

LAND REFORM IN MADAGASCAR: RATIONALES, ACHIEVEMENT AND INSTITUTIONAL CHALLENGES¹

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Abstract

The Malagasy reform on going since 2005 belongs to a new generation of land reforms in Africa. Two major innovations have inter alia emerged: the creation of land offices at commune level (decentralisation of land management) and land certification. This overview communication based on collective research during more than 10 years considers the three following questions:

- How is this reform innovative and what has it achieved in the 15 years since its inception?
- Does certification is really massive and inclusive or the preserve of the elites, and what are the effects at the household level?
- And have land tenure governance and institutions in Madagascar really changed?

The first section reviews the main land reform institutional innovations.

The second part analyses the reform achievement. At national level, the reform was deployed, in fits and starts, as international funding became available, and only in one third of the municipalities. Despite this, at local level, the communes keep their land tenure offices functional.

In this context, where certification is neither compulsory nor systematic, the third part points out that the demand for certificates is not massive. However, the certification dynamic is progressing year on year, and appears to be increasingly inclusive. The least educated and poorest households have access, and women are particularly proactive. However, on a less positive note, women's rights to plots belonging to the couple do not appear on most of the land certificates when the law allows it.

The fourth part analyses the power relations between land governance actors. It highlights how the land administration is reluctant in decentralizing power, and how it imposes technical constraints to re-assert its authority.

The fifth part presents guidelines for public policies to improve the certification process, strengthen the decentralization of land management, and promote social and political ownership of the reform.

Key words: land reform, decentralization, certification, impacts, institutional change, Madagascar

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1. Introduction

1.1. Context & Research question

Since the 1990's, the paradigm of land reforms is to accompany the gradual evolution of land tenure through the legal recognition of existing landholders' rights (Bruce et al., 1994) and the decentralization of land management (Lavigne Delville, 1998; Colin et al., 2022). The Malagasy reform on going since 2005 belongs to this generation of land reforms in Africa. Two major innovations have inter alia emerged: decentralized land management through the creation of local land offices at commune level and land certification, which enables individuals to register private property provided the community agrees on the legitimacy of the claimed rights. The Malagasy land reform objective was to overcome the pitfalls of the former land titling system that mainly benefit to economic and political elites (Jacoby and Minten, 2006) and to provide tenure security to a majority of households thanks to a low cost, easy and participatory registration process (Teyssier et al., 1998). However, contrary to similar land reform in other African countries such as Ethiopia or Rwanda (Deininger et al., 2008; Ali et al., 2016), land certification is "on demand" and not based on a systematic demarcation process. Then, a crucial stake in terms of development is to know how land reform is really implemented and appropriated at both national and local level.

This overview communication considers three questions:

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- **Does certification is really massive and inclusive or the preserve of the elites, and what are the effects at the household level?**
- **And have land tenure governance and institutions in Madagascar really changed?**

1.2. Methodology and data

This paper offers a comprehensive synthesis of research endeavors undertaken by a dedicated team of scholars and experts spanning over a decade. The bulk of these efforts unfolded between 2013 and 2021 under the auspices of the Observatoire du Foncier, an institution affiliated with the Ministry responsible for land affairs. Subsequent investigations, spanning from 2021 to 2024, were conducted in collaboration with Think Tany, a think tank affiliated with the University of Antananarivo.

This research is part of the field of institutional economics applied to development.

Data production was based on a mixed-method approach, which involved combining qualitative interviews and quantitative questionnaires. Interviews were conducted with a range of stakeholders, including households, local authorities, civil society representatives, government officials, experts, and donors. Additionally, data were gathered through participant observation within institutions responsible for land reform, as well as through systematic census at the commune level with local land offices. Furthermore, the paper utilizes first-hand data collected through several specially designed surveys conducted on large samples of rural households. These surveys were conducted in 2011 and 2015 (PECF Survey, comprising 1,862 and 1,834 households, respectively, with 1,551 households in the panel), in 2019 (Salima Survey), and in 2021 and 2022 (Women Land Access Survey). Each survey involved qualitative fieldwork within selected communes.

