Foreign Land Acquisitions in Madagascar:
Competing Jurisdictions of Access Claims

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Abstract

The 1.3 million hectare agricultural project proposed by the South Korean company Daewoo Logistics in 2009 illustrates the paradoxical position of the Malagasy government on land management issues. At the time, the Ravalomanana government (2002–9, dissolved by the military and the current president, Rajoelina, in March 2009) was simultaneously encouraging foreign land investment and implementing land reform to secure local land rights. The public spotlight on the Daewoo project, a project which has since been abandoned, also drew attention to other types of land acquisition by foreigners, such as for forestry and mining. This chapter analyses the realities encountered in the local settings where local and international stakeholders vie for the same plots of land. Even though the new land laws offer legal protection of local rights, the interpretation and enforcement of these new laws do not guarantee the respect of existing land rights, whether secured or not by title deed or certificate. Contrary to the opposition voiced against Daewoo at the national level, local reactions have been somewhat muted, largely owing to the fact that local State representatives and village
leaders are often, at least initially, interested in the economic opportunities promised as accompaniment to the international land projects. The authors also underline how local populations lack the necessary information to properly assess envisaged projects.

Introduction

During autumn 2008, a planned large-scale land acquisition in Madagascar attracted the attention of international media. The Financial Times revealed that a South Korean company, Daewoo Logistics, had undertaken negotiations with the Malagasy government to acquire 1,300,000 ha of arable land in four coastal regions (Blas 2008). Daewoo intended to produce 500,000 tons of palm oil in Eastern Madagascar and 4,000,000 tons of corn in the West, most of which was to be exported to the Korean market. It also planned to mobilise about 6 billion USD over 25 years to develop agricultural production and infrastructure (1,170 schools, 170 private hospitals, 250 markets, 120 churches, 60 power plants, 8 airports, 30 factories and silos, and 8 ports) and 70,000 jobs. This very large-scale project at first appeared as a powerful tool in the fight against poverty. However, its implementation required large tracts of arable land already subject to rights and in part cultivated.

In December 2008, a political crisis erupted in the capital of Madagascar. The opponents to Ravalomanana’s regime included the Daewoo project as symbolic of their plight, citing it as an example of how President Ravalomanana was stripping the country's national resources. The revelation of another agribusiness project, involving 465,000 ha, led by the Indian company Varun International, reinforced the charge (Hervieu 2009). International NGOs were perceived as supporting the protests and played a role in mobilising Western public opinion. In Madagascar, this support fuelled national protests and contributed to the fall of the Ravalomanana government in March 2009. The current president, Rajoelina, was front and centre of opposition to these foreign projects. Eventually, the two agribusiness projects—Daewoo and Varun—were suspended and their main promoters left the country.

Rajoelina’s rhetoric relied heavily on the spectre of foreign investors like Daewoo and their attempts to destroy local land-based livelihoods by usurping ancestral lands. In Madagascar, land is a source of livelihood for approximately 80% of the population (Maep 2005). In the vast majority of cases, cultivators hold no official title to the land they have been cultivating for generations. Land also anchors identity, as it is the portal to the ancestors, repository of culture and authentication of social status. Many Malagasy fear losing their lands more than anything else, as they commonly believe that land issues are the prerogative of the ancestors. Groups often claim autochthonous status using the rhetoric that their ancestors are buried on their family lands. This for them is the ultimate proof of family authenticity in their region, and for these groups it is a far stretch of the imagination that foreign people could lay claim to their land (Evers 2005).
The impact of large-scale agricultural, mining or forestry investments in Southern countries is becoming an increasing focus of scholastic inquiry (Cotula et al. 2009; Shepard & Mittal 2009; Von Braun & Meinzen-Dick 2009; Mann 2010). The main issues are resource access and land-use competition between investors and local populations. In many Southern hemisphere countries, local communities’ land rights are not legally recognised and the land is considered as State-owned. Large-scale transfers (lease or purchase) risk ignoring and breaching local land access practices and notions of ownership legitimacy. FAO, UNCTAD, and the World Bank have laid down high-minded principles for agricultural investment and urged that it be subject to the obligation of “respecting land and resource rights” (Borras & Franco 2010), but this ideal faces the hard reality that local groups and international claimants to land legitimise their land claims on the basis of competing legal jurisdictions, based respectively on local practices of land access (lex loci) and positive law (lex fori).

This chapter examines the possibilities to regulate these agricultural investments in Madagascar within a context of competing jurisdictions asserting control over land. It aims to analyze how actors mobilise and interpret the lex fori and lex loci rules in order to negotiate land deals or react to them.

