

POWER AND ACCESS TO LAND: AN ILLUSTRATION FROM MADAGASCAR

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Abstract

In Madagascar large-scale land acquisitions by foreign investors is a major political issue. With the support from the World Bank, efforts to attract foreign investors have been made, including an investment law simplifying access to land for foreign investors. This paper assesses how foreign investors' access to land is negotiated in Madagascar, and to which extent local populations have influence in these processes. First, an institutional analysis of the relevant legislation and policies is conducted, including the land tenure reform and the investment law. What is the potential of the current institutional framework to ensure that the interests of local populations affected by large-scale investments are considered? Second, examples from the ground are used to illustrate how the policies and laws have actually played out. Special attention is paid to the role of corruption. There is a general view that the regional land services are the most corrupt agencies in Madagascar, together with the courts. Observations and data were collected during fieldwork in Madagascar in 2011. The case of the largest investments in the history of Madagascar, the mining projects QMM and Ambatovy are explored in detail. The assessment of the formal institutional environment indicates that the legislation provides some potential for participation and influence by local populations in negotiations over access to land. The land tenure reform acknowledges that the person who cultivates the land has the right to it. The land tenure reform does not however address forests, grazing lands or the issue of colonial titles. There are several examples of when the sale of a colonial title have caused conflicts with local farmers that have been cultivating this land, in some cases since before independence, and who are now evicted. The results suggest that a formalization process aiming at securing rural small-holder farmers' land rights does not secure their access to and control over land when the institutional environment is weak, and corruption widespread.

Key words: land deals, land tenure reform, Madagascar

1. Introduction

In Madagascar large-scale land acquisitions by foreign investors is a major political issue. With the support from the World Bank, efforts to attract foreign investors have been made, including an

investment law simplifying access to land for foreign investors. Since 2005 over 50 agricultural projects have been prospected, claiming more than half of all arable land, as well as a number of very large-scale mining projects. This has been seen as a sell-out of “tanindraza”, the ancestors land and has caused massive popular protests, leading up to the political crisis in 2009. Simultaneously, a land tenure reform is being implemented, the main aim of which is to provide the rural population with formalized property rights to land, in the form of land certificates. An implicit rationalization behind being that vulnerable groups, such as women, will benefit from the reform; however, there are fears that a formalization of land rights will further weaken these groups control over land, particularly facing the increasing commercial pressure on land. The importance of these issues is underlined by recent reports by the UN stating that more than half of the Malagasy population is food insecure; around 80 percent of the population are rural small-holder farmers, of whom only a minority have legally secure land rights.

This paper assesses how foreign investors’ access to land is negotiated in Madagascar, and to what extent local populations have influence in these processes. First, an institutional analysis of the relevant legislation and policies is conducted, including the land tenure reform and the investment law. Does the current institutional framework ensure that the interests of local populations affected by large-scale investments are considered? Second, examples from the ground are used to illustrate how the policies and laws have actually played out. Special attention is paid to the role of corruption. There is a general view that the regional land services are the most corrupt agencies in Madagascar, together with the courts. Observations and data were collected during fieldwork in Madagascar in 2011. The cases of the largest investments in the history of Madagascar, the mining projects QMM and Ambatovy are explored in more detail.

There is an emerging literature on large-scale land deals (e.g. Lorenzo Cotula, Sonja Vermeulen, Rebecca Leonard and James Keeley 2009) discussing potential negative impacts on local interests, livelihoods,

and welfare. Insecure use rights on state-owned land and inaccessible registration procedures are argued to undermine the interests of small-holder farmers. Also, there is a lack of legal mechanisms, of transparency, and of checks and balances in contract negotiation. On the other hand, the assumption that formal land rights protect small-holder farmers in land deals can however be questioned (see for instance Borras and Franco 2011). Land tenure reforms and titling programs aiming at individualization and formalization of land rights have been criticized (e.g. Jean-Philippe Platteau 1996; Colin 2008) for depriving users of their customary right to land, and giving disproportionate power to commercial interests. There is a lively debate on the benefits with customary versus private tenure systems (Admos Chimhowu and Phil Woodhouse 2006; Pauline E. Peters 2004). Some of this critique comes from a feminist perspective. A neglect of intra-household allocation of resources and decision making in commercialization and privatization processes might weaken women's control over land (Ruth Meinzen-Dick and Esther Mwangi 2009). Susana Lastarria-Cornhiel (1997) suggests that land reforms and privatization processes have deprived women of their informal rights to land within the customary tenure systems, and that women are generally not able to participate fully in the land market; a problem that is likely to occur when men are predefined as household heads, and thereby the appropriate recipients of land in a land reform or resettlement program (Bina Agarwal 1994). A debate on women's vulnerability in the context of commercial pressures on land has been introduced by Julia Behrman, Ruth Meinzen-Dick and Agnes Quisumbing (2011) and Elisabeth Daley (2011). In relation to land rights, the discrimination women generally face in access to, ownership of, and control of land, including the legal protection of their land rights, makes women disproportionately more likely to be negatively affected by large-scale land acquisitions.

