

BRIEFING NOTES

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

“Land Tenure & Development” Technical Committee

Certificates as a tool for securing land rights in Madagascar: Initial impressions and outstanding issues

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The land reform initiated in Madagascar in 2005 introduced legal recognition for private untitled land (PPNT) as well as titled private land. Landholders can apply for certificates that constitute legal proof of private ownership. These land certificates are issued by local land offices which operate at the communal level and follow a procedure that ensures local social consensus on landholdings.

The reform has certainly made progress in the 17 years since implementation began, but has also faced various operational challenges and legislative reversals (see Briefing Note 1).

An uneasy mix of certificates and titles

The 2005 reform established registration and certification as equivalent, coexistent systems for registering land rights. Successive versions of the new legal framework gave the same legal value to land certificates and titles: both types of document confirm the holders' land rights, are transferable (through sale, gift or inheritance) and can be used as collateral to apply for credit.

Procedures for the two systems differ as certificates were intended to be an alternative and much more accessible option than registration, which is rarely used by rural people. The spatial distribution of the two coexisting systems is supposed to be captured through a standardised cartographic tool, the Local Land Occupancy Plan (PLOF) (see Figure 1 page 2).

The equivalence of the two systems is subordinate to the principle of anteriority – which means that people cannot apply for a certificate for land that is covered by a title or has been registered (even if the title is obsolete and the registration incomplete). This principle of anteriority can

cause deadlock, particularly in areas where cadastral procedures have barely begun or have been in abeyance for several years. It would help if it could be reviewed on a case-by-case basis, so that registration procedures could be cancelled if they are not completed within a certain timeframe, for example. Due to the symmetrical nature of the principle of anteriority, the courts may cancel newly issued titles if they encroach upon pre-existing certificates. This provision has been maintained in every version of the Land Law, and there have already been several occasions where the court has judged in favour of certificate holders.

The principle of equivalence has always been highly contentious, with senior government officials repeatedly clashing over the relative value and effectiveness of the legal protection provided by certificates and titles. These disagreements generally reflect the differing opinions of what constitutes land tenure security, and the power relations in play over the course of the reform.

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Titles are issued by senior government surveyors and land agents, using sophisticated tools and data from demarcation procedures to identify plots. Certificates are issued by local agents equipped with simple GPS tools, and based on information provided by local recognition committees involving neighbours, local dignitaries and members of the communal team (see Figure 2 page 3).

Although it is often assumed that titles give greater legal protection because they are issued through a higher-level, more technical procedure, recognition of rights actually depends more on the rights holders' local legitimacy and their neighbours' acceptance of parcel boundaries than on the technical aspects of

the process. The process used to issue certificates is based on principles of social consensus and pragmatism: it aims to reconcile legality and legitimacy (thereby reducing the risk of disputes), simplify and adapt the technical process to logistical constraints, and make it accessible to as many people as possible.

While it can be very hard for landholders in cities to determine boundaries to the nearest centimetre, rural actors can formalise boundaries with simple, socially validated markers that are recognised by their neighbours. Given that feedback from local land offices and surveys of a broad sample of households indicate that boundaries are the least common cause of disputes, it is hard to justify the use

of an expensive, time-consuming tool to delimit plots, as this would reduce the cost and time benefits of certification without providing any real added value.

Support for these two rights recognition systems is divided along clear socio-economic and political lines. The registration system is defended by elites in the field and in decision-making arenas (administrative officials, title holders, etc.); while the certification system, which is deployed by communal agents and mainly benefits small and medium-sized farmers, is supported by local decision-makers and rural populations on the ground, and promoted by civil society representatives in decision-making circles. Advocates of certificates are in the

FIGURE 1: Extract from a Local Land Occupancy Plan, showing land title boundaries in white and certificate boundaries in red



FIGURE 2: The stages of certification: local boundary recognition with neighbours, local dignitaries and a land agent, verification and registration of the parcel on the PLOF, and issuing a certificate to be signed by the mayor



majority, but carry less weight in political and administrative circles than the promoters of titles. Various attempts have been made over the years to use legislation and other means to discredit certification and relegate it to an intermediate stage in obtaining a title, or to restrict its scope and conditions of implementation (see Briefing Note 1).

In summary, certificates give landholders genuine legal protection and local legitimacy, and present fewer logistical and administrative hurdles than the complex procedure for issuing titles. However, preconceived ideas and political power relations can lead to inertia or resistance to the widespread adoption of certification.