Communes and regions were initially selected to reflect the diversity of land tenure practices and the significant variation in certification rates between them. Within each commune, households were randomly selected. The questionnaire was meticulously designed to encompass various modules covering topics such as land documentation, land tenure practices, transactions, investments, and parcel characteristics for all household parcels.

2. The rationales of the 2005 land reform

2.1. A considerable gap between the legal system and local land tenure systems

In 2005, Madagascar's population was predominantly agricultural. The 3 million rural households represent over 80% of the population (RGA, 2004-2005). They own and farm small areas (less than one hectare on average) (op. cit.). From a legal point of view, inherited from the French colonial system, most of these households are not recognized as landowners because they do not hold formal land titles. From the point of view of local and customary systems, which vary from region to region, families, households or individuals are regarded as landowners (*tompontany* in Malagasy) (Ottino, 1998; Muttenger, 2010). Local recognition of land rights is achieved through social acknowledgment and the use of semi-formal documents such as "petits papiers²" (private deeds of sale or deeds of notoriety). These documents are validated by both local and legal institutions, including state and customary representatives (Jacoby and Minten, 2006; Burnod et al., 2014, Boue et al., 2016). These documents do not legally register private ownership, but they serve as initial evidence and are used to resolve conflicts at both the local and court levels (Aubert et al., 2008).

After more than 60 years of French colonization (1896-1960) and over 40 years of independence (1960-2005), the Malagasy state has maintained a monopoly on land management, and has granted only a few hundred thousand land titles (Bertrand et al., 2008). These land titles, initially granted to settlers and subsequently to national elites, have benefited only a small proportion of the population, covering less than 10% of the total land area and predominantly located in urban areas or prime agricultural plains. Issued over thirty or forty years ago, many of these titles have become outdated, failing to reflect the current reality: while land parcels have been transferred and subdivided, the titles have not been updated to reflect the names of the new owners (heirs or purchasers) (Teyssier et al., 2008). The deconcentrated State services responsible for land tenure, based in district and regional capitals³, rely on paper archives often in poor condition. They take an average of 6 years to issue a title, despite the relatively low number of applications, and demand, through formal fees and corruption, an average of €500 to process the paperwork (Teyssier et al., 2008). In addition to titled land, the state, citing the presumption of ownership principle inherited from the colonial period, asserts ownership over vast rural territories, regardless of actual occupation (op. cit.).

Driven by civil society organizations since 2003, with the support of national and foreign land experts, and buoyed by the favorable stance of the Ministry of Agriculture (which was then responsible for land tenure), along with the availability of donors willing to finance a land reform, a land policy letter in 2005 laid the groundwork for a new reform (Andrianirina-Ratsialonana et Raparison, 2015; Sandron, 2008). The premise, akin to many land reforms in Africa, is that citizens face land tenure insecurity (Bouquet et al., 2016). The objectives are to legally recognize the land rights of the majority of Malagasy people, provide them with the opportunity to obtain a legal property document at a reasonable cost and within a reasonable timeframe, in order to enable land security, reduce conflicts, and foster investment, particularly through access to credit (Ministère de l'Agriculture, de l'Élevage et de la Pêche, 2005). The reform's focus is thus on legally securing existing land rights, rather than allocating new rights or land to Malagasy citizens (Bouquet et al., 2016).

² On this issue in West Africa, see Lavigne Delville (2002).

³ The country is organized into regions (23), districts (119 in total), communes (1,693) and fokontany (over 15,000, equivalent to villages). The State administration and its decentralized services are present at regional, district and fokontany level. The territorial grid is also broken down into Collectivités Territoriales Décentralisées (CTD), which correspond to Provinces (not active), Regions and Communes (1,693 communes) (law 2014-018). The units overlap. A region comprises 4 to 5 districts, a district comprises around ten communes, and a commune around ten fokontany. The land administration is spread across some sixty land districts, each grouping together one or more districts. The role of these decentralized services is to provide technical support and carry out legality checks on the actions of the CTDs.