2. Background land tenure in Madagascar

Madagascar is the world's fourth largest island, with a surface of 5,870,000 hectares, and a population of about 20 million. Despite low population density fertile land is scarce in many areas (Alfons Üllenberg, 2009). There is large variation in agricultural conditions, but deforestation and the resulting soil erosion is a general problem, as well as increasing pressure on land due to population growth. The pressure on land is also driven by commercial interest in land. Of the country's total surface 3.5 million hectares are used for agricultural production, slightly more than a third of this for rice production; 37.3 is pasture land or meadows; and 12.7 are forested (Üllenberg, 2009). FAO estimates that an additional 15-20 million ha could potentially be used for cultivation, whereas the Malagasy Ministry of Agriculture gives an estimate of 8 million ha (Rivo Andrianirina Ratsialonana, Landry Ramarojohn, Perrine Burnod and André Teyssier 2011).

The land tenure regime is complex. In principle two systems have coexisted since the colonial period: the customary system and the titling system, with the presumption that all non-titled land was state-property. In this section these systems are described as well as strategies and the legal framework for land acquisition by individuals and companies. Inheritance and marital regimes are crucial for the allocation of land within households why these are also discussed.

2.1 Land acquisition and titling

The customary system, in which local leaders governed land allocation, has gradually become more and more individualized (Jacoby and Minten, 2007). There are three ways to acquire land rights for individuals: inheritance, productive use, and purchase. Concerning inheritance, the traditional view in Madagascar is that land belongs to the ancestors, and inheritance is the most important mechanism for allocating land (Sandra Evers, Carolien Pronk, Martina van den Haak, Nandl Lokhurst and Inga Lingnau 2006). In the absence of a will, children are the primary heirs, while the spouse is eighth in the order of priority. The spouse will inherit only in case there are no close relatives to the deceased. In principle

children have equal right to inheritance irrespective of gender, but there is an exception for land, making it possible for heirs to convene on giving female heirs their share of the inheritance as a sum of money (Loi 1968-012). In practice, there are often oral agreements between parents and children on how the inheritance will be distributed, whereas a written will is less common. The second way to acquire land is by putting it to productive use (*mise en valeur*), i.e. a right originating in the use of land. Third, as unused land is becoming scarce, purchase of land is getting more important. The formal arrangements of land markets are poorly developed, a semi-formal system called “*petits papiers*” are widely used. If property rights to land cannot be obtained, other strategies to access land are available; including sharecropping, renting and lending (Marc F. Bellemare 2009).

Regarding allocation of land within the household, as discussed by Giovarelli (2006) and Mino Ramaroson, Danièle Ramiamanana and Lilia Ravoniarisoa (2010) women do have the social and cultural rights to own land, primarily land inherited from their father. However, women are inferior in status to men, and in general follow their husbands to work on his land. This makes widows a particularly vulnerable group, having no legal right to land inherited or purchased by the husband before the marriage. Women, in particular in rural areas, have a higher illiteracy rate than men, and less access to information. The heavy workload at home and traditional gender roles prevent women from participation in community activities, and from speaking up in public. It is even stated in the marriage legislation states that the husband is the household head. Assets, including land, acquired during the marriage are common property, whereas assets acquired before the marriage or as inheritance is individual property. In case of divorce, which is only possible if one of the spouses commit a fault, common property should be equally divided between the spouses, or according to a sharing rule decided upon at marriage; whereas all personal assets are kept by the spouses respectively (Loi 2007-022). Civil marriage is common in the central highlands of Madagascar, whereas in the southern and coastal regions traditional marriage is dominant (ROR, 2008). The traditional partition is two thirds to

the man, and one third to the wife Ramaroson et al. (2010); but it was claimed in focus group interviews that if the wife has committed adultery she does not get to keep anything. In general the wife returns back to her family home in case of divorce. Some women stated that their husbands do not accept a civil marriage, and administrative requirements such as a birth certificate, which many rural people don't possess, is another obstacle.

