A few were autonomous initiatives, but most were set up as the funding became available (with costs ranging from € 12,000 to € 30,000 per office). Now that the process has gone beyond the pilot stage, some key questions about the future of all these offices and the relevance of creating new ones in every commune on the island need to be addressed.

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<sup>1</sup> Only collectives with a formal status can formalise their land holdings, although this very rarely happens. For more information, see Aubert *et al.*, 2013.

<sup>2</sup>For comparisons of decentralisation processes in different countries see Fithpatrick, 2005; Bruce and Knox, 2009; Lavigne Delville *et al.*, 2001.

<sup>3</sup> *Petits papiers* (in French) are handwritten documents accompanying transactions – sale, inheritance and donation, or attesting property. They can be signed by witness or stamped by the chief of *fokontany* or the commune.

<sup>4</sup> The *fokontany* is the smallest administrative entity. The *Raiamandreny* that participate in local land recognition committees are supposed to be elected by local people (and are sometimes nominated by the mayor). More work needs to be done in this field, for while local people consult representatives of local religious or customary authorities before taking any steps to formalise their land rights, they do not envisage electing them onto these committees.

<sup>5</sup> \$US21 million to decentralise land management and \$US25 million to modernise the land services, accounting for about 80% of the reform budget for 2005 and 2010.

At the moment there are local land offices in the communes that are most easily accessible,<sup>6</sup> those with the greatest land density and/or those already involved in by development projects. While this distribution is logical in terms of effective action and support ('reaching as many people as possible in areas with the most serious land issues'), it reinforces territorial inequalities in access to public services. Furthermore, very few of the so-called urban communes have local land offices. This is due to the lack of an urban land management policy or, more exactly, to an implicit policy of territorial distribution that leaves the state land services with the potentially more lucrative urban areas.

The initiators and financial backers of the reform expected the demand for land certificates to be high as they are inexpensive and can be quickly and easily obtained from the local land offices<sup>7</sup>. Yet actual uptake has been very low, with a grand total of around 180,000 applications, and 96,000 certificates issued by the end of 2012 (see illustration 1, Land Observatory). This means that at the national level, far more certificates than titles have been issued across the country. Nevertheless, it raises questions at the communal level, where the average number of applications for certificates ranges from 38 to 261 per year (see illustration 2, PNF and Land Observatory).

The local land offices had to start operating autonomously only two years after they were set up, when international funding was withdrawn due to the political crisis. Some have fared better than others: one third have proved resilient,<sup>8</sup> over half of them are having problems,<sup>9</sup> and one tenth of the offices have ceased operating (PNF and Land Observatory, see Map 1).

Those implementing the reform often blame the land offices' operational problems on delayed technical support and lack of training. However, their fortunes are also shaped by the available funding and financial health of the commune concerned: it costs around \$US 5,000 to \$US 7,000 (20% to 80% of the communal budget) a year to run a land office (Andrianirina *et al.*, 2013). Communes have not been allocated the resources they need to exercise their new competences, and users have to bear a much greater proportion of the costs of certification than is the case with registration (Andrianirina-Ratsialonana, 2009). The successes and problems in these local land offices are largely determined by the municipal team's level of motivation, which is both the cause and effect of the lack of social demand for legal formalisation.

At the moment, the three main issues that land offices have to contend with are (Comby, 2011):

- technical sustainability: storing and updating data, computerisation and most crucially, the state administration's lack of will to decentralize land management and to share political and economic advantages;
- financial sustainability: if the cost of running the land offices cannot be covered by the income from certificates or (in the short term) by transfers from the State, it might be possible to use property tax revenues (although this is by no means guaranteed);

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<sup>6</sup> Which are not all served by paved roads.

<sup>7</sup> The certificates cost 50 times less than titles (\$US9-14, compared with \$US500-700) and can be obtained ten times more quickly (in 6 to 18 months rather than 6 to 10 years).

