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# Madagascar

Support to Madagascar Urban Land Policy

## Towards an urban land reform in Madagascar?

June 15, 2020

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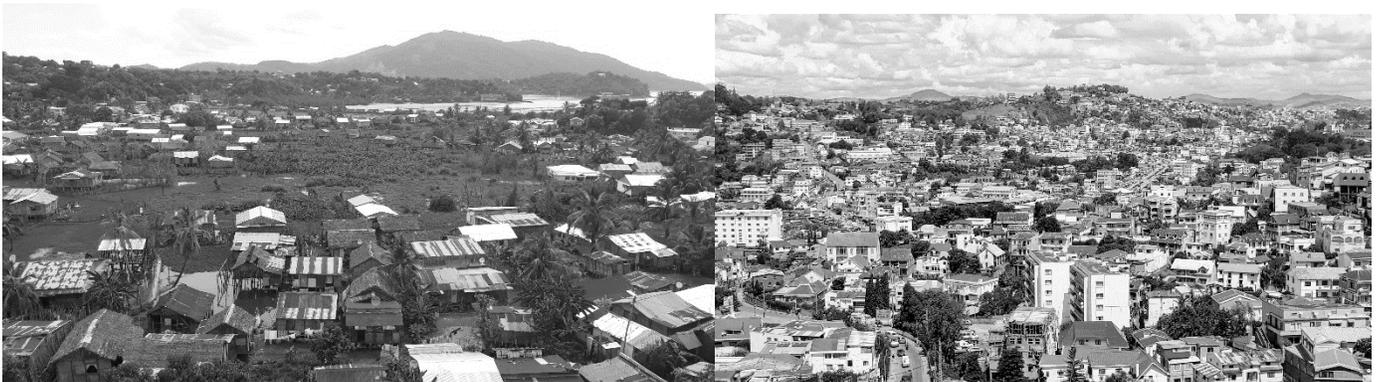
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# Towards an urban land reform in Madagascar?



Volume 1: Review of the urban land sector and initial recommendations  
to improve urban land governance

Support for Urban Land Policy in Madagascar  
Advisory Services and Analytics  
May 2020



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## List of Acronyms

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<i>AGEREF</i>	<i>Agence de Gestion des Réserves Foncières / Land Reserve Management Agency</i>
<i>AGETIPA</i>	<i>Agence d'Exécution des Travaux d'Intérêt Public et d'Aménagement</i>
<i>ASA</i>	<i>Advisory Services and Analytics</i>
<i>AUGA</i>	<i>Agence d'Urbanisme du Grand Antananarivo / Urban Development Agency of Greater Antananarivo</i>
<i>CF</i>	<i>Certificat foncier / Land certificate</i>
<i>CUA</i>	<i>Commune Urbaine d'Antananarivo / Urban Municipality of Antananarivo</i>
<i>CUNB</i>	<i>Commune Urbaine de Nosy Be / Urban Municipality of Nosy Be</i>
<i>DDPF</i>	<i>Direction des Domaines et de la Propriété Foncière</i>
<i>DE</i>	<i>Droit d'enregistrement / Registration right</i>
<i>DETT</i>	<i>Direction des Etudes et Travaux Topographiques</i>
<i>DGAT</i>	<i>Direction Générale de l'Aménagement et de l'Habitat</i>
<i>DGSF</i>	<i>Direction Générale des Services Fonciers</i>
<i>DMR - CUA</i>	<i>Direction de la Mobilisation des Ressources</i>
<i>FNF</i>	<i>Fonds National Foncier / National Land Fund</i>
<i>GF</i>	<i>Guichet Foncier / Municipal Land Office</i>
<i>IFPB</i>	<i>Impôt Foncier sur les Propriétés Bâties / Property taxes on building property</i>
<i>INSTAT</i>	<i>Institut National de la Statistique</i>
<i>LPF</i>	<i>Lettre de Politique Foncière / Land Policy Letter</i>
<i>MATP</i>	<i>Ministère de l'Aménagement du Territoire et des Travaux Publics</i>
<i>PGDI</i>	<i>Projet d'appui à la Gouvernance et au Développement Institutionnel</i>
<i>PLOF</i>	<i>Plan Local d'Occupation Foncière / Local Land Occupancy Plan</i>
<i>PNDU</i>	<i>Politique Nationale de Développement Urbain / National Urban Development Policy</i>
<i>PUDi</i>	<i>Plan d'Urbanisme Directeur / Master Urban Development Plan</i>
<i>PUDé</i>	<i>Plan d'Urbanisme de Détail / Detailed Urban Development Plan</i>
<i>PRODUIR</i>	<i>Projet de Développement Urbain Intégré et Résilience du Grand Antananarivo / Integrated Urban Development and Resilience Project of Greater Antananarivo</i>
<i>OATF</i>	<i>Observatoire de l'Aménagement du Territoire et du Foncier</i>
<i>SRAT</i>	<i>Service Régional d'Aménagement du Territoire / Regional Land-Use Planning Service</i>
<i>SEIMAD</i>	<i>Société d'Équipement Immobilier de Madagascar</i>
<i>TATOM</i>	<i>Projet d'extension de l'axe Antananarivo – Toamasina</i>
<i>TF</i>	<i>Titre Foncier / Land title</i>
<i>ZAC</i>	<i>Zone d'Aménagement Concerté / Joint Development Zone</i>

# Executive Summary

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## Introduction

1. ***Urban land governance, forgotten by the reform of 2005.*** The land reform initiated by the Government of Madagascar in 2005 was focused on the decentralization of land management in rural areas. The solutions implemented could not be applied in urban areas where the question of land security is not linked to the lack of documentation but, instead, to the existence of out-of-date land documents, generally with no relationship to actual land occupancy. Land titles often represent a land situation that existed in the past and no longer correspond to the formats or to the occupants of the property, making it difficult and often impossible to know who has the right to which property, to collect taxes, and to develop urban planning policies. Moreover, the lack of reliable land information is a threat to social cohesion because of the many conflicts within families, between neighbors and with public institutions. This weak land tenure raises serious problems in the cities that are undergoing exponential demographic growth and that are deprived of the basic information necessary for their development. An urban land reform is seriously lacking in Madagascar.
2. ***Study objectives.*** The purpose of this study is to propose strategic options to improve urban land tenure management. Insofar as the urban land sector is poorly documented, it is first necessary to carry out an assessment of land governance in two urban municipalities, Antananarivo and Nosy-Be. The aim of this assessment is to: (i) describe land management systems in the city; (ii) reveal the extent of the gap between the reality of land occupancy and the land information recorded by the administration; and (iii) explain the reasons behind them. On the basis of this information, this study presents a series of recommendations and draws attention to international practices that could help to guide the development of a strategy to improve urban land governance in Madagascar. In the longer term, this study can be considered as the starting point for a dialogue between the Government, land sector stakeholders, the World Bank and other partners for the design of a large-scale intervention to address rural and urban land tenure in its entirety, complementing the experiences gained to secure rural land tenure and the initiatives already in place to secure urban land tenure.
3. ***Presentation of the method and caveat.*** This study was initially broken down into three phases: (i) an assessment of urban land governance in Antananarivo and Nosy-Be, accompanied by an initial list of possible recommendations, developed in partnership with the OATF, two projects financed by the World Bank (PIC and PRODUIR) and an international expert; (ii) discussions with the main stakeholders in the sector; and (iii) the design of an urban development land tenure strategy in conjunction with teams from the Government. The current health crisis linked to COVID-19 led to the postponement of discussions on possible solutions. The missions and workshops planned in Morocco and in Madagascar in March and April 2020 were cancelled as well. **This document is therefore an intermediary document drawn up by the World Bank, whose assessment and recommendations have not yet been discussed with the government or with the other stakeholders in the sector. Consequently, this document is to be considered as a basis for proposals in view of future discussions when sanitary conditions permit.**
4. ***COVID-19 Response and Recovery.*** While it was not the initial objective of this study, one need that has emerged in the past few months is need for a swift response against crises like COVID and the proper policy tools and infrastructure investments for economic recovery. Urban land governance has a central role to play in both resilience and recovery in four major ways. First, land tenure security is critical to ensuring the protection of people's shelter, physical security, and livelihoods. Without some kind of regularization, the urban poor may not even have a safe place where they can 'stay at home' to practice 'social distancing.' Second, land administration investments, including land information systems and geospatial data, can help identify the poor for targeted interventions and to do predictive

analysis so that hotspots can be foreseen and a more effective response can be developed. Third, making land information system interoperable with social databases can help make COVID response more effective. Fourth, economic recovery will require a push for infrastructure investments (roads, housing etc.), many of which can be made easier and cheaper through investments in systems and practices that document land ownership and occupancy.

## Section 1 – Overview of Urban Land Governance

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### Antananarivo – land saturation and informal rights

5. ***Strong demographic growth faced with the scarcity of available land.*** The population of Antananarivo has one of the highest growth rates in Africa (3.6%). Some 50,000 to 60,000 households that have abandoned farming arrive in the capital each year. In 2019, the Urban Municipality of Antananarivo (CUA) counted almost 2 million inhabitants<sup>1</sup> for an area of 88 km<sup>2</sup>, resulting in a density of 22,000 inhabitants per km<sup>2</sup>. With its 26 peripheral municipalities, the agglomeration is home to some 3 million inhabitants. Between 2003 and 2017, the urban footprint increased from 25 to 33 km<sup>2</sup>. The city extends from the central hills towards the surrounding flood plains, often through filled-in rice paddies. In fact, in the past, social structuring determined the urban landscape: basically, the wealthy noble families lived at the top of the hills and their sharecroppers cultivated their rice paddies below in the flood plains. These rice paddies, often titled, were filled in as the city continued its remarkable expansion, and became known as the “bas-quartiers” (or slums). Poor families that lived on the rice-growing plain often remained there and expanded, progressively evolving from sharecropping to different urban trades. The scarcity of available land linked to a context of extreme poverty led to the development of slums and precarious housing that is home to 72% of the urban population. It is one of the forces driving urban sprawl into areas particularly unsuitable for residential housing. Successive planning initiatives are no longer sufficient to manage this accelerated urban development. The spaces that can still be developed are in the process of being absorbed at this time.
6. ***Inheritance and purchase are the principle ways of acquiring urban land.*** Inheritance concerns 50% of the land and corresponds to a patrimonial logic. Inherited land is rarely put on the market and is primarily intended to house the family. Inheritance remains the main vector to access land and housing for the poorest. The land market is largely active but generally subsists outside of official networks. The majority of sales take place directly between relatives or friends (95%), and only a minority through unofficial intermediaries. The poorest elements of the population have no access to the land market, even the unofficial one. They must settle for illegal occupancies where they first install a makeshift shelter, and then, if there is no objection, build a sturdier dwelling. Rentals are widespread but poorly documented. The number of men and women who are owners or beneficiaries is similar because land remains within the family circle and the rules for transferring real estate on the Hautes Terres are not discriminatory.
7. ***Official land information rarely corresponds to the actual land occupancy.*** Three quarters of the official land documents do not correspond to the current land occupants. In 2019, 88% of the parcels were already registered, but few of these registrations were updated. Some 80 to 90% of the land has undergone cadastral operations since 1939, but they have rarely been finalized with the issuance of a land title. A total of 53% of the land is titled. On this titled land, only 25% of the parcels are registered in the name of the current owners; the others are not updated and are registered in the name of a relative or former owner. A total of 32% of the titled landowners have no title of their own. Once the title is obtained, the transactions are rarely registered. Only 12% of the occupants of a titled property have

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<sup>1</sup> Unofficial but likely estimate, established on the basis of several sources (World Bank, 2011; UN-Habitat, 2012; official site of the CUA <http://www.mairie-antananarivo.mg/>). The official figures of the last General Population and Housing Census reported a total of 1.2 million inhabitants for the CUA. This gap could be attributed to issues concerning the methodology and the geographic boundaries of the CUA.

undertaken the measures necessary to officially register a sale or inheritance. Some 50% of the applications undergoing registration are more than 5 years old and 28% are more than 15 years old. This low rate of registration can be explained by the cumbersome procedures because the property has often passed through the hands of several owners without ever being updated. It is, therefore, necessary to reconstitute the entire chain of transactions by recreating all of the successive administrative and legal documents, and to pay the different costs. Moreover, the limits of the parcels legally registered no longer correspond to the current parcel boundaries. The parcels were subdivided and often have nothing to do with those on the cadastral map. To materialize and protect their rights, households especially use physical markings (walls, fences, buildings etc.).

8. ***Three-quarters of the households use “small papers” to invoke their land rights.*** For want of an official property document established in their name, 74% of the occupants resort to different documents of varying degrees of legality to secure their rights. Some 95% of the purchased parcels are associated with a sales deed, and 67% of the inherited parcels have a partition or a notarial deed. These documents can also be approved by an authority other than the land services. In poor areas, households present documents justifying the payment of property tax. These figures reveal the obvious need to have a land document validated by an authority at a lower cost and via an accessible procedure.
9. ***A feeling of insecurity for one out of five parcels.*** In the context of inadequate land information, 17% of the owners or occupants declared that they feared a challenge to their rights. Their fears are linked to the absence of rights that are clearly established on the basis of up-to-date documents. Some 33% of these households first express apprehension towards the different government actors at the time of development operations or of transactions with real estate developers. Households also fear the actions of family members, especially at the time of a joint inheritance or the subdivision of a parcel,
10. ***One out of ten parcels in dispute.*** The land disputes most frequently brought to court concern: (i) family conflicts linked to inheritance; and (ii) the case of double or multiple sales of the same property. In the areas studied, 12% of the households were confronted with land disputes most often resulting from conflicts, either with neighbors over property limits, with the family at the time of the transfer of an inherited property, or with the descendants of the former owner following an unregistered sale. Conflicts with the government are rare, but when they affect families or whole communities, they may transform into street protests.
11. ***The capacity of the land administration is much too small to meet its land management requirements, partially accounting for the current land governance situation.*** In 2006, the land registry of the city of Antananarivo counted 58,200 land titles. The potential number of transactions is ten times greater than the capacity of the administration to handle them. Likewise, the demand for the reproduction of topographic plans is five times greater than its administrative capacity. The services receive between 100 and 300 demands for plan reproductions per day, or an average total of 48,000 demands annually, whereas their average capacity is limited to 9,145 plans per year. A property transfer requires six official steps that take at least 120 days, at an average cost of US \$1,600. The average cost of this transaction represents 9% of the value of the land (compared to 7.6% in sub-Saharan Africa), and the average delay is twice as long as on the African continent (54 days). The limited performance of these services can be notably explained by the complexity of the procedures and by the services' reduced staff: 22 agents assigned to the property registry, 32 agents to land-mapping, and 19 to the State-owned land service in 2006. Investments made in the computerization of land data over the past 15 years have not led to the desired results, and related public-private partnership projects have met with little success.

### **Nosy Be – Land competition between tourism, agriculture, and urban expansion**

12. ***A sugar-producing island faced with strong urban growth.*** The population of Nosy Be tripled in 25 years, going from 30,000 inhabitants in 1993 to approximately 100,000 in 2019. This high rate is mainly due to the attraction generated by the tourism sector, which has led to an immigration rate of 13% per year. At this time, two-thirds of the overall population is concentrated between Dzamandzar and Hell-

Ville, close to basic facilities and services. Urban development is exacerbated on the outskirts of Hell-Ville, whose built environment has doubled in just 10 years.

13. ***The decline of the sugar sector has led to a rush on SIRAMA land.*** Approximately 40% of the island of Nosy Be is titled in the name of the SIRAMA and this land is highly coveted today, the object of official transactions and de facto occupancies. The sprawl of SIRAMA's land heritage is due to: (i) the land compensation of 700 workers laid off in 2006; (ii) the urban expansion of Hell-Ville in part on agricultural land that is no longer protected by a land title. This "squatterization" can be either individual or organized. The occupants sometimes form associations, often supported by political figures that defend their causes and thus cultivate a following. SIRAMA's limited control capacity has led to the rapid expansion of illicit settlements. The parcels occupied are resold and are used for the construction of housing or hotel investments. Some 37% of the parcels were purchased (i) through direct and official transactions with SIRAMA; (ii) from laid-off workers; or (iii) from illicit occupants. A total of 90% of the occupancy of SIRAMA's titled land takes place outside of the framework of official acquisitions. Households obviously do not have an official land document but claim a right of occupancy validated by different types of "small papers", e.g., "authorization of occupancy" or "authorization to develop agricultural land", issued by the sugar company and/or by the fokontany. There is even an unofficial land market specialized in these occupancy rights. This land can be taxed. Tax payment receipts are thus perceived as a land security tool that proves that the land has been previously occupied.
14. ***Irregular occupancy exposes families to the risk of eviction and is at the core of social tensions.*** Despite these local mechanisms aimed at recognizing occupancy, two-thirds of the households fear a challenge to the use rights that they obtained or were granted. Some 85% of them are particularly afraid that SIRAMA or the government could ask them to get off their land. Their immediate defense strategy is generally to join an association often created by the elite for political reasons. Irregular occupancies protected by important local figures generate tensions that can then escalate with respect to identity issues.

## **Section 2 – The economic and social consequences of inadequate land information**

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15. ***The overview of urban land management reveals an overall deficient situation*** at the institutional, legal, technical and social levels: only 25% of land information is updated and corresponds to the actual occupancy; collection of property taxes on building property (IFPB) reveals a loss of earnings of 61%; the number of land disputes is constantly increasing at the level of the courts and other legal bodies; the official land market is paralyzed and is limited to residential areas; the size of the majority of building parcels is much lower than the standards authorized by urban planning regulations, the "squatterization" of private property and anarchic occupancies in the public domain and high-risk areas increases every year; the rate of slum growth is approximately 70%.
16. ***Social and family tensions.*** The lack of transaction registrations has a major impact on the feeling of insecurity of the occupants who fear a challenge to their rights by the family, by public institutions or by third parties. Land disputes are often in the media spotlight, and public opinion estimates the rate of land conflicts brought before the courts at 80%. This proportion is probably closer to 30%, but some of the disputes can involve an entire neighborhood or hundreds of households.
17. ***Unreliable land information slows down and raises the cost of investments in urban infrastructure.*** Another consequence of the impossibility to record changes in land status is that public infrastructure projects are often subject to delays of several months since the process is blocked by unsolvable problems of identification of the beneficiaries to be expropriated and compensated.
18. ***The lack of updated land data hampers the collection of tax revenues.*** The management of property taxation (survey, tax base management, collection) has been the total responsibility of the municipalities since 2006, and it is based on a field survey and the declaration of the occupants. Due to the lack of a reliable land database, 61% of the buildings in the capital elude the IFPB, representing a considerable

deficit. The lack of updating of the land database also deprives the government and the municipalities of direct and indirect tax revenues.

### **Section 3 – Proposals for policy options to improve urban land governance**

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19. ***The aim is to develop a strategy adjusted to the constraints and to the context, and is in line with the current strategies of the Malagasy government in relation to urban land management.*** The Land Policy Letter (LPF) recommends the implementation of innovative approaches for the creation and management of land and land use databases via a single structure at the level of the major cities. It also proposes a consolidation of landholdings to accompany the restructuring of informal settlements and slums. The National Urban Development Policy (PNDU), approved in 2019, considers land management in urban areas to be a major challenge and proposes different options for upgrading the sector. The proposals suggested must take account of a context marked by: (i) the almost total lack of public land reserves; (ii) the limited capacities of the actors to update land information, reconstitute lost or damaged documents, register changes in status, and massively validate existing rights; (iii) the little interest expressed by the different administrations to consider alternatives to the land title; (iv) the impact of social constraints linked to widespread poverty; and (v) a complex land occupancy with frequent joint possession.
20. ***The observations of this report, like the guidelines of the PNDU, converge towards two main strategic axes:*** (i) to provide the administration with an efficient urban land management system; and (ii) land generation capable of addressing the projected demographic growth and the requirements in infrastructures.
21. ***The guidelines chosen to improve land governance require the simultaneous implementation of the following actions:*** (i) an assessment based on plot surveys in the field, of occupancy, developments, land status and occupancy regime; (ii) the updating of land information managed by land administration central units; (iii) the legal regularization of occupancies; (iv) the design and implementation of legal and administrative reforms of procedures; (v) the restructuring and equipping of areas in need with basic services; (vi) the creation of a reception area for new arrivals and for displaced persons within the framework of restructuring or expulsion.

### **Recommendations for the Efficient Management of Urban Land**

The improvement of urban land administration and management can be achieved in two stages:

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**Step 1:** Updating land information through a systematic inventory and the development of urban PLOFs

**3 sequential actions**

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**Action 1** – Acquire Very High Resolution (VHR) imagery.

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**Action 2** – Superimpose the land information held by land administration on the image.

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**Action 3** – Carry out participatory field surveys, including women, to establish an inventory of existing rights, occupation rights and rights of way.

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<b>Step 2 :</b> Formalize and secure occupancy through the use of innovative tools <b>3 possible options</b>	<b>Option 1: Secure rights by land title.</b> Simplified cadastral operations or prescription procedure.
	<b>Option 2: Secure rights by land certificate.</b> Certification procedure adapted to the urban environment (i) for land whose title cannot be updated given the cost and cumbersome nature of the procedures and (ii) for land recorded in cadastre without ever having been registered.
	<b>Option 3: Secure rights by the official recognition of occupancy rights.</b> Recognition of occupancy rights, captured during the survey, and located on land that is registered but whose title is difficult or impossible to update. The survey makes it possible (i) to confirm titled properties whose current owner is the one registered on the title; or (ii) to record on an ad hoc register the occupations of titled land when they do not correspond with the information recorded in the land register.

- **Step 1: To update land information via a systematic assessment and the development of urban PLOFs (Local Land Occupancy Plans)**

22. **Regularly updated land information and the systematic development of urban Local Land Occupancy Plans (PLOF) is highly recommended.** The PLOF is a land status map, based on different laws and decrees. It is assumed to represent the status of all the land included in a municipal land base. It is developed from: (i) a very high-resolution background image; (ii) existing topographic and land documentation; and (iii) systematic surveys of each parcel. It is considered as an upgraded land identification map, shared by land services and municipalities, and must be updated as transactions take place. It is carried out in three stages:

- **Action 1 – Acquire Very High Resolution (VHR) Imagery.** These are either satellite images, aerial shots taken by plane or drone (see experiences from Zanzibar *Annex 3, 1.1* and from the NGO Habaka) meeting the recently specified topographical standards.<sup>2</sup> They must necessarily be orthorectified according to the standards in effect.
- **Action 2 – Superimpose the land information held by land administration departments on the image.** Retrieving land information held by government agencies remains a complex, costly and often difficult to accomplish.<sup>3</sup> This action would provide a layer of information on registered land as recorded in government unit’s databases. This first step allows an initial, more or less precise location of the titled land and the dependencies of the State domain. However, it remains incomplete information because: (i) it reflects an old land situation that has not been updated for years or even decades, and (ii) some documents relating to titles have disappeared or are so damaged that they are unusable. This first layer of information can only be regarded as indicative and cannot tell the law systematically.
- **Action 3 – Carry out participatory field surveys to establish an inventory of existing rights, occupation rights and rights of way.** The inventory, as carried out in the framework of this study, is an essential prerequisite for understanding the reality of occupations, the land tenure status of plots and buildings, their compliance with town planning standards, land disputes and local dispute settlement mechanisms. This reconstruction of land information must pay attention to taking into account the rights registered or to be registered in the name of women or couples. It is essential to

<sup>2</sup> Decree No. 27684 of 5 December 2019 defined the technical specifications of photogrammetric works.

<sup>3</sup> However, it is important to note the positive experience of some services, among others in Tamatave and Atsimondrano, which have succeeded, with the existing human and financial resources, in digitizing the plans that are still available and usable and transferring them to an image.

ensure the participation of all, especially women, in local consultations for the identification of rights holders. The inventory made it possible to identify, parcel by parcel, land tenure status and occupations and to measure the discrepancy between official land information and the actual on-the-ground situation of the parcel. It could be carried out systematically in the targeted areas and then gradually extended to the entire urban area. Costs and needs in terms of staff and equipment still need to be assessed in order to determine an implementation schedule.

- **Step 2: To formalize and secure occupancy on a large scale through the use of innovative tools**

23. ***It is necessary to get past the notion of illegality of occupancies in order to secure them on a massive scale.*** The recognition of occupancy is a major factor in the fight against poverty. What is the most appropriate tool? A choice has to be made: to continue to manage urban land with the land title alone, or to find an alternative? The advantages of the land title, which guarantees property rights in absolute terms, are known, but its limits have also been recognized: (i) the complexity of the procedure generates costs and lengthy delays that make the title relatively inaccessible; and (ii) few people officially register sales and inheritances due to the costly and complex procedures involved. Moreover, the guarantee to property provided by the title raises problems when the links between the current occupants and the person or persons who have a land title cannot be established, when land documentation is unusable because it has been lost or damaged, and when the boundaries have disappeared. In this context, the design of land security tools in addition to the title alone is necessary and several options can be examined.
24. If the policy choice does not provide for land security tools in addition to the land title, a first option (*Option 1*) would be to consider coordinated State-owned land operations and/or acquisitive prescription, but neither allow for large-scale actions.

- ***Option 1: Secure rights by land title.*** It is a question of proceeding either by simplified cadastral operations, or by an “*acquisitive prescription procedure*” aiming at removing a property right with a view to reassignment. Both procedures remain in the perspective of the issuance of a land title. They mobilize substantial human and financial resources within the administration and have only been able to be implemented in a limited way, often with international funding. The most recent evaluations of cadastral operations have also shown mixed results.

25. ***If a policy choice is made for new tools to secure land tenure, in addition to land title, two new options should be considered.*** First, the challenge is to strengthen, standardize and provide a framework for the current land tenure security practices of households and local authorities. The small papers used today provide a first level of formalization and security for transactions: purchase/sale; sharing; donation; temporary transfer. They require the intervention of the owners (transferor and new buyer), call for witnesses and are most often targeted by local authorities (fokontany, town hall, district). It is recommended to support these local authorities in recording information systematically and rigorously and making it public. This strengthening of the local level would make it possible to avoid certain fraudulent practices. It would not require households to change their current practices, but only to consolidate them, and thus would not require significant additional costs. Moreover, the legal equity between men and women in accessing urban land will necessarily have to be reflected in the formalization of rights.

- ***Option 2: Secure rights with a land certificate.*** *Should and can certification be adapted to the land tenure context of urban and peri-urban areas?* To improve urban land tenure, the land certificate issued by the communes, which also guarantees a right of ownership in line with simpler and cheaper

procedures, could be a useful complement to the land title in peri-urban areas.<sup>4</sup> It is proposed to use the certification procedure for owners of formerly titled land, whose title cannot be updated due to the cost and/or cumbersome procedures. This proposal can also be justified for land that has been registered for several decades without ever having been registered. The proposed solution through certification has met with different constraints as registration through land titling is final and the land title cannot be replaced by another document.