The titling system, giving private property rights to land, was introduced by the French colonial state in 1896, and remained even after independence in 1960. As described in André Teyssier, Rivo Andrianirina Ratsialonana, Ramy Razafindralambo Yolande Razafindrakoto (2008) the procedure to get a land title is long and complicated. It involves 24 administrative steps, the average cost was about 1,400,000 Ariary (500 USD), and the average waiting time 6 years. 400,000 titles were issued until 2005, on a total area of 170,000 ha, corresponding to only about 10 percent of concerned land. The title registers are rarely updated, and colonial titles remains an important problem for many Malagasy small-holder farmers, who cultivate land which might have been in the family since pre-colonial times, but to which they do not have the legal right. There is no recent gender-disaggregated data available, but in 1993 19 percent of the land title holders were female (Giovarelli, 2006). Adaptations to the titling system have arisen as a response to the demand for formal land rights. To make it easier for small-holder farmers to obtain a title, a registration process called "cadastre" was conducted in several areas, implying a first step towards a title. However, many of the land owners never went further with the process, and the legal status is not clear. Furthermore, a quasi-formal system developed with sales acts, called "petits papiers", issued by local authorities. These do not have any actual legal value, but have been widely used. Unclear land rights have provoked a lot of conflicts (Teyssier et al., 2008).

2.2. The land tenure reform.

The weaknesses of the land titling system motivated the formulation of a new land policy, introduced in 2005. The presumption that all untitled land is state property was removed, and the new legal status “untitled private property” (Propriété Privée Non Titree, PPNT) was introduced for land that is used but not titled, and for which no titling process has begun.

Figure 1.





Figure 1 shows a simplified distinction between the different types of land. The special status category consists of mainly national parks and indigenous reserves. On PPNT it is possible to apply for so called land certificates (certificat foncier) at the decentralized Local Land Offices, LLO, set up at municipal level, in general with support from international donors. Titled and state property land continue to be the responsibility of the Regional or National State-Property Land Services (Service des Domaines); however there is no clearly defined mechanism for transfer of information between these and the LLOs (Loi 2006-031). To get a certificate, the land user makes a request at the LLO. To verify that the plot is PPNT, and hence certifiable, the plot is located on a map indicating the legal status of all land in the municipality. The applicant needs to show some evidence that the plot actually belongs to him or her, for instance a sales act or a will. A local recognition process is carried out with neighbors, the LLO agent and a committee with representatives from the village elders. The result is posted at the LLO and it is possible to appeal the decision. Furthermore, the applicant has to pay a fee, fixed by the municipality and based on the size of the plot. After the signature of the Mayor the certificate is issued and printed. A certificate

can be transformed into a title (Loi 2006-031). A land certificate can be issued individually, or in the name of several persons, as well as to public entities. For instance, a group of siblings can register inherited property that they wish to keep undivided. In 2006 a gender-focused assessment of the reform was carried out (Giovarelli, 2006). The recommendation was to make it easier for couples to apply for joint certificates. The most efficient measure suggested was to make joint certification mandatory for co-owned land, but contrary to other similar reforms, in for instance Peru (Deere and Leon, 2006), no obligation was legislated. Instead the minimum required action was taken, namely to introduce an extra line in the application form to make it easier to register co-owned property in the name of both spouses. Also, efforts to make sure staff stopped spreading information that only one person could be registered on the certificate should be taken.

Out of Madagascar's 1,550 municipalities 416 had LLOs in the beginning of 2012 (Land Observatory, 2012). The average cost of a certificate is around 25,000 Ariary (15 USD) and the average waiting time about 6 months. However, it is still only a tiny proportion of the potential land that has been certified. In more detail, a total of 120 000 applications have been posted since 2005, and 61 500 of these have so far been issued certificates. 1,750 of the applications have been rejected, and the rest of the not yet issued certificates are in process. 20 percent of the certificates are issued to women individually; the rest are issued to men individually, or to two or more persons jointly (Land Observatory, 2012). There is no information collected at national level about the number of joint certificates, but the information available from NGOs, land administration staff and the author's data collection at a selection of LLOs, shows that there are very few joint certificates.

2.3. Institutional framework for large-scale investments in land.

With the support from international donors such as the World Bank, efforts to attract foreign investors were made towards the end of the 20th century. Infrastructure development and employment creation

are expected benefits, in addition to revenues such as fees, taxes, royalties, and rent from land leases (Cotula et al., 2009). In principle, purchasing land is only possible for Malagasy nationals, not for foreigners. However, the new investment law (Loi 2007-036) simplifies access to land for foreign investors, through the Economic Development Board of Madagascar, EDBM, which assists foreign investors in starting up a Malagasy business. To limit the risks, as well as the initial investments costs investors may still prefer lease contracts over purchasing land. The lease contract is in general a so called “bail emphyteotique” granting the contractor the right to use the land for 18-99 years (Loi 2008-014). Agricultural projects covering a larger area than 1,000 ha, as well as all mining projects, have to carry out an Environmental Impact Assessment (Ministère de l’Environnement et des Forêts). Moreover, Madagascar has adopted the World Bank guidelines for how large projects should deal with involuntarily relocated populations (World Bank, 2001). Projects financed by investment banks adhering to the Equator principles (The Equator Principles, 2006) — a voluntary set of standards for determining, assessing and managing social and environmental risks in project financing — have to follow these too.