The chapter discusses first the conflicting directions of two dominant policies currently at work in relation to investment and land issues in Madagascar, one aiming to promote private investment, the other to secure local land rights. This contradiction does not arise out of any specific conflict of legislation but rather from the tension between the legislation and its effective enforcement. On the basis of the investors’ land access strategies, the second part analyses the “social working of law” (Griffiths 1992). It studies how officials, intermediaries, and stakeholders react to this legislation and why, in the end, local land rights are at risk. Thirdly, the chapter presents and explains why overt social reactions at the local level are few in number in contrast to the large protest against Daewoo. The last section deals with the tensions between the various legal systems and analyzes how these large-scale land acquisitions force the local landholders to change legal forum, from lex loci to lex fori.

Investment projects in the agricultural sector are generally negotiated behind closed doors. Information available to Malagasy citizens, decision makers as well as international organisations, is limited and impossible to verify. This chapter, in line with studies on biofuel and land acquisitions in Madagascar (Uellenberg 2008, 2010; Burnod et al. 2009) presents the status of land investment projects by differentiating the projects that were simply announced from those projects that are effectively underway. Data on actors’ land strategies were collected through sixty in-depth interviews with agents from public

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1 Lex loci is the concept which refers to the law of the place and includes local land access practices that are deemed legitimate in terms of local land ownership perceptions. Lex fori refers to the law of the forum, or court; that is, the positive law of the State, country, or jurisdiction. Courts, where the suit is brought or remedy sought, are an integral part of lex fori.
institutions, regional or local governments, private developers, populations, and other key informants. The interviews were conducted in the capital city, Antananarivo, and in two regions favoured by investors (Boeny and Sofia). In addition, this chapter benefits from the sustained fieldwork and studies conducted and supervised by Sandra Evers in the context of her research project on poverty and natural resource management in Madagascar.

Incoherence of National Policies: Promoting Foreign Large-Scale Land Acquisitions and Securing Local Land Rights

The Ravalomanana government (2002-9) envisaged international investments as vehicles to fuel the economic development of Madagascar. Following an evaluation by the World Bank on the investment climate (2005) and in compliance with its recommendations, the government implemented an incentive policy and focused on the promotion of foreign investments. It did this notably through the creation of a one-stop office for investors (Economic Development Board of Madagascar, EDBM) in 2006 and the adoption of an investment law in 2008. Based upon this institutional framework and through an increase in the scope of projects, foreign direct investment flows increased from 95 million USD in 2005 to 1,445 million USD in 2008 (UNCTAD, FDI database, March 2010). Although these investments were mainly oriented towards the mining sector, a new phenomenon began to appear in the agricultural sector.

Between 2005 and 2010, approximately 50 agribusiness projects were announced or revealed in media and research reports (Andrianirina Ratsialonana et al. 2011). Indeed, the Daewoo Logistics and Varun projects, targeting respectively 1,300,000 ha and 465,000 ha, have masked agricultural projects of lesser scope. An aggregate total of nearly 3,000,000 ha of land were affected (65% for food production, 32% for biofuel, 3% for forest plantations) (op. cit.). This surface area was significant considering that the 2.5 million family farms cultivate in total, and on the whole island, only 2,000,000 hectares. It also represented—although the methodologies and definitions used are open to question—15 to 37% of potentially arable land. These lands are estimated to be about 15 to 20 million ha by FAO (2007), and 8 million ha by the Ministry of Agriculture (2008).

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2 Part of the research project on Commercial Pressure on Land led and funded by the ILC (International Land Coalition), this study was realised by the Malagasy Land Observatory (Observatoire du Foncier à Madagascar—Rivo Andrianirina Ratsialonana and Landry Ramarojohn) and CIRAD (Centre de Coopération Internationale pour la Recherche Agronomique pour le Développement—Perrine Burnod and André Teyssier).

3 This project is a collaboration between the VU University Amsterdam, the University of Antananarivo, and the Dutch NGO ICCO (Interchurch Organisation for Development Cooperation).
Notwithstanding his anti-foreign investment rhetoric, President Rajoelina has maintained the policies of the former government with regards to international investment. The government has concluded several contracts in the mining sector and granted new authorisations for farm-land prospection for agribusiness projects. While the government advocates land leases for foreign investors, the new constitution, proposed by Rajoelina’s party and accepted by referendum in December 2010, is ambivalent. It refers to the existing investment law which includes the right of non-national investors to acquire land (see infra). The Daewoo case and the large-scale land acquisition issue were probably more a case of political rhetoric to destabilise the former President than a real opposition to foreign large-scale land investments.