- **Option 3: Secure rights by the official recognition of occupancies.** *Between inaccessible registration and certification unsuited to the urban land context, can an "Occupancy Register" be envisaged as an intermediate solution?* The aim is to recognize the occupancy rights, inventoried during the survey, which are on the registered land layer but difficult or impossible to update. The survey makes it possible (i) to confirm titled properties whose current owner is actually the one registered on the title; and (ii) to officially record on an ad hoc register the occupations of titled land when they do not correspond with the information recorded on the land register. The registration of such occupations could involve (i) the registration free of charge of the descendant(s) occupying land registered in the name of a relative; (ii) the parceling out of formerly registered land with no known owner; (iii) the taking into account of transactions on the informal land market. In accordance with current practice, these occupancy rights may be tradable and transferable, with the register of occupations recording the various transactions at a lower cost and according to a local and simplified procedure.

26. The registration of occupancies is a major innovation that must be tested beforehand by the MATP and placed within a legal framework in the future.

27. ***These different actions are to be taken in relation to zoning determined by urban planning instruments.*** Urban development plans establish a general zoning that can guide regularization operations in order not to officialize rights in unhealthy, high-risk areas. Depending on the social and land tenure characteristics of the area, they can also determine a zoning of the different land security options.

- **Step 3: Should an agency responsible for the coordination and implementation of urban land operations be created?**

28. ***The implementation of the above recommendations can justify the creation of a dedicated agency*** because it requires the establishment of new activities and approaches for the recognition and the regularization of rights, bringing together local actors, elected officials, neighborhood leaders, and NGOs working in the urban sector. It generates additional work, a large part of which must be outsourced to private service providers, requiring an operational capacity for the management of contracts as well as financial autonomy. In addition, in compliance with the indications in the Land Policy Letter and in the perspective of broadening the scale of actions, a land agency could be responsible for this type of operation, at the interface between the land services and the urban municipalities.

29. ***The Urban Development Agency of Greater Antananarivo (AUGA) could exercise a land jurisdiction*** to implement the above proposals within the agglomeration of Greater Antananarivo. Among its functions, this recently created agency includes *"the production of knowledge, particularly in relation to land tenure, at the service of the development of the PLOFs and of the improvement of tax measures"*, in conjunction with the land services. Consequently, AUGA can, in partnership with the land services, implement an assessment of rights, occupancies and existing footprints (Proposal 1) to update land information. It can also contribute, together with the land services, to the development of the urban

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<sup>4</sup> As early as 2011, an expert was surprised by the paradox of not allowing urban communes to benefit from the decentralization of land procedures (Comby, 2011) and suggested using communal land offices to regularize land parcels in urban areas.

PLOFs in the municipalities where it has jurisdiction. The possibility that it could either undertake or contribute to the regularization of occupancies by keeping an ad hoc register (Proposal 2) could also be considered.

### **Summary and sequence of proposals for a dialogue for efficient urban land administration and management**

*In summary, the proposals for efficient urban land administration and management suggest:*

1. update land information by carrying out urban PLOFs to inventory and map properties and occupations as they exist, based on a recent image;
2. regularize occupations according to three possible options, detailed in the table below; and
3. reflect on the value of entrusting responsibility for reconnaissance and regularization operations to a dedicated institution.

*A national debate on urban land tenure should facilitate choices between three options*, summarized in the following table:

<b>Options and General Principles</b>	<b>Key Activities</b>	<b>Feasibility and Pre-Requisites</b>	<b>Estimate of cost and time to implement</b>	<b>Advantages</b>	<b>Risks</b>	<b>Responsible institutions</b>
<p><b>Option 1: Secure rights by land title.</b> Updating and generalization of land titles issued by the administration</p>	<ul style="list-style-type: none"> <li>– Updating of owners according to acquisitive prescription procedures</li> <li>– Fragmentation of old land titles by State Transactions</li> </ul>	<p><b>Low</b></p> <p>Significant mobilization of human and financial resources</p>	<p>\$54 / parcel 6 months to 1 year</p>	<p>The legal framework does not need to be changed</p>	<ul style="list-style-type: none"> <li>– Complexity of procedures for tracing the succession of transactions</li> <li>– Complexity of registration and prescription procedures</li> <li>– The overload of the land administration does not allow for large-scale plot renovation operations.</li> </ul>	<ul style="list-style-type: none"> <li>– State Land Administration Department</li> </ul>
<p><b>Option 2: Secure rights by land certificate.</b> Land regularization requires an adapted certification procedure managed by the communes.</p>	<ul style="list-style-type: none"> <li>– Equipping municipalities with Land Offices.</li> <li>– Regularization of occupations through a certification procedure adapted to urban constraints.</li> <li>– Training of commune staff.</li> </ul>	<p><b>Low</b></p> <p>Legal principle of final registration to be amended Political will to strengthen decentralization</p>	<p>\$11 / parcel</p>	<ul style="list-style-type: none"> <li>– Simplified regularization of occupancy through an existing regulatory framework.</li> <li>– Improvement of land control by the municipalities in charge of property taxation</li> </ul>	<ul style="list-style-type: none"> <li>– Difficult to revise the legal framework</li> <li>– Weak collaboration and exchange of information between municipalities and land services</li> <li>– Commune capacities to be strengthened</li> </ul>	<ul style="list-style-type: none"> <li>– Urban and peri-urban communities</li> <li>– State Land Administration Department</li> </ul>
<p><b>Option 3: Secure rights by the official recognition of</b></p>	<ul style="list-style-type: none"> <li>– Use of the comprehensive inventory of occupancy rights</li> </ul>	<p><b>Medium</b></p> <p>Pilot required and policy</p>	<p>Less than \$10 / parcel</p>	<ul style="list-style-type: none"> <li>– Relatively simple and accessible regulation</li> </ul>	<ul style="list-style-type: none"> <li>– Legal framework for the regularization and ex post facto management of</li> </ul>	<ul style="list-style-type: none"> <li>– State Land Administration Department</li> <li>– Communes?</li> </ul>

<b>occupancy rights</b> The occupations inventoried by survey are recorded in an ad hoc register.	conducted during the PLOF – Writing them in the Occupancy Registry	choice for recognition of occupations		– Mobilization of fewer human and financial resources	occupancy rights to be developed – Need for prior experimentation	– Dedicated Land Agency?
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**Option 3 seems most realistic.** Securing land rights by updating and splitting up existing land titles seems prohibitive due to its cost and complexity. The experiment of free transfer fees to encourage the regularization of private property in 2016 did not produced the expected results. Securing land tenure through the certificate remains a possible option, but it requires first of all a reconsideration of the finality of the registration, and, therefore, it is dependent on a political will to pursue the decentralization of land tenure competences. The recognition of occupancy rights is a potential solution, as it promises to be simpler, less costly and can be tried out without waiting for the adoption of a specific regulatory framework. It is just a matter of establishing occupation on formerly registered land and giving the occupant a document certifying not a right of ownership but a simple occupation. This occupancy right could be considered as transferable. This innovation requires operational details to be worked out in a specific pilot operation. Particular attention will be paid to the consideration of rights inscribed in the name of women or couples.

*These options can be established in the following order:*

<p><b>Short Term (6 months): An Urban Land Tenure Improvement Strategy</b></p>	<ul style="list-style-type: none"> <li>– <b>National forum on urban land issues</b> for a shared assessment and agreement on a strategy for improving urban land governance;</li> <li>– <b>Creation of a joint working group</b> on urban land governance directed by the MATP/National Land Fund, and responsible for the design of pilot operations;</li> <li>– <b>Design of pilot operations</b> with different partners, and search for funding.</li> </ul>
<p><b>On the medium term, from 6 to 18 months: a choice of urban land policy based on experience</b></p>	<ul style="list-style-type: none"> <li>– <b>Launch of pilot operations</b> for occupancy surveys, and the renovation of the urban plot network;</li> <li>– <b>Assessment of pilot operations and feedback</b> about the experiences from actors in the urban land sector;</li> <li>– <b>Proposals for institutional and legal adjustments</b> to facilitate the regularization of land rights in urban areas.</li> </ul>
<p><b>In the long term, beyond 18 months: the conception and design of a National Urban Land Improvement Program</b></p>	<ul style="list-style-type: none"> <li>– <b>Preparation of a National Urban Land Improvement Program.</b> On the basis of pilot operations and these regulatory adjustments, this program could include actions in three areas: (i) the strengthening of institutions responsible for urban land tenure; (ii) regularization campaigns for land rights in urban areas; and (iii) training of actors in the urban land sector;</li> <li>– <b>Launch of campaigns for the recognition of occupancies and the regularization of land rights in urban areas</b> in Antananarivo and other cities in Madagascar.</li> </ul>

## General strategies for Urban Land Generation

30. The availability of updated land information and the recognition of occupancies and rights are essential options, but are not sufficient by themselves. It is of utmost importance to produce land to meet the demand for housing and facilities through urban upgrading, urban extensions, or the development of the rental sector.
  - **Strategy 1: To develop restructuring and land security measures for poor areas**
31. ***An assessment of available land reserves must take place before any restructuring can take place.*** Before a restructuring proposal can be made, and in the perspective of a resettlement, the authorities must be capable of assessing the area, the location, the status and the eventual allotment of financial reserves. This information should be precisely mapped, and zones where information is unusable should be identified.
32. ***Restructuring to free up land for housing and basic infrastructures.*** There are two possible ways of doing this: eviction, which can be accompanied by resettlement measures, or total restructuring. Eviction remains a complex social and economic issue. It is governed by expropriation procedures for the purpose of public utility, but its administrative processing is long and often leads to disputes. It cannot be considered as a default option in the case of one-off operations. Restructuring *in situ* is based on the provision of essential urban services. Land requirements are thus limited to the establishment of several new social infrastructures. Facilities are provided if the beneficiary community can reach an agreement with the owner over land that is still free to accommodate a facility. However, this means of action is limited because available land is rare and the rights are sometimes so confusing that investments for basic facilities are called into question.
33. ***Carry out a total restructuring through land consolidation or pooling.*** This type of action favors maintaining the inhabitants where they are, thus perpetuating social and economic links, but requires a land development operation. Consolidation consists of regrouping parcels to allow each new property to be developed in accordance with the urban development plan. Land pooling is a mechanism by which the owners or occupants temporarily pool their land resources in a given area for the purpose of

developing it and providing services for its inhabitants. When the operation is terminated, they each retake possession of a part of their property and may benefit from a legal regularization. Part of the non-restored land could be used for facilities. Another part could be put on the market to cover development costs. A part could be allocated to social housing projects. Moreover, and beyond the intervention of the State, international experiences have shown the possibility of improving access to land via a community-based organization. Several international experiences have revealed practices that may be of interest for Madagascar and, in particular, land sharing and community land trusts.

34. ***Implementing restructuring operations within the framework of a Joint Development Zone (ZAC).*** The ZAC is a zone determined by urban development plans where a public institution develops land and undertakes a restructuring without necessarily acquiring the land beforehand. Insofar as Madagascar has no experience with this type of urban operation, it has to be tested beforehand via pilot operations, in particular, within the framework of the PRODUIR project.
35. ***Implementing a full-scale urban land management laboratory within the PRODUIR framework.*** The project is thus considering a total urban renewal operation in favor of the resettlement *in situ* of people affected by the project. A PUDé will determine the main weak areas to be restructured. Depending on the degree of complexity of the land tenure situation and a level of restructuring adapted to each zone, the project will be able to implement different land tenure solutions within the framework of pilot operations. This will involve:
  - i. Updating land tenure information by the PLOF in a participatory manner and with the use of aerial images taken by a drone, systematic surveys and surveys of the actual plot network;
  - ii. Conducting a public information campaign in the areas in question to explain the benefits of a renewal operation;
  - iii. Setting up a forum for dialogue between the community, landowners and the public authorities under the leadership of the municipality;
  - iv. Establishing the Joint Development Zone (ZAC);
  - v. Inclusively defining development operations and adjusting urban planning standards to the social characteristics of the areas concerned;
  - vi. Regularizing occupancies and property rights;
  - vii. Establishing an authority in charge of restructuring;
  - viii. Capitalizing on the experience for the purpose of drawing up proposals for legal and regulatory adjustments.

- **Strategy 2: To increase and diversify the land supply in order to improve its affordability**

36. ***Systematize urban development plans to determine the standards adjusted to the context and diversify the land supply.*** Urban development and building standards must be adapted to the needs and the capacities of the majority of the households, and not the contrary. The LUH imposes a minimum area of 150 m<sup>2</sup> for building parcels, whereas 30% of the dwellings in the CUA are built on smaller-size parcels. Derogations can be granted to prevent housing and the concerned areas from being considered as illegal and thus deprived of regular access to facilities. Urban development plans make it possible to adopt regulations adapted to the standard of living of the inhabitants, and should be developed systematically.
37. ***Create land reserves for the development of trunk infrastructure.*** Their creation can be included in urban development plans and be provided for in agreement with existing procedures (expropriation, preemption, restructuring, joint planning, etc.) to give them a legal basis and to ensure government control over land. In these reserves and in the spirit of major trunk infrastructure, the land supply must be adapted to the demand of low-income households by making available land, whose area is less than the current standard, summarily fitted and equipped, but that will eventually be improved by the beneficiaries themselves.

38. ***Develop partnerships with private landowners in areas of urban sprawl.*** In areas where urban growth can be controlled, land use planning to develop infrastructure is an option for managing urban sprawl. In effect, Guided Land Development supports the conversion of private land on the periphery of the urban centre from rural to urban use through infrastructure systems.
39. ***The development of new cities creates new land supply and reduces pressure on urban centers.*** The project of the “new city of Tanamasoandro” is one of the relevant solutions to ease the pressure of the demand for land in the center of Antananarivo and to develop a belt of peripheral secondary centers. Its social and political costs give reason to believe that it can only be a solution among others to urban development problems. Nevertheless, private sector participation in these development projects provides significant land value added that can be captured for infrastructure financing.
40. ***Developing "sites and services" programs in urban sprawl areas to diversify land supply, particularly for the poorest.*** This is a gradual approach to the construction of housing estates (development of residential plots and public land for services) accelerating the availability of housing plots for the most vulnerable populations. Municipal infrastructure and services are phased in gradually, reducing initial development costs and enabling government agencies, municipalities and service providers to build delivery capacity to add more infrastructure and services as neighborhood needs increase.

- **Strategy 3: Promote the low-income rental sector as a solution to the problem of high-risk occupancies**

41. ***Regulate the semi-formal real estate market.*** The OATF (2020) advocates a more effective legalization of semi-formal markets for the purchase and sale of urban land in order to avoid conflicts and losses for the most vulnerable. This involves providing information about prices and training local authorities, particularly, the fokontany.
42. ***Regulate unofficial rentals to secure housing for poor households.*** The rental sector has a strong development potential. In 2019, it was estimated that 40% of the inhabitants of Antananarivo were renters, 58% declared themselves to be owners, 20% had one or several renters, and 75% considered the possibility of having renters in the future. To improve the operation of the rental sector intended for low-income households, ENDA recommends the creation of a Social Rental Management Agency (OGS) to more effectively officialize rental management (drawing up leases, follow-up of rent payment, property maintenance, management of eventual disputes, etc.)
43. ***Facilitate access to land for small investors who, in return, produce housing, part of which can be rented out.*** As international experiences have shown, this solution appears to be appropriate if land access is facilitated and if building standards are relaxed. The role of the public authorities is to ensure access to basic urban services and facilities without directly intervening in the rental sector.

#### **Land regularization in Nosy Be: what are the possibilities?**

44. ***Land regularization actions in Nosy Be depend on a political impetus.*** Land regularization in Nosy Be depends on a political commitment to determine a more general strategy, either in favor of maintaining the sugar sector or in favor of urban expansion and tourism infrastructures. In this context, it would be better (i) to recognize the occupancies and to facilitate their legalization in exchange for acquisition costs to be determined, and (ii) to regulate the transformation of agricultural lands into residential zones. A dialogue concerning these strategies needs to take place, and discussions with the SIRAMA were recently called off at the request of the company. As a result, the PIC project is designed to focus its assistance on specific real estate actions.
45. ***The approach would primarily aim at the systematic recognition of occupancies and a regularization of occupancies on titled land.*** If the political and social conditions are met, the proposed approach consists of a map based on the systematic survey of all of the occupancies on titled land, and on the regularization of the occupancies on the basis of registration at the level of the fokontany. The question

of the cost of acquiring occupancy rights on these titled lands still has to be negotiated. It would be necessary to extend the development of a PLOF to the scale of the island, while continuing to support the efforts of the PIC project.

46. ***The PLOF as the basis for land taxation: the experience of the PIC in Nosy Be.*** In 2007, the PIC project provided support to the urban municipality of Nosy Be for the development of its PLOF, for the purpose of improving the identification of tax sources and land tax revenue. Collection agents were able to observe a gap between the actual occupancies and the information available concerning titled properties, and the municipality went back to a tax survey. This eye-opening experience justifies a full review of land information on the basis of the plot network and existing occupancies, followed by regularization, as suggested for Antananarivo.

### **Relaunch the dialogue on land tenure policies**

47. ***The progress of urban land governance depends on a consensus concerning the new strategic options.*** In Antananarivo like in Nosy Be, the proposals laid out above require testing and discussion to arrive at informed decisions about complex questions. In the same way as the Steering and Follow-up Committee (COS) for the 2005 land reform, a multi-actor discussion platform would facilitate the choice and the adoption of new land policy strategies. Discussions could benefit from the results of land security experiments, which could be coordinated by the OATF.
48. ***The relaunch of the dialogue is to be supported by pilot operations.*** A process of national dialogue with the main actors in the urban land sector must be informed by the results of pilot operations, to inform the decision-maker on the effectiveness and feasibility of the various options. These pilots could focus on:
- i. low-cost methods and tools for the current inventory of land and parcel occupancy;
  - ii. regularization through certification by adapting the methods of decentralized land management and creating an experimental zone for systematic land certification in urban areas;
  - iii. regularizations by registration in an Occupancy Registry, managed by the communes and/or by a specific agency with the land services.

# Introduction

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## Urban land governance, forgotten by the land reform

***An innovative land reform...*** Madagascar is known to have initiated a land reform in 2005 that gave municipalities the possibility to register property rights using procedures that were less expensive and faster than the traditional land title. Laws No. 2005-019 and 2006-31<sup>5</sup> created a new land status, that of Untitled Private Property (PPNT), which applies to land that is occupied but neither registered nor recorded in the cadastre, and whose management is in the hands of local authorities. The municipalities are responsible for issuing, upon request, land certificates according to a procedure known as local recognition, implemented by local stakeholders. They are equipped with a Municipal Land Office (GF), i.e. a municipal office with a staff dedicated to a Local Land Occupancy Plan (PLOF), a map that represents the different land statuses and that encompasses the municipality's area of jurisdiction. These land management tools have met with a certain degree of success and appear to have satisfied the necessity to officialize property rights. As of 2020, 325,000 land certificates had been issued by 542 municipalities (OATF, 2020), or one-third of all of the country's municipalities in 15 years, compared to the 665,000 land titles that were established over 120 years for the entire country.

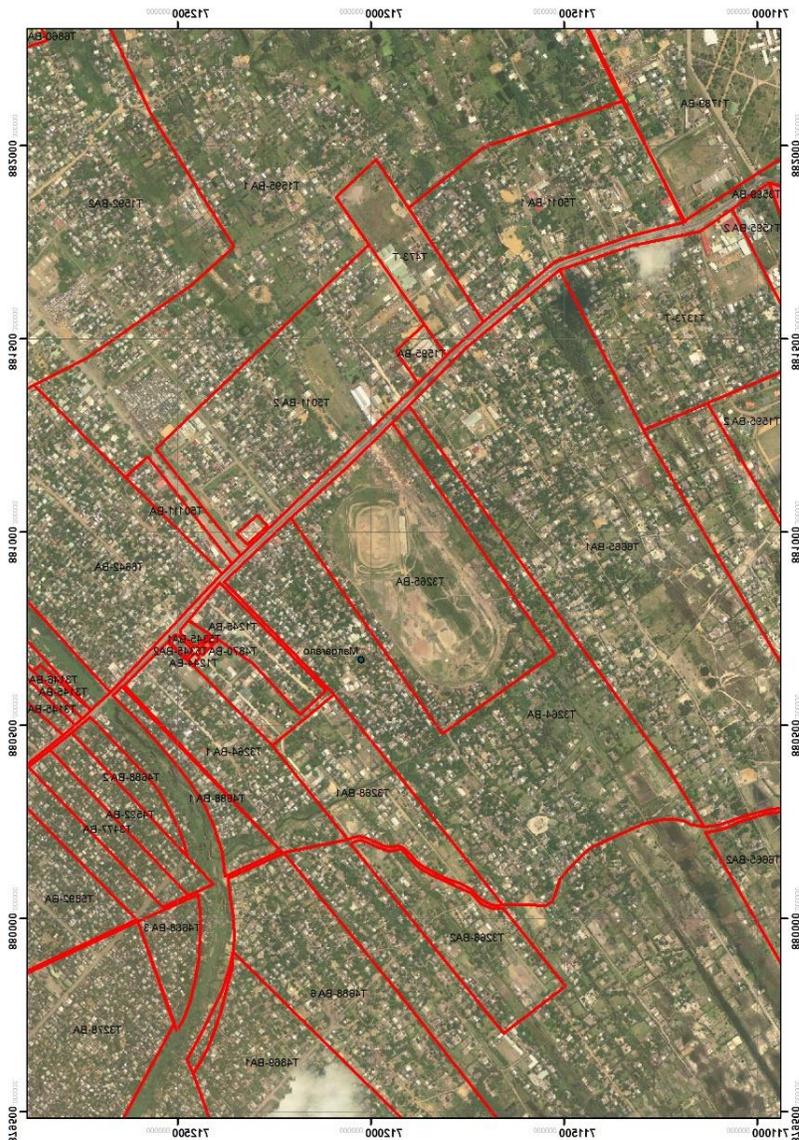
***...but focused on rural land.*** The legal framework for the decentralization of land management can apply to rural as well as urban zones. However, in reality, the 2005 reform is especially concentrated in rural zones (13% of the municipalities with a Land Office are considered to be urban), in that urban land is already partially registered<sup>6</sup> and is either part of the Titled Private Property (PPT) or of the Private Domain of the State (DPE) and the municipalities. The land jurisdiction of the municipalities is limited to property that is part of the Untitled Private Property (PPNT), which turns out to be quite rare in cities. Several land offices were installed by urban municipalities, but their actions have only had a limited scope.

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<sup>5</sup> Law No. 2005-019 of October 17, 2005 establishing the principles that govern land status, and Law No. 2006-31 of November 24, 2006 establishing the Untitled Private Property Regime.

<sup>6</sup> The percentage of land registered in urban municipalities is highly variable, ranging from 10% in Tsiroanomandidy, to 90% for Ambatondrazaka.

**Registration does not mean land security.** The main tool used to obtain land security in the city is registration, which leads to the issuing of a land title by the competent government agencies, either following an individual demand to acquire State-owned land, or collectively at the time of a cadastral operation. However, registration or recordation into a cadastre of urban property does not seem to meet the conditions necessary for land security. The map on the right clearly reveals the gap between land information and the reality of land occupation. This image shows the urban areas of Tamatave where we can see that the layer of “land titles” (in red) does not correspond to the urban plot network. Each title encompasses several dozen dwellings that do not have a specific land document. Land titles often represent a land situation that goes back several decades to a time when this part of Tamatave was still rural. This situation is characteristic of Malagasy cities in general. In these conditions, it is difficult and often impossible to know who has the right to which property, to collect taxes and to develop urban planning policies that have become crucial given the spectacular expansion of the cities.



**Without land control, rapid urbanization has led to a lack of basic services and alarming rates of urban poverty.** The urban

population increased from 2.8 million in 1993 to 6.9 million in 2012. In 25 years, the number of cities has gone from 50 to 172. One Malagasy out of two will live in a city in 2035.<sup>7</sup> Three quarters of urban residents have neither private access to water, a sewer network, garbage collection nor modern latrines. Some 66% of the inhabitants of Antananarivo live under the poverty line, and a large number of them live in slums, often in unsanitary conditions. Spontaneous occupancy complicates an urban planning system rapidly made obsolete as a result of the rate of settlement of new inhabitants and the growth of urban sprawl. The budgets of urban municipalities remain regrettably low (from \$2 to \$5 per person in the big cities), especially because of the lack of information about the land base that would make it possible to collect taxes.

**The lack of reliable land information is a threat to social cohesion.** The media often report social tensions linked to urban land. These reports often concern either (i) inter-family conflicts triggered by sales or the division of land without prior agreement on the basis of incomplete or falsified documents; or (ii) conflicts

<sup>7</sup> MATP, 2019, National Development Policy (PNDU).

arising at the time of the purchase of a piece of land by an individual with official documents or at the time of an expropriation by the government of families settled illegally, in good faith or not, on private or public lands.

***An urban land reform is seriously lacking in Madagascar.*** Constraints on urban planning and local taxation, like social tensions in the neighborhoods, depend on different factors, and many of them are linked to land issues. Identification of land available for new infrastructures of public interest, sanitation, transportation and leisure is hazardous, and in the case of expropriation in the public interest, the government must often provide double compensation, both to the assumed owners of the parcels and/or of the buildings. In the future, these constraints will probably worsen at the expense of public investments, municipal development and social cohesion. Responses are expected, but even though progress has been observed in terms of rural land tenure, the situation concerning urban land tenure still lacks strategies and solutions. Despite the Land Policy Letter of 2015 and a National Urban Development Policy (PNDU) adopted in 2019, there is still no clear national strategic framework to end the stalemate in which urban land management is embroiled.

***COVID-19 Response and Recovery.*** While it was not the initial objective of this study, one need that has emerged in the past few months is need for a swift response against crises like COVID and the proper policy tools and infrastructure investments for economic recovery. Urban land governance has a central role to play in both resilience and recovery in four major ways. First, land tenure security is critical to ensuring the protection of people's shelter, physical security, and livelihoods. Without some kind of regularization, the urban poor may not even have a safe place where they can 'stay at home' to practice 'social distancing.' Indeed, in some cities, slums are becoming a hotbed of COVID, highlighting the importance of slum upgrading programs that are enabled in part by land tenure regularization. Second, land administration investments, particularly those that involve land information systems and geospatial data, can help to not only map population density and identify the poor for targeted interventions, but also do predictive analysis so that hot-spots can be foreseen and a more effective response can be developed. Third, making land information system interoperable with social databases can help make COVID response more effective. For example, a simple address database connected with the Madagascar's beneficiary registry (i.e. the people who are eligible for government aid) can help expedite the targeted delivery of relief through payments and other means, while also expanding the beneficiary registry itself by bringing more urban poor into it. Fourth, economic recovery will require a push for infrastructure investments (roads, housing etc.), many of which can be made easier and cheaper through investments in systems and practices that document land ownership/occupancy. Therefore, the report's analysis and recommendation present or echo measures that will be able to strengthen Madagascar's COVID response and recovery.