There are four ways to access land for commercial purposes: purchase, lease, public utility and contract farming. The procedure depends on the status of the land and the origin of the investor. If land is titled private or state property, a lease contract can be signed between the investor and the land owner; users of the land without a title are considered squatters and can be evicted. For land that is not titled the first step is for the Commission for State-ownership recognition to verify whether land is already used, in which case it should be classified as PPNT, and left outside the contract. If the investment is considered important for the country’s development, it can be classified public utility, in which case land is expropriated, and land users evicted. In this case all land users, regardless of whether they hold a title or not, have the right to compensation. Finally, another way to access land is through contract farming, implying that the farmers cultivating land are contracted to produce and sell a certain share of their crops to the company. The former government planned to create special land reserves called

“Agricultural Investment Zones” agriculture, where establishment by agribusiness investors meeting selection criteria of intensive and market-oriented but this law was never put into effect Ratsialonana et al. (2011).

3. Experiences of foreign investments in land.

In this section experiences from large-scale land deals are discussed. Commercial interest in land from foreign investors is not a new phenomenon in Madagascar; during the colonial period there were plantations, and there has been an interest in mineral resources for a long time. However, attracting foreign investors has become an important policy priority and since 2005 over 50 agricultural projects — both food crops such as corn and paddy, and agrofuel such as palmoil and jatropha — have been announced, as well as several forestry and large-scale mining projects.

Table 1 depicts the different actors or stakeholders that are involved in a land deal and their different interests, challenges and means of control over land. For investors the main interest is naturally to maximize profits, but in the process it is also important to avoid conflicts over land which can lead to problems with the progress of the project and also to bad publicity. The national government has the development plan for the country as the main aim of the land deals. However, as discussed by Ratsiolanana et al. (2011) there is a potential conflict of interests between the investors need for large land areas and small-scale farmers' demand for secure land rights. Moreover, there are a lot of indications that the potential personal gains for decision makers is also an important motivation for granting investment permits to large-scale land deals. Similarly, at the regional and local levels of administration there are many indications of corruption. The struggle for these agencies is to acquire benefits for the region, since the tax collection is made at national level. The wanted benefits on the local level can be infrastructure projects and employment opportunities. Finally, for the local population, the project affected people, a key issue is to preserve their livelihoods and to get benefits from the

projects, which in case of relocation from the land has been shown to be challenging (see for instance the case of QMM described in ALT & Panos, 2009). A major obstacle to project affected people is lack of information.

| Table 1. Actors/stakeholders in land deals | | | |
|---|--|--|---|
| | Interests | Challenges | Control over land |
| Investor | Maximize profits | Securing land access without (open) conflict Not get bad reputation | Government grant permit Purchase via Malagasy firm Lease contract |
| National government | National development plan Personal gains | Satisfy conflicting interests: investors and small-holder farmers | Contracts over 50 ha State property |
| Regional, local administration | Maximize benefits for the region Personal gains | Not real decentralization of power | Contracts under 50 ha regional land services PPNT LLO |
| Local population | Preserve livelihoods Maximize benefits from project | Awareness Implementation Corruption, elite capture Distribution | PPNT World Bank OP 4.12 (village chiefs) |

According to investigations made by Ratsialonana et al. (2011) the agribusiness investors are competing over the same type of land, namely land that gets enough rain, situated on plain areas, and close to main roads, which is also the most attractive land for small-hold farmers (de Schutter, 2009). Ratsialonana et al., (2011) describe how land acquisitions have so far been non-transparent and top down processes, which have in general excluded local people; in particular people with weak land rights, such as women and people belonging to certain ethnic groups. There are 18 ethnic groups in Madagascar; ethnicity is a common ground for discrimination. Those who are included are typically of a certain social status and ethnic group, and when they are included details about contracts and agreements are kept secret from the majority of the local people (unpublished results from a study carried out by Ashley Clayton, 2011).