A complementary relationship between certificates and “*petits papiers*”

Although the legislator intended land certificates to replace the various informal security mechanisms that preceded them, practical experience suggests that there is a complementary relationship between certificates and “*petits papiers*”.

Land in rural areas is still secured through social recognition by peers and local institutions. People who wish to secure transfers and validate their rights draw up various kinds of “*petits papiers*”: affidavits, deeds of sale, tax receipts or even certificates of productive use, which are signed by the par-

ties involved and often stamped by a local authority – a representative of the neighbourhood (*fokontany*) or the mayor’s office. A large-scale survey conducted in 2015, a decade after the land reform began, found that nearly 50% of agricultural plots were supported by “*petits papiers*”, and over 80% of plots were covered by at least one document of some kind (with certificates accounting for nearly 16% and titles less than 2% of these documents, see Figure 3).

This ongoing reliance on “*petits papiers*” cannot be wholly ascribed to the gradual and still limited spread of local land offices and certification. There are three other reasons for such reliance, its medium- to long-term con-

tinuation, and why it is important to acknowledge it.

First, stakeholders can still opt for “*petits papiers*” rather than certificates. Certificates do have considerable advantages over titles in terms of cost and time, but in certain situations users may prefer to rely on “*petits papiers*” as they are cheaper (costing around one euro) and locally legitimised by the family, *fokontany* chief and other local authorities.

Second, there are complementarities between certificates and “*petits papiers*” at two key moments: when certificates are issued, and when there are changes in ownership.

- Although it is not a legal obligation, some local land offices require applicants to provide “*petits papiers*” for their certification files. This makes the process more onerous for the landholder, but also rein-

forces the certification procedure and connects different authorities (communal teams, neighbourhood chiefs, families) in ways that can be beneficial for local land governance. (Local authorities may also want people to keep using “*petits papiers*” as they provide a source of income and help maintain their power.)

- The lack of regulatory procedures makes it very hard to update certificates to reflect changes in land ownership. The parties involved in land transfers (buyers, heirs, beneficiaries of living donations) can use “*petits papiers*” to certify that the land has changed ownership, and legally formalise the transaction at a later date. “*Petits papiers*” thus play an essential role in providing security at key points that could lead to significant insecurity of tenure.

The third reason why these logics and practices persist is that “*petits papiers*” constitute prima facie evidence of ownership that is recognised by municipal councils, other government authorities and the courts when dealing with land disputes. It is important to maintain this recognition in the future.

What role could certificates play in pastoral areas and community lands?

Under current legislation, extensive pastures are excluded from private untitled land and certification, and are held under State ownership. Some of the land governance actors (mainly civil society groups) involved in negotiations over a new law on land covered by specific protection regimes are calling for the creation of a specific regime for collectively used

FIGURE 3: Different methods of securing rights to plots
(Sample of 7,874 plots and 1,550 households, PECF data, 2015)