***Very little information exists about the urban land sector.*** With the exception of several analytical studies carried out by the Land Observatory, UN-Habitat and the World Bank<sup>8</sup>, urban land governance has been widely understudied. The Land Policy Letter of 2005, revised in 2015, considers a treatment of the urban land question, but for the past 15 years, interventions and studies have primarily focused on rural land tenure.<sup>9</sup> A recent analysis of urban poverty considers the question of urban land tenure to be essential and concludes that there is an urgent need to carry out a study on urban land tenure and to update the land register, which has become obsolete.<sup>10</sup>

## Study objectives

***The purpose of this study is to propose strategic options to improve urban land tenure management.*** The

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<sup>8</sup> The World Bank, 2011. L'urbanisation ou le nouveau défi malgache (in French).

<sup>9</sup> We can observe the notable exception of the UN-Habitat project, Participatory Slum Upgrading Program (PPAB) since 2008.

<sup>10</sup> The World Bank, 2017. Great Antananarivo: Urban Poverty and Resilience Study. 54 p.

first step is to produce a maximum amount of information about land governance on the basis of a detailed analysis in two urban municipalities: the capital, Antananarivo, concerned by land issues linked to urbanization and housing, and a second urban municipality, Nosy-Be, where the problem is linked to competition for land control. The aim of this assessment is (i) to describe the characteristics of land management in the city; (ii) to reveal the extent of the gap between the reality of land occupancy and the land information recorded by the administration; and (iii) to explain the reasons. On the basis of this information, this study presents a series of recommendations and draws attention to international practices that could help to guide the development of a strategy to improve urban land governance in Madagascar.

In the longer term, this study can be considered as the starting point for a dialogue between the Government, land sector stakeholders, the World Bank and other partners for the design of a large-scale intervention to address rural and urban land tenure in its entirety, complementing the experiences gained to secure rural land tenure and the initiatives already in place to secure urban land tenure.

## Presentation of the method and caveat

In order to do this, the study was broken down into three phases: (i) an overview of urban land governance (centered on Antananarivo and Nosy-Be), accompanied by an initial list of possible recommendations; (ii) initiation of a dialogue and discussions with the main stakeholders in the sector; followed by (iii) assistance to the government with the design of an urban development land tenure strategy.

### Phase 1: Overview of urban land governance and initial recommendations

***Thematic analyses carried out by the Land and Land Use Planning Observatory in selected areas of Antananarivo and of Nosy-Be.*** The study, carried out in the second half of 2019, took place in the cities of Antananarivo and of Nosy Be. The first city was selected because of its status as capital of Madagascar, and because it is the most populous and the most advanced in terms of the implementation of urban development plans. Nosy-Be, an island, district and urban municipality, is representative of the land tenure reality of the majority of coastal and tourist cities in Madagascar, exposed to the challenges both of tourism development and urban spread at the expense of agricultural land. For Antananarivo, the study focused on 926 households living in three different areas of the city with contrasting socio-land tenure histories and socio-economic household profiles.<sup>11</sup> For Nosy-Be, the study considered the three urbanized poles of the municipality.<sup>12</sup> Field studies were supplemented by interviews with the institutions involved in urban land management: Ministry of Land Use Planning, NGOs working in the poorest areas, judges, technical and financial partners, civil society organizations and the private sector (notaries, real estate agencies). Documents were consulted to consolidate the analyses carried out. **This field work and the corresponding analyses were the subject of two reports that correspond to Volumes 2 and 3.**

***Additional international expertise.*** These studies were supplemented with international expertise in order to provide a more detailed analysis and to help with the formulation of recommendations, based, in part, on international experiences.

### Caveat: phases 2 and 3 could not be carried out

***A reminder of the initial approach.*** The process originally planned was to supplement the analysis with a visit of international good practices, notably in Morocco because of its relevant experiences in dealing with

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<sup>11</sup> *Andavamamba*, a poor neighborhood in the south of the city, marked by unstructured development, generalized household insecurity and informal land rights; *Andranonahoatra*, on the western edge of the capital, the result of periurban expansion, with households of different profiles; *Androhibe*, residential neighborhood structured by subdivision plans, and housing well-to-do families.

<sup>12</sup> *Hell-ville*, major city; *Dar-es-Salaam & Ambatoloaka*, marked by the presence of hotel establishments and the proliferation of informal structures on land belonging to the sugar company, SIRAMA; *Dzamazzar*, former housing area for SIRAMA workers, whose extension is more or less planned.

substandard housing. Two workshops were to be held from February until mid-April, 2020, one in Nosy-Be and the other in Antananarivo, to discuss the assessment and the initial recommendations. These dates corresponded to a meeting with the government and to the drafting of the final document. The present document was supposed to be shared with the municipalities concerned, the government, and the other funding organizations. The purpose of these discussions was to take the input from the different stakeholders on the initial recommendations into account and to consider the possible implementation of measures that they proposed on a pilot basis. On the basis of these discussions, a memo was to be drawn up listing the strategic options aimed at proposing the regularization of existing land rights and measures to be taken to make land information correspond to the reality of the occupations.

***The discussion on possible solutions has been postponed due to the current health crisis.*** These two phases could not be implemented because of the global health crisis. The missions planned in Morocco and in Madagascar were cancelled, as well as the two workshops. **This document is therefore an intermediary document drawn up by the World Bank, whose assessment and recommendations have not yet been discussed with the government or with the other stakeholders in the sector. Consequently, this document is to be considered as a basis for proposals in view of future discussions when sanitary conditions permit.**

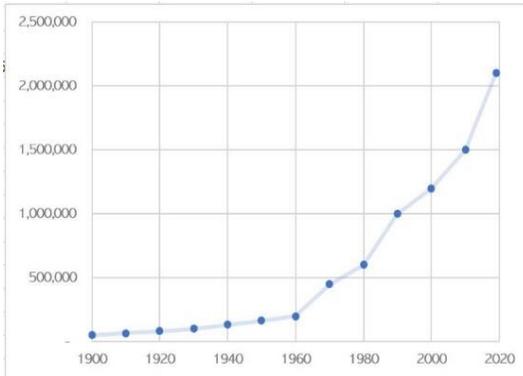
## Section 1 – Overview of urban land governance

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## Antananarivo – land saturation and informal rights

### Strong demographic growth faced with the scarcity of available land

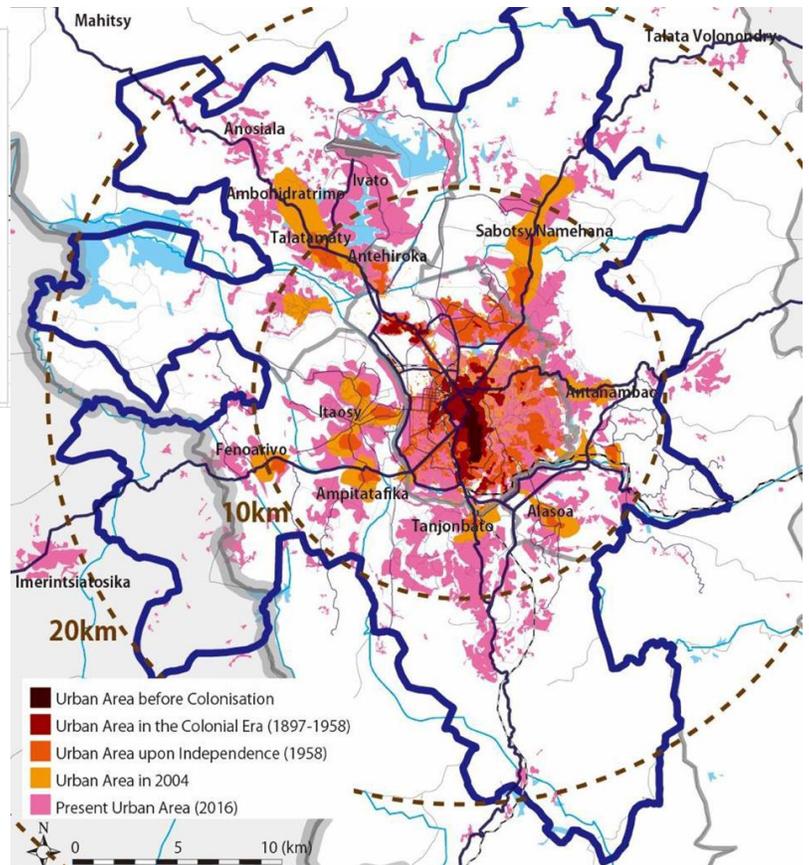
From a historical point of view, the expansion of the city of Antananarivo began at the central hill (also known as Haute Ville) towards the rice paddies below and the surrounding plains belonging to the State or to old, well-to-do families. Social structuring determined the urban landscape: basically, the wealthy noble families lived at the top of the hills and their sharecroppers cultivated their rice paddies below in the flood plains. These rice paddies, often titled, were filled in as the city continued its spectacular expansion, and became



**Fig. 1: Evolution of the population of Antananarivo between 1900 and 2019**<sup>13</sup> - **Map 1: Extension of Antananarivo since colonial times.**

urbanized spaces, referred to as the “bas-quartiers” (or slums) in everyday language. Poor families that lived on the rice-growing plain often remained there and expanded. Their activities progressively evolved from sharecropping to different urban trades. For the past 40 years, the capital has undergone rapid population growth. Every year, it attracts some 60,000 households that have abandoned farming. With one of

the highest growth rates in Africa (3.6%), the population of the Urban Municipality of Antananarivo (CUA) reached almost 2 million inhabitants in 2019<sup>14</sup> on an area of 88 km<sup>2</sup>, resulting in a density of 22,000 inhabitants per km<sup>2</sup>. In addition to the population density, the scarcity of available land in the urban center can also be explained by the preservation of a land heritage predominantly controlled by the bourgeoisie and the nobility. Linked to a context of extreme poverty, this situation has led to the development of slums and precarious housing that is home to 72% of the urban population (Habitat III, 2015). It is one of the forces underlying (i) the uncontrolled filling this situation has led to the development of slums and precarious housing that is home to 72% of the urban population (Habitat III, 2015). It is one of the forces underlying (i) the uncontrolled filling of the rice-growing plain by landless merchants and business people;



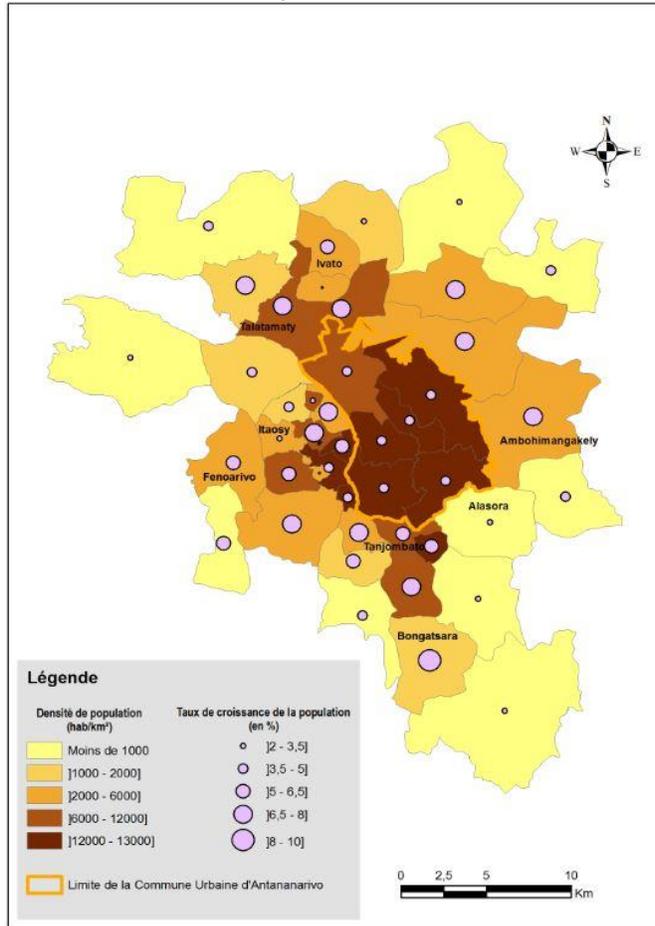
<sup>13</sup>Ramamonjisoa, 1975 and 1981; Bureau du Développement d'Antananarivo, 2007; Revue de l'Océan Indien, 2011; World Bank, 2011; UN-Habitat, 2012; Abrieu, 2012; INSTAT, 2014; Attoumani et al., 2015.

<sup>14</sup> INSTAT, 2019; Preliminary results of the general population and housing survey. The agglomeration referred to as the “Grand Tana” encompasses the CUA and 36 peripheral municipalities. Altogether, the agglomeration of Antananarivo counts almost 3.4 million inhabitants.

and (ii) urban sprawl that especially concerns the poorest, in low-lying areas and marshlands exposed to flood risks.

## Densification of the built environment: social and economic rationales

The built environment is characterized by the large number of buildings on the same parcel and by the reduced size of buildings, often below urban standards. The high saturation of the built environment has



led households to adopt extension practices: the city center develops via densification and the increase in the number of tall buildings. The most common strategy consists of adding a floor to an existing building or constructing another building contiguous to those that already exist on the same property, often on an undivided piece of land occupied by joint heirs. In addition to the objective of strengthening family cohesion, the aim is to preserve the family heritage from generation to generation. Undivided heritage is frequent to avoid the fragmentation and progressive sale of land, and to cope with the financial incapacity to acquire another piece of land elsewhere. The average size of a dwelling is around 60 m<sup>2</sup>, but may be much lower in some poorer areas.

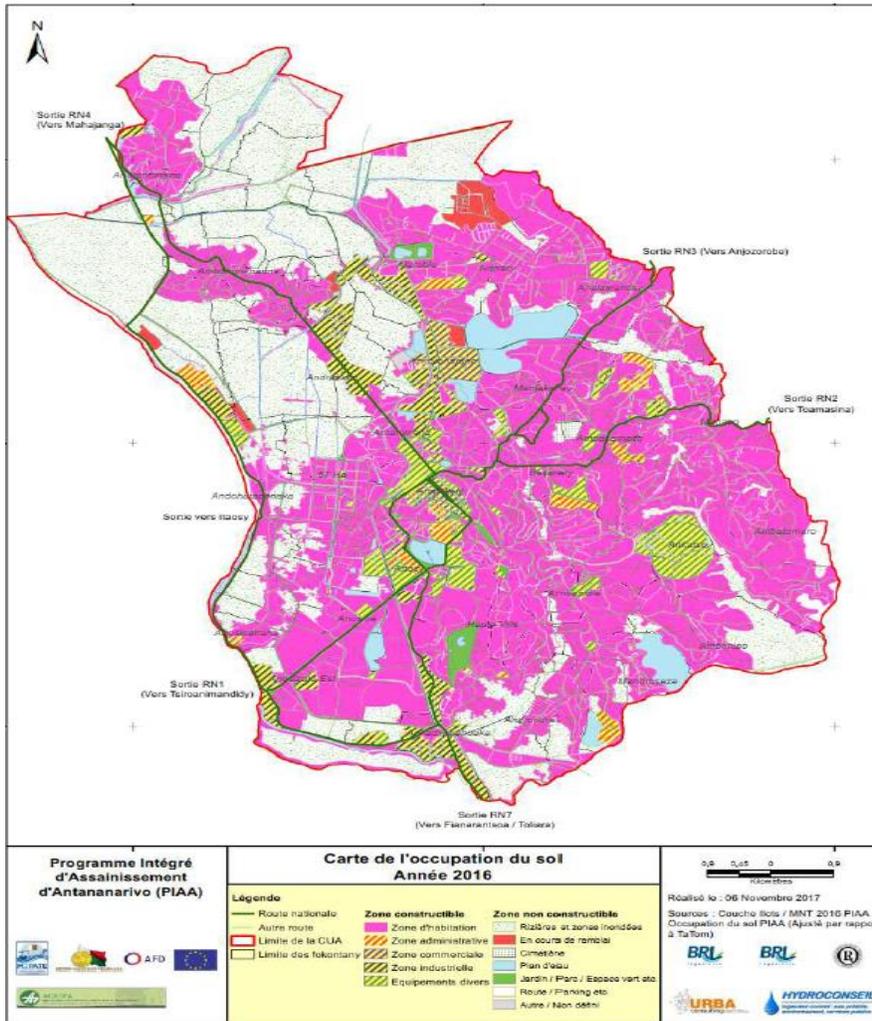
**Map 2: Demographic growth and density around Antananarivo (2015)**

New arrivals, most often poor,<sup>15</sup> generally settle on residual spaces, filling in rice paddies or vegetable fields, or in structures built on stilts above marshes. These areas have no basic services and the inhabitants live in makeshift shelters, often built in high-risk areas. The backfilling and high population concentration on the flood plain modify its natural drainage capacities and increase the risk of floods (World

Bank, 2014a).

<sup>15</sup> In 2016, approximately 66% of the population of Antananarivo was in a situation of extreme poverty and lived with less than \$2 per day (World Bank, 2016).

For all three of the areas studied, almost 77% of the parcels are intended for housing, 10% for businesses or workshops, 5% are still used for agriculture, and 2% are wastelands. Over half of the households surveyed have only one parcel, and 30% have two. More than 30% of the parcels are less than 150 m<sup>2</sup>, the minimum buildable area according to current standards.<sup>16</sup>



More than 30% of the parcels are less than 150 m<sup>2</sup>, the minimum buildable area according to current standards.<sup>16</sup>

The wealthiest households are located in the peri-urban zones and the large agglomerations around the capital (PNDU, 2019). Over the past 15 years, residential neighborhoods have considerably expanded within a radius of 20 kilometers around the city center, following the major road networks, through the purchase and transformation of agricultural and wooded areas in the surrounding rural municipalities.

**Map 3: Land use of the CUA in 2016: extension of the habitat by invasion of agricultural zones (source: AFD – Cabinet BRL, 2018).**

Moreover, the price of land<sup>17</sup> out of reach for poor households, as well as the uncertain rights on land without

legal documents, forces the new inhabitants to adopt an informal system of land rental and self-construction, or to settle in high-risk areas, encouraging the phenomenon of slum growth. The lack of resources for the control of new occupancies and buildings does not make it possible to limit this phenomenon.

## Urban expansion often precedes urban development plans

Successive urban development plans are systematically surpassed by urban development. Given the saturation at the historic center of the city on the hillsides, successive urban development plans aimed, as of 1920, at providing decent housing to a growing population by planning the expansion of the city into the plain. They led to the creation of a first series of residential cities: Ampefiloha, 67 ha, Ambodin'Isotry and Andranahoatra. The government created the SEIMAD<sup>18</sup> to manage the worksites and to commercialize housing (Olisoa, 2012). In the 1980s, planning included the peripheral municipalities where the city was

<sup>16</sup> Article 19 of the law on Urban Planning and Housing stipulates that a building permit cannot be granted for construction on a piece of land of more than 150 m<sup>2</sup>. According to the Urbanism Bylaw of the CUA (2004 PUDI, still in effect), all urban property must have a land title and all new parcels must have a minimum area of 175 to 200 m<sup>2</sup> depending on the zone.

<sup>17</sup> On the sides of the major arteries, the price of land is estimated at between 150,000 and 350,000 MGA/m<sup>2</sup> (OATF, 2019).

<sup>18</sup> The Société d'Équipement Immobilier of Madagascar is a public enterprise created in 1970, whose mission is the construction of social housing and facilities.

rapidly spreading. In 1985, the Master Urban Development Scheme (SDDU) for Greater Antananarivo, covering an area within a radius of 10 km from the city center, imagined a balanced development of the center and the periphery, the creation of peripheral facilities and the constitution of long-term land reserves. This plan was never approved and was only allotted low-level budgets for its implementation. Consequently, the SDDU had little impact on the development of the agglomeration.<sup>19</sup> Urban development is thus poorly controlled, both in the plain and in the direction of Ivato International Airport. It took another 20 years for the Master Urban Development Plan for the Agglomeration of Antananarivo (PUDi) to come along, reproducing the concept of Greater Antananarivo by including the CUA and 29 peri-urban municipalities. It is based on the development of the road network, structuring networks and peripheral poles. The PUDi must grapple with the rapid absorption of ‘urbanizable’ spaces, having decrease from 25,000 ha in 1985 to 15,000 ha in 2004, and few of its initial objectives have come to be.<sup>20</sup> In 2019, a new master urban development plan for Greater Antananarivo was launched and includes some 50 peripheral municipalities that hope to anticipate the consequences of uncontrolled urban development. The municipalities responsible for issuing building permits can no longer keep up with the demand. As an example, the CUA received 352 permit requests in 2018, but could only issue 96. At the national level, only some 20 cities out of the 100 identified by the PNDU have an Urban Development Plan.

### Inheritance and purchase, the principle ways of acquiring land

***Inheritance, the primary way to acquire urban land, corresponds to a patrimonial logic.*** Land and housing are relatively accessible to households with different economic profiles due to the combination of inheritance, bequests, purchases and, to a lesser degree, occupancy. Contrary to conventional wisdom that would have one believe that the market is the main way to acquire urban property, inheritance remains the main means of access to land and concerns 50% of it. Inherited land is rarely put on the market and is primarily intended to house the family and its descendants for the following reasons:

- (i) Inheritance contributes to the successive subdivision of increasingly small parcels, difficult to commercialize;
- (ii) When a parcel is so little that it can no longer be divided, the descendants share the buildings among themselves and increase the number of dwellings on the same piece of land. Joint ownership of the inherited land does not allow any of the co-heirs to sell their share. Consequently, households manage urban property like a family patrimony to which they have a long-term attachment: at least 50% of the households have owned their land for over 15 years.<sup>21</sup>
- (iii) The complexity and the cost of regularizing joint ownership, particularly to reconstitute the chain of rights or to obtain the formal agreement of all the co-heirs, is also a reason to maintain land within the family unit.

Moreover, inheritance is the main way to access land and housing for the poorest (60%), whereas purchase appears to be the means used by people with money to acquire urban land.

***The land market is largely active but generally exists outside of official networks.*** Access by purchase/sale is the second means of acquiring urban land (37% of the parcels). Three main actors contribute to the land market: the government through the SEIMAD, official private real estate agencies, and unofficial brokers. In general, the official land market in the areas studied remains very limited. The image of the impersonal market operated by intermediaries is far from the rule. The majority of sales take place directly between relatives or friends (95%), and only a minority through unofficial intermediaries (4%)<sup>22</sup> or an agency (1%). The main motivation for a purchase is to build a dwelling in the near future (52%) or for the children (11%).

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<sup>19</sup> Several urban development and sanitation projects can be observed in the Antananarivo plain, with the rehabilitation of national roads, including the RN1, the market in Anosibe, and the development of the Canal C3 financed by the World Bank and the French Development Agency before the 2000s.

<sup>20</sup> We can observe the creation of the bypass and the development of peripheral centers with the creation of hospital centers.

<sup>21</sup> 28% of the households no longer remember the date when they acquired the parcel.

<sup>22</sup> Sales are facilitated by “*mpaner*” or unofficial brokers.

After that, reasons may be of a financial nature, like the opportunity to resell (19%), the development of commercial or artisanal activities (5%) or a rental project (4%).

***The poorest settle for illegal occupancies.*** The recent settlement of poor rural migrants without access to the land market, even the unofficial one, is often through illegal occupancy of titled or cadastered land in the name of a third party or the State. The strategies consist of first installing a makeshift shelter (cardboard, bags), and then, if there is no objection or eviction, the households gradually invest in temporary building materials (boards and/or sheet metal) before building with bricks.

***The location of both land and housing is a widespread practice but poorly documented.*** Some 20% of the available housing is probably rented. In the densely-populated poorer areas, rents remain quite low, and there are undoubtedly as many owners as renters (ENDA, 2018). Three types of rental agreements exist: (i) lease-purchase; (ii) the simplified written agreement approved by the fokontany; and (iii) the oral agreement, the most frequent. In the poorer areas, owners rent their land to migrants, who are then responsible for the cost of the construction of their dwelling. Agreements are generally not documented, and permanent-type buildings are not authorized. Renters build shacks with boards, one next to the other, without the possibility of conforming to minimum hygiene and safety standards. Some renters have access to electricity thanks to illegal connections from the owner's home. The media reports frequent fires in these areas where the municipality is unable to enforce the different urban and safety standards.

***Men and women have relatively equal access to urban land.*** The proportion of men and women who are owners or beneficiaries is similar.<sup>23</sup> There are two major reasons. First, inheritance is the main way to acquire land, and women can inherit land to build their home as easily as men, in accordance with the principles of the land systems of the Hautes Terres. Then, the land market is the second main way to acquire land, but priority is not always given to the highest bidder. Sellers prefer that land remain within the family or in the neighborhood, increasing the chances that individuals, men or women with limited financial resources, can purchase the parcel. Consequently, men and women inherit and purchase land in similar proportions.<sup>24</sup> Moreover, women own parcels of different sizes, and the differences in the size of parcels held by men are limited. Women own slightly more small-size parcels than men.<sup>25</sup>

## The gap between land information and actual land occupancy

***Cadastral operations initiated since 1939 and still ongoing.*** In keeping with the urban development and land policies carried out since the colonial period and the first republics, some 90% of CUA land underwent successive cadastral operations. From 1930 to 1939, a massive operation known as the “indigenous cadaster” took place around and in the center of Antananarivo,<sup>26</sup> for the purpose of issuing cadastral titles. These operations, suspended at the beginning of World War II, rarely resulted in the issuing of property titles (Raison, 1969). Following independence in 1960, the resumption of cadastral operations still did not make it possible to register delimited parcels due to the lack of administrative resources. The proportion of parcels that actually made it to registration is not precisely known.<sup>27</sup> Individual initiatives sometimes made it possible to obtain a land title. In 2019, in the areas studied, 86% of the parcels had already been legally registered during different periods, 53% of which were declared to be titled, 33% to be cadastered but not

<sup>23</sup> The household lives on a parcel that belongs to the man (23% of the cases) or the women (22%), or that belongs to the family of the man (17% of the cases) or that of the woman (17%). The household can also live on a parcel that belongs to the couple (19%).

<sup>24</sup> Of all the inherited parcels, 21% were inherited by the man, 22% by the woman, 26% by the man's family, 25% by the woman's family, and 6% by others. Of all the parcels purchased, 23% were purchased by the man, 20% by the woman, 41% by the couple, 6% by the man's family, 6% by the woman's family, and 4% by others.

