

## “The Malagasy land reform: a replicable experience?”

Share Fair, IFAD Rome, 26-29 September 2011

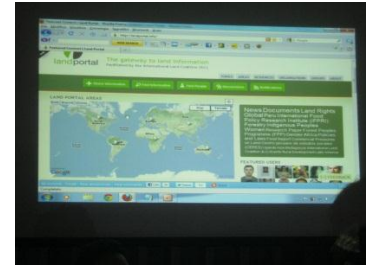
The session “The Malagasy land reform: a reproducible experience?” took place on 29<sup>th</sup> September, with IFAD, FAO and ILC participants. The land reform in Madagascar was discussed as an ambitious and original process, which could be an example for securing land access in other countries. The discussion was led by Mr Andrianirina Ratsialonana Rivo, Director of the Malagasy “Observatoire du Foncier”, Dominique Savouré, from the Council of the Notaries (France), Jean-Maurice Durand and Benoit Thierry (IFAD) and Steven Jonckheere (BSF). The debate focused on the key aspects such as decentralization and sustainability of the reform. The Land Portal, facilitated by ILC, was presented as a tool to enable exchange of land related information and interaction amongst its members.



Mr Rivo Ratsialonana and Mr Durand



During the presentation



The Land Portal

### The land reform in Madagascar:

The land reform in Madagascar meets a genuine demand for a simplified, decentralized, accessible system to obtain security of land tenure, at least in a large number of communes and regions.

Through such reform, there is currently in the country the coexistence of **two systems** : the land title and the land certificate; they are not incompatible, but complementary as the juridical competencies are clearly defined. Nonetheless, the two ways of recognising land rights are very different: the land title is a right created by the State (according to the Torrens system), while the certificate formalises a right *de facto*, i.e. the applicant is presumed to be the owner of the land that he/she occupies without title. Between the two systems there is no hierarchy: each one entails a political and juridical choice as the land certificate is not necessary a step towards a land title.

Although successful, the piloting of the land reform has been done in an isolated manner: there are in fact very few links with local development policies – such as agricultural development, land use, taxation – and those at national level, e.g. laws relates to land tenure, agriculture, mining and forestry. Therefore, there is the need for **the land reform to articulate itself within a broader framework of development**: this requires the set-up of an institutional framework. Moreover, the reform should be concretely supported by effective local governance and a strengthened decentralisation.

There is also an issue of **ownership** by the institutions involved in the reform and beneficiaries as it seems that the concept and implementation of the land reform has been guided by donors. Therefore, taking into account the needs of the beneficiaries and institutions and ensuring their involvement is of utmost importance at the moment.

Another key aspect is the **sustainability of the investments** into the reform which remains uncertain: there is the need to develop local financing mechanisms that would reduce the dependency on international donor fund – an issue that will be raised in other countries where similar land reform would be undertaken. Indeed it is necessary to seek ways to make the reform financially sustainable through the combination of various resources. However, first of all, financing of the land tenure offices must remain the responsibility of communes. It must necessarily be done by combining three sources in order to finance the decentralized land tenure management structures (to be adapted according to the situation of the communes): (i) the operating budget allocation from the State; (ii) the revenue from certification fees; and, (iii) the tax system (land taxes, plus taxes on various activities taking place in the area of the commune, such as tourism or mining).

The **lessons learnt** from Madagascar show that it is necessary to find the appropriate pace of the reform: although the large-scale, quick implementation can be an advantage – especially because this will make the reform almost non revertible – the experience shows that priority must be given to consolidation of advances, rather than to the pursuit of the reform at the same speed. In addition to this, when a traditional land management system is kept, like in Madagascar, it is necessary to find a good coordination and a good complementarity between the pre-existing system and the new decentralized land management entity. Complementary working methods must be encouraged and supported by harmonized technical means or harmonized training of the agents, etc.