The government’s desire to promote foreign direct investment and to lease large tracts of agricultural land would appear to be a difficult fit with the stated aim of securing land access at the local level. In any event, in 2004, with the support of various international development agencies, the Ravalomanana government launched a new land reform which is still in effect today. In accordance with international institutions’ recommendations, this new land policy aims at the recognition of local land rights and at the decentralisation of land management (Teyssier et al. 2009).

Prior to 2005, all land subject to claims of customary ownership and untitled land were deemed to be State-owned. The only way to legally secure land was to obtain a title deed delivered by the State land registry services. Now, under the new land reform, two major changes have been implemented. Firstly, untitled but occupied land is no longer the property of the State. Land claimed by local people may be deemed ‘untitled private property’. Secondly, local governments (municipalities) have been granted new powers. By creating a local land registry office, they are responsible for recognizing private property rights and issuing land certificates. As the applicant can be an individual or a group, the certificate can also be individual or collective. The property is no longer created by the State administration officers but recognised by a local commission, on the basis of pre-existing customary rights. The originators of the reform thus hoped to reconcile legality and legitimacy, lex fori and lex loci.

In less than three years, 350 Malagasy municipalities, or one-fifth of the total number, have set up land registry offices. They have delivered approximately 52,000 certificates in about four years, while the State land services has delivered on average 1,500 land titles per year. The average cost of a certificate is 15 USD and the process takes usually six months—a cheap and quick process compared to the delivery of the title deed which costs on average 507 USD and takes 6 years (ECR 2006, 2008; Teyssier et al. 2009).

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4 This local commission is comprised of elected representatives of the village and neighbours of the concerned claimant.
This new law comprises a dual legal system for land management: the formalisation of property rights through a title deed falls within the remit of the national government; the formalisation of property rights to untitled land through certificates is a new power granted to local government (Teyssier 2010). Users can choose the means of formalizing their land rights. Title deeds and certificates confer similar property rights. In spite of this legal system, land access in Madagascar is still commonly arranged on the basis of custom, and most local land rights based on custom are not formalised through titles or certificates. Indeed, only one-fifth of the local governments has a local land registry office and among these localities, only some individuals or households have asked for a certificate on one or several plots of their land patrimony.

The policy favouring investment would appear at first glance contradictory to policies favouring local rights, but these policies can be seen as complementary. Indeed, under the new land laws, only State-owned land can be leased to investors and developers. For international or national companies vying for land, the State land services demand compliance with several steps in order to verify that the relevant land area does not encroach or include titled private property, special status zones (national parks, land reserves) or un-titled private property. If the targeted land is genuinely unoccupied in its ordinary sense, “vacant and without master”, the State land services can establish a title or a long-term lease contract (bail emphytéotique). In addition, when the land area required exceeds 50 hectares, investors must obtain authorisation from the Ministry of Town and Country Planning.

Recently, the State-owned land services and the National Office for the Environment (ONE) decided to make lease issuance subject to the granting of an environmental permit. This license is subject to prior validation by way of an impact assessment that comprises environmental and socio-economic criteria, including the populations’ rights. This assessment, based on local consultations, should also contribute towards a better protection of local land rights.

However, in practice, land laws are not fully respected and do not really secure all pre-existing rights. In addition, the impact assessment process is not proving sufficient to allow claimants to voice and defend their rights. The tension between legislation and enforcement puts the policy promoting investment at odds with the new land policy. Even if the government has legal and institutional tools to regulate investment, preliminary case studies reveal that it does not effectively deploy them—at least during their negotiation phase. On the contrary, the State’s strategic position gives its representatives opportunities to promote investment without coordinating the management of public affairs at the different government levels (local, regional and national) and without securing the rights of local populations.

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5 In accordance with the Decree to Make Investments Compatible with the Environment (MECIE Decree), all agricultural projects larger than 1,000 ha must obtain an environmental license.
Investors’ Land Access Processes

Since 2009, investment flow into Madagascar has substantially decreased. Of the 52 projects announced between 2005 and 2009, one-third of the projects proceeded no further than land prospection or were halted (see Figure 1 for projects announced and ongoing projects). The new government’s seizing of power and the insecure investment climate discouraged some investors. But the political crisis was not the main cause. As observed in numerous developing countries, many investment projects did not materialise due to the world financial crisis and the stabilisation of food prices (World Bank, 2010).