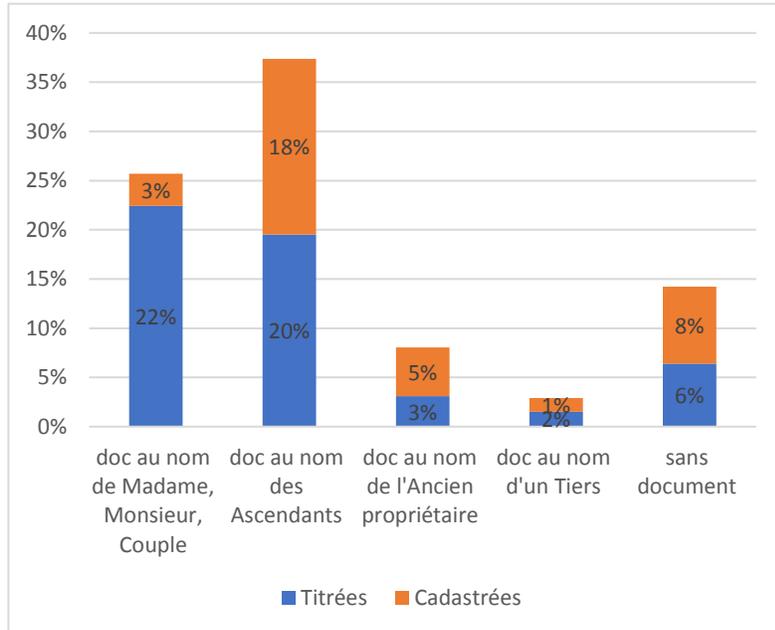
<sup>25</sup> 42% of the parcels that belong to women are smaller than 150 m<sup>2</sup>, compared to 38% of the parcels belonging to men, whereas 23% of the parcels that belong to women are bigger than 500 m<sup>2</sup>, compared to 29% of the parcels belonging to men. The proportions are similar for the other categories.

<sup>26</sup> Center and suburbs of Antananarivo, Ambohidratrimo, Manjakandriana, Anjozorobe (Raison, 1969)

<sup>27</sup> Interview with the Director General of Land Use Planning and Housing (2019) and the head of the Regional Land-Mapping Service of the city of Antananarivo (2019).

titled (procedure interrupted at the delimitation and boundary phase), and the remaining 12% are still in the process of being registered.

**Three-quarters of the official land documents do not correspond to the current land occupants.** Very few of these registrations carried out more than 20 to 30 years ago have been updated. Only 25% of the parcels are recorded in the name of the current owners; the others have not been updated. A total of 38% of the parcels are in the name of the ascendants; 11% of the parcels are in the name of the former owner or of a third party; and 14% of the owners have no document of their own to confirm a legal registration. A total of 32% of the titled landowners have no title of their own; they either have a Certificate of Legal Status,



(CSJ),<sup>28</sup> a plan, or no document at all for 12% of them (Fig. 2).

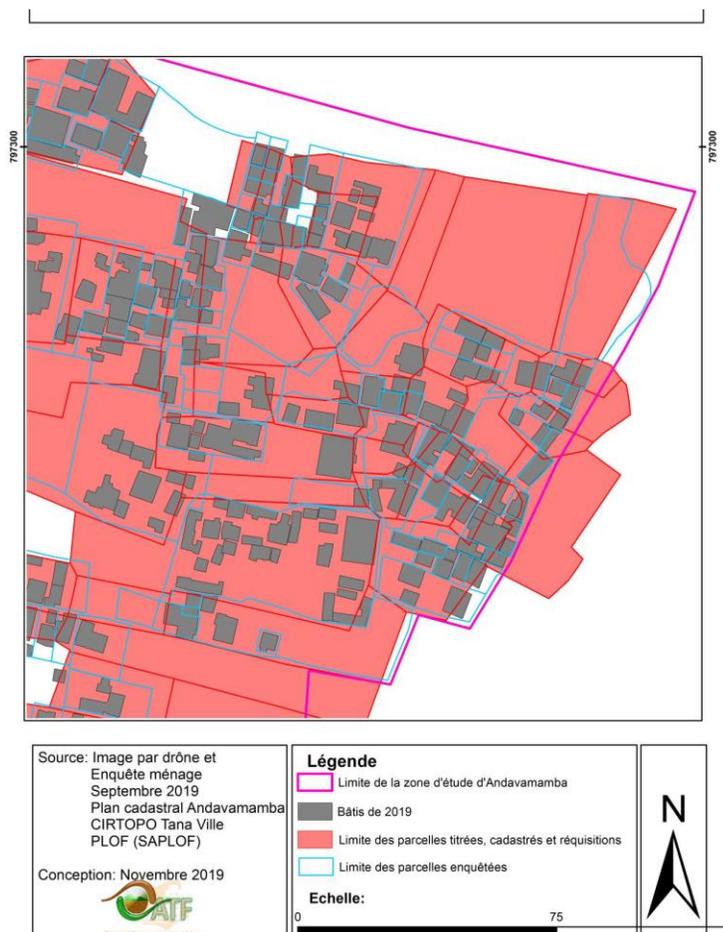
The status of 33% of the cadaster parcels is not clear. Approximately one household out of five has no document related to the cadaster (22%). A third of them have documents specific to the cadaster (notification of judgment, boundary report, extract of the cadastral map), and half of them have kept a plan. Taking all of the cadastral documents together, only 12% are in the name of the owners currently living on the land. Two thirds (64%) are in the name of their ascendants. More problematic yet, 18% are still in the name of the former owner and 6% in the name of another person. As for the

parcels currently being regularized, 50% of the applications are more than 5-years-old and 28% are more than 15-years-old.

**Transactions by sale or inheritance are rarely recorded.** Among the 53% of the occupants of a single titled property, only 12% have undertaken the measures necessary to officially register a sale or inheritance. The small number of transactions recorded can be explained by the cumbersome procedures for the new owner because the property has often passed through the hands of several owners without any of the information being updated at the time of transfer. It is therefore necessary to reconstitute the entire chain of transactions by recreating all of the successive administrative and legal documents (death certificate, notarial deed, deed of partition or will, etc.) and to pay the different costs. These limits have existed since the 1960s when studies at that time already bemoaned the fact that land documentation reflected “a land situation like the one 30 years ago” (Raison, 1969). The households surveyed mention other factors to explain their lack of motivation to register the transactions: (i) the required agreement of all of the co-heirs in the case of joint possession; (ii) the cost and time of procedures; (iii) their fear of one of their applications being lost by the land services, making it possible for a third party to eventually take advantage and claim rights to the parcel; and (iv) in 20% of the cases, the duplicate of the land title is not available, damaged or lost. Because of the impossibility to update documents, the urban land information system cannot be functional. It is not possible to make an exhaustive inventory of properties on the basis of documents conserved by the land administration, even those related to land that belongs to the State or to the municipalities.

<sup>28</sup> A document issued by the land administration at the request of any person seeking information about the legal status of a registered property.

**Map 3 – Gap between occupancy limits and land title limits (Andavamamba)**



*Parcels and topographic plans no longer correspond.* Moreover, the limits of the mapped parcels in the archives still available and on digital plans no longer correspond to the current parcel limits. In the case of Andavamamba, blatant discrepancies are obvious to the naked eye when the official topographic data is superimposed on the current occupancies identified in our survey. The limits of the cadastered or titled parcels cut through buildings and do not correspond to the parcels that are currently occupied and that were progressively subdivided.<sup>29</sup> These overlapping limits are proof of a confused situation where it is difficult for a government agent or a judge to determine rights on the basis of the plan and to therefore secure the current properties. To materialize and protect their rights, households tend to use physical markings (walls, fences, buildings).

*Three quarters of the households use “small papers” to invoke their land rights.* For want of an official property document established in their name, 74% of the occupants use various different documents<sup>30</sup> whose legal or probative value is more or less recognized, to secure their rights. This need to conserve a written trace of the right to land is

relatively systematic: 95% of the purchased parcels are associated with one, and a partition or notarial deed was drawn up for 67% of the inherited parcels. In the poorer areas, households present documents justifying that they have paid their property taxes. In the 5th city district where an operation to identify land and building property was carried out by the CUA with the support of the GIZ, the declarative registries, referred to as Permanent Registers of Land and Building Property (C3P) are seen as an alternative to the land title. In order to lend greater credibility to these documents, the signature of the former owner appears next to those of witnesses to the transaction. They can also be approved by an authority other than the land services: fokontany, district delegate, municipality, private surveyor. Only 6% of the households surveyed used a notary. This appetite for “small papers” is indicative of the obvious need to have a land document validated by an authority at a lower cost and via an accessible procedure. It is interesting to note that men systematically use these “small papers”, whereas women only use them three times out of four.<sup>31</sup>

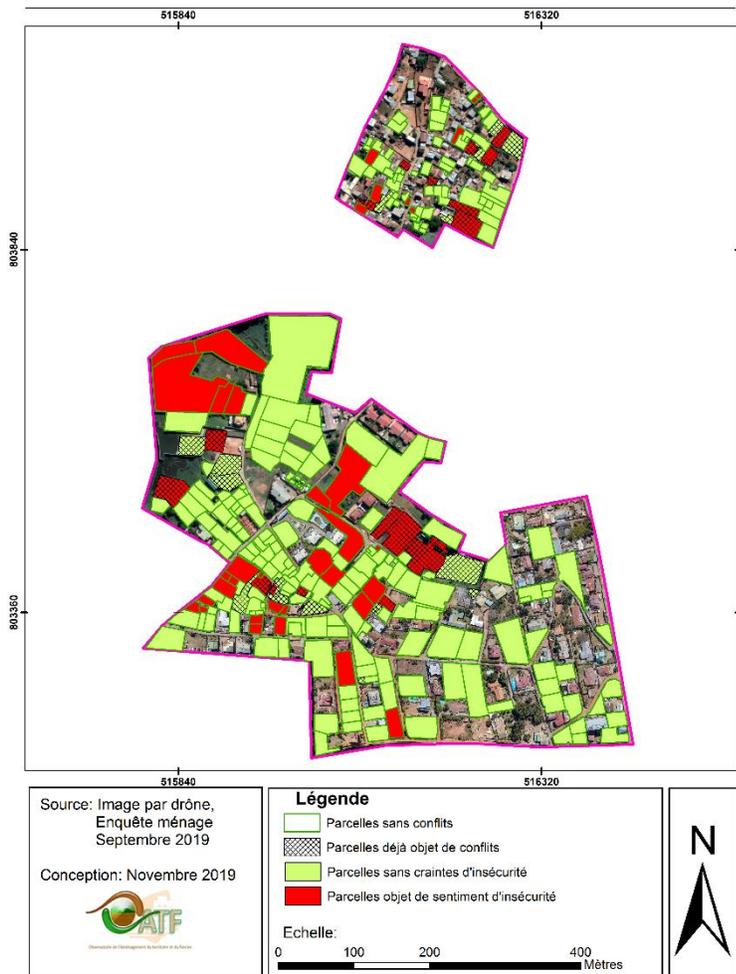
<sup>29</sup> This situation is found in the other areas studied. Volume 2 of this study carried out by the OATF presents numerous enlightening cartographic illustrations of the situation.

<sup>30</sup> Bill of sale (58%), inheritance, notarial or partition deed (44%), topographic plan of the original parcel (22%), deed of donation (4%), certificate of development (1%), authorization of occupancy (1%).

<sup>31</sup> Some 90% of the parcels belonging to men are associated with a “small paper”, compared to 75% of those belonging to women. When a couple wants to secure a piece of land acquired through normal channels, the documents are in the name of the couple in 82% of the cases. This bears witness to a rationale of pooling inherited property and of providing access to urban property for women.

## Feeling of insecurity and land disputes

***A feeling of insecurity for one out of five parcels.*** In the context of inadequate land information and in all of the areas studied, 17% of the owners or occupants declared that they feared a challenge to their rights.<sup>32</sup>



Their fears are linked to the absence of rights that are clearly established on the basis of up-to-date documents, or to the ignorance of the status of the occupied land, and they are afraid of an eventual eviction. Some 33% of these households express apprehension towards the different government actors (land use development service, SEIMAD, land services, urban municipality, head of the fokontany). The government could expropriate them within a context of development or of the restoration of public infrastructures, and at the time of transactions with real estate developers looking for land to build allotments or shopping centers on.<sup>33</sup> Households also fear the actions of family members (21%), especially at the time of a joint inheritance or the subdivision of a parcel, and 12% of them are afraid that someone from the outside will take over the land through intimidation, falsification or influence peddling, demanding their eviction on the basis of a legal proof of sale or inheritance, or of a decision obtained from the court.

***Map 5: Conflicts and feelings of insecurity –Andavamamba***

In addition, owners fear a challenge to a transaction by the former owner or his/her family (double sale, property claim on a parcel) that could be facilitated through lack of updated information following a sale (8%). For some (7%), neighbors represent a threat with regard to property limits and the shifting of boundaries. In Antananarivo, this feeling of land insecurity is experienced equally by men, women and couples.<sup>34</sup> However, it is greater when the parcel belongs to the family of one of the spouses since the risk of a dispute is frequently linked to a relative.

***One out of ten parcels in dispute.*** The land disputes most frequently appearing in the civil court of Antananarivo concern: (i) family conflicts linked to inheritance, especially when one of the co-heirs transfers part of an undivided property to a third party; and (ii) the case of double or multiple sales of the

<sup>32</sup> The same percentage is only 9% in the countryside.

<sup>33</sup> A large proportion of households that express this fear live in the Andavamamba neighborhood.

<sup>34</sup> Respectively, 16%, 18% and 17% of the parcels belonging to a man, a woman or a couple are associated with a feeling of insecurity.

same property.<sup>35</sup> In the areas studied, 12% of the households were confronted with land disputes resulting from conflicts with: (i) neighbors over property limits; (ii) the family, at the time of the transfer of an inherited undivided property or a subdivision between co-heirs; (iii) the descendants of the former owner, following an unregistered sale or a delay in the registration of the change in status. In this case, the heirs of the seller base their claim on un-updated documents, whereas the heirs of the buyer base their claim on a deed of sale or on the time of occupancy. The conflicts that affect families or communities not able to bring the case in front of a court of justice are transformed into social protests (blocking off alleyways, street demonstrations). The causes are often similar: the owner sells a property title in his name but occupied for several years by several households. The new owner decides to take possession of his/her property through legal channels, which can lead to the expulsion of several families by the police.

## An inadequate administrative capacity for the efficient management of urban land

***The capacity of the land administration is much too small to meet its land management requirements.***

The existence of a cadastral system for the past 90 years, and the possibility for residents of the city center to implement registration procedures means that a large part of Antananarivo is cadastered or titled. In 2006, the land registry of the city of Antananarivo counted 58,200 land titles (ATW, 2006) and currently counts 78,000 (DDPF, 2020). The regular updating of transactions would require a land management system capable of treating thousands of operations every year. The land service of the city of Antananarivo annually produces 1,400 land titles and registers 1,940 changes in status.<sup>36</sup> However, the average number of annual transactions in Antananarivo is estimated at over 20,000 – including sales and inheritances (ATW, 2006). The need to officialize transactions is therefore ten times greater than the capacity of the administration to handle them. Likewise, the demand for the reproduction of topographic plans is five times greater than the administrative capacity. For all of the 105,000 titles that exist in the Greater Antananarivo area, approximately 58,000 individual plans are registered.<sup>37</sup> The services receive between 100 and 300 demands for plan reproductions per day (ATW, 2006), or an average estimated annual total of 48,000 demands, whereas their average capacity is limited to 9,145 plans per year.<sup>38</sup>

***The poor administrative performance partially explains the current situation of land governance.*** In 2019, the Doing Business report classed Madagascar 162<sup>nd</sup> out of 190 countries for the transfer of a property within the framework of a notarized transaction.<sup>39</sup> According to this classification, a property transfer requires six official steps, at an average cost of US \$1,600, to obtain a property document registered in the name of the new owner after a minimum of 120 calendar days. The average cost of this transaction represents 9% of the value of the land (compared to 7.6% in sub-Saharan Africa) and the average delay of 120 days is twice as long as on the African continent (54 days). The limited performance of these services can be explained, in particular, by the complexity of the procedures and by the service's small number of employees: 22 agents assigned to the property registry, 32 agents to land-mapping, and 19 to the State-owned land service in 2006. This poor performance of the public services responsible for land management, linked to inadequate capacities and expensive and complicated procedures, explains the constraints described above: half of the regularized transactions take more than five years; users make little or no attempt to regularize their land rights and make do with a parallel system for documenting rights; only a

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<sup>35</sup> Andrianirina-Ratsialonana et al., 2012; Fanomezantsoa, 2013

<sup>36</sup> Averages calculated on the basis of data provided by the Land Observatory between 2010 and 2015 for the service of the city of Antananarivo ([www.observatoire-foncier.mg/serfoncier.php](http://www.observatoire-foncier.mg/serfoncier.php)).

<sup>37</sup> Consequently, almost half of the titles have no corresponding plan.

<sup>38</sup> Averages calculated on the basis of data provided by the Land Observatory between 2010 and 2015 for the service of the city of Antananarivo ([www.observatoire-foncier.mg/serfoncier.php](http://www.observatoire-foncier.mg/serfoncier.php)).

<sup>39</sup> In practice, only a minority of transactions are brought to the attention of notaries in Antananarivo. Moreover, Law No. 2007-026 giving status to notaries in Madagascar requires the recording of sales in front of a notary for buildings whose sales value is greater than 15 million MGA (or approximately US \$4,000).

third of the land titles correspond to the owners in place; and official land and topographic information is increasingly removed from the reality of land occupancies. Finally, the current system of urban land management is discriminatory: only the most affluent can obtain documents within a shorter time.

***An attempt at eliminating inheritance fees did not have the expected impact.***

In January 2016, the government announced that none of the land services would charge fees for changes in land status resulting from a death, for a period of six months. The initiative aimed at encouraging owners to regularize the status of the land that they had acquired through inheritance. The measure was extended twice, in July 2016 and in January 2017, but the number of regularized demands remained below the objective of 10,000 changes by inheritance registered in six months. A total of 9,700 demands were received by the end of one year. The reasons put forward are: (i) the limited knowledge of procedures to be taken; (ii) the complexity of the preparation of applications because the measure only affected the cost of status change and not the administrative actions required (at least six documents are required: death certificate, notarized inheritance deed, partition deed, legal status certificate (CSJ) of the inherited property, duplicate of the land title or of the cadaster, written demand addressed to the State-owned land service, etc.); and (iii) only registration and status change were free-of-charge, whereas all of the other costs were maintained (death certificate, notarial fees, etc.). Moreover, government agents complained about the proliferation of falsified death certificates and notarial deeds due to the fact that it was so difficult to obtain an original copy.

***The computerization of land data is a complex and costly undertaking that remains to be evaluated.*** The digitalization of the land information system has been identified as a necessity for almost 15 years now. The process is ongoing but its advancement depends on the service and the available financing. Several aid agencies have provided assistance in support of successive upgrading and land information protection plans, and almost \$30 million have been invested since 2007, particularly by the MCC. Nevertheless, the impact of a still incomplete computerization is difficult to assess. The technical objective seems to take priority over actions aimed at creating more sustainable and efficient information management conditions (simplification of procedures, decentralization of the recording of rights, locally held registers). Moreover, resources are limited and dependent on outside aid, and related public-private partnership projects have met with little success.

## Nosy Be – Land competition between tourism, agriculture and urban expansion

### A sugar-producing island faced with strong urban growth

The island of Nosy Be is both an urban municipality and a district of 321 km<sup>2</sup>, divided into six city districts and 42 fokontany, eight of which are classified as urban and three that are considered to be urban extension zones. Nosy Be has maintained a rural landscape: 230 km<sup>2</sup> are covered with forests and agricultural land; 57 km<sup>2</sup> are devoted to tourism infrastructures; and urban sprawl extends over 11 km<sup>2</sup> (PUDi, 2018; OATF, 2019). Two major development phases have taken place: the sugar industry as of 1920 and tourism as of the 1960s.

***Exceptional demographic growth.*** The population of Nosy Be, consisting of different Malagasy communities, to which can be added expatriates from the Comoros Islands and Europe (French and Italian), plus Indo-Pakistanis, is rapidly increasing at an annual rate of 4.9%.<sup>40</sup> The population has thus tripled in 25 years, going from 30,000 inhabitants in 1993, to approximately 100,000 in 2019 (OATF, 2019). This high rate is mainly due to the attraction generated by the tourism sector, which drains the population of the Grande Terre.<sup>41</sup> The rate of immigration is 13% per year. At this time, two-thirds of the overall population

<sup>40</sup> The average demographic growth rate at the national level is 3%.

<sup>41</sup> The development of the tourism sector led to the creation of 6,000 direct (60%) and indirect jobs.

is concentrated in the south, between Dzamandzar and Hell-Ville, close to basic facilities and services. In these agglomerations, the density may reach some 10,000 inhabitants/km<sup>2</sup>, whereas the average density of the island is approximately 300 inhabitants/km<sup>2</sup> (PUDi, 2018). Urban development is exacerbated on the outskirts of Hell-Ville, whose built environment has doubled in only 10 years (from 220 ha to 500 ha). Urban sprawl takes place towards the north and the west, mainly on the agricultural land of the SIRAMA. In 2005, Nosy Be attained the status of an Integrated Growth Pole (PIC) and benefited from the development of the first Master Urban Development Plan (PUDi) and from the establishment of the PIC project whose objective is to develop promising economic sectors such as agribusiness and tourism.

***The decline of the sugar sector has led to a rush on SIRAMA land.*** The land on the island, which was occupied by France as of 1841, was almost entirely registered at the time of colonization and the First Republic in the name of four major agricultural companies: SIRAMA, De Lastelle, Barday and Hassanaly. Some 40% of the island of Nosy Be is titled in the name of the SIRAMA (Map 6) and this land is highly coveted today. The sprawl of SIRAMA’s land heritage is due to two combined dynamics:

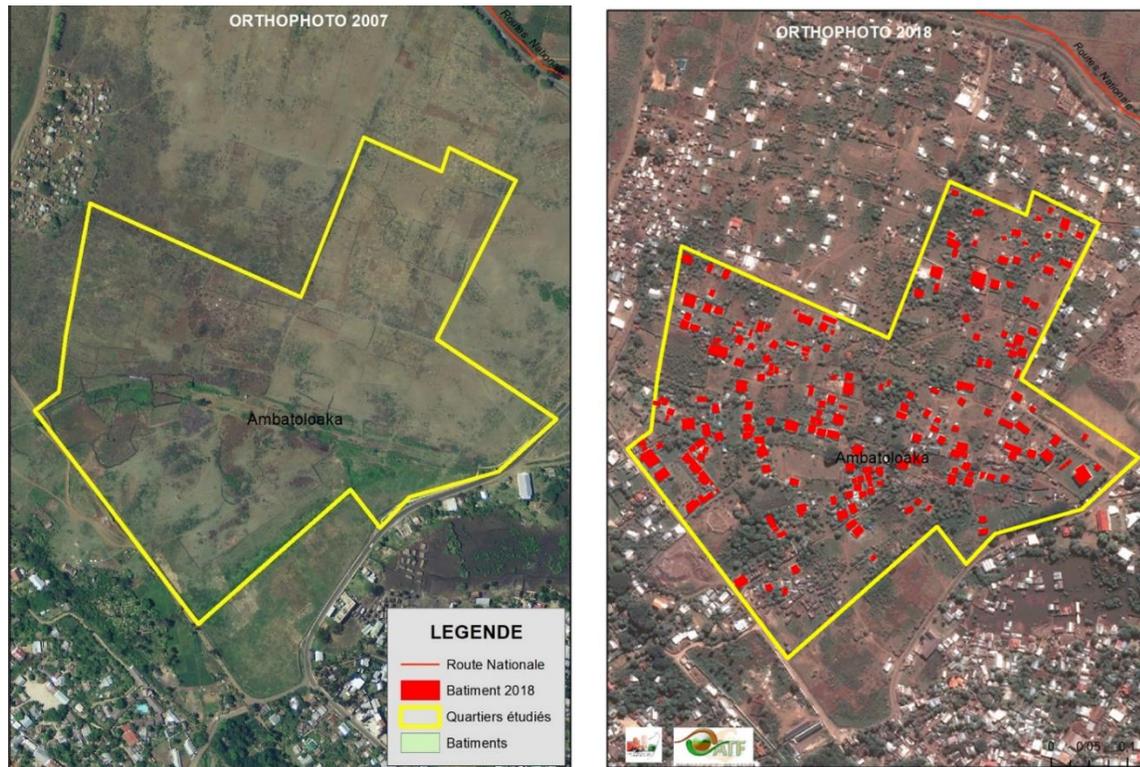
- i. The *Compagnie Agricole et Sucrière*, which became the SIRAMA after its nationalization in the 1970s, extended its sugar cane production from 2,000 ha in 1968 to 6,000 ha. Following management problems, SIRAMA filed for bankruptcy in 2006 and a large number of its workers were laid off. SIRAMA then began a decapitalization of its land assets. Its agricultural land was partially disposed of, first to compensate the 700 workers laid off from the sugar plant, and then to pay the salaries of the personnel maintained to provide minimum operation of the company until it could be relaunched.
- ii. The urban expansion of Hell-Ville has taken place in part on the agricultural concessions registered in the name of the major private companies that surround the city. A first road goes toward Fascène Airport, through land belonging to the Barday Company, whereas the other extends towards the west over land belonging to SIRAMA. The acquisition of land on the Fascène road can be negotiated with the Barday Company, at a cost of approximately \$20-25 per square meter. Considering the price to be too high and fearing prosecution in the case of unauthorized occupancy, households prefer to settle, legally or not, on land belonging to SIRAMA.



***Map 6: Location of SIRAMA’s titled land (land-mapping service of Nosy Be, 2019; Cabinet Zara Tany, 2019; PIC Project, 2020)***

The current situation shows that 48% of the settlements took place illicitly without the agreement of the company. This “squatterization” can be either individual or organized. The occupants sometimes form associations, often supported by political figures that defend their causes and thus constitute a following. SIRAMA’s limited control capacity has led to the rapid expansion of illicit settlements. The parcels occupied are resold and are used for the construction of housing or hotel investments. Some 37% of the parcels were purchased (i) through direct and official transactions with SIRAMA; (ii) from laid-off workers;

or (iii) from illicit occupants. Some 9% of the parcels were acquired by donation or attribution by SIRAMA, often before the 2000s.



Map 7: Occupancy of registered, unauthorized land in Ambatoloaka between 2006 and 2018

### The land heritage of SIRAMA cannot resist urban growth

In the face of demographic pressure and housing needs, and within a context of its declining agricultural activity, SIRAMA does not have the means to prevent these settlements, mainly for the purpose of housing. The major land titles correspond to a period when the sugar economy was in full expansion, whereas it is in decline today. With a legal force assumed to be unassailable, they can no longer preserve SIRAMA's land in face of the transformation of a sugar economy towards an urban landscape. Areas are inexorably created on registered agricultural land, and this trend seems to be irreversible. Settlements are organized to varying degrees by SIRAMA, or take place without its authorization.