<sup>8</sup> These offices have survived thanks to bridged funding (from thematic donor projects), self-funding (from local taxation), by raising the price of the certificates, and by reducing their activities (cutting staff from two to one, paying them part-time wages, reducing their opening hours and authorising agents to carry out various tasks in the town hall – taxation, secretariat, etc.).

<sup>9</sup> Opening on an ad hoc basis, lacking an operating budget, dealing with files in dribs and drabs, experiencing virtually no demand for new certificates.

- social credibility: local attitudes to certificates<sup>10</sup> are changing, especially with the closure of certain offices, which has led some villagers to transform their certificates into titles.

### 3. Separating the processes for securing and formalising tenure

#### 3.1. Limited demand for certificates

The lack of demand for this kind of formalisation is mainly due to two factors (Burnod *et al.*, 2012):

- insecurity of tenure in rural areas is not as widespread as the architects of the reform believed. Only a small proportion of plots are disputed (2% of the parcels covered by the PECF study<sup>11</sup>); and while many households feel that their rights are not fully secured in the long term, few worry about them being contested in the short term (8.2% of households in the PECF study<sup>12</sup>);

- households use a range of practices to secure land tenure and combine them depending on the characteristics of the parcels and territories concerned (the origin of the rights, agricultural quality, potential challengers, etc.; see, among others, Rakoto, 1995; Ottino, 1998; Leroy *et al.*, 2006; Aubert *et al.*, 2008; Muttenger, 2010). The main way of securing rural land relies on social recognition of the holder's rights by local peers and institutions. *Petits papiers* are also used to secure transfers and validate rights in response to or imitation of administrative practices (cf. Lavigne Delville, 2003). Finally, the least common option is legal formalisation through certificates or titles (cf. illustration 3).

#### 3.2. Does certification really increase security?

There are two main reasons why people apply for certificates (Burnod *et al.*, 2012). Firstly, due to a proactive desire to reaffirm their ownership rights (the poorest households do this to fend off concrete threats, while better-off households do this more systematically). Secondly, people apply for certificates as an opportunistic response to information and promotional campaigns in villages (72% of certificates in areas covered by the PECF study). Either way, certificates make their holders feel that they have greater security of tenure – in the same way that *petits papiers* do, but certificates are believed to secure the rights of future generations more effectively than *petits papiers*.

Households mostly apply for certificate for parcels that they depend upon for their economic and social reproduction (such as rice fields), land that is most likely to be contested by a third party and/or plots that they regard as their personal property.<sup>13</sup> () Regardless of their wealth or education, households rarely obtain certificates if they feel they have legitimate, recognised rights to a parcel, and/or do not have a whole range of rights to it, such as inherited parcels (*op. cit.*).

In a context of legal pluralism that varies from region to region, certification aims to legally validate only those rights that are socially recognised. This is done by informing villagers of

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<sup>10</sup> Some people now mistrust the certificate because of its association with the previous government or with development projects.

<sup>11</sup> The study on the perception and effects of land certification (PECF) was conducted by the Land Observatory, IRD and Cirad in four regions and nine rural communes with local land offices. It is based on quantitative surveys of 1,862 households and over 7,300 parcels. The results of the study represent the situation in these nine communes, not the island as a whole.

<sup>12</sup>The PECF study found that in these specific cases these fears relate to interventions by a family member (50% of cases).

<sup>13</sup> i.e. they enjoy *de facto* ownership and are not subject to family regulation, This is mainly the **case with land** that has been purchased; see PECF study and Boué, 2013

the ongoing application, getting rights validated by local committees<sup>14</sup> and allowing this validation to be contested (2% of all applications submitted from 2007 to 2012 were contested by the end of 2012, Land Observatory). Thus, certification provides greater security of tenure provided the municipal teams follow the basic procedures at every stage of the process and the local institutions implement basic monitoring<sup>15</sup> (although it can sometimes result in exclusions, especially within family groups). Unfortunately there have been instances where certificates are issued without following the proper processes,<sup>16</sup> creating insecurity and benefiting influential individuals that villagers dare not oppose (except in a few rare cases of collective mobilization).