2.2. The major land reform's innovations: legal recognition of legitimate rights

The first innovation is the 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 (Teyssier et al., 2009). 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 introduced 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 for the French acronym) 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 (Andrianirina-Ratsialonana and Burnod, 2012).

The second innovation is 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 State's decentralized structures, the communes (of which there were 1,557 in 2005), acquire new powers. Once they have set up a communal land office (CLO), they can issue land certificates for land covered by the PPNT. The CLO is an integral part of the communal administration. Opened by communal decree, the functions of this CLO are entirely public service. The reform thus allows for greater subsidiarity in land management, and recognizes - in part⁴ - the role played by communes in arbitrating conflicts or validating transactions. As a new body in land governance, the communal land office adds to, rather than replaces, the authorities already in place (customary representatives and council, fokontany chief, commune team).

The third innovation is a 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) (Law 2006-031), but have very different competent structures and issuing procedures. The reform offers indeed 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

⁴ This is because the mayor's role only applies to certified plots, and not to all land. In practice, the mayor and his deputies are called upon to deal with conflicts and transactions on all land, whatever its legal status.

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.

3. Significant but uneven progress

3.1. Differences in deployment between reform components

The reform comprises two main components, which have received equal funding from development donors over the years (Andrianirina-Ratsiolanana and Legendre, 2011). The first component focuses on the modernization of land services, while the second involves the decentralization of land management. Regarding the first aspect of the reform, there have been limited changes in the services provided to citizens seeking to register and title their plots. This is due to strong resistance from interest groups within the Ministry responsible for land tenure, aimed at maintaining the complexity and opacity of land tenure procedures to generate rents (Comby, 2011). Consequently, there has been minimal evolution in the practices of land tenure services towards applicants for land titles. The requirements for documents, the number of steps involved, timeframes, tools utilized, and the prevalence of corruption have remained largely unchanged. In 2011, when the reform was evaluated, the only noticeable effects of this modernization component for citizens were seen through the renovation of archives and buildings (Andrianirina-Ratsiolanana and Legendre, 2011). In contrast, the second component of the reform has led to more substantial changes, albeit with variations over time and across different geographical areas. 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). This far outstrips the number of titles issued over the previous century (estimated at 680,000).

3.2. National deployment of communal land offices in spurts

The most far-reaching changes took place under the second phase of the reform. Communal land offices (CLO) were deployed in spurts, in line with donor funding and political crises. The first CLO were set up in 2006, and by 2022, their number had risen to 546 (Burnod and Bouquet, 2022a). The pilot stage of the land reform was well and truly over. However, after 16 years of reform, one third of communes have local land offices...but two third of them still have not. Experience in other countries suggests that it takes over a decade to roll out a registration programme (a country like Mexico took over 20 years to roll out its land reform across the whole country), so this partial coverage does not constitute a problem provided the goal is still to create new offices. To date, only 3% of land tenure offices have been set up autonomously by communes, with the remainder supported by funding from international donors (Millennium Challenge Account, World Bank, European Union, Fonds d'Investissements pour le Développement Agricole, Agence Française de Développement, etc.) (Burnod et al, 2013b, Burnod and Bouquet, 2022 a).

In 2022, the CLO are located in the most densely populated and accessible areas. This distribution reflects both political (decision-makers' choices) and operational (projects' choices) rationales for reaching the maximum number of people/voters in the shortest possible time, but it reinforces territorial inequalities in terms of access to public services (Burnod and Bouquet, 2022a). Above all, this deployment rationale does not systematically meet landholder's demand for secure land tenure. In certain high-stake areas, such as the historic rice-growing plains or urban areas, the introduction of CLO comes up against legal and corporatist obstacles: the presence of unfinished titles or legal procedures, the land

administration's desire to retain jurisdiction over territories where land has a high monetary value (Burnod et al., 2013b; Burnod and Bouquet, 2022a).