***SIRAMA set aside part of its land as a compensation for its redundant workers, but the property rights of the beneficiaries have still not been officialized.*** Subsequent to the closing of the plant in 2006, the company set aside 694 ha to be attributed to its redundant workers as compensation and according to an allotment plan. In most of the cases, the employees who benefitted from this operation resold the parcels to a third party, mainly for the purpose of housing. Buildings were put up both by more well-to-do households who built permanent-type dwellings, as well as by poor households who built their shacks with rustic materials. The average size of the parcels varies from 400 to 700 m<sup>2</sup>. Overall, only 4% of the parcels resulting from official transactions with SIRAMA have a land title in the name of their owners, and 4% have a demand for registration in progress. These households use documents related to the investigation of the change in status (deed of sale with SIRAMA, established plan) to document their property. Some 92% of the owners of parcels allotted by SIRAMA have no official land document.

***A total of 90% of the occupancy of SIRAMA's titled land takes place outside of the framework of official acquisitions.*** In the case of unauthorized occupancy, households obviously do not have an official land document. They know that the land belongs to SIRAMA but claim a right of occupancy. There is even an unofficial land market specialized in these occupancy rights. When a piece of land has already been subject to two or three successive sales, the mention “*property of SIRAMA*” gradually disappears from the deeds of sale. The preceding deed holder is considered to be the owner. Successive transactions give the buyer a legitimate feeling of having acquired private property. In general, occupants deem that their occupancy is definitive as long as SIRAMA or the government does not evict them. A total of 58% of them have no documents, even unofficial ones, attesting to their rights. A total of 32% of them have different types of “small papers”, e.g., “authorization of occupancy” or “authorization to develop agricultural land”, issued by the sugar company and/or by the fokontany. These authorizations reassure them and some even hope that the authorization can be transformed into a recognition of the property. The land occupied as such can be the object of subsequent sales that are then officialized by deeds of sale, approved by the head of the fokontany or even by the municipality. This land can be taxed. Tax payment receipts are thus perceived as

a land security tool, proving that the land has been previously occupied.

**Map 8 – Occupancy inside SIRAMA's titled land in Dzamandzar**



***Local authorities have become the de facto actors of land management.***

Spatial information conserved by the land-mapping service can only consider the legal situation of land registered in the name of SIRAMA. In reality, the plot network has considerably evolved and is no longer consistent with that of the official registries and plans. In the absence of boundaries drawn by surveyors, occupants use physical markings (walls, plant hedges) to define their parcels. Legal status certificates are replaced by attestations of use rights or occupancy approved by the local

authorities, and the transactions are recorded in simple registries at the level of the fokontany. In this new context, the heads of the fokontany are those who have the most information about recent land transactions and the current state of land occupancy.

***Unofficial occupancy exposes families to the risk of eviction and is at the core of social tensions.*** Despite these local mechanisms aimed at recognizing occupancy on titled land, two-thirds of the households fear a challenge to the use rights that they obtained or were granted. To the contrary of Antananarivo, households in Nosy Be have little fear of disputes from their neighbors or members of their families. However, some 85% of them are particularly afraid that SIRAMA or the government will ask them to get off their land, whether they be the first occupants or have purchased the land from a third party. This feeling of insecurity is accentuated by frequent conflicts with the company: 12% of the households said that they have received

at least one interpellation from SIRAMA or the municipality about their parcels over the last ten years. Faced with the risk of eviction, the immediate defense strategy is generally to join an association often created by the elite for political reasons. The medium-term strategy is to demand the regularization of the occupancy by proposing to officially purchase the land from SIRAMA. This strategy rarely works: (i) because SIRAMA generally refuses proposals to buy land, especially valuable land reserved for the agricultural revival; (ii) because it fixes a price that households consider to be inaccessible,<sup>42</sup> or (iii) because the political elite convey messages about the legitimacy of the occupancies and encourage households to refuse to buy. Unofficial occupancies protected by important local figures generate tensions that can then escalate with respect to identity issues.

## Section 2 – The economic and social consequences of inadequate land information

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The overview of urban land management reveals an overall deficient situation at the institutional, legal, technical and social levels: only 25% of land information is updated and corresponds to the actual occupancy; collection of property taxes on building property reveals a loss of earnings of 61%; the number of land disputes is constantly increasing at the level of the courts and other legal bodies; the official land market is paralyzed and is limited to residential areas; the “squatterization” of private property and anarchic occupancies in the public domain and high-risk areas increases every year; and the rate of slum growth is approximately 70%.<sup>43</sup>

### Social and family tensions

The scarcity of transaction registrations has a major impact on the feeling of insecurity of the occupants who fear a challenge to their rights by their families, by public institutions or by third parties (real estate operators, opportunists, etc.). For the areas studied of Antananarivo and Nosy Be, an eventual eviction *manu militari* or the granting of a land title to a third party are among the most common fears. For Antananarivo, the lack of land documents in their names, associated with rumors of eviction, explains the apprehension of the occupants. In Nosy Be, the irregular situation of the occupancies on SIRAMA land constitutes the main source of anxiety. Fears also concern the risk that a family member will grab the land, particularly in Antananarivo.

To consolidate their rights, households depend on “small papers” that gradually become the norm when the regularization of occupancies is not assumed by the government. At the end of the chain, in the absence of a single legal document, everyone has his or her own “small paper”, with its varying degree of credibility. Intra-family land disputes are generally linked to the opposition to an unauthorized sale for a part of the land, or the double sale of the same parcel. Land disputes are often in the media spotlight, and public opinion estimates the rate of land conflicts brought before the courts at 80%. A study carried out by the Land Observatory in 2012 showed that this proportion is around 30%, but that the disputes sometimes involve an entire neighborhood or hundreds of households.

### Unreliable land information slows down and raises the cost of investments in urban infrastructures

Another consequence of the impossibility to register changes in land status is that public infrastructure projects are often subject to delays of several months since the process is blocked by unsolvable problems

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<sup>42</sup> Regularization involves purchasing land from SIRAMA at a cost of 15 to 50,000 MGA/m<sup>2</sup>, plus registration costs payable to the land services.

<sup>43</sup> PPAB 2, 2015; ONU-Habitat, Country report, Madagascar, 2016.

of identification of the beneficiaries to be expropriated and compensated. The complex and unofficial situation of the occupants, renters, owners, heirs and co-heirs of the first and second generation means that the project operators themselves must take responsibility for the regularization procedures of the different rights before being able to provide compensation. As an illustration, the Northeast Bypass Project, financed by the AFT and the European Investment Bank, required the freeing up of several agricultural parcels along the path of the new road. Out of 232 parcels impacted by the first segment of the work, almost 75% of the owners could not be compensated because their land status was not up-to-date, generally because of unregistered changes in status. A time-consuming and onerous regularization effort was launched, involving, in some cases, an appeal before the courts, with a long procedure of acquisitive prescription. In some cases, it was impossible to find information about the right holders to be compensated because the pages of the land registry were damaged. Land services can neither establish legal status nor make new entries as long as the land registries have not been reconstituted. A solution would have been the presentation of the cadastral extract or the duplicate of the land title, but the concerned owners had never been issued one. This situation led to delays in the implementation of the project of several months.

### Lack of updated land data hampers the collection of tax revenues

The management of property taxation (survey, tax base management, collection) has been the total responsibility of the municipalities since 2006. This competence was confirmed by Law No. 2014-020, within the framework of “effective decentralization”.<sup>44</sup> Moreover, rural municipalities collect the Property Tax on Land (IFT), whereas urban municipalities mainly collect the Property Tax on Building Property (IFPB). The CUA establishes its database on land occupancy based on a land survey and declarations made by the occupants. The last official survey of building property carried out by the CUA took place in 1990 with the support of the World Bank and within the framework of the Antananarivo Plain Development Project. It made it possible to count 97,772 buildings. In 1998, a projection based on figures from 1990 established an estimation of 117,000 existing buildings, and this figure constitutes the tax base on which the municipality has based its tax collection for the past 20 years. An estimation made in 2017 by the Malagasy Institute of City Professions (IMV), using digital maps, nevertheless found some 300,000 roofs in the CUA. Consequently, 61% of the buildings in the capital elude the IFPB, representing a considerable deficit since the annual property tax revenue represents 20% of the annual budget of the CUA.<sup>45</sup> In the 5<sup>th</sup> city district, the survey supported by the GIZ in 2018 made it possible to count 43,000 buildings compared to the 27,000 identified by the declarative approach, for a total of 16,000 taxable buildings that escape property taxes. The fact that the land database is not updated also leads to enormous financial losses. As a matter of fact, the informal approach to changes in property status deprives the government and the municipalities of direct and indirect tax revenues such as:

- i. The taxation of land transactions (sales, inheritances, leases) via registration fees (DE), and the tax on capital gains on property (IPVI) collected by the tax centers;
- ii. Property taxation: Property Tax on Building Property (IFPB) collected by the CUA;
- iii. Revenues collected by the State-owned land and land-mapping services: fees and costs linked to recording, conservation, demarcation, map reproduction, etc.

The DE and IPVI, estimated annually at between 16 to 40 billion MGA, represent 3 to 5% of the total tax revenues that contribute to the government budget. Revenues from the land services of the city of Antananarivo, with a total of approximately 140 million MGA per year, represent between 12 and 20% of the domestic revenues of the land services.<sup>46</sup>

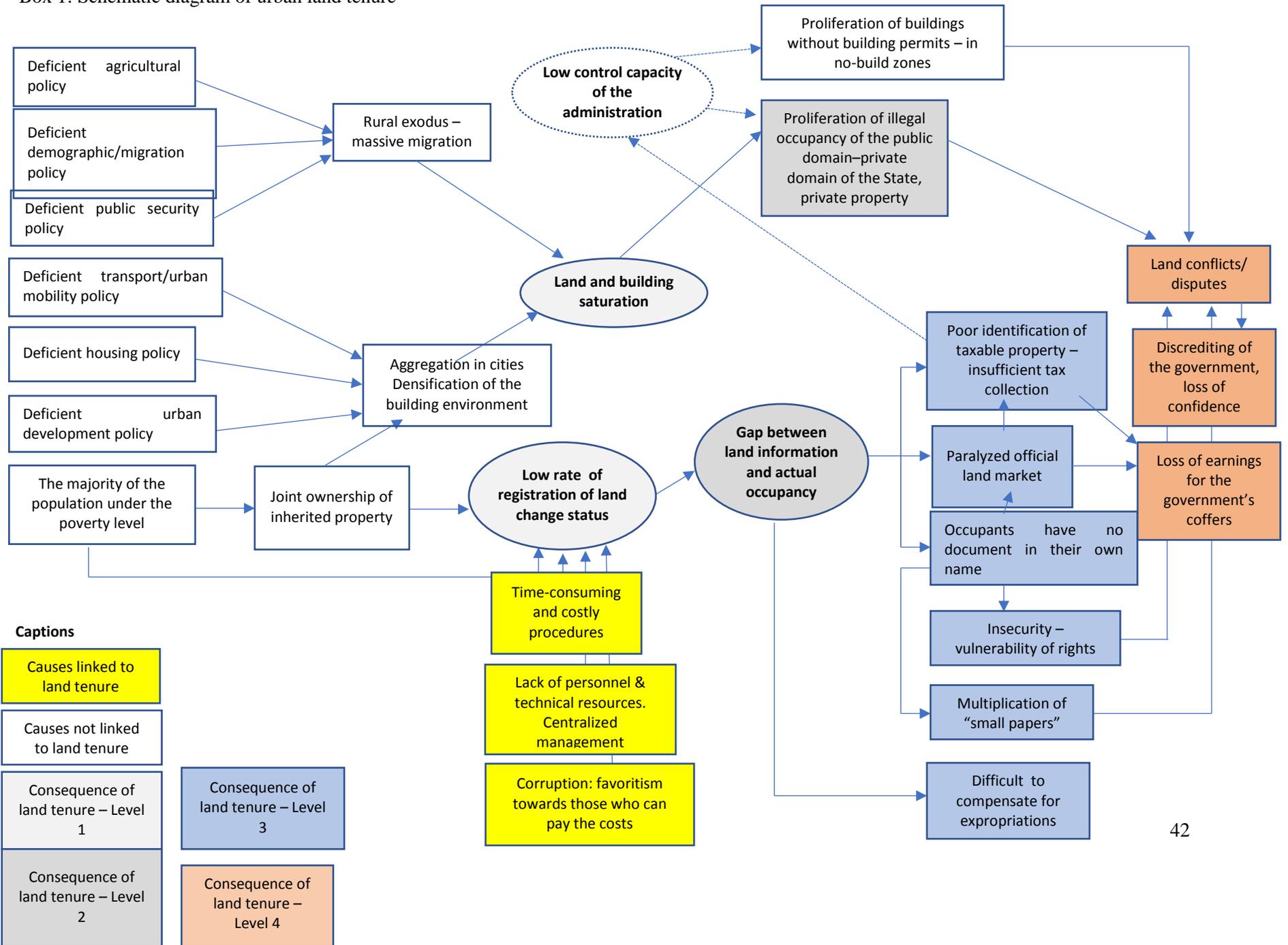
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<sup>44</sup> Law No. 2014-020 concerning the resources of the decentralized local authorities states in its Article 184, “tax revenues from the decentralized local authorities include the revenues of direct taxes, rights and the following taxes: (...) property taxes on building property (...)”.

<sup>45</sup> The annual budget of the CUA varies between 30 and 90 billion MGA (US\$ 8 to 24 million).

<sup>46</sup> Land Observatory, 2012 - <http://www.observatoire-foncier.mg/article-91/>

Box 1: Schematic diagram of urban land tenure



## Section 3 – Proposals for policy options to improve urban land governance

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In response to the constraints mentioned above, this section proposes a series of recommendations to ensure the more effective management of urban land. These proposals were formulated for the purpose of fostering a dialogue with the government and stakeholders in the urban land sector. They are fully consistent with strategic national documents concerning the land and urban sectors and with experiences developed in Madagascar and abroad. Each proposal is supplemented with a reference to a national or international experience that it is hoped will enhance the land aspects of the National Urban Development Policy.

### Developing a strategy adjusted to the constraints and to the context

#### ***An overview of current measures of the Malagasy government related to urban land management***

Government measures are contained in two key documents: the urban component of the 2015-2030 Land Policy Letter (LPF) and the National Urban Development Policy (PNDU). The LPF, revised in 2015, recalls the necessity of considering urban land as well as rural land. The LPF esteems that “*the upgrading of land services, which is not the only condition for improving urban land issues, did not have any major impact as a result of the poor availability and diffusion of computerized land information*”. It recommends the implementation of innovative approaches for the creation and management of land and land use databases via a single structure at the level of the major cities. It also proposes a consolidation of landholdings to accompany the restructuring of informal settlements and slums. The PNDU, approved in 2019, considers the control of land management in urban areas to be a major challenge. In this perspective, it proposes a general framework that anticipates the establishment of up-to-date and accessible digital cadastral databases; the consolidation of these data at the national level; the improvement of the land assessment system for the increased mobilization of tax revenues, an effective regulation of the land market and a guarantee of tax transparency; the establishment of land control measures; the adoption of resource mobilization strategies for a more effective urban management together with land management; as well as the pursuit of efforts related to land security.

***An overview of constraints concerning the design of a land policy for the city.*** The measures suggested take account of the limits imposed by the legal and institutional framework, and by the practices of stakeholders in the sector and the poverty of urban households. Realistically speaking, the proposals must take account of a context marked by:

- The general lack of public land reserves and a limited capacity to attribute land titles;
- The sometimes uncertain knowledge of land status in rural peri-urban zones;
- The limited capacities of public actors (land and municipal services) to (i) update land information; (ii) reconstitute lost or damaged documents; (iii) register status changes; and (iv) massively validate existing rights;
- The little interest expressed by the different administrations to consider alternatives to the land title in order to recognize and secure occupancies in urban and peri-urban municipalities;
- Efforts to prevent the extension of the decentralization of land management in peri-urban zones;
- The impact of social constraints: mass poverty, illiteracy and difficulties to contact the administration;
- A complex land occupancy with frequent joint possession;
- Natural risks accentuated by high demographic pressure.

***An overview of the general principles and objectives of an urban land policy.*** The long-term objectives are:

- To secure and equip the settlements and the existing poorer districts with basic services and to limit their sprawl and their over-densification, which does not necessarily mean regularizing *in situ* unofficial occupancies;
- To provide housing for a land population that will double in Antananarivo over the next 18-20 years, on developed and outfitted land (flood protection, sanitation, access roads);
- To ensure to as many people possible: (i) access to decent housing; (ii) basic services; and (iii) land tenure security (protection from eviction and involuntary displacement).

**These objectives require a public action capable of: (i) making an assessment, based on field surveys, of occupancy, development and land status; (ii) updating land information managed by government services; (iii) legally regularizing occupancies; (iv) designing and implementing legal and administrative reforms of procedures; (v) restructuring and equipping areas in need with basic services; (vi) creating a reception area for new arrivals and for displaced persons within the framework of restructuring or expulsion.**

A change in paradigm is essential if we are to overcome problems that have remained without solutions for decades now. Moreover, the observations of this report, like the guidelines of the PNDU, converge towards: **(i) a series of recommendations to provide the administration with an efficient urban land management system; and (ii) more general measures for land generation capable of addressing the projected demographic growth and infrastructure requirements.** These two axes target a strategy adapted to the context of Antananarivo and the big cities in Madagascar. The case of Nosy-Be requires specific provisions.

## Recommendations for the efficient management of urban land

The improvement of urban land administration and management can be achieved in two stages:

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**Step 1:** Updating land information through a systematic inventory and the development of urban PLOFs

**3 sequential actions**

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**Action 1** – Acquire Very High Resolution (VHR) imagery.

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**Action 2** – Superimpose the land information held by State land administration units on the image.

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**Action 3** – Carry out participatory field surveys, including women, to establish an inventory of existing rights, occupation rights and rights of way.

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<b>Step 2 :</b> Formalize and secure occupancy through the use of innovative tools <b>3 possible options</b>	<b>Option 1: Secure rights by land title.</b> Simplified cadastral operations or prescription procedure
	<b>Option 2: Secure rights by land certificate.</b> Certification procedure adapted to the urban environment (i) for land whose title cannot be updated given the cost and cumbersome nature of the procedures and (ii) for land recorded in cadastre without ever having been registered.
	<b>Option 3: Secure rights by the official recognition of occupancy rights.</b> Recognition of occupancy rights, captured during the survey, and located on land that is registered but whose title is difficult or impossible to update. The survey makes it possible (i) to confirm titled properties whose current owner is the one registered on the title; or (ii) to record on an ad hoc register the occupations of titled land when they do not correspond with the information recorded in the land register.

## Step 1: To update land information via a systematic assessment and the development of urban PLOFs (Local Land Occupancy Plans)

**Transparent land information that is regularly updated is a prerequisite before any improvement can take place.** The fact that land information is not updated is a problem that gets worse every day. It contributes to the increase in opacity of administrative practices, constitutes an important factor in the perpetuation of corruption in the sector, increases land insecurity and compromises the operation of official and unofficial markets. With each undeclared transaction, land information becomes a little more obsolete. Its updating must be considered as a priority if we are to improve land administration and management and all of the activities related to urban development: local taxation, regularization and restructuring of poor areas, infrastructures.

**An essential first step: drawing up urban Local Land Occupation Plans (PLOF) to capture the actual land situations.** The PLOF is a map of the status of all the land included in a municipal land base, i.e., the public domain, the private domain, titled and untitled private property, and land with a specific status. It is developed from (i) a very high-resolution background image (ii) existing topographic and land documentation; and (iii) systematic land surveys. It is considered to be an upgraded land identification map, shared by land services and municipalities, and must be updated as transactions take place. The land administration has a PLOF Support Service (SAPLOF) responsible for the development or the control of the development of PLOFs. The municipalities and the land administration can use it for initial registrations as well as for transfers.

- **Action 1 – Acquire Very High Resolution (VHR) Imagery.** These are either satellite images, aerial shots taken by plane or drone (see experiences from Zanzibar *Annex 3, 1.1* and from the NGO Habaka) meeting the recently specified topographical standards.<sup>47</sup> They must necessarily be orthorectified according to the standards in effect.

- **Action 2 – Superimpose the land information held by State land administration units on the image.** Retrieving land information held by government agencies remains a complex, costly and

<sup>47</sup> Decree No. 27684 of 5 December 2019 defined the technical specifications of photogrammetric works.

often difficult to accomplish.<sup>48</sup> This action would provide a layer of information on registered land as recorded in government agencies' databases. This first step allows an initial, more or less precise location of the titled land and the dependencies of the State domain. However, it remains incomplete information because: (i) it reflects an old land situation that has not been updated for years or even decades, and (ii) some documents relating to titles have disappeared or are so damaged that they are unusable. This first layer of information can only be regarded as indicative and cannot tell the law systematically.

- **Action 3 – Carry out participatory field surveys to establish an inventory of existing rights, occupation rights and rights of way.** The inventory, as carried out in the framework of this study, is an essential prerequisite for understanding the reality of occupations, the land tenure status of plots and buildings, their compliance with town planning standards, land disputes and local dispute settlement mechanisms. The inventory made it possible to identify, parcel by parcel, land tenure status and occupations and to measure the discrepancy between official land information and the actual on-the-ground situation of the parcel. It could be carried out systematically in the targeted areas and then gradually extended to the entire urban area. Costs and needs in terms of staff and equipment still need to be assessed in order to determine an implementation schedule.

*Open Cities Africa Antananarivo project: an accessible technology and a simple approach for a land occupancy assessment.*

The Open Cities Africa project, supported by the World Bank and GFDRR, is taking place in a dozen cities in Africa, including Antananarivo. It consists of collecting and mapping geographic data in selected areas, making them available on the open platform “Open Street Map”, and developing tools aimed at helping the different stakeholders to use the information concerning urban risks. In Antananarivo, the NGO Habaka has implemented the project with the local authorities and stakeholders in 12 areas of the city at high risk of floods and fires. Field surveys are supported by a recent aerial image taken by a drone and by open software, Open MapKit and Open Data Kit, installed on smartphones to map buildings and public facilities. Field surveys were carried out with the support of the local population. With the help of some 30 field agents, most of whom were volunteers, the results, collected in three months (during “mapathons”, or collective work events), were inserted into Open Street Map.

Within the framework of this study in partnership with the OATF, it was decided to use the approach developed by Habaka. Aerial images were taken by drone over the three Fokontany surveyed, and the software, Survey Solution, installed on tablets, was used for the questionnaires and to map parcels. This technological solution made it possible to rapidly identify the limits of parcels drawn on the tablet with the respondents. Some 1,000 households were surveyed over a two-week period. The results of the map were used to compare the information acquired in the field and the theoretical information in the possession of the land services.<sup>49</sup>

*The experience of the OATF and the NGO Habaka has made it possible to reconstruct land information according to three principles.*

The surveys and the tools developed by the OATF and Habaka made it possible to recreate data and to update them for the entire set of parcels according to a systematic approach based on the following three principles:

- Begin with real occupancies.** In the peri-urban zone, the information held by the administrations is very far from the reality observed in the field. It will be less time-consuming to produce new information by combining field and topographic surveys than to update the information held by the domains;
- Build on local validation,** because knowledge about the boundaries and the identity of the owners is known at the local level for the majority of the parcels. The concerned populations, local authorities and intermediation bodies must contribute to the assessment according to an organization that mobilizes the occupants, the owners, non-resident beneficiaries and local officials (neighborhood heads, representatives of the fokontany and the municipality)

<sup>48</sup> However, it is important to note the positive experience of some services, among others in Tamatave and Atsimondrano, which have succeeded, with the existing human and financial resources, in digitizing the plans that are still available and usable and transferring them to an image.

<sup>49</sup> These maps are presented in Volume 2 of this study.

of each area. The participation of an NGO that ensures intermediation between populations, the administration, the municipalities and the owners is essential;

iii. **Limit the intervention of specialists and the use of archives to parcels subject to disputes.**

The assessment by Habaka and the OATF made it possible to identify, with the help of the inhabitants, the diversity of land rights (real property, declaration of property on the basis of “small papers”, negotiated or unauthorized occupancies, etc.). It was the groundwork essential to then determine the different possible actions necessary for the regularization of rights.

This work of reconstructing land information must pay attention to and take into account the rights registered or to be registered in the name of women. It is essential to ensure the participation of all, especially women, in local consultations for the identification of rights holders.

***Current technologies combined with land surveys can also help to provide bases for tax collection.*** Recent and high-resolution images taken with drones are a good option for the city. They provide the concerned populations, administrative services and municipalities with an overall view that they can relate to and with images that can be regularly updated. Nevertheless, the images are not proof of rights and must be considered as complementary tools for investigative work. Combined with systematic surveys, images can be used to take stock of occupancies, buildings and to update the parcel map. They facilitate the assessment of land occupancy that can also be upgraded by the more effective collection of information necessary for land taxation (*see Appendix 3, 1.1. The Zanzibar experience: collecting information for urban development and tax purposes*).

***Survey of land and buildings in the 5<sup>th</sup> city district of the CUA***

The project initiated by the CUA with the support of the GIZ in the 5<sup>th</sup> city district aims at increasing the financial autonomy of the municipality thanks to better information about the building properties and an upgrading of the database for Property Tax on Building Property (IFPB). In fact, the estimate of 50,000 buildings not inscribed in the taxpayer registry and not subject to the IFPB makes it possible to identify a tax reservoir that could significantly increase the municipality’s resources. Property taxes contribute up to 35% of the municipality’s tax resources. However, at this time, there is no system to verify and follow up on buildings, no updated database and no sanctions for fraud.

The CUA implemented a survey based on the declaration of property in this district. The information is recorded in a “Permanent Register of Land and Building Property” (C3P) completed by the registrant and returned to municipal agents. This declaration thus makes it possible to attribute a tax address for the purpose of taxation. The CUA also upgraded the database management and the calculation of the IFPB using a GIS that encompasses the declared information, the building map based on an aerial image, and the amount of taxes to be paid. This tool made it possible to (i) organize the distribution of the C3P registers and the follow-up of declarations; (ii) identify properties; and (iii) facilitate the calculation of the IFPB. It also made it possible to determine the sum due by each taxpayer and to have an overview of the IFPB that can be collected in a year. In 2019, 66% of the C3P registers were completed and returned to the CUA, whereas the remaining 34% represented 14,397 buildings that had not yet been declared and taxed. The city is currently undertaking the collection of these taxes.

