



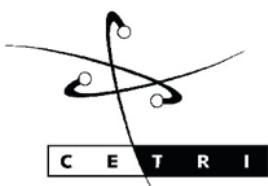
Land policy in Madagascar

Overview, stakes, challenges and outlooks

Executive summary

This document is a summary of the study conducted jointly between Entraide et Fraternité¹ and the Centre Tricontinental², *Land policy in Madagascar - Overview, stakes, challenges and outlooks*, written by Laurent Delcourt (Cetri) following a field assignment to Madagascar in April 2018.

November 2018



Avec le soutien de



¹ *Entraide et Fraternité* is a Belgium-based Catholic NGO of international cooperation for development and solidarity, which takes action to defend the food sovereignty model so that people may enjoy the right to food. To achieve this, we work in partnership with local associations in a number of African, Asian and Latin American countries to support durable agriculture in rural communities. We are also working to increase awareness among Belgian citizens and political decision-makers to promote societal and political change that will be a vehicle for justice.

² An NGO founded in 1976 and based in Louvain-la-Neuve (Belgium), the CeTri is a permanent centre for study, publication, documentation, training and education about development and relationships across the North-South divide. Its objective is to ensure that viewpoints from the South are heard, and to contribute to critical discussion of the dominant understandings and practices about development in today's «neoliberal» globalisation. It places particular emphasis on understanding and discussing the role of social and political actors in the South who are fighting for recognition of social, political, cultural and ecological rights.

Family farming under pressure

Madagascar is fundamentally a rural, agriculture-orientated country. The vast majority of the population draw their essential income and food from farming. However, a number of factors jeopardize this small-scale family farming approach. The first is population pressure, which is causing an inevitable shrinkage of the land parcels farmed by each household. Another is pressure associated with climate warming. A third is commercial pressure, which, due to renewed interest from national and international investors, is leading to an increase in land grabs, property seizures and expulsions of farmers. This results in intensified competition for land and resources, and insecurity for the local communities. This combination of factors is considerably weakening Malagasy farming, and perpetuating poverty in rural communities. Within 30 years, the average farming plot has shrunk from 1.5 ha to 0.8 ha, creating problems for the farmers' subsistence; in this context, therefore, land security is a pivotal issue.

An unsuitable land tenure system

Madagascar inherited from its colonial period a land ownership system that was utterly out of step with the local social and cultural realities. It opposed the customary laws on occupation of space and governance of the land, laws which would assign land to the person(s) farming and improving it. This tenure system, fashioned by and for the colonists at the Malagasy people's expense, barely changed after the country became independent in 1960, and thus favoured the nation's post-colonial elite. The result was a far-reaching land crisis.

An ambitious reform...

Launched under the government of Ravalomanana (2002-2009), the 2005 Land Reform set out to secure land rights for as many people as possible, quickly and at an appropriate cost for the economic context. It sought to reconcile the legal dimension (the formal legal framework) and the legitimate dimension (social and traditional recognition of land ownership).

³ The presumption of state ownership means that any unregistered, unrecorded and unclaimed land automatically belongs to the State.

⁴ See inset 2 in the full study.

This reform was responsible for two significant advances. On the one hand, it removed the presumption of state ownership³. On the other, it created a new legal category: private ownership of untitled land (POUL). This status confers on farmers an ownership right over land that they have occupied or farmed for a long time, via the obtention of a land certificate, on condition that nobody else holds a formal title for the same land. The reform placed allocation and management of POULs in the hands of sub-district offices.

...with limited effect

Beyond these noteworthy advances, the reform remains limited and incomplete. Its singular focus on securing land rights has led to counter-productive, and at times harmful, effects on the rural communities.

First of all, only one in three sub-districts has a land tenure office. After thirteen years of implementing the land reform, two thirds of the Malagasy population still live in situations of severe land insecurity.

Also, the new laws granted in the framework of the reform are fragile. The land certificate can still be challenged by a third party who presents a land title, as the latter document is often deemed to have a higher legal value. This favours the national elite and foreign investors (via Malagasy operators), for whom access to this kind of official document is easy⁴.

And most importantly, the reform does not address the crucial question of access to land. There is no doubt that formal documentation of rights is a necessary step, but it is insufficient in view of the reality of Madagascar's rural context, characterised by the small scale of family farms and limited access to land for many social groups, including some of the island's most vulnerable (women, young people, sharecropping tenants, migrants, landless farmers, etc.).

Evolution of land management

Pre-1897

Land belongs to the sovereigns of different kingdoms. Families have a recognised user's right, by which they farm and improve the land in exchange for a tax. «First comer» principle applies.

1897-1960

The French colonial administration removes customary law, introduces land registry and the presumption of state ownership, defines colonisation perimeters, and allocates the land within them to colonists. A land title is the final proof of ownership, and only the colonial administration can award it.