The **Council of the Notaries** has carried out an audit of the reform and a legal analysis, which aim was to look for solution in land tenure, cancelation of state ownership of land and decentralization. The land titling and the decentralized certification system were analysed. Although it has been found out that in some cases the land plots were not surveyed correctly, the land certificate reform is remarkable: there is now social control over the boundaries, which ensures the security of legal documents. For this reason, the debate of the hierarchy between the two systems is perceived as not so important: the title gives formally more legal security, but the certificate functions similarly. At the same time, there are limits of the certificate: it is useful only in rural areas, while the tenure security in urban areas is not addressed adequately. What is more, higher attention should be given to transfer actions (such as sale and heritage), which have not been well integrated so far. Thirdly, there is the necessity to have technical and financial means to carry out the reform and strengthening local governance.

From a field perspective, the land reform may be a success. However, the reform is not widely known and there are still many misunderstandings in the reform, depending also from the fact that the initial intention of the government was looking into land transfers, hence the need for certification was identified. At the moment, traditional land users, who have been cultivating that land since generations are not considered adequately in the land reform: there is the need to insist on secondary rights, due also to high population migration.

#### **Discussion:**

The discussion focused mainly on the following aspects:

**Sustainability:** The key question in the future will be the financial sustainability of these type of reforms, also for their replication in Africa or elsewhere. One tool can be given by the land tax, which unfortunately in Madagascar is still weak: the problem is the low sense of citizenship and the unrecognised duty to pay tax. The aim is to link land property and land taxation and in such regard there is on-going awareness raising. Integration of land management with the agricultural policies has to be facilitated in order to make the land productive and taxes affordable. The lessons are to build the land reform on micro ownership and simplified certificates and closely linked to the decentralization process.

**Customary rights and security of rights:** To what extent was the land reform about restoring the rights of the people's informal customary land rights? What is the impact on the political stability of the country? The land reform was not too much about specifically restoring customary land rights nor about allocating land, but it was about improving land tenure security through the recognition and legalization of de facto ownership. Nevertheless, in Madagascar the internal migrations are common. Thus there are many layers of rights and still some difficulties with land speculation. But even in those cases, the land certificates give people more legal security. The two parallel rights are both recognized in the local system: 1/3 of the land is already covered with the land reform, with 60.000 certificates given out. At the same time, customary land ownership is still strong in some areas, where people have not made use of the land reform so far.

**Gender:** although officially included in the land reform, gender issues have not been addressed systematically: in fact, there is the need to explicitly push for joint tiling and women's land titling from the start of a land reform. Currently, there is an ample group of CSOs working on this aspect in the country.

#### **The discussion is continuing online:**

The discussion is continuing online in the Land Portal, where we launched three questions:

1. Can the land reform in Madagascar be replicated in other countries? What would be the main elements of this experience which could be used in other contexts ? What would be the main constraints?
2. How can decentralised land administration systems, as in the case of Madagascar, be made sustainable and pro-poor?
3. Is information on good (and bad) cases of land reform easily accessible and shared? How could the "Land Portal" facilitate the sharing of this information?

If you wish to participate at the debate, please visit the [Land Portal](#). If you are not registered yet please click [here](#).

#### **References and useful links:**

Observatoire du Foncier: <http://www.observatoire-foncier.mg/>

Council of the Notaries: <http://www.notaires.fr>

Land Portal: <http://landportal.info/>

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## Land reform in Madagascar (video)

Part 1: <http://www.vimeo.com/21748719>; Part 2: <http://www.vimeo.com/21749666>; Part 3: <http://www.youtube.com/watch?v=DYHGC658ZAo>

The reform allows all Malagasy who occupy and use land to have access to secure land tenure. This entails transforming “*petits papier*” or informal agreements into legally recognized certificates. These certificates are affordable and delivered without long delays.

The National Land Programme (*Programme National Foncier* or PNF) is responsible for the implementation of the reform.

The reform is based on: i) the modernisation of the technical tools; and, ii) two legal innovations.

The modernisation of the technical tools included, on the one hand, the restoration of paper documents and, on the other hand, the digitisation of the land data which is contained in the land titles. This improves the storage of the documents and make it easier to consult them. As such it contributes to reducing the delays in processing the demands for a land title. As the hardware used to process the demands is very sensible to the way in which it is conserved, the buildings have been rehabilitated. It is in this context that the “one-stop offices” have been created. These offices bring together the land registry and topography services and makes procedures less cumbersome for the users.