This tool opens up interesting prospects for improving tax collection. It was not designed to improve land tenure security as well. The inhabitants of this district are therefore more exposed to taxes, but their rights to land are not necessarily strengthened.

## Step 2: To formalize and secure occupancy through the use of innovative tools

*“Pour la majorité des malgaches, y compris ceux qui vivent en ville, leur unique richesse est constituée de leur possession foncière. Les ménages sont pauvres, voire très pauvres, mais sont le plus souvent propriétaires des murs de leurs maisons. Leurs conditions de logement restent cependant précaires, proches de la survie, et l’instabilité juridique associée à leurs droits de propriété ne leur permet pas de capitaliser sur leur actif immobilier. En effet, leurs droits de propriété sont précaires, reconnus uniquement par les « petits papiers » délivrés par les chefs de*

*quartiers, susceptibles d'être remis en cause à tout moment (...). Cette incertitude juridique autour des droits de propriété fonciers doit être brisée. D'abord par un rapprochement des procédures semi-officielles et officielles ; ensuite par une simplification des ces dernières. »*

*L'urbanisation ou le nouveau défi malgache. World Bank, 2011.*

***Getting past the notion of illegality of occupancies to secure them at a massive scale.*** Land security prevents forced evictions and guarantees occupancy, allowing the improvement of the habitat and living conditions and the possibility of resettlement. The recognition of occupancy, regardless of whether or not it complies with existing standards, is a major issue in the fight against poverty. The updating of land information will reveal numerous occupancies and practices outside of the legal framework, but it is easier to adapt legal principles than to penalize a large part of the urban population.

***A choice has to be made: to continue to manage urban land with the land title by improving it, or to find an alternative to the land title alone?*** Even if the necessity of an exhaustive assessment of existing rights is unquestionable, the means necessary to regularize rights raise land policy issues. The advantages of the land title, which guarantees property rights in absolute terms, are known, but its limits have also been recognized: (i) the complexity of the procedure generates costs and lengthy delays that make the title relatively inaccessible; (ii) the exclusive nature of the title disqualifies the non-legal forms of rights and makes them more vulnerable to market pressures; (iii) few people take the time to officially register sales and inheritances due to the costly and complex procedures involved, whereas the reestablishment of titled property rights is complex and not within the means of the majority of the people concerned; (iv) the registration procedure is highly centralized and the concerned administrations are not equipped to deal with the land title demand; and (v) fraudulent practices have developed, both on the user side and on that of the administrative services since the title strongly increases the value of the land on the market (two to four times, according to sources). Yet, the land title remains the preferred option of the administrations responsible for land tenure. No alternative has been considered to officialize property in an urban context because of a principle established by the current legal framework: the land title is final<sup>50</sup> and no other land document can substantiate a property right on a previously registered piece of land. This highly reassuring provision nevertheless raises problems when the links between the current occupants and the person or people who have a land title cannot be established, when land documentation is unusable because it has been lost or damaged, and when the boundaries have disappeared and no longer indicate property limits. In this context, the possibility of an alternative to the land title alone seems pertinent, and several options can be examined.

***If the policy choice does not provide for land security tools in addition to the land title, coordinated State-owned land operations and/or acquisitive prescription are to be considered, but neither allow for large-scale actions***

- ***Option 1: Securing land via the land title.*** This means proceeding either by a simplified cadastral operation, or by a measure aimed at extinguishing a property right for the purpose of reallocation. Both procedures remain within the context of the issuing of a land title. They mobilize substantial human and financial resources within the administration and could only be implemented in a limited way in the past, often via international financing. Moreover, assessments of the most recent cadastral operations have shown mixed results.

<sup>50</sup> Law No. 2005-019 of October 17, 2005 establishing the principles governing land status. Article 29: “*The land title established by a registration procedure (...) is definitive and unassailable*”. Law No. 2017-046 establishing the legal framework for registration and titled land property. Article 7: “*The admission of buildings to the land registration regime is definitive*”.

**Regularization by land title remains feasible but it is complex and limited in the poorer areas.** The NGO ENDA, within the framework of the project, Decent Housing for Everyone (LDT), supports the rehabilitation of housing provided that the beneficiaries can prove their property right<sup>51</sup> on the land where the dwelling is located. ENDA assists applicants to clarify their rights by helping them to retrace the history of the transactions and repeat the land registration process, as well as with various other procedures. From 2017 to 2019, ENDA drew up an initial list of 200 families who could benefit from this project, chosen from among 1200 candidates. Unfortunately, for the time being, their action has been limited to 58 families who may eventually be able to undertake land regularization procedures.

**If a policy choice is made to adopt new land tenure security tools in addition to the land title, two new options are to be considered:** *The first challenge is to strengthen, standardize and oversee the current land tenure security practices of households and the local authorities. The “small papers” used today make it possible to minimally officialize and secure transactions: purchase/sale; partition; donation; temporary transfer. They require the intervention of the owners (transferor and new buyer), call on witnesses, and are often approved by the local authorities (fokontany, municipality, district). It would be advisable to assist these local authorities to systematically and carefully document information and to make it public. This reinforcement at the local level would make it possible to avoid certain fraudulent practices. It would not require households to change their current practices but only to consolidate them and would therefore not impose any significant additional costs.*

- **Option 2: Secure rights with a land certificate.** *Should and can the certification be adapted to the land tenure context of urban and peri-urban areas?* To improve urban land tenure, the land certificate issued by the communes, which also guarantees a right of ownership in line with simpler and cheaper procedures (see Annex 1), could be a useful complement to the land title in peri-urban areas. It is proposed to use the certification procedure for owners of formerly titled land, whose title cannot be updated due to the cost and/or cumbersome procedures. This proposal can also be justified for land that has been registered for several decades without ever having been registered. The proposed solution through certification has met with different constraints as registration through land titling is final and the land title cannot be replaced by another document

**Land certification in cities faces different constraints:**

- Certification in urban areas requires a rethinking of the definitive nature of registration, to which the land administration is not favorable;
- Experiences with municipal land offices in urban areas are rare and limited;<sup>52</sup>
- The exact boundary/limit between registered and unregistered parcels is not always clear in the PLOFs, which are still not updated;
- The Communes lack the capacity, equipment and budget to carry out certification operations;
- The State’s land services lack the capacity, equipment and budget to effectively carry out certification operations;

<sup>51</sup> They are either in possession of a land title or, at the least, of administrative documents that can retrace the different land transactions substantiating their property rights – even if the latter are not updated.

<sup>52</sup> One of the rare experiences with municipal land offices in the Greater Antananarivo area is that of the municipality of Ivato, equipped with a land office since 2012 but whose intervention capacity is limited. Lands belonging to the untitled private property domain are relatively few and the potential of land to be certified remains limited. Since 2012, 860 land certificates have been issued for untitled private property and 100 demands are pending because the beneficiaries have not yet paid the fees. The lack of resources of the concerned households is a real problem. Moreover, they often think that their rights are secured once they have initiated the procedures. A land certificate can be transformed into a land title, but this has only been the case for 50 certificates.

- Finally, a regulatory framework for the urban land offices has to be implemented so that their operation, designed for a rural context, is consistent with urban land use requirements.<sup>53</sup>

The elimination of these constraints will require strong strategic measures in favor of the decentralization of urban land management subsequent to a national dialogue and the agreement of all of the stockholders involved.

- **Option 3: Secure rights by the official recognition of occupancy rights.** *Between inaccessible registration and certification unsuited to the urban land context, can an "Occupancy Register" be envisaged as an intermediate solution?* The aim is to recognize the occupancy rights, inventoried during the survey, which are on the registered land layer but difficult or impossible to update. The survey makes it possible (i) to confirm titled properties whose current owner is actually the one registered on the title; and (ii) to officially record on an ad hoc register the occupations of titled land when they do not correspond with the information recorded on the land register. The registration of such occupations could involve (i) the registration free of charge of the descendant(s) occupying land registered in the name of a relative; (ii) the parcelling out of formerly registered land with no known owner; (iii) the taking into account of transactions on the informal land market. In accordance with current practice, these occupancy rights may be tradable and transferable, with the register of occupations recording the various transactions at a lower cost and according to a local and simplified procedure.

***The registration of occupancies is a major innovation, to be tested beforehand and placed within a legal framework.*** This proposal could be discussed and developed with all of the stakeholders, and tested, in practice, on several different sites. The OATF and the National Land Fund (FNF) could be in charge of the piloting, assessment and organization of the discussion. The legal and regulatory provisions necessary to design a legal framework and the detail of the procedures have not yet been determined. The question of the public service(s) responsible for maintaining this Occupancy Registry remains open. Furthermore, the legal equity between men and women in accessing urban land will necessarily have to be reflected in the formalization of rights. Steps will still have to be taken to ensure that the formalization process is not carried out to the detriment of women.

*The case of plot cards in Kinshasa (see Appendix 3, 2.1; the plot card for land security in urban areas, municipality of Kalamu, Kinshasa) and of the flexible land tenure system in Windhoek (see Appendix 3, 2.2.) present a similar experience that are now part of the daily practices of these capitals. The experience of land regularization in Honduras (see Appendix 3, 3.5.) or in (Rwanda through the Land Tenure Regularization Program (see Appendix 3, 3.1.) is often cited as an example: between 2007 and 2014, Rwanda succeeded in registering almost 90% of the parcels existing at the national level. It is the only African country to have successfully carried out such a project. There is also much to be learned from this experience for countries that are considering a massive regularization of land rights: its success resides in its long and methodical preparation at the legal and institutional level for three years, from 2004 to 2007, and in the search for financing that allowed it to carry out the program without interruption. A massive regularization response of the type that took place in Rwanda nevertheless has its problems (for example, its updating). Other responses are possible. Their implementation is generally limited to certain specific areas and securing is only a temporary response. This is the case of the "moratorium on eviction" in the slums of Madhya Pradesh in India. (see Appendix 3, 2.2.).*

***Actions to secure land tenure are to be taken in relation to zoning determined by urban planning instruments.*** Regardless of the option chosen, the recognition and regularization of occupancies should be

<sup>53</sup> An adaptation of land certification in the urban context requires adjustments to take account of zoning, allotments, land reserves, titled land that is illegally occupied and titled land in the name of the municipality. The notion of "footprint", the relevance of the Local Recognition Commissions, links to the tax databases and legal tools available to the municipality for the acquisition of land and expropriation are all points that remain to be clarified.

avoided in high-risk areas (floods, landslides, marshlands and drainage areas, etc.). It is also necessary to provide for resettlements in zones that are not threatened by natural risks. Urban development plans establish a general zoning that can guide regularization operations in order not to officialize rights in unhealthy, high-risk areas. The LUH (law on urban development and habitat) requires that for each urban development plan, a land survey be carried out that takes stock of the situation of the area to be developed. By identifying specific zones, urban planning regulations make it possible to define the different possible uses depending on the type of land and urban development provisions.

## Should an agency responsible for the coordination and implementation of urban land operations be created?

***Coordination between the different administrations responsible for urban and land development is essential*** for urban planning based on knowledge of land status. Knowledge about land tenure is a prerequisite to urban development. Renewal operations and investments in transportation, sanitation and networks should all be a function of the land base. On the other hand, it is not worth securing land in areas unfit for housing. Coordination between institutions is necessary to develop actions that link land security to risk management and urban planning. An urban development agency could facilitate the coordination.

***The implementation of the above recommendations can justify the creation of a dedicated agency*** for the following reasons:

- It requires the establishment of new activities and approaches for the recognition and the regularization of rights, bringing together local actors, elected officials, neighborhood leaders, NGOs working in the urban sector, etc.
- It requires a functional relationship between the land services and the urban or peri-urban municipalities;
- It generates additional work, a large part of which must be outsourced to private service providers, requiring an operational capacity for the management of contracts as well as financial autonomy.

In addition, in compliance with the indications in the Land Policy Letter, a land agency could be responsible for this type of operation, at the interface between the land services and the urban municipalities.

*Land security can be facilitated by the creation of a land agency operating at the local or national level. This is the case of the land agency of the wilaya of Boumerdès in Algeria (see Appendix 3, 4.1.1.). It is also the case of the rural land agency of Côte d'Ivoire, an institutional innovation for massively securing land that is not, however, operative in urban areas (see Appendix 3, 4.2).*

***The Urban Development Agency of Greater Antananarivo (AUGA) could exercise a land jurisdiction*** to implement the above proposals. This agency, whose creation was supported by the AFD, was recently established by the Ministry of Land Use Planning and the municipalities making up the agglomeration. It was created in response, among other things, to the needs of local decision-makers to know more about land tenure, its management and its implications in terms of land use and local taxation. One of its main functions is “*the production of knowledge, particularly in relation to land tenure, at the service of the development of the PLOFs and of the improvement of tax measures*”, in connection with the land services. Consequently, AUGA can, with the support of the land services, make an assessment of the rights, occupancies and existing footprints mentioned above (Proposal 1) to update land information, taking account of the actual occupancies and urban plot network. It can also contribute, in conjunction with the land services, to the development of the urban PLOFs in the municipalities where it has jurisdiction and could act as a technical relay between the land services and the municipalities that have no land capacities. The possibility that it could either undertake or contribute to the regularization of occupancies by keeping an ad hoc register (Proposal 2) could also be considered. The question of the Land Reserve Management

Agency (AGEREF) still remains open. This agency, created by decree in 1999, was supposed to manage “land reserves intended for the development of a national policy in terms of land use planning as well as the promotion of the economic and social sectors for the facilitation of access to property, especially for the poorest households”.<sup>54</sup> Apparently, it was never operational.

## Summary and sequence of proposals for a dialogue for efficient urban land administration and management

***In summary, the proposals for efficient urban land administration and management suggest:***

1. update land information by carrying out urban PLOFs to inventory and map properties and occupations as they exist, based on a recent image;
2. regularize occupations according to three possible options, detailed in the table below; and
3. reflect on the value of entrusting responsibility for reconnaissance and regularization operations to a dedicated institution.

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<sup>54</sup> Decree No. 99-698 of August 26, 1999.

*A national debate on urban land tenure should facilitate choices between three options*, summarized in the following table:

<b>Options and General Principles</b>	<b>Key Activities</b>	<b>Feasibility and Pre-Requisites</b>	<b>Estimate of cost and time to implement</b>	<b>Advantages</b>	<b>Risks</b>	<b>Responsible institutions</b>
<p><b>Option 1: Secure rights by land title.</b> Updating and generalization of land titles issued by the administration</p>	<ul style="list-style-type: none"> <li>– Updating of owners according to acquisitive prescription procedures</li> <li>– Fragmentation of old land titles by State Transactions</li> </ul>	<p><b>Low</b></p> <p>Significant mobilization of human and financial resources</p>	<p>\$54 / parcel 6 months to 1 year<sup>55</sup></p>	<p>The legal framework does not need to be changed</p>	<ul style="list-style-type: none"> <li>– Complexity of procedures for tracing the succession of transactions</li> <li>– Complexity of registration and prescription procedures</li> <li>– The overload of the land administration does not allow for large-scale plot renovation operations.</li> </ul>	<ul style="list-style-type: none"> <li>– State Land Administration Department</li> </ul>
<p><b>Option 2: Secure rights by land certificate.</b> Land regularization requires an adapted certification procedure managed by the communes.</p>	<ul style="list-style-type: none"> <li>– Equipping municipalities with Land Offices.</li> <li>– Regularization of occupations through a certification procedure adapted to urban constraints.</li> <li>– Training of commune staff.</li> </ul>	<p><b>Low</b></p> <p>Legal principle of final registration to be amended Political will to strengthen decentralization</p>	<p>\$11 / parcel<sup>56</sup></p>	<ul style="list-style-type: none"> <li>– Simplified regularization of occupancy through an existing regulatory framework.</li> <li>– Improvement of land control by the municipalities in charge of</li> </ul>	<ul style="list-style-type: none"> <li>– Difficult to revise the legal framework <sup>57</sup></li> <li>– Weak collaboration and exchange of information between municipalities and land services</li> <li>– Commune capacities to be strengthened</li> </ul>	<ul style="list-style-type: none"> <li>– Urban and peri-urban communities</li> <li>– State Land Administration Department</li> </ul>

<sup>55</sup> Data drawn by the OATF from the Anjzorobe Cadastre update operation. There is no recent land titling operation in urban areas. The Anjzorobe experience is one of the most recent land operation (2016) and it is similar to titling operation that could be carried out in urban areas.

<sup>56</sup> Unit cost from CASEF project, May 2020.

<sup>57</sup> Revision of the principle of permanent registration through land titling and incorporation of non-titled surveyed parcels into the status of Non Titled Private Property.

				property taxation		
<b>Option 3: Secure rights by the official recognition of occupancy rights</b> The occupations inventoried by survey are recorded in an ad hoc register.	<ul style="list-style-type: none"> <li>- Use of the comprehensive inventory of occupancy rights conducted during the PLOF</li> <li>- Writing them in the Occupancy Registry</li> </ul>	<b>Medium</b>  Pilot required and policy choice for recognition of occupations	Less than \$10 / parcel	<ul style="list-style-type: none"> <li>- Relatively simple and accessible regulation</li> <li>- Mobilization of fewer human and financial resources</li> </ul>	<ul style="list-style-type: none"> <li>- Legal framework for the regularization and ex post facto management of occupancy rights to be developed</li> <li>- Need for prior experimentation</li> </ul>	<ul style="list-style-type: none"> <li>- State Land Administration Department</li> <li>- Communes?</li> <li>- Dedicated Land Agency?</li> </ul>

**Option 3 seems most realistic.** Securing land rights by updating and splitting up existing land titles seems prohibitive due to its cost and complexity. The experiment of free transfer fees to encourage the regularization of private property in 2016 did not produced the expected results. Securing land tenure through the certificate remains a possible option, but it requires first of all a reconsideration of the finality of the registration, and, therefore, it is dependent on a political will to pursue the decentralization of land tenure competences. The recognition of occupancy rights is a potential solution, as it promises to be simpler, less costly and can be tried out without waiting for the adoption of a specific regulatory framework. It is just a matter of establishing occupation on formerly registered land and giving the occupant a document certifying not a right of ownership but a simple occupation. This occupancy right could be considered as transferable. This innovation requires operational details to be worked out in a specific pilot operation. Particular attention will be paid to the consideration of rights inscribed in the name of women or couples.

*These proposals can be established in the following order:*

**In the short term, within 6 months: an urban land tenure improvement strategy**

- **holding of a National Forum on Urban Land Issues**, enabling (i) a presentation and discussion on the diagnosis of the situation; (ii) agreement on a strategic roadmap for improving urban land governance. The present study could be presented on this occasion to complement the work of the OATF and NGOs working on urban land tenure;
- **creation of a joint working group** on urban land governance responsible for pilot operations and led by the MATP / Fonds National Foncier;
- **design of pilot operations** with different partners and search for funding;

**In the medium term, from 6 to 18 months: a choice of urban land policy based on experience**

- **Launch of pilot operations** for occupation inventories and plot renovation;
- **Evaluation of pilot operations and feedback** of experiences to urban land actors;
- **Proposals for legal and institutional adjustments** to choose one of the three options to facilitate the regularization of land rights in urban areas.

**In the longer term, beyond 18 months: the preparation of a National Urban Land Improvement Program**

- On the basis of the pilot operations and regulatory adjustments planned for the medium term, this program could envisage interventions in three areas: (i) strengthening the institutions in charge of urban land tenure (land services, municipalities, possibly agencies); (ii) campaigns to regularize land rights in cities; (iii) training of urban land tenure actors.
- **Launching of campaigns for the recognition of occupations and the regularization of land rights in urban areas** in Antananarivo and other Malagasy cities.

## General Strategies for Urban Land Generation

The availability of up-to-date land information and the recognition of occupancy rights are necessary solutions, but they are not sufficient in themselves. It is essential to produce land and facilitate the installation of equipment. This generation of land is possible both through the development of urban districts (especially slums) and in the management of urban extensions.

### Strategy 1: Developing a method for upgrading and securing land tenure in slums

**Assess the available land reserves prior to any upgrading.** Prior to any upgrading proposal, the authorities concerned must be able to assess their room for maneuver and to know precisely, throughout the city: (i) the surface area and location of public land reserves (mainly land registered in the name of the State or municipalities); (ii) their current status and use; (iii) the beneficiaries of a possible use; (vi) their actual use and occupancy. This information shall be accurately mapped, and shall mention the areas where the information has been lost, destroyed or is unusable.

**Upgrading to free up land for housing and basic infrastructure.** In the case of slums, the aim is to reconfigure slums in order to tie them to the urban fabric and improve the living environment of the population. Two operating methods are possible: involuntary resettlement, which can be accompanied by re-housing measures, and maintenance in situ with simple rehabilitation, known as in situ rehabilitation or complete restructuring.

***Involuntary resettlement remains socially and economically complex to implement.*** Following expropriation, the State or the community can legally acquire land for the installation of infrastructure and equipment. Expropriation is pronounced only for public utility and involves several administrations. Theoretically, it takes at least one year to complete all the steps from the Declaration of Public Utility to the payment of compensation. However, administrative processing takes longer because the expropriated persons' files must be up to date (transfers, powers of attorney, etc.) in order to be eligible for compensation. An important budget line must also be dedicated to the operation. For example, a \$20 million investment by the PRODUIR project for the rehabilitation of 12 km of canal in Antananarivo requires the displacement of 420 households compensated to the tune of \$6 million, i.e. one third of the investment cost. Involuntary resettlement can also lead to strong social tensions between the State and the expropriated; it can only be considered as a default solution in the case of one-off operations.<sup>58</sup>

***In situ upgrading operations allow the production of land, which, although limited, makes it possible to provide a minimum of urban services in slums.*** In situ upgrading appears to be a simplified solution because of its mode of intervention, based on the provision of essential urban services at a lower social and financial cost than eviction. If it is necessary to acquire some land for new infrastructure, the beneficiary community can ask the owner of a piece of land that is still free to accommodate a school, a water hydrant or a sanitary block. In the case of the Opening up and Sanitation of Priority Neighborhoods in the Antananarivo agglomeration (DAQP) project supported by AFD, the Fokontany identify the infrastructure needs and the land for their installation. They are in charge of clarifying the land situation and the project only invests if there is a donation from the owners. Since its launch, the project has completed 102 units of standpipes, 21 sanitary blocks and 32 washhouses. However, this method of intervention is limited because the available land is scarce and rights are sometimes confused; nearly 20% of the sites selected for these facilities are questioned due to a lack of clarity on land ownership. Thus, the impacts of in situ upgrading operations remain limited and infrequent. Complete upgrading seems more appropriate for a real improvement of precarious neighborhoods.

***Proceed with complete upgrading by land consolidation or land pooling.*** This type of intervention helps to keep the inhabitants in place, thus perpetuating social and economic ties, but requires a land development operation, either by regrouping or pooling. Consolidation is a land development operation that consists of grouping together plots of land belonging to one or more owners whose occupation has been recognized with a view to redistributing the land base after the sites for facilities of collective interest and infrastructure rights-of-way have been freed up. The aim of the operation is to enable each new property to be constructible in accordance with the urban plan. Land pooling is a stage whereby owners or occupants temporarily pool their land resources in a given area for the purpose of developing and equipping it. At the end of the operation, they will individually regain possession of their property, in the same proportion, but with a smaller surface area, after applying a reduction coefficient. The land returned to the owner will not necessarily be located within the same boundaries, as the operation is usually accompanied by land

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<sup>58</sup> Involuntary resettlement can also lead to strong social tensions between the State and the expropriated; it can only be considered as an extreme solution in the case of one-off operations. The case of Rio de Janeiro sheds light on the problems relating to eviction. Indeed, more than 7,000 families are affected by forced displacement procedures as part of urban mobility planning, the revitalization of certain districts, the promotion of tourism, the installation of sports facilities or because of their location in so-called risk areas. These forced evictions, although accompanied by compensation, do not enable the affected populations to regain their living conditions. Sometimes, there have been large street protests which have forced the administrations to use excessive force to reprimand them. In Haiti, after the devastating 2010 earthquake, local authorities and landowners, with the support of armed groups, carried out forced evictions of vulnerable people in camps for fear that their private and public land would become permanent locations for these populations. Although part of an urban planning logic, some eviction processes have not been completed because of the complexity of the projects, particularly the necessary displacement of populations. Such is the case of the project for a new 650-hectare Thu Thiem urban centre in Ho Chi Minh City, which began in the 2000s and for which the process of compensation and eviction is still underway.

consolidation. The presumed owners will be able to benefit from a legal regularization (title, occupancy permit, certificate). Part of the land not returned will be used for infrastructure development. Another part may be placed on the market to cover the costs of development, equipment and restructuring. Part of the land may be used for social housing projects. Different options are possible for a complete restructuring. The recent recommendations of the NGO Enda for a Social and Solidarity Land Organization deserve to be examined.<sup>59</sup> The examples of land pooling in Thimphu, Bhutan and Huambo, Angola (*Annex 3, 5.4.*) may shed light on the Malagasy case.

***Beyond the intervention of the State, international experiences have shown the possibility of improving access to land via a community-based organization.*** Several international experiences have revealed practices that may be of interest for Madagascar and, in particular, land sharing in Bangkok, Thailand (*Appendix 3, 5.1.*), and Community Land Trusts (*Appendix 3, 5.3.*):

- *Land sharing* implies an agreement between the owner of an illegally occupied property and those who occupy it. The aim for the owner is to avoid a dispute whose outcome is highly uncertain and, for the occupants, to be resettled on the site and not to be displaced against their will. In order to avoid a long expulsion procedure, the owner accepts that the occupants regroup themselves on a section of the land that is then sold to them at a preferential price.
- *Community Land Trusts* are non-profit community organizations, created to ensure land management. They disassociate land property, which is communal, from that of housing, which is individual, but whose access cost is therefore more affordable. Allocation of a parcel takes place via a renewable lease; housing can either be relinquished through inheritance or sold by its owner, but at a price that is lower than that of the market because it does not include that of the land, which remains the common property of the trust. This practice is similar to the one recommended by ENDA for a Social and Solidarity Land Agency (ENDA, 2019).

***Implementing renewal operations within the framework of a Joint Development Zone (ZAC).*** The Joint Development Zone (ZAC) is an urban development instrument that links land operations to urban development operations. In accordance with the LUH, the ZAC is a zone where a municipality or a public institution develops built or unbuilt land to make serviced parcels available and to undertake renovation and restructuring actions. ZACs have a development plan and an investment program with a budget; it is possible to build within a ZAC without public acquisition of the entire zone. Complete renewal operations of poor areas can take place within the ZAC framework, previously identified in an urban development plan. Insofar as Madagascar has no experience with this type of urban operation, it has to be tested beforehand via pilot operations. The PRODUIR project provides for a pilot slum restructuring operation via a ZAC. This tool, still at the design stage, will be a first experience from which we will be able to draw some lessons.