Nevertheless, in Madagascar the flow of investment has not entirely dried up. The targeted land area currently totals about 150,000 ha, 20 times less than the surface areas contemplated by the 52 projects. Biofuel, for national and international markets, is the main objective (96% of project lands).

Thirteen private companies have commenced their agricultural projects. They are mainly funded by foreign investment (11 out of 13)—for the most part by European backers. They aim to produce jatropha-based biofuel (10 out of 13). These companies, the majority with little experience in the agricultural sector, plan to develop large-scale plantations to an overall land area of between 5,000 and 30,000 ha, based on mechanisation and a wage system. To date, they remain at the phase of first plantations (nurseries or trials). Surface areas effectively cultivated represent only 23,000 ha.

Fifteen other companies are currently in the preparatory phase of drawing up their investment plans: five foreign companies are planning large-scale plantations of cereals or jatropha, while ten Malagasy companies are targeting sugarcane-based biofuels’ production, hoping to add value to the raw material produced by small farmers.

In the following sections, we will focus on agricultural projects planning to develop large-scale plantations in settings where land allocations risk resulting in loss of land for local people.
Figure 1: Announced and on-going projects

![Bar chart showing projects announced versus on-going projects for various categories.](chart.png)
Figure 2: Targeted surfaces and land actually cultivated by investors
Giving priority to political contacts rather than technical entry points, investors rarely follow the recommended trajectory of applying to the Economic Development Board, the State land services, and the National Office for the Environment. A few major investors directly address government members, following the example of Daewoo. The majority of investors approach the main representative of the regional government or the local mayor. They are usually redirected to the State land services, first at the regional level, subsequently at the national level.

With the exception of one consortium of Malagasy investors planning to buy approximately 20,000 ha, other developers (all foreigners) favour leasing rather than outright ownership. Most of them hope to get a 50-year lease (*bail emphytéotique*) and land rents for about 2,000 ariary/ha (i.e. about 0.80 USD/ha). Legally, the outright purchase of land by foreigners is complicated. Since 2008, the new law on investment permits this through the delivery of an acquisition permit (*autorisation d’acquisition*) for all foreign investors possessing a Malagasy company (Law N° 2007-036), which in practice is quite straightforward because the only condition is to have one of the associates registered as a resident. However, the modalities of enforcement of this authorisation are still vague in the absence of the enabling decree. According to investors, this preference for leasing instead of buying land arises from a desire to limit initial capital costs or valuable fixed assets, allowing mobility and—in the event of technical, economic, or political problems—shutting down operations and mitigating financial prejudice.

Investors hoping to develop large-scale crops seek land with common characteristics: good pedoclimatic conditions adapted to the planned crop and mechanisation; from 10,000 to 30,000 ha; ‘non- or under-productive’, ‘un-owned land’—the targeted land is thus supposed to be State-owned; and for the most part, the proximity of a national road or a port for the transportation of inputs (large economic investors, like Daewoo and Varun, were not as limited by the constraint of accessibility and envisaged the construction of infrastructure). They identify these lands upon the recommendation of a Malagasy intermediary, the regional services, or maps and aerial identification.

Investors look mainly for *tanety* (flat land) and not for shoal land suitable for rice production. These *tanety*, even if they are qualified as non- or under-valued by investors, are likely to be pastures or reserves of woods (firewood being the household’s primary source of energy). Moreover, investors look for large single tracts of land so as to facilitate the inclusion of crop plots. Thus, targeted land is likely to be already claimed by local people. Moreover, despite the potential arable land announced (8 million to 20 million ha), investors found themselves competing for land (on the seven jatropha projects underway, three cases of disputed claims were observed opposing three developers). These zones of disputed entitlement prove that the land fitting all the favourable investment criteria was not as extensive as initially forecast.
Let us now examine the process used by investors to gain access to Malagasy land, and the ways in which actors interpret the laws (lex fori).

First, in the formal procedure demanded by the State land services, the investors must obtain the mayors’ approval. Whether they engaged in this formal procedure or not, investors commonly obtain authorisation easily for the establishment of their project (see infra).