The first legal innovation has been the lifting of the principle of state ownership of land and the creation of the notion of non-titled private property. From now on non-titled plots which have been used for several years are assumed to belong to the ones that occupy the land. As such, the property right can be formalised.

The second legal innovation has been the decentralisation of land administration. From now on, it is the responsibility of the municipalities to ensure land tenure security on non-titled private plots. In this context, land offices are created in the municipalities and they issue legally recognised land certificates.

“I need a land certificate to secure my plots. Nowadays, a lot of people do not hesitate to occupy plots that do not belong to them. That is why it is important to have a land certificate, to secure my land and to have legal right over it.”

The creation of these land offices can be considered as revolutionary within the context of land administration, not only in Madagascar, but all over Africa. The municipalities are considered to be responsible for the recognition of ownership of those plots that have not been titled yet.

The land office has information on the ownership of the different plots that exist within the municipality and their localisation, thanks to the digitisation of the land data available at the land registry and topography services. This information (including geographical coordinates and the name of the owner) is brought together in the PLOF or local land ownership/occupancy plan. The PLOF is a joint tool for the land office and the land registry and topography services. The PLOF can be in digital or in paper form. The majority of the land offices do not have electricity. They therefore work without a computer and with the paper version of the PLOF. The law stipulates that a PLOF must be developed. The PLOF is a map showing the ownership of different plots.

The land office therefore is responsible to formalise the recognition of ownership. Agents recruited locally and paid by the municipality are responsible for the management of the land office. In order to become a land officer they have had to follow several months of theoretical and practical trainings.

A local recognition committee, composed of traditional and elected leaders carry out the actual recognition on the field of the ownership right. The advice of the committee can still be contested by the neighbours or the applicant. If no objection has been raised, the certificate can be printed and signed by the mayor. It is then issued to the applicant, after he/she has acquitted themselves from the certification fees.

## Evaluation institutionnelle de la réforme foncière à Madagascar

### Rapport de la mission FIDA-FAO

20 juillet 2011

DURAND, J.M., JONCKHEER, S., LIVERSAGE, H., MATHIEU, P.

<http://landportal.info/resource/land-tenure-systems/evaluation-institutionnelle-de-la-r-forme-fonci-re-madagascar>

### Summary of main observations and recommendations

#### I. Main observations: lessons learned and results

**The reform meets a genuine demand for a simplified, decentralized, accessible system to obtain security of land tenure, at least in a large number of communes and regions.**

**It has led to quantitatively significant results that undoubtedly make it irreversible.** The reform has led to the creation of 406 land tenure offices (*"guichets fonciers"*), i.e. in a little over a quarter of all communes, and 56 land tenure resource and information centres (CRIF). The mechanism is being adopted by mayors, albeit in a variety of ways and to a variety of degrees. With more than 60,000 certificates established (out of 120,000 applications submitted), there has been a significant response to farmers' demand for legal security of land tenure, resulting in a reduction in the number of conflicts.

**The reform has acquired both a degree of maturity and a critical mass.** Decentralized land tenure management now has the support of a large number of actors, including officials working within the traditional system, who were sometimes initially opposed to the changes being imposed on them. It thus has every chance of continuing, even if its practical details are revised.

**Complementarity and absence of competition between the two systems** (decentralized, by the GF, and "traditional" land tenure services). Some of the key actors (especially at the national level) have started to realize that the decentralized land tenure security system (GF, certificates) and the State's land tenure services (surveying and public land services) are not in competition but are complementary. Both are intended to continue and both can develop and boost their quality and their resources, on condition that they complement and support one another. In operational terms and at regional and local levels, however, this complementarity is still highly problematic and a huge amount of work is needed to define their roles, promote good coexistence and create the necessary synergies.