3.3. Contrasting trajectories for communal land offices

The trajectories of CLO have been highly contrasted. Over 330 CLO were created between 2006 and 2009 as part of development projects. These first CLO were forced to be autonomous after only one or two years of existence, due to the suspension of international funding following the political crisis of 2009⁵. Despite this, in 2012, new CLO were set up and 465 CLO are now in operation. Against all expectations in a post-crisis situation, 90% are still operational and have demonstrated their resilience (Andriamanalina et al., 2014). However, 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). They also vary in terms of skills and capacity to follow procedures and archiving methods. In 2019, 34% of the CLO had had ceased all activity 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.

3. The effects of decentralized land management at household level

3.1. An inclusive certification process, but a scope that needs to be consolidated

The certification procedure, carried out by CLO, was intended to reach as many people as possible and overcome the pitfalls of land title registration, a lengthy and costly procedure usually reserved for the elite. However, unlike other reforms based on the systematic certification of all plots, at no cost (in Mexico) or very low cost (in Ethiopia), certification in Madagascar is on demand, and fees are set by the municipal team. On paper, this "on-demand" option makes it possible to respect owners' choices, but in practice it raises questions about the risks of exclusion. An "on-demand" option, as practiced in the case of registration, may in fact benefit only the most informed, best-trained, best-endowed with capital, or most influential players, and limit the participation of more vulnerable groups and individuals.

After more than 15 years of implementation, is certification on a massive scale (as expected in the 2005 land policy letter)? In 2022, nearly 1,370,000 certificates have been issued. On a country-wide scale, certification does not reach the majority of citizens, but it already affects a far greater number of rural households (13% out of an estimated 4 million) than title registration (2%).

These operational results are still modest, for two reasons. Firstly, the demand for certificates had been overestimated by assuming that all citizens were in a situation of land tenure insecurity (Bouquet et al., 2016). Households in 2005 were certainly insecure in legal terms (they had no legal documents of ownership), but their perception of insecurity was not systematic (Burnod et al., 2012, Rakotomalala et al., 2018). Indeed, many families and individuals knew that their rights would be reaffirmed if challenged by neighbours and local authorities⁶. Many of them produced small hand-written document (private deeds of sale, deeds of notoriety, development certificates, endorsed or not by a local authority) to confirm their rights and to use them in the event of conflict, in local bodies, but also, if need be, in the courts (Aubert et al., 2008, Burnod et al., 2014, Boue et al, 2016, Rakotomalala et al., 2018, Di Roberto, 2020).

⁵ This was the case for American cooperation funds (as part of the Millennium Challenge Account), which financed the creation of over 70% of land tenure offices in 2009 (Andriamanalina et al, 2014). Funding from the World Bank and the European Union was also suspended that year.

⁶ On the definition of (in)secure tenure security see Lavigne-Delville, XXX and Arnot et al., 2011.

Secondly, two mechanisms are holding back demand for certificates (Burnod and Bouquet, 2022b). The first is the price, which is too high, preventing rights holders from certifying their plots. The average price of a certificate reaches 10-15 euros when calculated to cover the counter's operating costs and defined by the communal team. However, it can be lowered to 2 euros⁷ in the context of promotional operations and to encourage the expression of requests for certificates. In order to increase the pace of certification, in 2007-2008, and again from 2018 onwards, subsidized certification operations were carried out by land reform stakeholders (Andriamanalina et al., 2014). These operations were also accompanied by information and awareness-raising campaigns, improving local knowledge of land certification. More than three-quarters of certificates were issued as part of certification support projects (Burnod et al, 2014, Rakotomalala et al., 2018). Demand for certificates seems to be largely driven by information and promotion campaigns.

The second mechanism that hinders demand for certificates stems from the social and/or family environment. The family or a wider group may recognize private property on its own scale, but not on the scale of individuals, and so refuse individual certificate applications (Boué et al., 2016). For example, households or individuals may have use and management rights, but not the right to sell (this is often the case on family plots in the case of undivided inheritance). Applying for an individual certificate would mean freezing property rights, uncoupling access to land from family obligations, and allowing the individual to sell his or her plot without prior authorization, all of which could be sources of great tension. On the other hand, a "petit papier" such as a deed of notoriety mentions that a sibling has inherited the land, but says nothing about the rights of each sibling⁸.