## Implementing a full-scale urban land management laboratory within the PRODUIR framework

The for Integrated Urban Development and Resilience Project of Greater Antananarivo (PRODUIR) has the resources to develop pilot restructuring operations. Its objective is to improve urban living conditions and flood resilience in certain underprivileged neighborhoods of Greater Antananarivo and improve the capacity of actors to respond to an emergency situation. It will benefit the 650,000 people living in the

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<sup>59</sup> "This organization could acquire land in complex areas in order to regularize the land situation and develop the micro-district in a way that meets the needs of the inhabitants. Consultation with the inhabitants and the authorities will be essential to analyze the opportunity to acquire land, and to define the terms and conditions for the provision or rental of land/housing" (ENDA, 2019).

intervention zone of the 1st and 4th districts of the AUC and the communes of Anosizato Andrefana, Bemasoandro and Andranonahoatra, which have slums and precarious areas in the heart of the urban area. One component of the project includes investments in response to the risk of flooding. This involves rehabilitation work on the retention basins and canal C3, the Ikopa and Sisaony dikes. To free up the land needed for the work, the MATP has launched an expropriation procedure for public utility purposes along the 12 km of canal C3 and on a 4 ha site in Iarinarivo to confine the sludge resulting from the dredging of the canal. 800 plots have been identified to date. In Iarinarivo, the project is facing social protests causing significant delays. On canal C3, given the vulnerability of the impacted households and the precariousness of their occupation, the project foresees a long process of land regularization in order to be able to proceed with compensation. PRODUIR foresees a Detailed Urban Development Plan (PUDé) that will define the various intervention modalities. The aim will be to: (i) improve mobility and accessibility; (ii) improve access to basic water and sanitation services and public infrastructure; and (iii) strengthen resilience (risk and disaster management, evacuation routes and spaces, etc.).

The project is thus considering a total urban renewal operation in favor of the resettlement *in situ* of people affected by the project. A PUDé will determine the main weak areas to be restructured. Depending on the degree of complexity of the land tenure situation and a level of restructuring adapted to each zone, the project will be able to implement different land tenure solutions within the framework of pilot operations.

This will involve:

- i. Updating land tenure information by the PLOF in a participatory manner and with the use of aerial images taken by a drone, systematic surveys and surveys of the actual plot network;
- ii. Conducting a public information campaign in the areas in question to explain the benefits of a renewal operation;
- iii. Setting up a forum for dialogue between the community, landowners and the public authorities under the leadership of the municipality;
- iv. Establishing the Joint Development Zone (ZAC);
- v. Inclusively defining development operations and adjusting urban planning standards to the social characteristics of the areas concerned;
- vi. Regularizing occupancies and property rights;
- vii. Establishing an authority in charge of restructuring;
- viii. Capitalizing on the experience for the purpose of drawing up proposals for legal and regulatory adjustments.

## Strategy 2: To increase and diversify the land supply in order to improve its affordability

In Antananarivo, the state is struggling to increase and diversify the land supply. Few options are likely to meet the demand for land for low-income households, and accompanying the inevitable urban sprawl remains a possible solution for producing urban land.

***Systematize urban development plans to determine the standards adjusted to the context and diversify the land supply.*** In an agglomeration where the large majority of the inhabitants live under the threshold of poverty, it is not advisable to impose an ineffective regulatory framework. Procedures and urban development and building standards must be adapted to the needs and the capacities of the majority of the households, and not the contrary. For example, the LUH imposes a minimum area of 150 m<sup>2</sup> for building parcels, whereas 30% of the dwellings in the CUA are built on smaller-size parcels. In this case, derogations can be granted to prevent housing and the concerned areas from being considered as illegal and thus deprived of regular access to facilities. Urban development plans offer the possibility of adopting more

realistic standards. The adjustment of standards makes it possible to take account of the realities on the ground and to identify new accessible and formal land offers. The Brazil's experience on Special Zones of Social Interest (ZEIS) could be inspiring<sup>60</sup>. The inclusive PUDi and PUDé must therefore make it possible to adopt regulations adapted to the level of resources of the inhabitants of the different areas, but they do not cover the whole city. However, they do not cover the whole city. In the absence of urban development plan, the law alone remains.

***Create land reserves for the development of trunk infrastructure and promote a land supply adapted to the demand of low-income households.*** Their creation can be included in urban development plans. The observation that these plans are made obsolete by the rate of urbanization and the unplanned expansion of the habitat does not invalidate them. The public authorities can invoke them at the time of operations based on other tools (expropriation, preemption, restructuring, joint planning, etc.) and provide them with a legal basis. Land reserves can also contribute to limiting speculation. The land supply must be adapted to the demand of low-income households if it is to have any chance of meeting a massive demand with few solutions. The government and the municipalities must promote the offer of land whose area is less than the current standard of 150 m<sup>2</sup>, summarily fitted and equipped, but that will eventually be improved by its beneficiaries, mainly through self-improvements. This is the focus of trunk infrastructure (for example, the *Ethiopian Urban Expansion Initiative – Appendix 3, 5.2*) that aims at improving the land supply for households that do not have access to the official private market.

***Develop partnerships with private landowners in areas of urban sprawl.*** In areas where urban growth can be controlled, land use planning to develop infrastructure is an option for managing city expansion. Guided Land Development, a land management technique, guides the conversion of private land parcels on the edge of the urban centre from rural to urban use through infrastructure systems. It is undertaken in partnership with landowners, who can participate by donating their land to accommodate future urban facilities. In this way, an infrastructure development plan is prepared that follows the boundaries of existing parcels of land. This approach remains less costly than the outright acquisition of land, and landowners contribute to the investment costs of the facilities through certain taxes linked to the increased value of their land resulting from servicing and/or subdivision. However, the land administration, service providers and owners must act in a coordinated manner and ensure the equipment of the area. In addition, regulatory instruments must be implemented for effective planning.

***The development of new cities creates new land supply and reduces pressure on urban centers.*** The project of the “new city of Tanamasoandro” is a pioneering example of the creation of a new city. This project anticipates the urban expansion of Antananarivo and raises the sensitive issue of the use of land that is still agricultural within the agglomeration. It is a 1,000 ha site that can accommodate 100,000 people, of which 200 ha are residential areas, 350 ha dedicated to economic and industrial development zones and the rest allocated to administrations and sports and cultural areas. Tanamasoandro, an autonomous city, will have its own drinking water supply system as well as its own waste management system. This project benefits from major political support and although it is declared to be of public utility, the procedures of expropriation that are linked to it have met with opposition, especially from a large number of owners to

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<sup>60</sup> From the 1980s, Brazilian cities have used the concept of Special Zones of Social Interest (ZEIS) to recognize the existence of informal settlements in zoning maps, increase tenure security and foster pro-poor urban development. ZEIS are areas where specific standards prevail for construction, parceling, land use and occupation. These standards are typically less constraining and more suited to local conditions to facilitate legalizing informal settlements and creating social housing. ZEIS can be defined both in informal settlements and in areas with unused or underused urban land and buildings. In the latter case, ZEIS ensure that any urban operation within the area include the construction of pro-poor housing, regardless of the prevailing land prices. Since 2001, ZEIS have been widely adopted in Brazil after federal law no. 10.257 (the City Statute) encouraged municipalities to recognize ZEIS in their Master Plan. As a result, thousands of informal settlements made their apparition on zoning maps as ZEIS, which contributed to a greater sense of tenure security, and provided new opportunities to formalize the land rights of their inhabitants.

be compensated, over an area of approximately 3,000 ha. The creation of new cities is one of the relevant solutions to ease the pressure of the demand for land in the center of Antananarivo and to develop a belt of peripheral secondary centers. Its social and political costs give reason to believe that it can only be a solution among others to urban development problems.

However, the new city of Tanamasoandro, although facing a challenge of connectivity will be able to take advantage of this proximity to ensure its development. In addition to the installation within the new city, the mobilization of private operators in this project could make it possible to recover the capital gains on land. Indeed, with nearly a third of the space dedicated to economic and industrial development, the development provided by the developer (or the State) provides investors with strong financial resources. The tax on land capital gains is instituted by law, but there is no mechanism in place to ensure its collection.<sup>61</sup>

**Developing "sites and services" programs in urban sprawl areas contributes to the diversification of land supply, especially for the poorest.** This is a gradual approach to the construction of housing estates (development of residential plots and public land for services) accelerating the availability of housing plots for the most vulnerable populations. Municipal infrastructure and services are phased in gradually, reducing initial development costs and allowing government agencies, municipalities and service providers to add more infrastructure and services as neighborhood needs increase. The housing construction phase is left to the beneficiaries themselves, who had to use their own resources, such as informal finance, family labor and various other forms of community participation to build their homes. Although this type of program is mainly aimed at meeting the needs of communities (land security, basic urban services, better living conditions), it requires strong political will and long-term national and local commitment. In addition, a housing and land tenure policy geared towards the poorest is needed. Usually this intervention is coupled with a program for restructuring precarious neighborhoods and the serviced areas for "sites and services" are placed in areas of urban expansion. The success of the Kenyan experience can inform the Malagasy authorities about the operational mode and the results obtained.<sup>62</sup>

### Strategy 3: Promote the low-income rental sector as a solution to the problem of high-risk occupancies

**Regulate the semi-formal real estate market.** The OATF (2020) advocates support of semi-formal markets for the purchase and sale of land to avoid conflicts and losses for the most vulnerable. This could take place through the availability of information about prices, the training of local competent authorities capable of advising the buyers and sellers, and the transparency of offers to avoid various scams at the expense of the most vulnerable. The fokontany will have a role to play in the clarification and the mediation of rental and real estate relationships.

**Regulate unofficial rentals to secure housing for poor households.** It appears that the rental sector, which already meets a large part of the housing demand, still has a strong development potential. According to a survey taken in 2019 of 903 inhabitants of Antananarivo (Stileex), 40% were renters and 58% declared themselves to be owners. Among the latter, 20% had one or several renters, and 75% considered the

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<sup>61</sup> The example of new cities in Egypt shows that the auctioning of (serviced) desert land for the construction of new cities (2,100 ha in 2017) has made it possible to collect 117 times the total urban property taxes collected in the country, i.e. 10% of national public administration revenues. The USD 3.12 billion collected was used to cover the cost of developing the site and building a road between the site and the Cairo ring road. Source : E. Peterson, 2010. *Exploiter la valeur du foncier pour financer les infrastructures urbaines*, PPIAFF World Bank Group).

<sup>62</sup> Sources: Leslie Kilmartin, Harjinder Singh, 1992. *Housing in the Third World: Analyses and Solutions*, Concept Publishing Company and UNHabitat, 1987. *Case study of sites and services schemes in Kenya. Lessons from Dandora and Thika*

possibility of having renters in the future. The rental of part of a dwelling is a widespread practice in the major cities in developing countries. Apart from illegal occupancies, it is the rental sector that meets - most often within an unofficial framework - the demand for housing of low-income households.

To improve the operation of the rental sector intended for low-income households, ENDA recommends the creation of a Social Rental Management Agency (OGS), for the purpose of securing rental contracts in poor areas. The OGS could offer support to owners for rental management (drawing up leases, follow-up of rent payment, property maintenance, management of eventual disputes, etc.) in exchange for payment. This would make it possible, on the one hand, for the owner to discharge himself of this activity, and on the other, for the renter to benefit from a professional rental management service. ENDA recommends providing lease and rental forms to the fokontany, where information meetings could take place for the purpose of informing owners and renters of their respective rights and of regulating rental practices in an unofficial sector with no real legal base (ENDA, 2019).

***Facilitate access to secured land for small investors who, in return, produce housing, part of which can be rented out, could be an appropriate response***, provided that (i) there is access to land, and (ii) that the standards of development, facilities and construction be relaxed. The role of the public authorities is to ensure access to basic urban services and facilities without directly intervening in the rental sector. In the case of Antananarivo, an option like this could be supported by the local authorities and the intermediation of an NGO.

*The experience of Morocco, where the promotion of the rental sector for low-revenue households led to convincing results, can be cited as an example. It shows that an option could be to encourage the association of a poor household (that received a resettlement property as a compensation, following the restructuring operation of a poor area) without the resources necessary to build a dwelling, with another more well-to-do household or a small investor who will take on the cost of construction of the dwelling. In return, he receives a third or a quarter of the dwelling – for example – one out of three or four floors – to live in, sell or rent. The beneficiary of the settlement parcel will thus have free access to housing, whereas the investor has access to land at a price lower than that of the market, allowing him to capitalize on his investment. This type of practice increases the rental offer and, in Casablanca (Appendix 3, 6.1), led to a real investment dynamic in the low-income rental sector. Rents remain low even if they are not always accessible to the most vulnerable households.*

## Land regularization in Nosy Be: what are the possibilities?

***Land regularization actions depend on a political impetus.*** Above all, land regularization in Nosy Be raises the question of the conversion of SIRAMA's titled lands in residential zones and of tourism investments. Beyond the strategies proper to the company and to the local populations, a political commitment is needed to determine a general strategy, either in favor of maintaining the sugar sector or in favor of urban expansion and tourism infrastructures. The current trend shows that the dynamics of urban growth will intensify and that SIRAMA will have difficulties maintaining its property. In this context, it would be better (i) to recognize the occupancies and to facilitate their legalization in exchange for acquisition costs to be determined, and (ii) to regulate the continuous transformation of agricultural lands into residential zones. A dialogue concerning these strategies needs to take place, but the context is strained. Several attempts at resolving the problem were made at the time of the different missions led by various governmental institutions, but have yet to succeed. Discussions with the SIRAMA have been called off for the time being at the request of the company. Moreover, the PIC project logically focuses on very specific real estate actions, whereas the conditions have not yet been met for large-scale land regularizations.

***The approach would primarily aim at the systematic recognition of occupancies and a regularization of occupancies on titled land.*** Like in Antananarivo, and if the political and social conditions are met, the proposed approach consists of a map based on the systematic survey of all of the occupancies on titled land,

and on the regularization of the occupancies on the basis of registration at the level of the fokontany. The question of the cost of acquiring occupancy rights on these titled lands still has to be negotiated. It would be necessary to extend the development of a PLOF to the scale of the island, while continuing to support the efforts of the PIC project.

***The PLOF as the basis for land taxation: the experience of the PIC in Nosy Be.*** In 2007, the PIC project provided support to the urban municipality of Nosy Be for the development of its Local Land Occupancy Plan (PLOF), for the purpose of (i) improving the identification of tax sources and land tax revenue through the mapping of titled land properties; (ii) assessing the feasibility of the establishment of a municipal land office; and (iii) making a catalogue of properties of interest available to private operators, particularly in the tourism sector, with information about their boundaries, areas and designated owners. The PLOF was established by topographers from Antananarivo and Nosy Be on the basis of land information from the land services and facilitated by the acquisition by the PIC of images and computer hardware. It first of all made it possible to observe the large cover of land titles on the island, leading to the decision to not finance the establishment of a municipal land office. Once the PLOF was installed at the municipality's tax service, collection agents were able to observe a gap between the actual occupancies and the information available concerning titled properties. These gaps existed both in relation to the property lines as well as to the identity of the owners. In addition, transactions are rarely registered at the level of the land service, whereas occupancies are documented by papers other than the land title. The use of the PLOF for tax purposes did not last long, and the municipality reverted back to the identification of taxpayers by door-to-door surveys and using a software program without a map database. A total of 21,000 properties were identified, leading to a projection of tax revenues of almost 1.5 billion MGA in 2015, land and building taxes combined. The taxes collected vary each year between 380 and 580 million MGA, only one third of the amount projected. The margins of progress, both for taxation as well as for land security, are considerable but continue to depend on a political commitment to improve them.

## Relaunch the dialogue on land policies

***The progress of urban land governance depends on a consensus concerning the new strategic options.*** The proposals laid out above require testing and discussion to arrive at informed decisions about complex questions and the necessity of changing the paradigm. The land reform process of 2005 was accompanied by a Steering and Follow-up Committee (COS) directed by the government and that brought together the different stakeholders in the land sector – the concerned administrations, local elected officials, civil society organizations, technical and financial partners and development projects - every six months. This committee, responsible for the follow-up of the land reform, guaranteed the continuation of the dialogue between the actors with sometimes differing opinions, and allowed the decision-makers to hear and take different options and solutions into account. Over time, this COS lost its regularity to the point of no longer meeting. The quality of the national dialogue on land issues suffered, and opportunities for exchanges in this sector became increasingly random and infrequent.

In the particular case of Nosy-Be, it seems difficult to undertake concrete actions to clarify land governance without the prerequisite of a debate to share a common vision of the problems and possible solutions among all the actors. A Regional Forum would allow the actors to better agree on the necessary interventions.

***The relaunch of a multi-actor discussion platform would facilitate the choice and the adoption of new land policy strategies.*** The reactivation of a land discussion platform would make it possible to relaunch a dialogue of utmost importance to the sector. Discussions could benefit from the results of land security experiments, which could be coordinated by the OATF. *The Senegalese multi-actor platform on voluntary*

*directives and land governance (see Appendix 3.7) presents a successful experiment with discussions on the land sector between all the concerned stakeholders (the government, elected officials, civil society, technical and financial partners).*

***The reactivation of the dialogue should be accompanied by pilot operations.*** These options have relatively complex legal and operational implications and concern land policy strategies that raise contradictory points of view. A national dialogue with the main actors in the urban land sector is not sufficient. It must be supplemented with experiences in the field and carried out within the framework of pilot operations in order to inform decision-makers of the effectiveness and feasibility of the different options. The pilot operations proposed could concern:

- i. Low-cost tools and methods to carry out the assessment of land occupations and the urban plot network, in pursuit of the work done by the NGO Habaka;
- ii. Regularizations by certification through the adaptation of decentralized land management methods and the creation of an experimental, systematic land certification zone in an urban environment;
- iii. Regularization on the basis of entries in an Occupancy Register, via a project and/or AUGA.

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# Appendices

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Annex 1: The different land statuses in the urban municipalities of Madagascar.

Annex 2: The different institutions involved in urban land management and urban planning and their role and responsibilities.

Annex 3: Some examples of international land management experiences.

Annex 4: Different means of land transfers and sales.

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Annex 6: The multi-purpose cadaster, a long-term perspective.

### Annex 1: The different land statuses in the urban municipalities of Madagascar.

Type of status	Characteristics
<b>State-owned land regime</b>	
Private Domain of the State (DPE) and the Municipalities	Governed by Law No. 2008-014 and its Implementing Decree No. 2009-233, the State's Private Domain includes (i) the untitled DPE consisting of unoccupied lands or those with no established ownership (vacant and ownerless land), and (ii) the DPE titled in the name of the State. An untitled DPE that has not yet been occupied or developed can be subject to registration. An untitled DPE that has been occupied over a long period is considered to be Untitled Private Property and can be regularized by land certification. The titled Private Domain can be assigned to a ministry for a specific use, and may be subject to a private sale, a rental or a lease. Long-term occupancy on the titled DPE cannot be subject to a prescription procedure but can be regularized upon decision of the State. The municipality can hold titled lands in its name.
Public Domain	Governed by Law No. 2008-013 and its Implementing Decree No. 2008-1141, the Public Domain encompasses the natural (lakes, coast, rivers), artificial (public infrastructures, roads, railways, etc.), and the regulatory (dependencies) public domain. The Public Domain is non-transferable, inalienable and imprescriptible. Nevertheless, a fixed-term concession or lease is authorized.
<b>Private property regime</b>	
Titled private property (PPT)	Order No. 60-146 governs titled private property. The land title is created by registration of the Private Domain of the State, carried out by government and land-mapping services. The land title can be individual or jointly owned. Titled land can be transferred by sale, inheritance, donation or exchange. Occupancy of over 20 years, peaceful and uncontested by a third party on titled land, can lead to a demand for acquisitive prescription.
Cadastered private property	Land said to be 'cadastered' is land that has been subject to a collective registration operation – instituted by the decree of August 25, 1929, and then replaced by Law No. 67-029 – but that has not been able to go beyond the intermediary phases (Collective Boundary Report or a decision of the Land Court). Even though a transformation into a land title is still required, cadastered land has progressively constituted a legal existence.
Untitled private property (PPNT)	Governed by Law No. 2006-031 and its Implementing Decree No. 2007-1109, the PPNT consists of land that was formerly part of the untitled DPE but that was subject to a "footprint" or a permanent, individual or collective occupancy. Land that belongs to the PPNT can be regularized by a land certification procedure in municipalities that have a Municipal Land Office. Without a land certificate, a PPNT remains a status with no documentation in the event of a transfer.
Certified private property	Governed by Law No. 2006-031, the land certificate can be subject to all operations involving a transfer of rights (sale, inheritance, lease, mortgage, etc.).
<b>Areas subject to specific status</b>	
Special economic zone. Emerging industrial zone.	Areas with specific status are awaiting the enactment of the law that governs them. Sectoral laws can be applied by default, or these zones can be incorporated into the DPE and titled in the name of the State.

**Annex 2. The different institutions involved in urban land management and urban planning and their role and responsibilities.**

Level	Responsibilities concerning the land	Urban planning	Conflict solving
<b>National</b>	Ministry of Land Use Planning: approves requests for State land of more than 1,000 m <sup>2</sup> in urban areas.	Ministry of Land Use Planning: issues special exemptions for building permits.	
<b>Regional</b>	<ul style="list-style-type: none"> <li>Regional Domain and Land-Mapping Service;</li> <li>Governor of the Regions: approval of requests for acquisition of State land (less than 1,000 m<sup>2</sup> in urban areas).</li> </ul>	Regional Land-Use Planning Service (SRAT): <ul style="list-style-type: none"> <li>Authorizes transactions, alignment, within the framework of transactions;</li> <li>Issues technical opinions for Building Permit requests;</li> <li>Drafts the PUDi and the PUDé.</li> </ul>	<b>Court of Appeal:</b> <ul style="list-style-type: none"> <li>Issues decisions on land disputes;</li> <li>Expropriation in the case of Declaration of Public Utility.</li> </ul> <b>Court of Cassation</b>
<b>District</b>	<ul style="list-style-type: none"> <li>State-owned land service: request for acquisition from the State domain</li> <li>Land-mapping service: reproduction of the plan, demarcation, parceling</li> <li>Conservation service: transfer of titled property, issuing of CSJ (Certificat de Situation Juridique)</li> <li>Land court: collective registration</li> <li>Tax center: recording of land transactions</li> </ul>	Local land-use planning delegate (DLAT), specific for Nosy Be (authorizes transactions, alignments, building permits, drafts the PUDi-PUDé) since the SRAT is based in Antsiranana.	<b>Court of First Instance:</b> <ul style="list-style-type: none"> <li>Issues decisions on disputes;</li> <li>Legal division of land below the authorized standards.</li> </ul>
<b>Municipal</b>	The mayor signs the land certificate if the municipality has a Land Office. The municipality identifies and collects Property Taxes on Developed Property (IFPB). The delegate of the administrative subdistrict (assigned to the district) certifies transactions.	<ul style="list-style-type: none"> <li>Directorate of Urban Planning: issues building permits on the basis of the technical opinion of the SRAT (urban municipality, category I);</li> <li>Municipal agent in urban municipalities in category 2.</li> </ul>	Arbitration decision in the case of investigation of a land certification.
<b>Fokontany</b>	The head of the fokontany participates in the State Land Recognition Commission when it concerns a land registration or the parceling of a titled property. The head of the fokontany participates in the Local Land Recognition Commission (CRL) in the case of a land certification.		Head of Fokontany: mediation of land disputes at the level of the fokontany (with or without Municipal Land Office). The CRL plays a mediation role in the case of conflicts linked to land certification.

## **Annex 3 - Some examples of international land management experiences.**

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### **INTERNATIONAL EXPERIENCES OF INTEREST TO IMPROVE URBAN LAND MANAGEMENT IN ANTANARIVO**

#### **1. IMPROVE KNOWLEDGE OF LAND AND THE FORMS OF LAND APPROPRIATION AND DEVELOPMENT**

##### **1.1. Zanzibar Mapping initiative**

A Zanzibar en Tanzanie, le manque d'informations géospatiales à jour entravait plusieurs activités clés, notamment l'urbanisme et la collecte de recettes fiscales, dans un contexte d'urbanisation galopante compte tenu d'une augmentation de 25 % de la population dans les 8 dernières années et de dépendance à l'égard du tourisme, qui contribue à 30 % du PIB de l'archipel. Les efforts déployés pour remédier au manque de données géospatiales ont abouti en 2016 au Zanzibar Mapping Initiative (ZMI), une initiative conjointe du gouvernement, d'universités et de partenaires de développement. Afin de permettre une cartographie rapide à partir d'images à très haute résolution, le ZMI a utilisé des drones pour cartographier les 2.500 km<sup>2</sup> de l'archipel de Zanzibar. Pour commencer le travail, l'archipel a été découpé en 421 zones de 9 km<sup>2</sup> chacune couvertes par un total de 3.000 vols de drones à ailes volantes eBee. Ces vols ont permis de capturer des images avec une résolution de 7 cm de différents terrains, y compris des zones urbaines, touristiques ou agro-industrielles. Ces images ont permis d'identifier 500.000 bâtiments, soit le double par rapport aux informations contenues dans la base de données fiscale précédente. et augmenté l'afflux d'informations sur la propriété. Les autorités locales de Zanzibar ont pu utiliser cette imagerie pour concevoir un Système d'Informations fiscales et mettre en œuvre des projets pilotes de taxation foncière. En outre, les données collectées par le ZMI ont été mises à disposition sur Open Street Map et Open Aerial Map, qui permettent d'autres innovations en matière d'urbanisme et d'atténuation des risques naturels.

##### **1.2. City Planning Labs and Tools for Urban Planning in Indonesia**

With a population of nearly 270 million people, Indonesia faces unique urbanization challenges. Already highly urbanized, Indonesia expects its urban population to 60% by 2025 and then again to 72% by 2050. That is an estimated 86 million people added to Indonesian cities between 2018 and 2050. Add to the demographic pressure, Indonesia's geography comprising approximately 18,000 islands, half of which are permanently inhabited, making it exceptionally vulnerable to rising sea levels driven by climate change. In fact, the capital city of Jakarta faces the dual challenge where the city itself is sinking at a rate greater than the rise of sea-level, resulting in about 40% of the city now being below sea-level.<sup>63</sup> This difficult situation has led the Government of Indonesia to announce the construction of a new capital in East Kalimantan, the Indonesian portion of Borneo island.<sup>64</sup>

Given the significant changes to the dynamics of Indonesian cities, data-driven and demand-responsive urban analytical tools are not only important, they are essential. To support Indonesian Government efforts to meet the growing challenges of urbanization, the City Planning Labs (CPL) initiative has developed several urban planning tools (UPTs), which harness spatial data and analytics to support evidence-based decision making at the city level. The UPTs are designed in a way that multiple stakeholders can use the tools simultaneously in a way that allows them to propose solutions and compare the results of various planning scenarios, thus fostering collaboration and consensus-building, which is critical for the implementation phase. Two salient CPL UPTs that have been used in Indonesia are Suitability and Urban Performance.