#### II. Main observations: difficulties and challenges to be met

##### D1. Diversity of contexts has not been taken into sufficient account

The demand for security of land tenure through land tenure certificates varies according to context and region, with a high demand in regions with a high population density, agriculture that is particularly market oriented, scarcity of land and large monetary land transactions (for example Vakinankaratra). In zones with the opposite characteristics (for example Menabe), the demand is lower, as are the motivation and the capacity to pay for land tenure certificates.

##### D2. Financial, technical and institutional sustainability: still problematic and not assured

The capacity of communes to (i) manage the GF and (ii) meet the real costs of these offices is uneven – good in some zones, but insufficient in others. The financing and technical capacities of the decentralized services (surveying and public land services) are also insufficient in many places. In both financial and technical terms, the sustainability of the reform is therefore still uncertain. Various forms of subsidy are needed for the present and probably also in the short and medium terms. The economic and technical sustainability of the system is not guaranteed, but can certainly be boosted.

##### D3. Institutional coordination and collaboration between the two main land tenure security systems: problematic relations between component 2 of the reform (decentralization of land tenure matters) and the traditional land tenure services

Relations between the National Land Tenure Programme, which during its early years focused especially on component 2 (the most innovative and most difficult component) of the reform, and the two traditional land tenure services have been problematic from the start. In an institutional context of insufficient dynamism of the land tenure services, this has been a perhaps inevitable side effect for the programme to have operational room for manoeuvre, the capacity for innovation and the dynamism needed to achieve real advances that are both speedy and quantitatively significant in component 2 of the reform. Having carried this out, relations must now be "rebalanced" and a better coordination sought between the programme (and, within it, component 2 of the reform) and the land tenure services: *maintaining dynamism* (and thus a certain degree of conceptual and operational autonomy), but *ensuring institutional coordination* with the surveying and public land services and *establishing genuine practices of systematic collaboration*, in which each actor can find motivations and be able to fulfil its specific tasks.

##### D4. Lack of precision in methods of processing land tenure and topographic information

In practical terms, the procedures for the decentralized securing of land tenure are not yet sufficiently based on consolidated

precise land information (both topographical and cartographical) that would allow the topographical triangulation (verification) of the coordinates of titled property and public land, and of untitled private property that is intended to be guaranteed by land tenure certificates. The lack of full, precise and properly shared cartographical land tenure information is a danger to both systems of providing legal security of land tenure. This situation is mainly the result of the poorly supervised and/or rushed services of private providers, but also of poor communication and the lack or insufficiency of the will to collaborate between, on the one hand, the decentralized land tenure services (surveying and public land services) in regions and districts, and, on the other, the regional services (of the National Land Tenure Programme) supporting component 2 of the reform.

#### **D5. Interactions and synergies between land tenure reform and other public policies linked to land management processes**

The land tenure reform is not well enough coordinated with other national policies that interact with land tenure and may rely on land tenure information (contained in local land occupation plans) and on good security of land tenure for all categories of farmer in order to enhance their effectiveness. These policies essentially concern *agriculture* (especially with the aim of supporting large-scale modern investors while also boosting small family farming) and regional development, but also environmental preservation and decentralization. Systematic evaluation of the desirable exchange of information and complementarity should be undertaken, and greater coordination sought.

#### **D6. Securing of secondary and collective land tenure rights**

The rights of people who have in actual fact and for a long time occupied land with abandoned titles (colonial concessions), sharecroppers and tenant farmers, as well as community rights (especially those of pastoral groups) are not taken into account or guaranteed by GF, nor by any aspect of the legislation and the reform. The question of how to make these rights secure must be raised and appropriate means of securing tenure must be sought.

