



# Land certification as a substitute or complement to local procedures? Securing rural land transactions in the Malagasy highlands



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## ABSTRACT

This text deals with the relationships between land transactions and the formalization of land rights in a Malagasy context, exploring the local procedures aiming at securing land transactions, while putting them in perspective with the legal formalization of land rights through land certification. Our research shows that (i) transactions are far from being limited to legally recorded plots of land, (ii) the local extra-legal procedures for formalizing transactions are highly standardized, (iii) the buyer's choice regarding the way to secure the transaction varies according to his relation with the seller and to the type of document that previously secured the seller's property rights on the plot, and (iv) rather than a substitute, the plot certificate comes as a complement, an 'additional layer', to local sales contracts formalization.

## 1. Introduction

Land policies since the 1990s promote land rights registration, which means legalizing property rights on plots, as a condition for land tenure security and agricultural productivity. The assumptions are twofold. First, that tenure security requires legalization – whereas the relation postulated between customary rights and insecurity on one hand, and titling and secure land rights on the other hand, is often empirically questioned (Platteau, 1996; Arnot et al., 2014). Second, that land rights certification takes place in a vacuum – whereas numerous studies highlight the ubiquity of local extra-legal practices securing land rights and land transfers through private deeds and sometimes the intervention of authorities through the legalization of signatures (Koné and Chauveau, 1998; Lavigne Delville, 2002a; Benjaminsen and Lund, 2003). In such cases, the logic of formalizing contracts is endorsed by local state authorities, but is not incorporated in the land law, corresponding to what is described as 'informal formalization' (André, 2003; Benjaminsen et al., 2008), 'endogenous formalization practices' (Mathieu, 2001), or 'semi-formal practices' (Mathieu, 1998; Colin, 2013) – we will use the latter terminology in this paper.<sup>1</sup> This observation raises the question whether land titling or certification comes as a substitute or as a complement, or an additional layer, to semi-formal practices (Bouquet et al., 2016).

The formalization issue usually remains framed within a land title or certificate registration paradigm, i.e. the record of rights that an identified legal entity holds over a given piece of land, whereas recording land transfers can be seen as an alternative to such procedures (Mathieu, 2001; Fitzpatrick, 2005; Comby, 2007; Colin, 2013). This paper thus addresses the issue of the interactions between land sales contracts formalization and legal plot certification.

We address these issues with a focus on sale transactions in a Malagasy context. This case study presents a triple interest. (i) In 2005, Madagascar implemented a land certification program, as a possible alternative to the land titling procedure existing since the colonial era, which is nevertheless maintained. The reform was justified by presumed land insecurity, by a need to provide an easier path than land titling in order to legally secure land rights, but also aimed at facilitating access to credit, revitalizing investments and stimulating land markets (Burnod et al., 2012; Bouquet et al., 2016). The Malagasy land certification is a cheaper procedure than land titling, easier to set up technically, and closer to the actors (Teyssier et al., 2007). It was launched in a context where most of the agricultural land was not titled, and of widespread practice of semi-formal practices. According to a decentralization rationale, the municipal *guichets fonciers* (land offices) are responsible for the delivery of land certificates, following a contradictory procedure of recognition of the rights and identification of

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<sup>1</sup> Formalization has various meanings: using papers (compared with oral agreements), using papers endorsed by local authorities, but without legal recognition (what we call semi-formal practices), and legalizing agreements. We will use the terms 'local formalization' to include papers endorsed as well as paper not endorsed by local authorities (recognizing that legal formalization may bear on local component).

the right holder.<sup>2</sup> The land certificate establishes ‘untitled private property’ (*PPNT, propriété privée non titrée*) (Law n°2006-031). Today, in municipalities where *guichets fonciers* have been implemented, land certification thus constitutes a new option for the households to legally formalize their rights. (ii) The literature shows evidence of an active land market in Madagascar. (iii) Local formalization is widely practiced through private deeds that may be endorsed by local authorities at the level of the hamlet and *fokontany* (village), or through an authenticated deed issued and registered at the level of the *arrondissement*, once the signatures are authenticated by the municipality.<sup>3</sup> These documents (*taratasy*, literally ‘papers’) can formalize either market-based (sales contracts formalization) or non-market (inheritances, gifts) transfers of land, or rights regarding plots acquired through the development of land. Sometimes land titles are locally updated with these *taratasy* (skipping the registration of the land transfer in the *service des Domaines*) (PNF, 2007<sup>4</sup>; Teysier et al., 2007; Aubert et al., 2008; Omrane, 2008).

In a previous paper (Boué et al., 2016), we focused on households’ participation in the certification process, without considering the issue of its possible links with semi-formal practices. This paper discusses buyers’ practices regarding ways of securing land transactions, documenting the relations between legal (certification) and semi-formal procedures. Our hypothesis was that the buyer’s choice regarding the ways of securing a transaction (including, after 2006, through a certificate) is based on the (subjective) perception of the level of threat, itself a function of the type of land, the relationship with the seller, the origin of the seller’s right, and the document held by the seller prior to the transaction.