To sum-up, 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)

While certification is not massive - it only affects 13% of households - it is inclusive - certification benefits all household profiles. The statistics available in 2011 & 2015⁹ do show some positive trends in access to certification by different social groups (Burnod et al., 2014 & 2017; Rakotomalala et al., 2018):

- 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 indigenous 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

⁷ For reference, the wage of a farm day laborer is around 1 euro.

⁸In Madagascar, deeds of notoriety are rarely drawn up by notaries. They are drawn up by the chief of the fokontany, who collects the testimonies given and the agreements made collectively in the event of a division or transfer of land within a family, for example. These deeds record the signatures of all those present.

⁹ The PECF study was based, in 2011 and again in 2015, on panel surveys of 1,863 households in 4 regions and 9 communes of the country.

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.

3.2. Effects differing from those expected

When the reform was launched in 2005, the expectations of political leaders, NGOs and donors were manifold: secure land tenure, access to credit, investment, etc. What were the actual impacts on certificate-holding households?

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 (Burnod et al., 2014; Rakotomalala et al, 2018).

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.

The certificate helps to improve households' perception of security on plots on which they have already invested, or on which they intend to invest, but it needs to be coupled with other services (agricultural advice, price information) or the market (inputs, products) to be a lever for investment.

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 (Burnod et al., 2014; Boue et al., 2016, Rakotomalala and al, 2018). 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 (Di Roberto, 2020). 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 (Rakotomalala et al., 2018). 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 (Di Roberto, 2021). 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.

4. Difficulties encountered in decentralizing land management

4.1 Land tenure offices are dependent on the level of involvement of the communal team and on extra-communal funding.

The establishment of CLOs relies on funding from sources beyond the commune, primarily development aid due to the limitations of the municipal budget. Only 3% of CLOs have been established using the municipality's own resources (see above). The cost of establishing a CLO ranges from €8,000 to €30,000, covering expenses such as outfitting premises (whether within existing offices or separate locations), procuring equipment, training staff, and obtaining the Local Land Use Plan (LLUP) (Andriamanalina et al., 2014; Comby, 2011). The LLUP is a cartographic tool that displays the spatial distribution of various land statuses overlaid on high-resolution satellite or aerial images. By identifying titled land and land in the process of being registered, it delineates areas eligible for certification (as certificates can only be issued for land outside titled areas) and progressively certifiable land. Consequently, the LLUP serves to define the jurisdiction of the CLO (the PPNT) and that of the deconcentrated State land service (titled land and land under state ownership). However, obtaining the LLUP is complex for two main reasons. Firstly, its cost: acquiring an aerial photograph is estimated at €25 to €40 per km² for communes averaging 350 km² in size (Andrianirina Ratsialonana and Legendre, 2011). Secondly, the complexity arises from the requirement to access and validate information from State land services regarding titled land (see below). Failure to deliver or validate the LLUP impedes its functionality.

At the municipal level, the effectiveness of CLOs largely depends on the engagement of mayors and their teams in providing sustained local services to their constituents. The operational costs of the CLOs to fulfill their public service mandate, estimated at approximately €5,000 per year (Andrianirina et al., 2013), are scarcely covered by revenues from land certificates, limited state transfers, or land taxation (an unpopular option constrained by the poverty of rural households). Some municipal teams manage to cover their expenses using their own resources by adjusting the structure of the CLO (reducing staff) and increasing certificate fees. Certain CLO agents are compelled to work part-time, engaging in multiple activities (becoming pluriactive) such as agriculture or service provision, often related to land.

Given this context, the support of financial backers is crucial to maintain the operations of communes and CLOs over the long term. For instance, during the period from 2018 to 2020, 45% of CLOs received support from projects, while over half of the remaining 55% ceased operations. This situation raises concerns about the sustainability of the decentralization process in land management and the communes' ability to continue their efforts without support from either the State or projects.