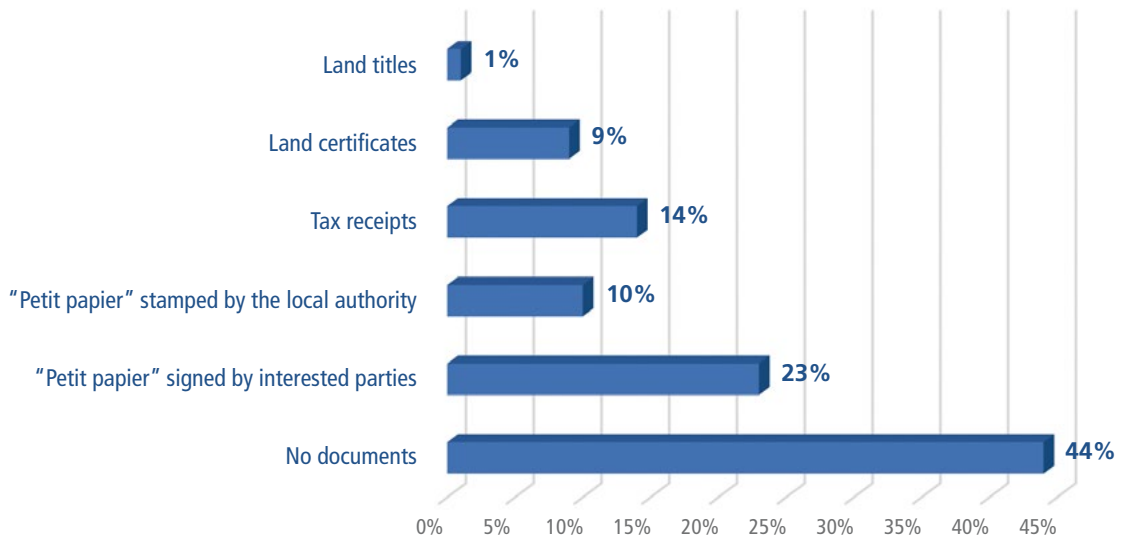


FIGURE 4: Herds of Zebu, and groups of herders explaining the management and spatial extent of their grazing land



and appropriated land. This would add a new community land regime to existing State ownership regimes (public and private) and private property (titled or untitled). What role could land certificates play in this new setup?

Pastoral areas present particular challenges in terms of tools for securing land tenure because diverse local actors use them for a variety of collective and individual purposes, such as grazing, natural resource extraction, fishing, and agricultural land reserves. The way that these spaces are appropriated, managed and used varies greatly from one region to another, as do the groups involved (lineages, village residents and other units).

These factors, and the boundaries of these spaces and contours of the collectives involved are also likely to evolve over time (grazing areas shift according to rainfall and changes in the watercourses used to water herds, the number and identity of users and

managers fluctuates, and private appropriation occurs within small collective agricultural holdings, etc.).

Efforts to recognise and legally secure community rights over these spaces should therefore avoid fixing set boundaries, specific uses, and particular types of user groups.

This may initially seem totally contradictory to the very principle of land certificates, but it could be done in several ways.

- The collectives involved, which are generically defined as *fokonolona*, could vary according to regional and local realities and evolve over time, with collectively defined mechanisms to formalise modes of membership, representation and decision-making.
- Depending on locally expressed needs, certain modes of land and natural resource use (grazing, agriculture, fishing) could be promoted or protected through participatory management agreements.

- These collectives could participate in adversarial territorial delimitation undertaken by a local recognition committee, using simple participatory techniques and skills and working in conjunction with decentralised institutions for a given period (with quality control of the process by deconcentrated bodies, if necessary). This would reinvigorate the principles of adversarial local recognition that underpin the legitimacy of certificates and local land offices.

- The boundaries of these spaces could be registered on local land occupancy plans (LLOP), but not recorded in the land register as this would freeze the boundaries of the land and the identity of its holder(s). It would, however, help prevent applications for titles or certificates that are not initiated or validated by the relevant community of users and managers. This would be a sort of “preventive” form of delimitation, based on a “defensive” logic.

Conclusion

One of the challenges in securing land tenure is enabling rights holders to access and use land resources in a peaceful manner, and for a long period of time. Security of tenure can be obtained through documents, governance and institutions.

The following recommendations are based on initial assessments of the role that land certificates can play in securing rural land in Madagascar:

- reaffirm the principle that certificates and titles are of equivalent legal value;
- implement the system for updating certificates to reflect land transfers;
- consider the possibility of cancelling incomplete registration procedures under certain conditions and after a certain period of time, in order to clear legal vacuums and open the way for new procedures for issuing certificates;
- support the production of “*petits papiers*” by villagers and communal authorities, etc. Avoid cumbersome procedures and ensure that “*petits papiers*” can help resolve disputes by establishing basic information such as how the plot is accessed, the names of neighbours and witnesses, names of men and women with rights to the plot, etc.;
- extend the powers of local land

offices and develop land management tools so that they can recognise rights to land that is collectively managed and used for diverse purposes.

These proposed recommendations will only be relevant if they are the outcome of joint discussions based on knowledge of land practices and issues, involving representatives of different user groups, rights holders and intermediary bodies (civil society, trade unions, elected officials, etc.).

In order to be implemented, they should also be supported by local elected officials and backed by the State technical services (land services and other sectoral services). ●

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This paper is not intended to promote a particular technique or tool, or encourage the application of similar technologies in Southern contexts. The aim is to provide some insight into their origins and the conditions for their implementation in very specific contexts, remembering that efforts to secure land tenure in Africa should support the local management and State regulation of existing practices. This may require different types of tools that need to be invented on a case-by-case basis.