The land deals with the agribusiness investors Daewoo and Varun International, concerning almost half of all agricultural land in Madagascar, have been seen as the trigger of the political crises in 2009. South Korean Daewoo negotiated directly with the Malagasy government for a lease contract covering 1,300,000 hectares of arable land to produce palm oil and corn, mainly for the South Korean market. The land areas to be used were located without consulting the people using the land. Indian Varun International prospected irrigation schemes for intensive corn and paddy production on 200,000 ha. On already used land contract farming was planned, but the farmers concerned were never consulted (Ratsialonana et al., 2011). The contracts spanning over 50 years, with seemingly unrealistic production goals, risking of leaving the contract farmers in poverty, caused massive popular protests. In January 2009, riots burst out in the capital; both the Daewoo and the Varun deals were canceled, the president was forced to resign, and Madagascar is still, in late 2011, governed by a transition regime which is not recognized by the international community. The crisis has made many international donors and investors leave the country. One of the main obstacles is lack of financing because of banks' unfavorable risk assessments. The total area prospected by investors was at least 3 million ha (Üllenberg, 2009) in 2009, but of this area only 150,000 ha were actually used in early 2010 (Ratsialonana et al., 2011). There are indications that large-scale investments in land are increasing again, but there is very little information and evidence available on the impacts, let alone gender impacts. There are so far no documented cases in which land has been acquired from a land certificate holder. It is the responsibility of the Commission for state-ownership recognition to verify whether land is used or not, but there are no clear mechanisms for this. As discussed in Ratsialonana et al. (2011) it is difficult to verify land ownership due to technical problems such as the absence of a national level database, or map, showing the legal status of land. Moreover, there are examples of how companies have not followed the procedures on with what entity to negotiate access. For instance, the agreement between GEM BioFuels

and 18 communes is violating the legislation. There is a higher risk that the rights of small-holder farmers are neglected if procedures are not followed.

There is a resistance movement requesting an immediate halt to evictions of the Malagasy people from their land, and that the authorities protect the land rights of families who have been living on their land for many years (TANY, Aug 4. 2011). The land deals, has been seen as a sell-out of “tanindraza”, the ancestors land, to foreign investors; the rent for leasing land is about 1 USD/hectare and year (de Schutter, 2009). Madagascar has been famous internationally for the protests against the deals with Daewoo and Varun, as an example how popular protests might stop land grabbing (Borras and Franco 2010). Other examples of resistance as a response to neglecting the local populations’ interests is, as has been seen in the rural municipality Soavinandriana, to stay on the land and keep planting; the owner tries to evict them but has thus far not succeeded. A more aggressive resistance strategy that has been practiced in different situations in Madagascar is bush fires. For instance, as described in Ratsialonana et al. (2011), when local populations in both the Boeny region and in Tuléar did not approve of project plans, they burned down plantations. In the Daewoo and Varun cases, the international media attention is argued to have been an important factor (Ratsialonana et al. 2011).

4. Case studies – Ambatovy and QMM

In this section I describe two cases of large-scale mining projects, QMM and Ambatovy, which illustrate issues of land tenure that will be highly relevant also in coming agribusiness projects. There are numerous examples of investors buying land where the people using the land are not the legal owners, due to corrupt practices or colonial titles. There are a lot of environmental concerns that have been raised, but in this paper the focus is on the land tenure issues.

The QMM project, extracting the mineral ilmenite in the south-east of Madagascar, is a joint venture between the UK/Australian Rio Tinto and the Malagasy government with World Bank funding starting in 1998. At this time untitled land was presumed state property, and given that the state is one of the shareholders (a solution that the new mining code is trying to avoid to make investments more independent from the state) land acquisition seem to have been straight-forward World Bank (2010). In the case of QMM a Declaration of Public Utility was made to acquire 800 ha of land required to construct a new port, and 530 households were relocated (Rio Tinto). Houses were replaced, and for agricultural land the project affected people had a choice between comparable land and monetary compensation. The household head was the recipient of compensation (Rio Tinto), hence leaving wives without secure property rights. Due to a lack of substitutable land most people got monetary compensation instead of farmland (Rio Tinto), contrary to the World Bank (2001). Compensation procedures have been strongly criticized for being lower than promised, and for some agricultural lands not granted at all (Ratsialonana et al., 2011). Many single mothers describe in ALT and Panos (2009) how they are having a hard time providing for their families. Moreover, there are stories about how monetary compensation and loss of income generating activities caused a negative behavior, including increased alcohol consumption.

The Ambatovy project is the biggest investment in the history of Madagascar with its 10 billion USD. It got its mining permit in 2006 to extract nickel and cobalt in the east coast. This is a joint venture between the Canadian mining conglomerate Sherritt, and Japanese, South Korean, and South African investors. In addition to the mining site, the project includes a 220 kilometers long pipeline through (primary) rainforest; a plant site; a tailings facility and a large port. The project uses thousands of hectares of land for its activities which naturally has impacts on the original use of the land. Forests, agricultural lands, villages etc. are concerned. There is no public information how the project got access to all the land that is used. According to the regional land services, all land acquisition has been in the

form of state lease contracts (*bail emphytéotique*). It is however also possible to have a Malagasy branch of a foreign company and register property in the name of this branch, which is a practice promoted by the Economic Development Board of Madagascar. And there is also land that has been purchased, if not in the exact name of the project, at least with project money. For instance, land for two resettlement villages was purchased from a group of title holders not using the land.