4.2. Ongoing tensions between actors surrounding the decentralization of land management

In contemporary times, land reforms in Africa have followed complex and erratic processes, alternating between periods of acceleration and stagnation, even regression, which have impacted concrete implementation (Seck and Lavigne Delville, 2018). The analysis of public policies shows that a policy is reflected not only through actions but also through "inactions" or various types of blockages (social, political, legislative, executive/operational, etc.) driven by actors with different or divergent interests (op. cit.). In Madagascar, the decentralization of land management, which has led to a redistribution of powers, has sparked tensions within the state apparatus (state services and municipalities, different Ministries) and among the stakeholders involved in land governance (state services, civil society, experts and researchers, media, development projects and donors, etc.). Over the years, the central land administration has implemented various initiatives aimed at restricting the authority of communes in land management and complicating the certification process (Burnod and Bouquet, 2022a). These initiatives include upstream actions such as requiring visas for opening CLOs and issuing LLUPs, as well as midstream measures like establishing technical standards for paper usage and mandating QR codes. Downstream controls on certificates are also imposed. The objective of the land administration is to maintain control over land management and the associated revenues. The following points highlight the diverse constraints imposed on actors involved in land decentralization and their corresponding responses (Ministries, Communes, development projects, civil society):

- **In 2010**, a circular from the land administration mandated that Communes obtain a visa for the opening of their CLO, a requirement to be fulfilled through the deconcentrated services of the land administration.
- **In 2012**, two administrative notes issued by the central land services suspended the activities of CLOs in 13 communes in the Analamanga Region. Civil society organizations focused on land issues, united under the Solidarité des Intervenants sur le Foncier (SIF), objected by filing a petition lodged with the Conseil d'Etat on September 18, 2012. The main argument of this petition was that communes, decentralized territorial collectivities, possess full administrative and financial autonomy; while they are subject to oversight by state services, they cannot have one of their services shut down solely by a decision from the state's technical services (Andrianirina Ratsialonana and Raparison, 2015). During the proceedings, the Direction Générale des Services Fonciers revoked the administrative notes that were the subject of the dispute.

- **In 2014**, the Ministry of State responsible for land affairs issued a decree suspending the certification process for almost a year (from 2014 to 2015), along with all land sales operations within the State's private domain, in communes lacking a LLUP and communal planning scheme. The aim of the State was to conduct an inventory of its own properties to build up land reserves for infrastructure development. Communes could only resume certification activities after completing their planning schemes, which required an average expenditure of over 3,000 euros. This decree raised questions as developing infrastructure on certifiable land, typically cultivated, fragmented, and often situated in low-lying areas, would pose challenges. Following the ministerial decree, only 10 communes managed to finance a planning scheme (with support from development projects). Some communes opted to close their CLOs, while others maintained operations to provide information to users at a minimum. In addition to the efforts of mayors striving to keep their CLOs functional to some extent, the national platform of SIF once again responded, asserting that the Ministry could not impede the activities of Decentralized Territorial Collectivities (DTCs) for political reasons using administrative practices that were not legally appropriate (such as circulars, service notes, and decrees) (Andrianirina Ratsialonana and Raparison, 2015). Various development projects focusing on land issues also strongly criticized this certification blockade. The Ministry responsible for land affairs eventually lifted the decree.
- **In 2015**, as part of a revised version of the law on private land ownership, the land administration is attempting to enforce mandatory conversion of certificates into titles upon any change in ownership (through inheritance, sale, or free transfer). The objective is to regard the certificate as an initial step in the registration process, thereby reinstating the land administration's monopoly over all legally registered land. The Ministry of Finance, informed by various networks of land experts from civil society and development projects, and able to secure substantial budgetary support from the World Bank only by demonstrating progress in the country's reforms, is urging the Ministry responsible for land affairs to abolish this requirement.
- **Over the 2017-2020 period**, various administrative activities have contributed to enhancing the quality of CLOs and their services. However, simultaneously, some activities have also impeded their progress, primarily due to: 1) delays or incomplete provision of LLUP, 2) the bureaucratization of the procedure (imposition of standards for registers and certificates, including format, specific printing paper, and codes to prevent reproduction), and 3) the enforcement of certificate controls (shifting from random to systematic checks on all certificates). Despite efforts by various development projects and their associated donors to mitigate these changes, they are compelled by the land administration to finance all technical activities and field missions as required.