The second step, not included in the formal procedure but systematically undertaken, is a field visit. The investors, the developer, its team, the mayor and the leaders of the villages (the local elites, commonly called tompon-tany, ‘masters of the land’⁶) undertake a field survey in order to define the boundaries of the land to be developed. During this visit, the mayor and the developer explain the project to the villages’ leaders. If there are cultivated plots on the land targeted for development, the developer usually undertakes to not use these lands. If there are pastures, the developer promises to furnish fodder. On the basis of these negotiations, the developer and the mayor list the different developers’ commitments (priority access for locals to jobs, construction of school, well or community clinic, payment of land fees). Occasionally, but not always, these engagements are written into a convention approved by all the local councillors or, in some rare cases, by the main representative of the region. This oral or written convention is not reviewed by the State land service. Thus, this first agreement is based on the parties’ interpretation of positive law and local/customary land rules. It proceeds neither from the lex fori nor from the lex loci. The investors, the mayor, and often the villages’ leaders consider most of the targeted area as State-owned land. The investors and mayors also judge whether most of the local and customary claims of land ownership will be respected. Some village leaders are aware that their rights to use the pasture will be denied but might think that the decision, viewed as coming from the State and concerning State-owned land, is impossible to circumvent. Owing to the convention, the investors often manage to escape or postpone the long and costly formal land access procedure. Private developers can first realise plantations on these plots, not only to carry out initial agronomical trials but also to attract new sponsors. An Australian developer (GEM) established a 45,000 ha jatropha plantation through informal land leases negotiated only with certain mayors (but the plantations, hastily realised to attract new investors, have for the main part failed owing to hasty seeding on poor soil, no use of fertilizer, insufficient knowledge of soil quality, and insufficient rain). One Indian developer procured a 5,000 ha land lease, signed by a former main representative of the regional government but not duly registered by the State land registry service.

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⁶ The concept of tompon-tany is known throughout Madagascar. It is translated as ‘master(s) of the land’ and not ‘owner(s) of the land’ because, despite the fact that tompon-tany land claims might be deemed legitimate at the local level, they often do not have officially registered certificates or titles of their land.
During a third phase, some developers wish to duly formalise their land rights, notably when some sponsors demand the land lease or the title. Only a minority of developers had engaged in these procedures by 2010. They had to pay the State land registry service in order to obtain a map of the relevant tract of land. However, maps used by the government’s land services are not necessarily up-to-date: they may not show all the titled property and may not represent the untitled private property. Landowners’ rights, even if secured by title deed, remain precarious (Land Observatory and CIRAD fieldwork).

In theory, the State land service officers’ fieldwork must compensate for the lack of a comprehensive inventory. A recognition commission must disclose in a statement the presence of existing claims to lands on the targeted area and to restrict land available for development to genuinely “vacant and ownerless” tracts. This commission is normally comprised of a government land service agent, a surveyor, a representative of the local technical services (agricultural, forest and environment, etc.), the mayor, and leaders of the village concerned.

However, the composition of the commission and its mission statement are not in accordance with black letter law. Some members of the commission, such as the neighbours of the land targeted for development, owners of the titled or untitled land included in the targeted area, or the representative of the technical services are not represented. These commissions usually do not follow procedures to include views of the various population groups in the region, which might have very diverse tenure arrangements. In addition, in cases when the local government had a local land registry office, the local officers were not invited to attend the commission. Whatever the reasons (technical difficulties due to large land areas, corrupt practices, wish to see the project succeed, wilful ignorance of the new land law recognizing the untitled private property), the statement issued by the commission is often restricted to the sole entry “nothing to declare”. This "nothing to declare" means local objections to the envisaged land project are rarely officially registered. As there is no formalised opposition, the targeted land is defined as State-owned land and the State is then allowed to register it in the name of the national investor, or in the State’s name to transfer rights of use to the investor. In only one case, local users in charge of forest management and organised in associations formally recognised by the Ministry of Environment have made one complaint (see infra).

Currently, the Ministry of Town and Country Planning has approved two projects but has not yet signed any lease. This delay, lengthened by the current political crisis, has placed the projects on hold. This was also aggravated by the fact that investors, who accepted the low price of the rents (less than 1,40 USD per ha), did not properly assess the high transaction costs to access land (several appointments with the State’s land office, at the
regional and central level, long delays between two appointments, several costs to obtain the formal documents, and registration costs).

Owing to insufficient knowledge of the new land laws, inconsistent interpretation, and all-too-frequent non-compliance, existing land rights—whether secured or not by title deeds—risk being denied. Legal safeguards which are designed to protect the population’s land rights are being ignored. Despite the new land laws, land use by local people can continue to be labelled State-owned land and even titled land is not secure.

Local Resistance is Weakened by Competing Interests and Lack of Information

A strong contrast is apparent between the social movement against the envisaged Daewoo project at the national level and the social reactions against smaller agricultural projects at the local level.