About 250 households, with more than 1000 people, were relocated to these villages. All households will receive land titles, and in the allocation of these a gender approach has been adopted. Households are encouraged to register the title in the name of both spouses, an initiative developed with the NGO EFA, working on promoting women's rights to land. The process of joint titling has, according to staff at Ambatovy (interview with the Social department, May 5 2011), been rather difficult. For instance, there are men who oppose the inclusion of his wife in the title, arguing that the replaced land was his, not the family's. Moreover, the process has been delayed due to legal complications. A few years after the Ambatovy project had acquired the land, a person claimed compensation by presenting a title for the same land, registered in his name. These problems illustrate the serious problems of disorder, and even corruption, at the state-property land services. Another indication is the accounts from LLO staff in the Atsinanana commune in the region about how people got land titles "on the desk" without going through the regular procedures of local recognition on land that they have never cultivated but that is occupied by other people. These people find out about the illegitimate land title only when they try to certify their land at the local land office. Similar problems have already been noted for certificates. The beneficiary of a certificate is not always the person holding the land. A recent case was reported from the Itasy region, where municipality staff had registered land belonging to the municipality in their own names (VIVA TV, June 4 2011). In the area of the Ambatovy project which concerns several municipalities, there are LLOs, but only a few of these are functioning, and as the example from Atsinanana shows, obstacles to securing land for the users occur also at well-functioning LLOs.

Corruption creates insecurity for both small-scale farmer and for investors, and hurts the confidence in public authorities. The reform is not likely to be effective in land deals in the near future.

Moreover, the resettlement villages is an example of the discrepancy between formal and informal land rights. The land used for the relocated villages were already occupied. There were 83 households that had cultivated the land for several generations, were hence squatters in a strictly legal sense, but were still included in the compensation scheme. This implies that they have had to share the rice fields that they are cultivating with the relocated households, which in cases when land holders have not been “willing to cooperate” (in other words, not willing to accept the compensation offered by the project), the public utility clause has been used, and land holders expropriated (interview with the Regional Communications department at the Ambatovy Project, May 6 2011).

5. Discussion and concluding remarks

The assessment of the formal institutional environment indicates that the legislation provides some potential for participation and influence by local populations in negotiations over access to land. The land tenure reform acknowledges that the person who cultivates the land has the right to it, and a land certificate in principle gives increased tenure security against an external threat of appropriation in that it gives a formal document verifying who owns the land in case another private person or company demands to get access to it. The land tenure reform does not however address the issue of colonial titles. There are large land areas that were titled during the colonial period that are still in the name of the colonizer. The Malagasy farmers that have been cultivating this land after independence do not have the formal right to it, and are in a legal sense considered squatters. Another legal limitation is that the discrepancy between de jure and de facto land rights when it comes to titled land cannot be solved by the reform. When investors arrive on the ground they have to negotiate with the title holder who has the legal right to sell the land. In practice this may however also imply negotiations with the users of the

land. There are several examples of when the sale of a colonial title have caused conflicts with local farmers that have been cultivating this land, in some cases since before independence, and who are now evicted. Further, corruption is widespread in many parts of the Malagasy society which might affect the actual tenure security.

Another dimension of the type of land protected by the reform is that certified land is, almost exclusively, individually held agricultural land. This is in line with the objective of the reform, which is to secure family farm land. Land that is communal, such as grazing land and forests, will rarely be covered by certification. Nevertheless, those lands are attractive for investors in biofuels such as jathropa and palm oil (Ratsialonana et al 2011).

Most projects within agribusiness are prospected in the Sofia region where there are no local land offices so far. Even land that is PPNT, but not certified, has in principle legal protection against appropriation. However, this right still needs to be proven, which is difficult in the absence of an LLO or where the LLO is not well-functioning. Moreover, as information is difficult to spread in remote areas, information campaigns are part of the establishment of a LLO in a commune. Hence, people in communes without LLOs might not be aware of their rights. With regards to intra-household threats to tenure insecurity it is clear that the land tenure reform has had some effect in protecting women's land rights. However, the lack of gender equality principles, and in particular the lack of mechanism to ensure that couples' joint property is jointly secured, seems to have reinforced the primary ownership of land by male household heads, at the expense of women's land rights.

To some extent it seems to be up to the investor whether informal land holders will receive compensation. Attention from international NGOs such as Greenpeace is thought to increase the chances that the interests of local populations are respected, but there are few such organizations present in Madagascar. There is an increasing interest in land in many African countries from Chinese

investors (Kweku Ampiah and Sanusha Naidu 2008). One example in Madagascar is a mining project with Chinese investors in the municipality of Soalala (Razafindramiadana, 2011), where there is no LLO. In contrast to the other projects discussed in this article, the role of international investment banks is smaller since Chinese investments in general have government support, and hence codes of conduct such as the Equator principles are not in force. Another factor that is not likely to be relevant in the case of China, is independent, critical, international media reports which can have a positive influence on foreign investors' actions in developing countries.