In 2021, the enactment of a new law (Law 2021-016) concerning PPNT reinforced the central administration's authority while challenging the fundamental principles of land reform. This law was conceived and drafted unilaterally by the land administration, without consulting other stakeholders in land tenure or involving the land tenure drafting committee. Contrary to the realities on the ground, the law restricts and fixes the boundaries of land defined as PPNT. As a result, it limits the areas recognized as belonging to families, eligible for certification, and under commune management, thereby weakening the position of all land rights holders outside these restricted zones. Conversely,

the law expands the boundaries of land designated as "domaniales" by the State, thus placing it under the purview of its deconcentrated services (Burnod and Bouquet, 2022a).

This new law has prompted reactions from a wide range of players (Burnod and Bouquet, 2022a): 1) national civil society specializing in land issues, through the national SIF platform, and in particular farmers' organizations, grouped within the CNAF (Comité National des Agricultures Familiales), 2) mayors¹⁰, who were often reluctant to oppose the government for reasons of allegiance and dependence, and 3), through civil society, experts and researchers, other national and international civil society platforms¹¹, journalists¹², but also the technical and financial partners of land reform and rural development in general. These various parties issue press releases, send letters to the presidency, or request meetings with senior government representatives. Faced with these protests at multiple levels and within a pre-electoral context (with elections scheduled for the end of 2023), the government initiated radical changes. These changes included restructuring the teams at the Ministry responsible for land, restarting the national debate by inviting various stakeholders (civil society, mayors, development projects, etc.), drafting a new law, and pressuring projects to distribute certificates in the presence of the media. Less than a year after its publication, Law 2021-016 underwent significant revisions, resulting in the enactment of Law 2022-13. The latter reaffirmed the initial goals of the reform. Appropriated land is once again legally recognized as PPNT, but must have been developed for more than five years to be certified. The authority of the communes is also reaffirmed.

5. Policy implications: challenges and prospects

5.1. Improving certification processes

Certificate applicants come from a wide range of economic backgrounds. The inclusive nature of certification has been facilitated by reduced fees and the systematic census of plots conducted during operations subsidized by development projects¹³. This inclusivity in household diversity could be further extended through the continuation of such operations. Simultaneously, the inclusive nature of certification needs to be reinforced by providing better information regarding the possibility of registering all entitled parties on the certificate: both spouses, siblings, or larger collectives. At the same time, LCO opening procedures and certificate issuance must remain cost-effective (simple equipment, limited number of steps and stakeholders) and be subject to punctual and efficient controls (upon request or on a random basis).

As in many countries in the Global South, land tenure reform in Madagascar has not resulted in radical transformations in terms of investment, access to credit, or land markets. However, the Malagasy reform stands out for its effective legal protection, improved access to information, and consolidation of the role of local land management institutions - key dimensions of land tenure security (e.g. Colin et al., 2022).

Updating the evolution of certificates (fragmentation, names of owners) through transfers (sales, inheritance) on land registers and LUPP - the key step in monitoring and facilitating mutations through inheritances and sales - has been insufficiently addressed in land policies and government guidelines. To date, the procedure for transferring certificates (updating the document and the information system) has been hindered by fiscal and institutional issues. Debates focus on the amounts to be paid for a land

¹⁰ Press release from the association of mayors and a dozen national civil society platforms dated 22/04/2022

¹¹ Communiqué des membres du CTFD sur le site web « foncier et développement », communiqué de l'International Land Coalition datée du 01/04/2022.

¹² Articles from RFI Radio France Internationale.