A new reform on the horizon ?

Wishing to emphasise its commitment to land reform, in 2015 the Malagasy government published its «New Letter for Land Policy», launching the second land reform act for the period from 2015 to 2030. The question of access to land is among the priorities of this new policy. However, this commitment has yet to translate into any concrete action.

At present Madagascar's government seems to be pursuing an entirely different project. Now that investors are returning to Madagascar after several years of instability (2009-2012), the State seems to have abandoned land reform to concentrate on establishing a context that appeals to investors. Securing investments is taking precedence over achieving security for small rural farms.

During the presidency of Hery Rajaonarimampianina⁵, many contracts were negotiated with companies and investors, offering the latter very favourable terms. In addition, the government was looking to create investment zones featuring substantial advantages in terms of customs and tax, like, for example, the recently-introduced Agricultural Investment Zones (AIZ) and Special Economic Zones (SEZ). There are genuine concerns that the government might resort to seizing property, citing reasons of public utility, to facilitate the creation of AIZ⁶ and SEZ, as has happened elsewhere.

Legitimate questions also arise about the adverse effects on Madagascar's rural farmers as a result of the Regional Programme on Food Security and Nutrition (PRESAN), which intends to turn Madagascar into the «breadbasket» of the Indian Ocean by supporting investment in growing subsistence crops for export to neighbouring countries. This project, partly funded by at least 49 million Euros from the European Union, raises fears that family farms will again be seized and their owners ousted to meet the food requirements of small island states in the Indian Ocean⁷.

End the ambivalence of the Malagasy government

Given the way things are heading, an impasse seems inevitable. These inappropriate, and above all, potentially explosive policies carry long-term risks of : accelerating the transfer of land and resources in favour of foreign investors or the national elite ; erasing the little progress made towards securing land rights ; further aggravating the situation in Madagascar's rural areas ; continuing to chip away at the people's rights, especially their right to food. However, as a signatory of several international treaties and conventions on human rights (CEDAW, CESC, ACHPR, etc.), the State of Madagascar has obligations to aid attainment of and protect these rights. All the more so since family-scale farming accounts for nearly 70% of households and 25% of national GDP.

In a country like Madagascar, characterised by small land parcels and the saturation of currently-farmed areas, the obligation to respect people's right to food assumes that a land redistribution programme will be rolled out, paying attention to different uses of the land, and targeting in priority the people «overlooked» by the reform : women, young people, migrants, sharecropping tenants, landless farmers, livestock farmers, etc.

The role of civil society

Madagascar's civil society organisations took a hands-on approach to land reform implementation by helping the sub-districts to set up land tenure offices. Given the increased threat to the security of people's land, they have also organised a way of resisting land-grab incidents.

Nevertheless, Madagascar's civil society evolves in often-isolated, self-contained worlds (depending on the sector, the nature of the funding providers, etc.). Since the connections between them are somewhat competitive (e.g. for funding), it is rare for these civil society organisations to find synergies and work together towards a common purpose.

⁵ Hery Rajaonarimampianina stepped down from office on September 7th, 2018, in order to stand as a candidate in the presidential elections on November 7th of the same year. Rivo Rakotovoao stood as acting President in the interim, pending the election result.

⁶ See inset 6 in the full study.

⁷ See inset 5 in the full study.

Ambitious land reform seeking to reconcile the legal and the legitimate. Recognition of tradition by introducing the "untitled private ownership of land" and decentralising the process of granting it (via land certificates) to sub-district offices. Non-presumption of state ownership. The reform has a mixed effect.

1960-2005

The new independent State maintains the system inherited from colonisation. The population continues to use the traditional system. The «legal» and the «legitimate» are in opposition. Land insecurity is widespread ; the State is incapable of controlling the situation.

2005

Political crisis ; withdrawal of international aid and most investor support. Land reform is halted. The end of this crisis, in 2012, leads to a race to secure foreign investment, jeopardizing efforts made since 2005 in favour of land security.

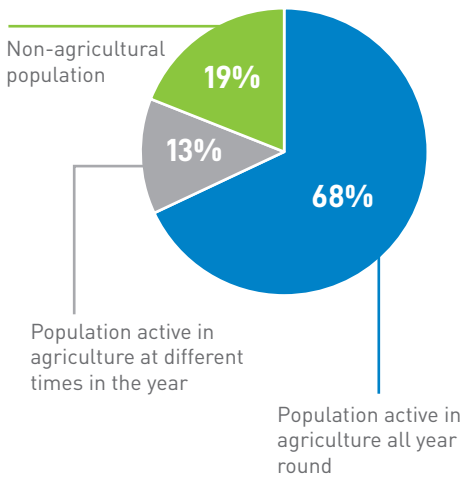
2009-2012

Tugged and torn between the many requests and demands from funding providers, the organisations end up scattered across myriad initiatives. It is therefore time for all the elements to converge and reach a critical mass capable of reminding the State of its responsibilities : to uphold its human rights commitments and protect its people. Above all, civil society must combine