References

Agarwal, Bina. *A field of one's own. Gender and land rights in South Asia*. Cambridge University Press, 1994.

Agarwal, Bina. "Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market." *Journal of Agrarian Change* 3, 1-2: (2003) 184–224.

Alchian, Armen A., and Harold Demsetz. "The Property Right Paradigm." *The Journal of Economic History* 33, 01: (1973) 16–27.

ALT, and Panos, editors. *Voices of Change. Oral Testimony of the Antanosy People*. Andrew Lees Trust & Panos London, 2009.

Amparafaravola Land Certificate Database. Collected by Randrianarimanarivo Faniry Anja, 2010.

Ampiah, Kweku, and Sanusha Naidu. *Crouching Tiger, Hidden Dragon? Africa and China*. University of KwaZulu-Natal Press, 2008.

Anteteszambaro Land Certificate Database, 2011. Collected by NGO EFA.

Behrman, Julia, Ruth Meinzen-Dick, and Agnes Quisumbing. "The Gender Implications of Large-Scale Land Deals." IFPRI Discussion paper 01056, International Food Policy Research Institute (IFPRI), 2011.

Bellemare, Marc F. "Sharecropping, Insecure Land Rights and Land Titling Policies: A Case Study of Lac Alaotra, Madagascar." *Development Policy Review* 27, 1: (2009) 87–106.

Besley, Timothy. "Property Rights and Investment Incentives: Theory and Evidence from Ghana." *Journal of Political Economy* 103, 5: (1995) 903–37.

Bres, Aurélie. *Logiques de Production et Stratégies de Sécurisation Foncière Paysannes : Quelles Perspectives de Suivi - Evaluation des Impacts du Guichet Foncier de Soavinandriana - Ampary (Madagascar)*. Master's thesis, Centre National d'études Agronomiques des Régions Chaudes (CNEARC), 2006.

Chimhowu, Admos, and Phil Woodhouse. "Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa." *Journal of Agrarian Change* 6, 3: (2006) 346–371.

Colin, Jean-Philippe. "Disentangling Intra-kinship Property Rights in Land: A Contribution of Economic Ethnography to Land Economics in Africa." *Journal of Institutional Economics* 4, 02: (2008) 231–254.

Cotula, Lorenzo, Sonja Vermeulen, Rebeca Leonard, and James Keeley. *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa*. FAO/IIED/IFAD, Rome, 2009.

Daley, Elizabeth. "Gendered Impacts of Commercial Pressures on Land.", 2011.

Datta, Namita. "Joint titling - A Win-win Policy? Gender and Property Rights in Urban Informal Settlements in Chandigarh, India." *Feminist Economics* 12, 1-2: (2006) 271–298.

Deere, Carmen Diana, and Cheryl R. Doss. "The Gender Asset Gap: What Do We Know and Why Does It Matter?" *Feminist Economics* 12, 1-2: (2006) 1–50.

Deere, Carmen Diana, and Magdalena Leon. "The Gender Asset Gap: Land in Latin America." *World Development* 31, 6: (2003) 925–947.

Deininger, Klaus, Daniel Ayalew Ali, and Tekie Alemu. "Impacts of Land Certification on Tenure Security, Investment, and Land Market Participation: Evidence from Ethiopia." *Land Economics* 87, 2: (2011) 312–334.

Evers, Sandra, Carolien Pronk, Martina van den Haak, Nandl Lokhurst, and Inga Lingnau. "National Legislation and Local Practices: Competing Jurisdictions in Land Management in Madagascar." *Taloha Revue Scientifique Internationale des Civilisations* 16–17.

Field, Erica. "Entitled to Work: Urban Property Rights and Labor Supply in Peru." *The Quarterly Journal of Economics* 122, 4: (2007) 1561–1602.

Giovarelli, Renée. "MCC Madagascar Projet Foncier Matières Relatives au Genre en Prendre en Compte. Mission Report from Madagascar.", 2006.

Goislard, Catherine. "L'accès à l'information légale pour sécuriser les droits fonciers des ruraux pauvres à Madagascar. Le cas des guichets fonciers." In *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO, 2008, number 3 in Land tenure collection.

Goldstein, Markus, and Christopher Udry. "The Profits of Power: Land Rights and Agricultural Investment in Ghana." *Journal of Political Economy* 116(6): (2008) 981–1022.

Jackson, Cecile. "Gender Analysis of Land: Beyond Land Rights for Women?" *Journal of Agrarian Change* 3, 4: (2003) 453–480.

Jacoby, Hanan G., and Bart Minten. "Is land titling in sub-saharan Africa cost-effective? Evidence from Madagascar." *World Bank Economic Review* 21, 3: (2007) 461–485.

Joireman, Sandra Fullerton. "The Mystery of Capital Formation in Sub-Saharan Africa: Women, Property Rights and Customary Law." *World Development* 36, 7: (2008) 1233– 1246.