The analysis points out that in the context of the study, the semi-formal procedures are highly standardized – so standardized that the usual dichotomy between ‘formal’ and ‘informal’ institutions is radically questioned in such a context (see also Hodgson, 2006, for a more general discussion of this dichotomy). Our results confirm that there is a demand ‘from below’ for increased security of land purchases, but at the same time, they discredit the mainstream view that this security can only be achieved through a unique top-down legal procedure. Regarding the determinants of the demand for both local and legal formalization of land purchases, quantitative data suggest that the history of the plot and the underlying relationship between sellers and buyers matter and do play a key role, and qualitative data provide a rather convincing narrative of why it is so, by including in the picture how actors perceive tenure security. Rather than a substitute, the land certificate comes as a complement to local sales contracts formalization.

The outline of the paper is as follows. A first section presents the method and the study area. In Section 3, the procedures of local and legal formalization are briefly described. Section 4 sketches the characteristics of the sale market according to the types of land, to the relationships between the actors involved in the transaction, and to the type of document securing the transfer. Section 5 deals with the determinants of choice among the various local securing practices before the settlement of the *guichet foncier*, while Section 6 discusses the relations between plot certification and semi-formal practices once established the *guichet foncier*.

## 2. Study area and methodology

The first-hand data was collected by the first author of this paper in 7 *fokontany* of the rural municipality of Faratsiho, located in the central highlands, at 87 km in the Northeast of Anstirabe. The region is characterized by very few migratory movements, an insignificant amount of titled plots, and by individualized rights, with the exception of some *tanety* plots (hill lands) managed more collectively at the family level. Contrary

to others regions of Madagascar, this municipality is not concerned by big development projects or large-scale investments on land.

The *guichet foncier* of Faratsiho (financed by the Millennium Challenge Account) was one of the first established in the country, in February 2006, the first certificate being delivered in April 2006. This gave us the maximum time span to appreciate actors’ strategies regarding ways of securing land transactions. We opted for mixed methods, ensuring a sound contextualization and fined-tuned understanding of actors’ practices in an iterative research process, and providing quantitative elements regarding those practices. Fieldwork was carried out over 15 months, between May 2008 and November 2011. This long-term immersion allowed the collection of quality data on issues considered as sensitive – land transactions are always delicate to investigate, especially from the supply side. Beyond the lessons that can be learned through such an immersion, this analysis is based on two types of data. (i) In-depth qualitative interviews were carried out with 85 households, on land practices, sources of land insecurity, land transactions, and so forth.<sup>5</sup> These interviews brought light to actors’ rationales regarding local and legal ways to secure land rights and land rights transfers, but also provided the necessary elements for a sound conception of a questionnaire survey. (ii) This questionnaire survey covered 405 households.<sup>6</sup> The sample included two sub-samples of similar size: 203 households with at least a certificate at the time of the survey, and 202 without any certificate (1,764 owned plots in total)<sup>7</sup>; it was drawn from the population census and a database of certified plots.

The interviews and the questionnaire survey yielded data regarding the members of each household and on each of the owned or cultivated plot of land; a specific module of the questionnaire survey concerned land transactions. The objective was to explore how the rights on each household’s plot were secured, as well as the rationales for the demand, or not, for ‘land documents’, and more specifically for which type of document (title, certificate, and *taratasy*).

As with any case-study research, the data presented here are not nationally representative, but they do bring forth some salient and original features regarding the rationale for the demand or lack of interest for a legal formalization of land rights, as well as regarding how people envision the respective role of semi-formal practices and legal formalization.

All the interviewed and surveyed people were Merina<sup>8</sup> and, with few exceptions, rice farmers. The Merina households are monogamous. The couples are generally independent since their marriage, owning their house and independently farming land, most of the time initially delegated by their parents. The rice plots constitute the most important productive capital in this family-farming, small-scale and subsistence agriculture (on average 24.3 ares of rice fields by household, in the questionnaire survey). The farmers also cultivate land located on the hills (*tanety*), where bean, corn, soya, and tubers are produced.

## 3. Semi-formalization of sales contracts and plot certification

We present in this section a qualitative account of land sales semi-formalization procedures, and certification for plots purchased after 2006.

### 3.1. Semi-formal procedures securing land sales<sup>9</sup>

Once the buyer and the seller agree on the price, they may draw up

<sup>5</sup> We use the term ‘interviews’ to refer to this data.

<sup>6</sup> We use the term ‘questionnaire survey’ for this data.

<sup>7</sup> Statistical treatments do not reveal significant differences between households with at least one certificate and others, regarding their involvement in semi-formal procedures; we thus do not weight the results in this paper.

<sup>8</sup> Merina is the most important ethnic group in the Highlands.

<sup>9</sup> Our field observations were made between 2008 and 2011, but no major change in the procedures since the establishment of the *guichet foncier* in 2006 has been mentioned by the interviewees.

<sup>2</sup> On the procedure of certification, see section 3.2, and Teysier et al. (2009).

<sup>3</sup> A municipality includes various villages. An *arrondissement* is a group of municipalities. The *arrondissement* representative (*délégué d’arrondissement*) is the State representative at this level; the mayor is the head of the municipality.

<sup>4</sup> PNF, 2007. Guide pratique de la Gestion Foncière Décentralisée. Ministère de l’Agriculture de l’Élevage et de la Pêche, Secrétaire Général, Madagascar.

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