### 3.2. Local land offices (not just certificates) as a factor in greater security

While certification may lead to disputes, it can also help resolve them at the local level and in the courts. In most cases, local land offices act as referral rather than conflict settlement agencies (Burnod *et al.*, 2012). Setting aside their role in certification, they also give local people greater legal autonomy upstream of the process<sup>17</sup> (Andrianirina *et al.*, 2012). They are used by households that simply wish to obtain information and which have rarely, if ever, had the opportunity to use the state land services.<sup>18</sup> They are also occasionally mobilized to defend collective rights. Nevertheless, the local land offices cannot supply effective legal protection for all untitled but occupied land. Likewise, the sole legal status of untitled private property cannot provide this protection.<sup>19</sup> The state land administration recognises untitled private property only when it wishes to do so, and when the lands are actually certified. It is not uncommon for state representatives (from state officers to mayors) to ignore or pretend to be unaware of the existence of either untitled private property or local land offices, in order to register land in the name of the State so that it can be leased to investors (Andrianirina-Ratsialonana *et al.*, 2011; Burnod *et al.*; 2013 a&b).

## 4. Certification: a widely accessible but under-used option

Although the number of households that have obtained certificates is small (on average, only 9% of households in communes with land offices have chosen this option), the PECF study shows that those that have done so are very varied in terms of their wealth, level of education, origin and geographic isolation.<sup>20</sup> Far from being the preserve of the elite, certification actually seems relatively accessible – although better off and better educated households do tend to use more handwritten documents (*petits papiers*) and legal processes to secure their land rights (more certificates and titles). Certification is relatively inclusive but has had mixed results in this respect in terms of gender equity, although more work needs to be done on the

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<sup>14</sup> Composed of the chief of the *fokontany*, people from neighbouring parcels and various *Raiamandreny* (notables and elders).

<sup>15</sup> Most households are controlled by their family and local institutions, and this monitoring is made easier by the fact that formalisation is voluntary rather than compulsory, and there are a limited number of requests.

<sup>16</sup> It is hard to determine how many of these fraudulent certificates exist, and although they do affect morale, they are limited.

<sup>17</sup> Except when they scare them in order to increase demand for certificates...

<sup>18</sup> The PECF study found that 20% of households had visited their local land office, while four out of five households had never consulted the land services.

<sup>19</sup> Even without a certificate, the legal status of UPP is supposed to provide some legal protection because the land can only be registered in the name of the State or of an individual if it can be proved that there is no owner.

<sup>20</sup> The PECF study shows that 10% of households in the poorest tercile have certificates; 16% of those with certificates have never been educated and 47% never progressed beyond primary school.

way that certification can lead to exclusion among siblings and migrants.<sup>21</sup> While women apply more for certificates for their own plots than men do (PECF), most certificates for parcels that are registered as belonging to a couple (24% of parcels) are issued in the husband's name rather than that of the couple.<sup>22</sup>

## 5. Little added value in terms of markets, credit and investment

There does not seem to be a firm link between formal documents proving land ownership and access to credit in Madagascar. Land is rarely used as collateral, and when it is, *petits papiers* and land certificates are used in the same proportion (respectively less than 0,5% of credit studied in the PECF<sup>23</sup>). On the one hand, the institutions/individuals that provide credit prefer to use physical guarantees that are easy to seize and sell, such as bicycles, cattle, sacks of rice, etc.; and on the other, households are reluctant to offer their land as security.

There is certainly no mechanical connection between certification and investment. Security of tenure is an enabling but by no means a sufficient condition for investment. In addition, the legal formalisation of rights does not automatically confer security of tenure. Therefore, certification (which is more commonly realised after investment<sup>24</sup>) is more part of a dynamic of consolidating rights and securing capital than a pre-requisite for investment.

At the moment it is too early to analyse the possible effects of certification on land markets (the dynamics and types of transactions, the adoption of legal registration of rentals or sales in the local land office or the unchanged use of *petits papiers*<sup>25</sup>), as the process is too new and too few parcels have been certified. What is clear is that the sale-purchase and rental markets are very active in rural areas in Madagascar,<sup>26</sup> and do not seem to be restricted by the lack of legal formalisation of plots.