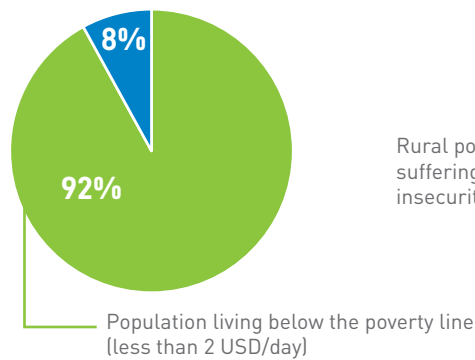
its strengths with its voice to propose a large-scale land redistribution project, promote it collectively and convince the government – and the political world – of its relevance. An initial step in the right direction would be to set up a single platform for monitoring land matters, shared across civil society (as proposed by BIMTT⁸).

Madagascar – some useful figures⁹

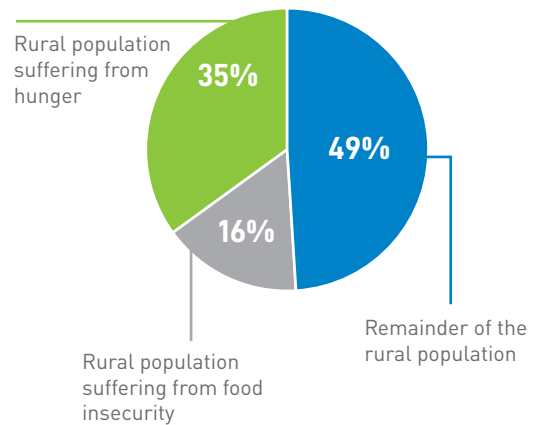
Madagascar, an agriculture-orientated country



Madagascar, a poor country



Madagascar, rural people going hungry



- Agriculture represents 25% of Madagascar’s GDP and 30% of exports.
- 60% of agricultural production is consumed by households.
- 75% of the population live in rural areas.

- The GDP per capita is 410 US dollars.
- The country ranks 158th out of 187 on the Human.
- 86% of people in poverty live in rural areas.

- 47% of small-scale farmers and 43% of farming day labourers do not have enough to eat.
- 68% of households in the south of Madagascar are in a state of food insecurity.

⁸ BIMTT is a network of institutions providing training in Madagascar’s rural context. It was created to reinforce its members’ capacity to take action and to empower and enable rural people to be active players in development.
⁹ The figures shown here are taken from the full study written by Laurent Delcourt.

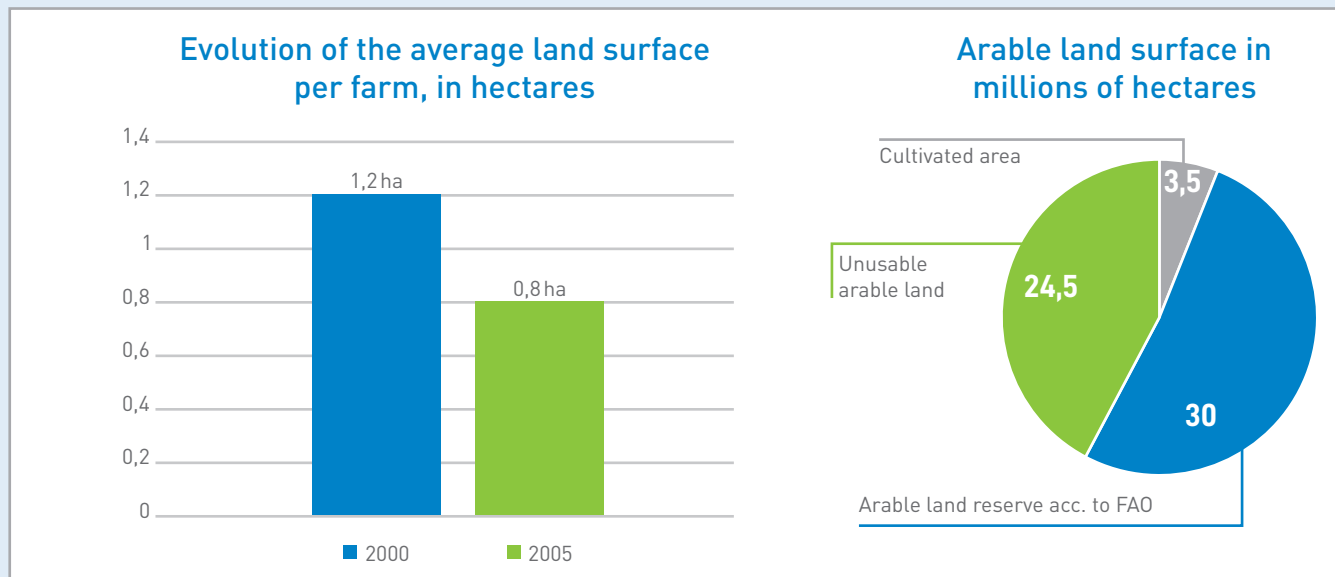
Launch of a programme of agricultural investment zones, with the World Bank supporting the pilot phase. This project raises many concerns about the land security of family farmers.