Firstly, the opposition to Daewoo came mainly from Malagasy and international organisations and was politically exploited by political opponents to the Ravalomanana government. This opposition initially found little echo in the local population of the region where the Daewoo project was planned. In Madagascar, when the Financial Times revealed the Daewoo case, only one Malagasy media outlet, La Gazette, confirmed the information and specified that Daewoo was already prospecting land. Apart from the interventions of a local association (Observatoire de la Vie Publique à Madagascar) and one local leader, little opposition was openly expressed until the political crisis erupted (Rakotondrainibe & Randrianarimanana 2010). Opposition to this land transfer came from the Malagasy Diaspora, particularly the Collective for the Defence of Malagasy Land, in connection with the vigilance against land appropriations organised by various international organisations, and this played a major role in the media attention to the protests, thanks to Internet and media connections. This media buzz then reverberated back in Madagascar. The network of civil society organisations working on land issues (Solidarité des intervenants sur le foncier, SIF) and one agricultural union publicly voiced their doubts and fears. The political opposition forces seized upon this sensitive issue and successfully mobilised the masses (op cit.). Rajoelina, the leading opponent to the regime, denounced the plan to transfer the tanindrazana, the “land of the ancestors”, to foreign companies. These discourses provoked shockwaves in national public opinion. Rajoelina announced in his first public speech his opposition to the Daewoo project but never really ceased to raise the subject, even after Daewoo’s agents had declared their

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7 http://terresmalgaches.info/. The Collective launched a petition from January 2009 against “the Daewoo affair”.
8 Among the most known are: http://farmlandgrab.org/, http://www.grain.org/, http://www.viacampesina.org/fr/
intent to withdraw. Thus, the opposition to Daewoo’s project was successful due to the efforts of the NGOs and to the use of the issue in political debate.

A major issue now remains to be discussed: do the mayors and the local elites involved in negotiation with investors make any objections in order to protect local land rights? Is the population informed about the project? And are the objections raised reinforced and relayed by organisations or political groups?

As previously mentioned, the mayors generally welcome the agribusiness projects. On the basis of our initial interviews, certain mayors consider the rural dwellers as landowners but think that the land is legally defined as State-owned land. They are unaware of the 2005 legislative amendments and hesitate to voice their opposition in the presence of other State representatives (Land State Service Officers, main representatives of the regional government). Moreover, the territory they manage is vast (commonly over 200,000 ha) and sparsely populated (approx. 30 hab/km²). As the lands targeted for development are mainly pastures, they consider that stock herders have alternative pastures. The Mayors also believe that the developers will respect the rights on the lands cultivated, without really bearing in mind that the land registration in the name of the developers precludes all potential legal recognition and protection of the local land rights.

However, the mayors are often attracted by the economic benefits associated with the agribusiness project. The promise to develop economic activities (jobs, social infrastructure, and land fees) in their rural areas, not to mention personal perks, is usually enthusiastically received. Job opportunities are usually rare in the locality, and the construction of social infrastructure often depends on international agencies’ projects. Above all, owing to land fees paid by the investor, the mayor can notably increase the local government budget. The budget for a rural municipality is typically between 5,000 and 12,000 USD. With land fees of approximately 1 to 2 USD per ha, the land fees from a 5,000 ha agribusiness project are therefore very profitable. Mayors are aware that the project will be more advantageous to some local groups—such as the stock breeder or the coalman—than to others, but they perceive the project as a real opportunity to increase local development.

In addition, the mayors accept the projects because they connect them to other foreign-directed and national NGO’s in their region (nature reserves, reforestation projects, etc.). Some mayors attempt to secure the potential advantage associated with these projects, such as financial infusion for existing projects, ranging from environmental projects such as a nature reserve park, a project of local management of forestry resources, or the development of a local land registry office (data from ongoing fieldwork by Observatoire and CIRAD). Some mayors are even proactive in acquiring projects. Acting as a broker (Bierschenk et al 2000), they attend official meetings, living part-time in the main town of the region and frequently exchanging news with State or regional representatives. In
several municipalities surveyed, two or three private agribusiness developers are present or even competing. This competition strengthens the mayor’s bargaining power in the land transactions: the mayor can increase the list of advantages he wants for the local population (school, well, community clinic).

In addition, it may be of interest to the local tompon-tany to collaborate with land registration projects or assessment procedures for international investments in land. The tompon-tany see themselves as guardians of the land they inherited from their ancestors. They may be attracted by the prospect of generating revenues by temporarily leasing out their land to foreign investors (fieldwork data, Evers 2007), having their own land fees paid by the investors, and obtaining job opportunities for villagers. They also fear opposing projects which enjoy the support of the mayor and other State representatives. The problem, however, is that the positive laws formalise these flexible land-use rights in a bail emphytéotique (long-term land lease), ignoring the local customs where land can be leased and reclaimed by local tompon-tany without formal notice.