<b>Recommendation</b>	<b>Content</b>	<b>Paragraph of the report</b>
<b>R1. General recommendation: on the basis of an established desire to maintain the advances of the first phase, reaffirmation of the political choices needed in order to continue the process of land tenure reform and the decentralization of legal security of land tenure.</b>	A choice to be confirmed and the necessary preliminaries. Despite the difficulties, the process of land tenure reform meets deep-seated expectations and has the potential to become a mainstay of rural development, agricultural modernization and decentralization: it should be pursued (in appropriate ways), consolidated and completed, if a clear political will underpins the process, particularly by incorporating the decentralization of land management into support for decentralization and the boosting of local governance.	<b>I.1.</b>
<b>R2. Adaptation of the pace of the reform.</b>	Giving priority to consolidation of advances and resolution of the current problems of phase I, rather than the large-scale, hasty pursuit of the establishment of land tenure offices; taking the variety of situations into account.	<b>I.2.</b>
<b>R3. Clarification of the status and institutional integration of the National Land Tenure Programme into the administrative organizational chart; at the same time, strengthening of the coordination and “positive tone” of relations between the programme (component 2) and the land tenure services.</b>	The clarification and coordination of the National Land Tenure Programme with the other permanent actors (State services) involved in land tenure issues must be pursued and completed in order to achieve a stable institutional framework. Among the various possible scenarios, priority should be given to exploring the creation of a national land tenure agency, a choice that would have major institutional ramifications. A very stable political context with very clear guidelines on land tenure, repositioned within a wider perspective of greater support to decentralized structures (taxation, regional development, local development), is a vital condition.	<b>I.3.</b>
<b>R4. Better coordination of component 2 of the reform with the traditional land tenure services; encouragement of both to work in a complementary and not competitive manner.</b>	Implementation of component 2 of the reform should involve the land tenure services more systematically, and these services should be encouraged to see their activities as a constitutive element of this component, in a spirit of constructive complementarity and not of competition. Interdisciplinary teams can be envisaged that would combine constitutional service officers, National Land Tenure Programme agents (or agents of the Directorate for Land Reform and Decentralized Land Management or the land tenure agency, as the case may be) and contracted land	<b>II.</b>

**R5. Encouragement of complementary working methods and motivation among actors at all levels (interministerial, ministerial, regional and district).**

tenure service agents, the idea being that these teams will, with time and appropriate training, become the leaven of a new culture.

At the interministerial level: creation of an interministerial committee for land tenure reform (and the assurance of land tenure security in rural areas, linking in with agricultural and rural development policies) that would validate the main guidelines and could commission studies and proposals for action on relations between land tenure reform and other policies that are associated and interact with land tenure. At national and regional ministerial level, the establishment of greater coordination and collaboration will be carried out pragmatically, particularly by promoting methods and institutional frameworks for collaboration with the National Land Tenure Programme and by motivating and encouraging officers. The training system for jobs connected with land tenure should also include a major component concerning the methods and practices of interdisciplinary and intersectoral collaboration.

II.

**R6. Reconciliation of the duo of modernization of State services and decentralized land tenure management**

This should be carried out through three different but complementary areas of intervention:

- Simultaneous pursuit of the components concerned with decentralization of land tenure management and modernization of land tenure services by building up their complementarity; modernization of decentralized land tenure services should turn them into real organs of support for development and reform, with a clear demarcation of their specific areas of responsibility;
- Redesign of training with a view to facilitating both the modernization of State services and also decentralized land tenure management;
- Harmonization and expansion of communications on the reform.

III.

**R7. Seeking of ways to make the reform financially sustainable through the combination of various resources.**

Financing of the land tenure offices must remain the responsibility of communes. It must necessarily be done by combining three sources in order to finance the decentralized land tenure management structures:

- The operating budget allocation from the State;
- The revenue from certification fees;
- Tax revenue (land taxes + taxes on various activities taking place in the area of the commune, such as tourism or mining).

IV.

**R8. Boosting of the tools and mechanisms for supervising and monitoring the performance of communes and GF.**

The systems of supervising and monitoring the performance of the GF must be boosted through the following lines of action:

- Development of new instruments to monitor and evaluate performance within the Land Tenure Observatory;
- Review of the range of checks on legality;
- Establishment of quality control for the local land occupation plans; in view of the inadequacies already noted with regard to some of these plans, it is necessary to ensure their quality control and establish effective practices to share information among the surveying and public land services and the land tenure offices.

I.4.