## 6. Are these new land devices better than nothing?

### 6.1. Superposition rather than substitution

Local land offices and certificates have been appropriated to varying degrees, depending on the commune and local land issues, the different authorities in charge of land issues in the locality, the position of the communal team, and the general relationship between local people and the State or development projects. These devices are not a substitute for existing land tenure arrangements, but are superimposed upon them, thereby contributing to and interacting with the country's normative and institutional pluralism. In this particular respect and contrary to the expectations of the founders of the land reform, land certificates do not replace *petits papiers*:

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<sup>21</sup> In the PECF study, the criteria of origin did not seem to work against incomers, who account for ¾ of people who have been in the study site for over 10 years, and who are often better off than people who were born there.

<sup>22</sup> The practical implications of this legal (rather than practical) exclusion should be studied in cases where the woman is divorced or widowed.

<sup>23</sup> Few rural households covered by the PECF study had access to credit (5% of households in 2011), and those that did mainly obtained it through micro-finance institutions.

<sup>24</sup> In the study, nearly 20% of households had invested in at least one of their parcels in the last five years (making improvements, changing crops, using more intensive growing practices).

<sup>25</sup> *Petit papiers* are used to formalise most sale/purchase transactions (90%) – compared with just 10% of loan, rental and sharecropping agreements.

<sup>26</sup> The PECF study found that 5% of parcels (9% of rice fields) are sharecropped, rented or loaned, and 37% of parcels had been purchased (a third of them in the last five years).

- certificates have considerable advantages over titles in terms of cost and timescale, but are less flexible, accessible and ‘established’ than *petits papiers*. Some users prefer the latter because they are cheaper (costing about €1), because of the type of authority involved (family, head of *fokontany*), and because they formalise transactions rather than rights;
- although this is not compulsory, some land offices demand *petits papiers* for their certification records. While this reinforces and complicates the certification procedure (and makes it look like registration procedure), it shows that there is interaction between the different types of land authorities (municipal team, village chief, family): the municipal team (mayor and local land officer) prefer to ask the family and village chief for additional proof of ownership before initiating the certification process. It can also make rights holders feel that *petits papiers* are still useful and have a legal value<sup>27</sup> and does not create an incentive to abandon them;
- some local authorities benefit from the continued use of *petits papiers*, as they help them retain their power and generate income.

## 6.2. From legislation to practice

In terms of land tenure, the main impact of the reform has been to legally recognise local/customary land rights and break the land administration’s monopoly over the legal formalisation of land. However, legal recognition of land rights is only effective when it is accompanied by information, transparency, controls, checks and balances – otherwise the laws are at best meaningless or at worst lead to exclusion.

## 6.3. Opportunities for decentralisation

Thanks to the land reform, the communes have extended their competences and are now focusing on new operations that combine systematic property tax registration with group certification (still demand-led) in order to diversify the land offices’ activities, increase their financial autonomy (from the State and international donors) and encourage local development. In doing so, the land reform focuses on formalisation rather than governance (in the pilot operation, each of the four communes received over 7,000 applications for certificates). These operations will need to address various issues:

- with taxation, shifting the emphasis from registration to recovery;
- with certification, being aware of (i) the risks of identifying rights too quickly, (ii) the fact that households only have a partial interest in certification<sup>28</sup>; (iii) *in fine*, the risk of households using more tax receipts as a tool for legal protection than certificates;
- with this joint ‘tax registration and certification’ operation, improving tax recovery in order to fund common interest projects, rather than simply covering the costs of tax registration and meeting the operating costs of town halls and local land offices.

## 6.4. Questions for the next stage of the reform

In order to feed into the debates about the next stage in the process, the reform should:

- ✓ draw on the systems used for *petits papiers* by formalising transactions and the origin of rights rather than ownership, and encouraging more explicit involvement by other types of local authority;

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<sup>27</sup> These *petits papiers* have no legal value in the strict sense, but do act as initial proof of ownership when disputes arise (Rochegeude, 2001; Aubert *et al.*, 2008).