Land Observatory. "Statistiques Guichets Fonciers." <http://www.observatoire-foncier.mg/>. Aug. 5 2011.

Lastarria-Cornhiel, Susana. "Impact of privatization on gender and property rights in Africa." *World Development* 25, 8: (1997) 1317 – 1333.

Üllenberg, Alfons. "Foreign Direct Investment (FDI) in Land in Madagascar." 2009.

Loi 1968-012. "Loi 68-012 du 4 Juillet 1968 relative aux successions, testaments et donations."

Loi 2005-019. "Loi 2005-019 du 17 octobre 2005 fixant les principes régissant les statuts des terres.", .

Loi 2006-031. "Loi 2006-031 du 24 Novembre 2006 fixant le régime juridique de la propriété foncière privée non titrée.", .

Loi 2007-022. "Loi 2007-022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux."

Loi 2007-036. "Loi 2007-036 du 14 Janvier 2008 sur les investissements à Madagascar."

Loi 2008-014. "Loi 2008-014 on State-owned property."

Meinzen-Dick, Ruth, and Esther Mwangi. "Cutting the web of interests: Pitfalls of formalizing property rights." *Land Use Policy* 26, 1: (2009) 36 – 43. Formalisation of Land Rights in the South.

Ministère de l'Environnement et des Forêts. "Decret No 99-954 relatif à la mise en compatibilité des investissements avec l'environnement MECIE."

O'Laughlin, Bridget. "Agrarian change, gender and land rights." *Development and Change* 36, 1: (2005) 194–196.

Peters, Pauline E. "Inequality and Social Conflict Over Land in Africa." *Journal of Agrarian Change* 4, 3: (2004) 269–314.

Platteau, Jean-Philippe. "The evolutionary theory of land rights as applied to sub-Saharan Africa: A critical assessment." *Development and Change* 27, 1: (1996) 29–86.

Ramaroson, Mino, Danièle Ramiamanana, and Lilia Ravoniarisoa. "Promoting Women's Access to and Control over Land in the Central Highlands of Madagascar." Technical report, Plateform SIF, 2010.

Ratsialonana, Rivo Andrianirina, Landry Ramarojohn, Perrine Burnod, and André Teyssier. "After Daewoo? Current Status and Perspectives of Large-Scale Land Acquisitions in Madagascar.", 2011.

Razafindramiadana, Lantoniaina. "Wisco entame les forages (Fer de Soalala)." *L'Express Mada* <http://www.lexpressmada.com/4886/fer-de-soalala-madagascar/22396-wisco-entame-les-forages.html> April 6 2011. Visited Aug. 8 2011.

Ribot, Jesse C., and Nancy Lee Peluso. "A Theory of Access." *Rural Sociology* 68, 2: (2003) 153–181.

Rio Tinto. "Processus DUP. Constructions des infrastructures industrialo-portuaire et routières de Toalagnaro." .

ROR. "Enquête periodique auprès des ménages.", 2008.

de Schutter, Olivier, editor. Report of the Special Rapporteur on the right to food, Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge, Human rights council. United Nations, United Nations, 2009.

Soavinandriana Household Survey, 2011. Collected by author.

Soavinandriana Land Certificate Database, 2011. Collected by author.

de Soto, Hernando. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. Basic Books, 2000.

TANY. "Petition: Halte aux Expulsions de Familles Malgaches et l'Accaparement des Terres à Madagascar." <http://terresmalgaches.info>. Visited Aug. 28 2011.

Teyssier, André, Rivo Andrianirina Ratsialonana, Ramy Razafindralambo, and Yolande Razafindrakoto. "Decentralization of Land Management in Madagascar: Process, innovations, and observation of the first outcome." 2008.

The Equator Principles. "The Equator Principles." 2006. <http://www.equator-principles.com>. Aug. 5 2011.

Tripp, Aili Mari. "Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda." *African Studies Quarterly* 7: (2004) 1–19.

Tsikata, Dzodzi. "Securing Women's Interests within Land Tenure Reforms: Recent Debates in Tanzania." *Journal of Agrarian Change* 3, 1-2: (2003) 149–183.

Walker, Cheryl. "Piety in the Sky? Gender Policy and Land Reform in South Africa." *Journal of Agrarian Change* 3, 1-2: (2003) 113–148.

Whitehead, Ann, and Dzodzi Tsikata. "Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Return to the Customary." *Journal of Agrarian Change* 3, 1-2: (2003) 67–112.

World Bank. "World Bank Operational Policy OP 4.12 addressing involuntary resettlement." 2001. Revised February 2011.

World Bank. "Governance and Development Effectiveness Review. A Political Economy Analysis of Governance in Madagascar." , 54277-MG.