¹³ During campaigns subsidized by development projects, certificates cost an average of 1 to 2 Euros. Outside these campaigns, certificate prices are set by local councils and average around 15 Euros.

transaction (currently, the amount of tax registration for a purchase transaction can exceed the price the buyer has to pay to acquire the land), on the beneficiaries of the corresponding tax revenues, and on the validation bodies. Consequently, the procedure finds itself in a legal vacuum. To consolidate and perpetuate the achievements of the reform, particular attention should be given to the following points.

- Transactions are indeed conducted on certified plots, and faced with the legal loopholes regarding formalizing land transfers, CLO agents in certain communes have been proactive and implemented practical solutions involving only local actors (Boué and Colin, 2015; Di Roberto, 2020; Rakotomalala, 2020; Rakotomalala and Burnod, 2018). There is an urgent need to capitalize on these practices and proceed with their formalization; otherwise, the gains made in terms of legal recognition of rights are at risk of relatively rapid obsolescence.

- Acknowledgment of the role played by "petits papiers" and their accompanying documentation (minimum information to be entered, witness signatures to be affixed, fokontany field checks, etc.) (op. cit.). For the majority of citizens across the country, small-format documents play a decisive role. In all communes without CLOs (which still represent two-thirds of the total), they are the only means of written protection for all citizens. In communes with CLOs and those where land services are readily available, "petits papiers" are still produced by households and local institutions, as they are often combined with certificates and titles (to compensate for the difficulty of making legal transfers, or because they offer a more flexible way of formalizing in writing, adapted to the reality of local rights).

5.2. Sustaining and strengthening the decentralization of land management

To ensure the effectiveness of decentralized land management, municipal teams, agents and local representatives of the population need to be better trained in the content, powers and opportunities offered by land laws, particularly that on PPNT. In practice, when landowners have not legally registered their rights, land tenure services on PPNT land are far from systematic in taking account of existing rights and the diversity of their holders. In past cases of land allocation by the state to private investors, farmers' rights have not been systematically considered (Burnod et al., 2013a; Burnod and Andriamanalina, 2017).

Decentralized land management can also be made sustainable through the technical and financial reinforcement of CLO. This requires, first and foremost, making land agents' work sustainable. One option would be to transform communal land agents into territorial civil servants, under the responsibility of mayors but paid by the State, which would largely solve the budgetary problem for communes. Secondly, we need to open up the functions assigned to the CLO. Consideration needs to be given to the functions of this office in terms of issuing PPNT certificates, but also to its functions in terms of land use planning, support and control of land transactions, and land taxation.

Another option would be to extend the powers of CLO and innovate in land management tools, so that CLO can intervene in the recognition of rights to land that is subject to a diversity of uses and collective management. Current laws clearly announce the legal recognition of local rights for agricultural land (cultivated, fallow) or developed land (construction, graves). They are more ambiguous when it comes to grazing land or forest areas, which are subject to local community rights, and which by default remain legally classified as belonging to the State domain and under specific land tenure protection statutes. The option proposed by civil society is to create a specific law dedicated to community-managed land.

5.3. Social and political ownership of reform

Land tenure reform is necessarily a long-term process, involving the deployment of mechanisms (land tenure offices, certificates) and ensuring their sustainability (continuity of service, updating through the registration of transfers) in contexts where the state is fragile and resources are severely limited.

The orientations of a reform are the product of a confrontation of different visions and power relationships that are likely to evolve over time (Seck and Lavigne Delville, 2018). Issues of governance and power can be more decisive than technical issues (Colin et al., 2022). These issues must be considered in international aid schemes. As well as designing and financing (over the long term) legal and technical tools, it is important to support governance at local and national levels, to encourage debate, and to strengthen the level of information and skills of all players involved in these debates.

These proposals are only relevant if they are the product of shared debates, based on knowledge of practices and issues in the field (and therefore, upstream, the production and sharing of knowledge through research), the participation of representatives of different user groups and rights holders, and the involvement of intermediary bodies (civil society, trade unions, elected representatives, etc.). If they are to be implemented, they must also be supported by local elected representatives and receive the backing of the State's technical services (land services and other sectoral services).

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