<sup>28</sup> In the pilot operations, households only certified 50% of their holdings on average.

- ✓ focus on land governance rather than formalising rights, by:
  - strengthening decentralisation (competences, resources) in accordance with other territorial policies and avoiding a ‘super deconcentration’ of the land services;
  - increasing subsidiarity in land management, and offering communes the opportunity to work and arbitrate with different types of local authorities;
  - emphasising the role that land offices can play in supporting land management, rather than simply registering rights (providing information, acting as points of reference in conflicts, mediating with State forestry, mining and land authorities, and acting as an interface between other types of traditional land authorities);
  - building on citizens’ mechanisms for information and control rather than relying solely on administrative mechanisms;
  
- ✓ strengthen and diversify existing land offices before setting up new ones or trying new forms of land office (especially as the latter will be in communes with less pressure on land or less pressing land issues).

## 6. Illustrations

**Illustration 1: Changes in the number of local land offices and land certificates, 2006-2012**

	2006	2007	2008	2009	2010	2011	2012
<b>Number of land offices created each year</b>	7	27	193	101	68	53	29
<b>Cumulative number of communes with an open land office</b>	12	39	232	333	401	454	483
<b>Annual number of applications for land certificates</b>	1 751	10 176	55 996	47 485	18 320	19 694	18 146
<b>Cumulative number of applications for land certificates</b>	2 098	12 274	68 270	115 755	134 075	153 769	171 915
<b>Annual number of land certificates issued</b>	811	1 249	18 891	32 085	11 898	10 650	20 739
<b>Cumulative number of land certificates issued</b>	811	2 060	20 951	53 036	64 934	75 584	96 323

Sources: Madagascar Land Observatory & PNF

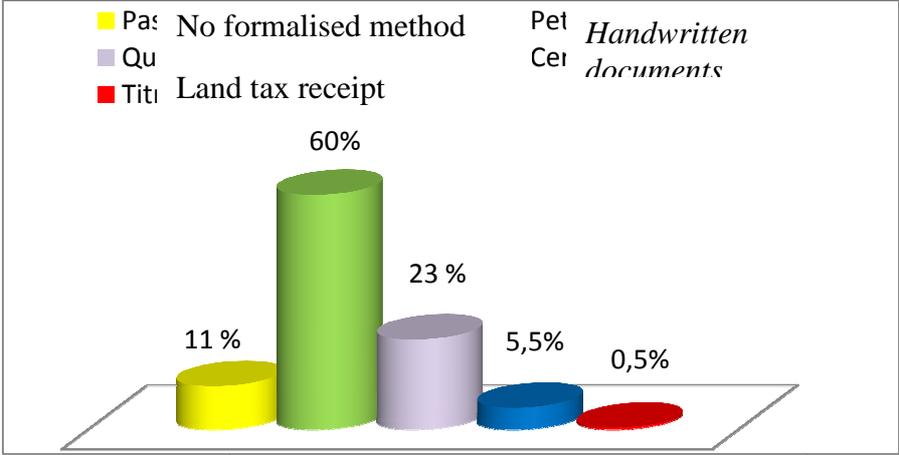
**Illustration 2: Performance of communal land offices at the national level, 2006 - 2012**

	2006	2007	2008	2009	2010	2011	2012	Average
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<b>Average annual number of requests for land certificates in each commune</b>	146	261	241	143	46	43	38	<b>131</b>
<b>Average annual number of land certificates issued in each commune</b>	68	32	81	96	30	23	43	<b>53</b>
<b>Average conversion of applications into land certificates</b>	46%	12%	34%	68%	65%	54%	114%	<b>41%</b>

Sources: Madagascar Land Observatory & PNF

**Illustration 3: Main modes of securing land tenure\* (PECF survey)**



\* This illustration only considers one type of method per parcel (knowing that there may be several), identified by respondents as the main method



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