2015	2017
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New Letter for Land Policy from the government of Madagascar. The Letter expresses a resolve to overcome the limitations of the 2005 reform, with particular emphasis on access to land and achieving land security. Unfortunately, there has been little concrete action to date.

Law 2017-023 establishing Special Economic Zones (SEZ). Major concerns about potential land-grabbing and loss of sovereignty in these zones. This law demonstrates once again the Malagasy government’s ambivalence regarding the land issue.

Land issues in Madagascar



Achieving land security, and access to land – two different challenges

Achieving land security	Access to land
Recognises user's rights and informal ownership by giving them official status.	Refers to the full set of social, traditional and legal processes enabling a population to have a measure of control over the land.
Only applies to land already being farmed.	A means of combating social injustice and poverty in the rural context.
Does not extend to people with no access to land (women, for example).	Improves food security and food sovereignty.
Does not change the system, even though it is unfair.	Must be accompanied by actions to achieve land security.
In Madagascar, it is only part of the solution to food insecurity.	
Achieving land security has to go hand in hand with access to land in a policy aimed at improving food security and farmers' living conditions.	

2.5 million farms (80% of them family farms) share the 3.5 million hectares of cultivated land. Due to a combination of demographic growth and land grabbing, Madagascar's land has become saturated, resulting in :

- overexploitation of land parcels, erosion, soil depletion and loss of fertility,
- clearing of poor-quality land, deforestation, destruction of biodiversity,
- increased competition for access to land, dissolution of traditional solidarity, and rising social tensions, especially in rural areas.

Some recommendations

To the Malagasy government and its funding providers

Given that :

- The Malagasy state and its funding providers are bound by a number of pacts and international agreements to respect, protect and promote human rights in all their actions ;
- The majority of the Malagasy population is rural, active in agriculture, living below the poverty line and regularly going hungry ;
- The lack of access to land and the small size of the land parcels are the primary causes of vulnerability in Madagascar's rural population ;
- Policies that support large-scale investments are jeopardizing the (already precarious) rights of the Malagasy people, as well as their ability to feed themselves ;
- The Regional Programme on Food Security and Nutrition, supported and part-financed by the European Union, raises a number of concerns about food and land security.

We advise the Malagasy state and its funding providers to protect the rights of the population by :

- Introducing a strong, global legal framework to guide the process on large-scale investments, giving priority to respecting and protecting human rights. Essential components of such a framework would be :
 - transparency of negotiations,
 - consultation with and participation by the populations concerned,
 - independent analyses of the risks and impacts for the environment, and also concerning human rights,
 - plan to provide rewards, compensation or allowances for people who have suffered negative effects as a result of these investments ;
- Pursuing and reinforcing the progress made in the 2005 Land Reform, particularly via a land redistribution programme that includes groups previously «overlooked» by the reform : women, young people, sharecropping tenants, livestock farmers, migrants, landless people, etc. ;
- By giving form to aspects of the new Letter for Land Policy that have won the support and participation of Madagascan civil society.

To Madagascan civil society and partners in the North

Given that :

- Although civil society in Madagascar is already highly active in defending the rural population and combating land grabs, it remains very divided and fragmented, and as such lacks the coordination to bring about significant changes in national policy ;
- Part of this division in civil society may be attributed to the many requests and demands from funding providers, which are sometimes disconnected from the reality on the ground and the actual needs of the local populations.

We advise Madagascan civil society to :

- Join forces to propose a large-scale land redistribution project, to promote it collectively and to convince the government – and the political world – of its relevance ;
- Support and participate in the BIMTT-developed monitoring platform for land matters. This would be a first step towards greater synergies and convergences, and would pave the way for critical monitoring of the Malagasy government's land policies.

We advise our partners in the North, and providers of funding for Madagascan civil society, to :

- Provide civil society organisations with the opportunity and the resources to initiate such a programme, and launch independent discussion about the kind of development model the country needs and its citizens desire, and about how to make this transition ;
- Coordinate and consult between organisations on their actions and their support for Madagascan civil society, in order to create synergy at local level and provide a better response to the local populations' needs.

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