## Land Portal synthesis report of online discussion

21/10/11

<p>Title of discussion (click title to view discussion)</p>	<p><b>The land reform in Madagascar - a model for replication?</b></p>
<p>Objective of discussion</p>	<p>The online Land Portal discussion was launched on September 21 in preparation of a same-named live session, during the Agricultural Knowledge Share Fair on September 29, with the objective to exchange lessons amongst practitioners drawn from the land reform in Madagascar, as well as to discuss to what extent the model could be replicated in different circumstances. During the live session, threads of the online discussion have been taken up. This preliminary summary highlights the main points raised so far to generate further inputs.<sup>1</sup></p>
<p>Participants (click name to view user profile)</p>	<p>Alfons Üllenberg, Rivo Andrianirina – Ratsialonana, Steven Jonckheere, Mamy Rakotondrainibe, André Teyssier, Sabine Pallas, Landy Razafindrakoto and Marit Widman</p> <p><b>We thank all participants for their valuable contribution.</b></p>

During the online debate, broad consensus showed that land reform has actually led to improvements in the land policy and land tenure security for Malagache citizens. A decentralized structure with the local land certification offices (guichets) was considered relevant for the rural population outreach. Hence, the decentralized issuing of land certificates, to abolish the public property regime and the administration of land rights at the local level has been considered a replicable model for other countries.

However, risks of the reform have been raised since farmers might be more likely to sell their land in times of crisis, which eventually may affect agricultural development and food security. The financial viability of the reform was questioned and an extensive focus on donor financing was criticized with regards to dependency issues, them pushing the reform and taking the lead in the dialogue. Other constraints included the lack of integration of the policy framework (agriculture, mining, housing, conservation, etc.), low capacity in the implementation, and a lack of information sharing within the administration regarding the two parallel existing systems for titling and certification. It was suggested to restructure the administration along the requirements of the land reform.

Further, it was highlighted that an understanding of the country's history, culture and institutions is a basic prerequisite to make land reform sustainable and inclusive, as land in most societies (as is the case in Madagascar) is more than just a production factor. In general, this therefore limits the replication of similar approaches. Nonetheless, for the Madagascar case it was considered fruitful to include other countries' experiences with issues such as land rights recognition or the duality of decentralized systems for future phases of the reform. Particularly a comparison with the experiences from Burundi was prompted, as a similar model is piloted there.

It was stressed that land issues always touch on social issues such as education. The communities and individuals, as well as the local land office agents have to be instructed on their rights and responsibilities. In light of this evidence, an awareness campaign at the national level was proposed. The question, who should take on the responsibility for (legal) awareness raising (government? NGOs? CSOs?), was left open for discussion. It was stated that CSOs should

<sup>1</sup> Online discussion open until mid-November.

not be the guarantor of the state law but of the poor's properties. Financial sustainability of the decentralized system was brought up in the context of tax and registration fees: It was stated that municipalities have to improve their tax revenues to provide the necessary budget and cover operational costs of the land offices. But on the other hand, a "vulnerability policy" could allow for affordable official fees for the poor.

A broad debate on gender and the land reform evolved. Nevertheless, no consensus was reached, whether gender issues have already been considered adequately in the design and during the implementation of the land reform. The position that the original reform failed to take gender issues adequately into account (women's tenure, access to land for marginalized women, etc.), because the possibility to register land certificates under women's names has not been promoted, and the fact that men are still by default considered head of households was challenged with the allusion that about 20% of the certificates have been assigned to women and that women still possess "hidden powers" in some regions. However, the land reform reinforces the inequalities between women and men, as only few women are aware of their land rights and the existence of the land offices. Consequentially, joint titling is very rare. One suggestion/ conclusion was to look at the certification process at the household level during the early design stage of land reforms.

It was proposed that the next phase of the land reform would take on board the lessons and issues raised, and follow up on them in order to strengthen the land tenure for rural farmers and their autonomy. The Land Portal provides the opportunity for the land reform process in Madagascar to upscale the discussion from the national to the international level, as well as provide a multi vocal platform to debate on land issues. There is a lot to be learned to make land reform effective for reducing rural poverty.

For further information visit the [Madagascar Country Pages!](#)

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