Weak publicly expressed opposition by villagers to projects or land acquisitions are primarily due to a dearth of information. Consultation of local people is only compulsory within the framework of the environmental impact assessment. As observed in other countries (Sulle & Nelson 2009), locals are neither properly represented nor actually informed about planned investments, and their opposition or suggestions for amendments do not force the investor to withdraw or to substantially modify a project.

In cases where local village leaders are consulted, they do not necessarily represent the community at large, as local communities in Madagascar can have very disparate hierarchical structures in terms of land access. Social distinctions can be based on autochthonous versus migrant status, intra-ethnic hierarchies (see as an example, Evers 2002, 2006), and/or age and gender differences. Groups and individuals may have different interests and positionings towards projects. Some may be able to benefit from international players arriving in the local setting and may serve as brokers and mediators or may be able to acquire labour contracts, whereas others may stand to lose the few livelihood possibilities they derive from their small plots of land.

In this regard, it is important to note that the delegates of the municipality are usually appointed after formal elections. Although there may be overlap between the municipality delegates and the tompon-tany, it should be stressed that the interests and agendas of the mayor or the municipality delegates on the one hand and tompon-tany village elites on the other are not automatically in harmony.
In addition, local people sometimes may say yes to something offered to them even when they disagree, or they frame their discontent in a statement which implies that they fail to understand what is being proposed. Indeed, it is not uncommon in Madagascar to find that pretending not to understand is used as a strategy by local groups and leaders when they disagree with something. They prefer this approach to just saying no to a project (Van Dijk 2010: 54-55) because they fear that saying no might have consequences. These attitudes go back to memories related to pre-colonial and colonial times when non-compliance was not advisable. In fact, the French colonial period was marked by the appropriation of lands, forced labour, and heavy taxation, and resistance was not tolerated (Campbell 1991).

Limited, publicly expressed opposition by locals to large-scale foreign land acquisitions is also a result of the way land issues are handled. If there are village-level ‘consultations’, the land issues and the fact that people might actually lose their land is not directly discussed. The accent is usually on the benefits for local groups, such as access to services (school, health centre and roads) and jobs. In practice, villagers attending these meetings are not really consulted, as they have no power, for example, to veto the projects.

Finally, if land users are informed, they are not always in a position to assess the consequences of the scale of the envisaged international project. They may, for example, presume that they will retain access to agricultural land and tomb areas which are intrinsically bound to the ancestors, while surrendering only a portion of pastures. In three case studies undertaken by the Malagasy Land Observatory, pastures were the objects of negotiation between the developer and the population. Local people accepted giving up control of their pastures for compensation (development of new pastures, production of grazing crops by the investor) and promises of jobs and social infrastructures. Local groups, however, have little power to enforce these agreements. Local people are often lured into the projects when promises are made, but the full scale of projects is concealed, and adverse impacts are downplayed (Magrin & Van Vliet 2005).

Despite the above, it should be stressed that if local groups are confronted with the consequences (such as dispossession) of international land acquisitions of their land, they in fact do react more openly, as witnessed currently in the Rio Tinto mining project near Fort Dauphin (Seagle 2009) or, in the past, in the case of a plantation of 2,000 ha of Anacarde in the Boeny region. In the latter case, 1,500 ha of the 2,000 ha of tree plantations were reportedly burned down by local populations (fieldwork data of Land Observatory, 2010). It is also currently the case in one area where coalmen, organised in associations, are manifesting their opposition to the State land service. Local reactions thus take various forms, ranging from violent protest to less visible forms of resistance. However, the arena of negotiation and the nature of the debate can quickly become inaccessible or too complex for local rights’ holders, and their defence often depends upon the support of third-party organisations or political networks.
Historically, dislocation from land has triggered violent conflicts between the State and local communities. During the pre-colonial Merina kingdom, when internal slavery was implemented on the island to meet specific political and economic objectives (Campbell 1991: 111), land was forcibly taken from farmers, breaking links between Malagasy people and their ancestors and eventually making them *andevo* (slaves). *Andevo* were “lost people”, lacking links to ancestral lands and permanent tombs and thus precluded from becoming ancestors themselves—the essence of the Malagasy identity (Evers 2002, 2006). Colonial-era policies aimed at export production, ‘colonial conservation’ (see Sodikoff 2007) and forced labour regimes continued to break local links with the land, as many forests were appropriated for logging concessions (Jarosz 1993). Today, the term *andevo* still means someone who lacks anchorage in land through tombs, land and history (Evers 2006: 417).

In short, the prospect of losing land is the worst fear for many Malagasy, as this risks severing the link with the ancestors. Furthermore, losing land to foreigners has an additional association with slavery and colonialism. Thus, with the arrival of international stakeholders competing for land, local *tompon-tany* potentially have much to lose in terms of their local prerogatives in dealing with land access issues.

**Change of Legal Forum**

In many instances, disputes over land access are dealt with within the context of local dispute-resolution mechanisms; people rarely seek to remedy their disputes in *lex fori* (positive law courts). Even in cases where ‘forum shopping’ (Benda-Beckman 1981) is possible—whereby people select the forum they think will produce a result favourable to their position—small Malagasy farmers often do not have the necessary skills to engage in the subtleties of this practice (Pronk & Evers 2007).

In effect, by collaborating with private developers, *tompon-tany* have changed legal forum, something they are rarely aware of. In the domain of *lex loci*, while leasing out land, local leaders settled land access and conflict at the local level. Indeed, in many regions, authenticity demonstrated through the family tomb of a particular family is an important factor in assessing rights, competing claims, and conflicts. With the arrival of the international stakeholders holding nationally approved (*lex fori*) leases, *tompon-tany* theoretically can lose their land for a considerable period of time—or possibly forever—as they cannot just reclaim their land whenever they wish. Arguments of family authenticity, based on tombs in the region, by a particular family may do little to uphold local land claims. Local means of dispute resolution in land access matters are then no longer the relevant forum, as the international stakeholder can sustain its claim via an official lease. Local populations must then change legal forum in order to fight for their rights. They will have to deal with a *lex fori* environment, where courts determine who
has rights and on what basis. Lack of knowledge, money and relevant networks to engage in positive-law legal procedures discourage many local stakeholders from bringing their land claims to court, and it is therefore not a theoretical possibility that they will lose their land to international stakeholders laying claim to the land.

**Conclusion**

Existing laws provide a framework to guarantee the respect of existing land rights, whether secured or not by title deed or certificate, but investors and State representatives’ practices or interpretation of the law often ignore or bypass official legal channels. Land rights, relative to the domain of *lex loci* (customary land ownership arrangements), are partly not respected due to the imperfect implementation of the law and not to the absence of adequate legislation.

Local-level representatives and elites seem to be in an ambivalent situation. They may attempt to attract agricultural projects to secure financial and status resources; however, at the same time, they potentially weaken the rights of other local groups (such as migrants leasing land) and eventually their own land rights and prerogatives. Thus, large-scale land transfers to investors risk breaching local land rights. Moreover, as the land-lease contract is legitimised by positive law, local actors must change legal forum in order to fight for their rights. They will have to deal with a *lex fori* environment, where courts determine who has rights and on what basis.

Local communities’ negotiation powers in these land deals are weakened by the asymmetry of power between the parties but also by the reluctance to refuse a project promising jobs and local infrastructures in poorly developed regions. Local communities’ negotiation powers are also weakened by the low value—defined by the market or appreciated by investors and decision-makers—attached to local livelihood strategies and the cultural meaning of land when compared with the assets and inputs the developers offer (capital, know-how) or promise to provide (Cousins 2009; Vermeulen & Cotula 2010).

The legal recognition of local land rights is necessary but not sufficient to increase local communities’ negotiation power with investors (Vermeulen & Cotula, 2010). The consolidation of land reform, through the reinforcement and the expansion of the network of local land registry offices, presents an opportunity to legally empower local communities in terms of tenure security. The demarcation between “unoccupied land” and “untitled private property” cannot be unilaterally defined by the State’s land services but should involve the local governments and other local stakeholders. The involvement of local land registry office agents and representatives chosen by the villagers, in the commission for State-ownership recognition and in the committee of environmental
impact assessment, can lead to a better respect of non-titled property. However, the risk that local elites remain the only ones voicing their opinions remains a challenge. There is an urgent need for anthropological assessments of local land tenure situations which go beyond mere descriptions of local power structures. Such assessments should seek mechanisms to include marginal groups and ensure that their voices are heard prior to and during the implementation of the land project. In order to make local stakeholders truly more equal partners, they should also have a power of veto where aspects of a project are deemed to offend their fundamental interests.

References