The Suitability tool identifies optimal locations for infrastructure investments across a city given policy parameters and projects under consideration. Applying GIS and advanced data analytics, it is able to map infrastructure gaps given factors such as the location of existing infrastructure and the distance between urban services and neighborhoods across cities. With this data, it is able to identify optimal locations for infrastructure investments e.g. social housing, transport routes etc.

The Suitability tool was used for a land suitability case in the Indonesian city of Palu. Following the 7.5 magnitude earthquake in September 2018, the coastal city of Palu on the island of Sulawesi, suffered tremendous damage. The

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<sup>63</sup> Source: <https://www.nytimes.com/interactive/2017/12/21/world/asia/jakarta-sinking-climate.html>

<sup>64</sup> Source : <https://www.bbc.com/news/world-asia-48093431>

tragedy led to over 2,000 deaths, nearly 79,000 displacements, and 68,400 damaged dwellings. Resettlement locations and related investments were urgently needed. The Suitability tool was deployed with its four-step process: (1) data collection and generation; (2) data standardization; (3) data entry into Suitability tool; and (4) analysis to develop an index of suitable and non-suitable areas for resettlement locations. The Suitability dataset for Palu was built with 25 spatial data layers, including altitude, slope, built-up area, proximity to areas of interest (markets, schools, commercial centers), and night lights. Combining these layers, the tool was able to exclude undesirable areas for settlement location e.g. disaster prone areas (direct impact and on river setbacks), agricultural land, and national park land etc. With the remaining areas identified as low to no-risk of natural disasters, additional factors like low previous build-ups and access to urban services were added. With seven key factors in mind—population density, economy, geographic, education, health, connectivity, and risk mitigation—the Suitability tool was able to zero into three areas were identified as optimal for new settlement areas.

Often used in conjunction with the Suitability tool, the Urban Performance tool forecasts and assesses a city's possible future development scenarios in response to policy options or projects under consideration today. Complete with simulations and a range of indicators, Urban Performance can greatly bolster evidence-based decision making and support infrastructure investment decisions that support economic growth and development. The Urban Performance methodology consists of four steps: (1) understanding the city (concerns, policy options, relevant metrics); (2) characterizing the city through data (data collection and visualization); (3) simulating the city into the future (hundreds of scenarios are modeled and refined according to the stated policy objectives and projects under consideration); and (4) analyzing results and preparing next steps (selected scenarios are presented to stakeholders and evidence-based decisions are made).

The Urban Performance tool was used in two Indonesian cities: Denpasar and Semarang. The capital of Bali, Denpasar is a tourist magnet and one of Indonesia's biggest destinations. In 2017 alone, Bali hosted 5.7 million foreign visitors in addition to domestic tourists. High levels of tourism have resulted in population growth as well as an increase on economic and human development indices. At the same time, urban planning, zoning, and infrastructure investments have failed to keep pace with Denpasar's tourism-driven growth trajectory. As a result, Greater Denpasar is now plagued by major traffic jams as well as significant changes to its cultural and social fabric. Using Urban Performance, relevant stakeholders were brought together to discuss over 400 development scenarios for 2030 and their location was defined using the Suitability tool. After the lens of 14 range of indicators that looked into social, economic, and environmental aspects, one scenario that best reflected stakeholder vision and had affordable investment costs. Named the Efficient Scenario, it called for retrofitting rice fields for the widespread development of EcoVillages<sup>65</sup> with an increase in economic activity and densification nearby. The Efficient Scenario also envisioned investments in public transportation and lowered traffic congestion. This Efficient Scenario was then compared with a Base Scenario to depict the initial situation in 2016, and a Business-As-Usual (BAU) Scenario that depicted the situation if historical growth patterns and no policies were introduced. Comparing these scenarios showed that when compared to Base and BAU, the Efficient Scenario showed an increase in access to urban services, higher density, more green space, lower GHG emissions, and increased employment. At the same time, the Efficient Scenario showed a 74% reduction in related infrastructure costs and an 11% saving in municipal service cost.

The Urban Performance tool was also deployed in Semarang, which with a population of 1.6 million is one of the largest cities in Indonesia. In Semarang, the key challenge was around mobility, specifically traffic congestion due to the lack of an integrated public transport system and the slow development of transport infrastructure. Similar to the process in Denpasar, relevant stakeholders were consulted in Semarang. More than 100 scenarios were modeled and analyzed with a range of 14 indicators, including social, economic, and environmental aspects. Once again, one scenario that best represented stakeholder vision and minimized investment costs was selected. This was the Transit-Oriented Development (TOD) Scenario and it called for the densification of optimal locations (which were separately identified through the Suitability tool) and proposed quality improvements in bus rapid transit (BRT). This TOD Scenario was then compared to the Base Scenario of 2016 and the Detailed Spatial Plan (DSP) Scenario that planned for the city's growth and development. The evaluation showed that even without the development of new amenities or public transport infrastructure, the TOD Scenario resulted in a greater access to urban services and an increase in transit proximity of almost 20% compared to the Base Scenario. By contrast, the DSP Scenario showed that the new

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<sup>65</sup> The EcoVillage concept is an urban retrofit project developed by local authorities of Denpasar. It envisions converting existing rice fields across the city into public spaces with touristic attraction, bringing about economic benefits to residents and businesses in their surroundings. Within the scope of the project, improvements to traditional markets, public spaces and overall neighborhood upgrades are considered. Furthermore, the EcoVillage contributes to conserve natural and cultural heritage, avoiding irregular settlements in conservation areas and increasing the accessibility to parks.

planned settlements would have taken people farther away from transport access points, increasing not only the time needed to access urban services but also GHG emissions by almost 9%. The TOD Scenario also implied no infrastructure costs and showed 13% savings in municipal service costs compared to the Base Scenario.

Overall, both Suitability and Urban Performance tools demonstrate the value of just-in-time spatial analytics that can support not only city planners but also policymakers. In the context of urban land governance, it can also help the local authorities prioritize urban land regularization to support the city's development efforts in line with their own desired scenarios. It is also important to note that despite the UPTs' several benefits, the tools' outputs are constrained by the availability and quality of the data inputs.

## 2. ENREGISTREMENT DES OCCUPATIONS ET PROCESSUS ÉVOLUTIF DE RECONNAISSANCE DES DROITS FONCIERS : ALTERNATIVES AUX TITRES FONCIER

### 2.1. La fiche parcellaire, une pratique locale de sécurisation foncière en milieu urbain – Commune de Kalamu, Kinshasa, RDC

Dans cette commune urbaine de Kinshasa, un Service de la Population effectue périodiquement un recensement de chaque parcelle. Les données sont recueillies sur une Fiche Parcellaire. Les informations sont centralisées à la commune et grâce à son partenariat avec la Commune belge d'Ixelles, Kalamu a pu acquérir du matériel informatique et un logiciel spécifique pour la gestion des données de population. Outre les informations démographiques, la fiche parcellaire collecte également des renseignements sur la propriété, l'occupation et les transactions des parcelles en se basant sur des documents anciens, sur le témoignage des voisins et sur les informations enregistrées par les agents recenseurs. La commune délivre également un Certificat de confirmation de propriété qui constate les nouveaux droits fonciers inscrits sur la fiche parcellaire. Ce Certificat est délivré au requérant qui souhaite entamer une procédure d'obtention du Certificat d'Enregistrement (équivalent du titre foncier) auprès des services fonciers de l'Etat. Dans le cas de Kalumu, les données figurant sur la fiche parcellaire sont digitalisées et archivées par le Bureau de la Population.



L'authenticité et la fiabilité de la fiche parcellaire tiennent à la proximité de l'administration communale avec les occupants des parcelles. Le chef du Quartier dispose de ses propres archives ; il conserve des preuves des différentes transactions (acte de cession, acte de vente, PV de conseil de famille pour régler une succession, ...), voire des photos des parties prenantes au moment de la transaction. Les usagers semblent accorder leur confiance au système foncier géré par le chef de Quartier. Nombre d'entre eux se contentent de la Fiche Parcellaire et ne souhaitent pas s'engager dans les procédures complexes et coûteuses du certificat d'enregistrement. Ces fiches parcellaires restent à améliorer et ne sont pour l'instant qu'une information sur les droits constatés. Elles fournissent peu de renseignements techniques sur la parcelle, ce qui réduit leur efficacité comme outil de gestion foncière.

### 2.2. Système de tenure souple (*Flexible Land Tenure System*), Windhoek, Namibie

Le système de régime foncier flexible (*Flexible land tenure system*) en Namibie vise depuis 2012 à sécuriser l'occupation, dans des conditions abordables, des habitants des quartiers informels et des bidonvilles de Windhoek. Ce système instaure une reconnaissance souple et évolutive de tenure foncière, en complément à la pleine propriété formelle : (i) les autorités locales choisissent le type de régime foncier approprié pour la formalisation d'un quartier informel ; (ii) ces nouvelles formes de tenure font l'objet d'un enregistrement dans des registres tenus parallèlement au registre des droits de propriété ; (ii) les différents types de tenure pris en charge dans les registres parallèles peuvent être améliorés progressivement dans le temps.

Le Titre initial (portant sur un droit d'occupation perpétuel d'une parcelle qui n'est pas encore strictement délimitée), permet d'ériger un logement d'une taille définie et d'y vivre. Il peut être transformé en Titre à bail (avec des droits similaires à un titre foncier sur une parcelle délimitée par une carte cadastrale locale) ou directement en titre de propriété (*Free Hold Title*) si au moins 75% des occupants du terrain donnent leur accord, à condition que le demandeur puisse en payer le coût administratif, et que l'administration ait la capacité de le faire.

À court terme, elle assure aux occupants une forme de sécurité de l'occupation et améliore leur cadre et niveau de vie en les aidant à sortir de la précarité ; elle permet aux ménages qui en auraient besoin d'obtenir un titre de propriété, notamment pour accéder au crédit ; la progressivité du processus et la participation de la communauté à la décision évitent que l'attribution de titres se traduise par l'appropriation du terrain à des fins spéculatives.

### **2.3. Moratoire sur les évictions » dans l'attente de réponses plus durables dans les bidonvilles du Madhya Pradesh, Inde**

Depuis 1976, la « Déclaration comme *slum* » de quartiers qui occupent un terrain public est une forme de reconnaissance administrative de leur existence et une première étape vers leur réhabilitation. Les *slums* sont répertoriés à intervalles réguliers par les villes. Après vérification de leur conformité aux critères de la loi sur les slums, l'obtention d'un certificat de non-objection de l'agence foncière de la ville et l'accord du Conseil de la ville, ils sont déclarés « slums » et font l'objet d'une notification.

Le Gouvernement de l'État du Madhya Pradesh accorde aux « personnes sans terre » occupant moins de 50 m<sup>2</sup> de terrain à des fins résidentielles à une date donnée, ou aux résidents des colonies de squatters dans les zones urbaines le droit de bénéficier d'une forme de Titre à bail de durée limitée mais renouvelable, appelé « Patta ». Deux types de pattas peuvent être accordés : le patta de 30 ans pour ceux qui vivent dans des bidonvilles qui doivent être améliorés et réhabilités ; le patta annuel, renouvelable, est accordé à ceux qui vivent dans des bidonvilles dont la population doit être déplacée. Le patta peut être hérité mais il ne peut pas être transféré. Seul un usage résidentiel est autorisé. Cette loi remplace toutes les autres lois et réglementations, et s'impose au schéma directeur de la ville. La délivrance de Pattas est limitée aux terrains appartenant à l'État du Madhya Pradesh ou à la municipalité. La préférence était à l'origine donnée à l'amélioration plutôt qu'à la relocalisation des bidonvilles.

## **3. PROGRAMMES DE RÉGULARISATION DES DROITS FONCIERS BASÉS SEULEMENT SUR L'ATTRIBUTION DE TITRES DES PROPRIÉTÉ / TITRES FONCIERS**

### **3.1. Le Programme National de Régularisation de la Tenure Foncière. Rwanda, 2007-2014 : 11,3 millions parcelles enregistrées en 7 ans**

L'expérience du Rwanda est souvent citée comme un succès. Des leçons peuvent être tirées de cette expérience sous réserve de tenir compte du contexte particulier du Rwanda, un pays de petite taille, où l'administration est très présente dans l'ensemble du territoire.

La rareté de la terre et l'insécurité des droits fonciers comptent parmi les causes du génocide au Rwanda en 1994. Les autorités rwandaises ont ensuite considéré comme une priorité de traiter la question foncière en adoptant en 1999 une loi sur les successions pour reconnaître les droits fonciers des femmes, suivie en 2004 par une nouvelle politique foncière traduite en loi organique dès 2005 et par la création du District Land Bureau (DLB), une nouvelle institution chargée de la gestion foncière aux niveaux des districts et des communes.

En l'absence d'expériences, une première opération pilote a été lancée pour enregistrer 15.000 parcelles de 2007 à 2010 dans 4 zones représentatives de la diversité géographique du pays. A cette occasion, une procédure innovante de délimitation et d'enregistrement des droits, basée sur des opérations systématiques utilisant des images satellitaires, a été mise en œuvre par des enquêteurs formés au préalable. En présence des voisins et des autorités locales, ces enquêteurs ont tracé les limites de parcelles sur les images, établi une numérotation unique et enregistré les revendications de droit. Ces données ont été numérisées et affichées localement pendant un mois pour tenir compte d'éventuels recours avant que ne soient établis des titres et des baux au niveau central.

Ces pilotes ont également permis d'améliorer la méthode d'intervention en vue d'une opération à grande échelle conduite par la Rwanda Natural Resource Authority (RNRA). En moins de 3 ans, la RNRA est parvenue à délimiter de manière participative 11,3 millions de terrains (sur les 11,5 millions que compte le Rwanda) pour un coût moyen de \$6 / parcelle, créant ainsi une référence emblématique en matière d'enregistrement massif de droits fonciers. Les évaluations réalisées à la suite de cette opération ont montré une nette amélioration de la sécurité foncière au profit

des hommes et des femmes et une plus grande fiabilité des locations et des cessions de terre. L'enregistrement régulier des transactions reste là encore un défi à relever au risque d'un décalage des informations foncières avec la réalité des occupations.

### **3.2. Le programme massif de conversion des Permis d'habiter en Titres fonciers. Bénin, 2007-2012**

L'expérience du Bénin en matière de reconnaissance des droits fonciers en milieu urbain et périurbain est riche d'enseignements pour Madagascar et en particulier pour Antananarivo sur quatre questions clé :

1. Elle met en évidence les difficultés insurmontables des tentatives de reconnaissance des droits fonciers fondées uniquement sur la procédure de l'immatriculation et l'attribution de titres fonciers (TF) individuels, héritées du système colonial.
2. Elle souligne la faiblesse d'une stratégie de formalisation fondée sur l'hypothèse selon laquelle seul le TF garantit la sécurité de l'occupation et permet l'accès au crédit (sur hypothèque), donc l'investissement.
3. Elle démontre en grandeur réelle, l'échec de la tentative d'attribution massive de TF en lieu et place des droits fonciers coutumiers ou des autorisations administratives d'occuper un terrain (permis d'habiter – PH).
4. En reconnaissant la « propriété présumée », elle souligne la possibilité, sous condition d'une réforme juridique en profondeur (l'adoption en 2013 du nouveau Code foncier et domanial du Bénin), de promouvoir une autre forme de sécurisation et de reconnaissance des droits hérités du système foncier coutumier et/ou des diverses formes d'attribution administrative, sur lesquels les transactions et mutations n'ont pas fait l'objet d'une déclaration ou d'un enregistrement. On trouve, dans ces cas, une situation très proche, à bien des égards, de celle qui prévaut dans l'AUA pour les présumés propriétaires ne possédant que des « petits papiers ». Cette nouvelle de reconnaissance des droits ne se substitue pas à la procédure d'attribution de TF, qui reste en vigueur, mais coexiste avec elle.

Cette évolution est le résultat d'une pratique et d'une réflexion de plus d'une décennie. En 2000, le gouvernement du Bénin annonçait son intention d'encourager et d'aider les propriétaires fonciers urbains à transformer leurs droits fonciers coutumiers, administratifs et contractuels en titres fonciers. Cette initiative visait à répondre aux problèmes de l'insécurité foncière et à ses conséquences sur les marchés fonciers et sur l'investissement

Pour atteindre son objectif, le gouvernement du Bénin a lancé, dans sept zones urbaines du sud du pays, un « projet pilote » pour enregistrer les parcelles de terrain dans sept petites zones urbaines test du sud du pays et permettre aux propriétaires fonciers de transformer leurs droits d'occupation administrative (PH) en Titres fonciers. Le projet pilote devait définir la méthode par laquelle toutes les parcelles de terrains urbains pourraient être placées sous le régime du droit civil, par un titement « de masse » en plusieurs étapes: (i) identification et étude du périmètre de chaque zone urbaine; (ii) transformation juridique de la zone dans son ensemble du statut coutumier ou domanial en régime de droit civil; (iii) cartographie du parcellaire; et (iv) enquêtes parcellaires pour vérification foncière de chaque occupant présumé propriétaire; (v) enregistrement des droits et (vi) délivrance de TF.

La transformation des PH et autres titres précaires en TF devait se faire parallèlement à d'autres projets de réformes : territoriale (amélioration de l'aménagement du territoire et de la gestion des opérations de lotissement); urbanistique (plans d'urbanisme); administrative (bureaux d'enregistrement « déconcentrés ») et mise en place de services communaux de gestion; fiscal (amélioration de la fiscalité foncière des communes).

Le Millennium Challenge Corporation a apporté une assistance au gouvernement du Bénin pour assurer la conversion de permis administratifs et de droits coutumiers en titres fonciers urbains dans 28 villes du pays. Le projet concernait 30 000 « présumés propriétaires » de parcelles dans les zones urbaines, détenteurs de permis administratifs ou ayant accédé au foncier sur les marchés coutumier ou informel. Il visait à mettre au point une méthode et des procédures qui auraient permis de gérer selon le droit civil tous les terrains urbains (estimés à 500 000 parcelles), sur lesquels devaient donc, à terme, être délivrés des titres fonciers.

Cette méthode s'est avérée défectueuse, coûteuse et non durable. En 2011, après 5 années et en dépit d'un appui financier considérable, de la création d'une Commission Nationale d'Appui à la Création de Titres Fonciers (CNAO-TF) et de la mise en place de structures permettant d'associer les populations concernées, les formalités d'enregistrement n'étaient achevées que sur 245 dossiers et 5 titres fonciers avaient été délivrés, sur les 30 000 prévus au début du projet.

Les raisons de cet échec ont été analysées au cours des années 2015-2016. Il est en partie dû à ce que les administrations de l'état en charge du foncier ne voulaient pas envisager d'alternative au titre foncier et à la corruption

dans le secteur foncier. Par ailleurs, l'appréciation selon laquelle un titement massif renforcerait la sécurité foncière et, par conséquent, réduirait la pauvreté, s'est révélée fondée principalement sur une approche idéologique.

Ce projet a eu le mérite de montrer qu'il n'est pas possible de réaliser massivement la transformation des droits fonciers, avec le niveau de précision requis, en respectant la norme "absolue" de la propriété civile. Cela ne peut se faire que parcelle par parcelle, sur une période de temps, avec un examen délibéré, guidé par des règles claires et uniformes pour résoudre les questions juridiques de fond.

Il a montré comment un processus alternatif pouvait être redéfini. C'est sur cette base qu'a été défini, à partir de 2015, un processus – actuellement mis en place – de reconnaissance des droits à deux niveaux dans les villes du Bénin, combinant : (i) d'un côté les TF, « inattaquables », garantis par l'État, qui continuent d'être délivrés pour les projets les plus importants ou qui requièrent un accès au crédit et, (ii) d'un autre côté, un renforcement graduel du registre des droits des « présumés » propriétaires des petites propriétés foncières, avec pour objectif de réaliser, sur une période de plusieurs années, la formalisation progressive des droits fonciers assurant la sécurité avec, pour statut final, des titres de droit civil.

Dans une telle combinaison, le processus de délivrance de titres de propriété urbaine aurait les caractéristiques clés suivantes

- Les méthodes de levés systématiques « de masse » (zone par zone) seraient utilisées pour corriger et mettre à jour les plans de lotissement de tous les quartiers urbains et pour enregistrer chaque parcelle individuelle comme objet du droit civil.

- Le registre n'essaierait pas de transformer immédiatement les droits fonciers existants de chaque parcelle en titres, mais enregistrerait tous les actes et informations disponibles sur les droits et obligations (même irréguliers ou contradictoires) relatifs à la parcelle.

- Au fil du temps, chaque propriétaire foncier renforcerait son statut de « propriétaire présumé » en ajoutant au registre des actes appropriés et conformes, en corrigeant les actes « irréguliers » antérieurs ou en réglant les réclamations contradictoires par voie judiciaire ou par la médiation.

- À tout moment lorsque cela est nécessaire ou opportun (en prévision d'un investissement ou d'une transaction), le propriétaire foncier ferait une demande de confirmation des droits fonciers et recevrait ensuite le titre. Cela se traduirait par un renforcement progressif de la sécurité d'occupation car la documentation des actions, compatible avec la possession, s'accumulerait - paiements d'impôts, enregistrement des contrats et des successions, dépôt de permis de construire, etc.

Il pourrait également, à tout moment, déposer une demande individuelle de confirmation des droits fonciers pour achever la transformation des droits en titre. Il s'agit de la nouvelle procédure, proposée dans le projet de code foncier et domanial, qui remplace l'immatriculation.

### **3.3. The land regularization program in Ethiopia , 2003-2005<sup>66</sup>**

Between 2003 and 2005, Ethiopia ran an ambitious land regularization program wherein 20 million parcels in three of the country's main regions were registered at the low-cost of just \$1 a parcel, which is significantly lower than the typical average cost of systematic registration at between USD 20-60 per parcel. The effort was commendable not only for the speed of its implementation but also the high level of accuracy. Certificates (akin to use rights rather than full titles) could not be issued due to boundary conflicts and disagreements in just 5% of the cases, compared to 20% in other titling projects.

The most unique feature of this program was that the certificates were issued without any field survey or maps, though the certificates left space to add this information at a later date. In line with best practices, the initiative relied heavily on community engagement and participation. The general process was initiated at the *woreda* (district) level and included a village meeting, which led to the election of an independent land use and administration committee (LAC). The LAC was in charge of carrying out the systematic adjudication of rights as well as related demarcations in the field, which were conducted in the presence of and in consent with neighbors. The adjudication process had a great emphasis on transparency and public participation, with village elders being relied on for dispute resolution. The process also allowed for some regional variations to bring it in line with local sociocultural practices. These steps concluded in the issuance of a preliminary registration certification, which was then displayed in public in case any additional objections to the proposed boundaries came forward. If everything was in the clear, the results were

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<sup>66</sup> Source : Impacts of Land Certification on Tenure Security, Investment, and Land Markets: Evidence from Ethiopia, Klaus Deininger, Daniel Ayalew Ali, and Tekie Alemu.

recorded in registry book with copies at the district and kebele (ward) levels. Thereafter, the certificates were issued with the right holders' pictures.

The program was a great success in four main ways. First, it exemplifies the importance of a participatory approach to land rights, which can result in mass registration even in the absence of spatial information. Second, the program garnered international recognition for gender equality via joint certification of spouses and successfully included the pictures of both male and female right holders in the certificates. Third, the program created was conducted in a way that additional investments could be added to further increase the security of tenure. For example, this program paved the way for a second-level certification program.

Lastly, and perhaps most relevant to Madagascar's needs, the Ethiopian certification program, even though it targeted rural areas, helped bring some security of tenure to households in areas where urban expansion is inevitable. This would not only guarantee them some level of compensation, but it ensures that the government can engage in inclusive urban expansion.

### **3.4. The Welfare Cost of Lack of Land Rights : the case of Kibera, Nairobi, Kenya**

Despite strong economic performance, Kenya has an acute housing crisis. With an estimated housing deficit of 2 million units and the annual housing production of only 50,000 units, over 60% of Kenya's urban population is forced to live in slums.<sup>67</sup> The capital city of Nairobi is no exception. By some estimates, 60% of the city's 2.5 million inhabitants live in informal settlements that occupy less than 10% of the city's land area.

Nairobi is home to Kibera, the largest slum in Africa and one of the largest in the world. Packed into just 4 sq kms (1,000 acres), Kibera's population, prone to seasonal variations, has ranged between 200,000 to 1 million residents. With open sewage and littered garbage, Kibera's residents live in unsanitary conditions, which are now even more dangerous given the COVID-19 pandemic.

Located just 4 kilometers from downtown Nairobi, Kibera embodies the tremendous welfare loss and the related loss of economic potential stemming from a lack of clear and tradeable land rights. While it is situated on government-owned land, Kibera is managed by political elites and slumlords, who want to maintain the status-quo. Without investment incentives that typically come with land ownership, slumlords have created an alternate rent-seeking ecosystem wherein they profit from the slum business and fiercely protest any redevelopment proposals. Without formal land rights, Kibera's residents have no legal recourse and live under the threat of eviction and distorted power dynamics with the slumlords. Without land rights regularization, disputes and corrupt land deals are common.<sup>68</sup>

By some estimates, the lack of land rights on Kibera's highly desirable land just 4 kms away from the Central Business District amounts to USD 1 billion.<sup>69</sup> This sum could support redevelopment efforts and critical infrastructure investments, which in turn fuels economic growth through job creation. However, Kibera's potential remains untapped and the lives of its residents remain difficult in the absence of security of tenure, infrastructure investments, and access to urban services.

### **3.5. Property Regularization based on Public Need, Honduras<sup>70</sup>**

Following the devastating Hurricane Mitch in 1998, Honduras saw internal migration to its capital city of Tegucigalpa and the main industrial center of San Pedro Sula. Over the next decade, the people who had moved to the urban and peri-urban areas of these two cities had formed several informal settlements in colonias or neighborhoods, resulting in the loss of land for alleged owners, increase in informality, and barriers to planned urban development and expansion.

To address this particular issue and the wider problem of lack of titles for an estimated 60% of the parcels in the country, Honduras adopted a new and innovative property rights regularization mechanism in its 2004 property law. This mechanism called Public-Need Based Regularization or RINP (Regularización Inmueble por Necesidad Pública) enabled a special type of land tenure regularization through systematic registration in priority urban and peri-urban areas. RINP was designed in a way that the beneficiaries (in other words, long-term informal occupants who applied for and/or received titles through RINP) did not have to pay for the surveying, registration and other related costs.

<sup>67</sup> Source: <https://openknowledge.worldbank.org/bitstream/handle/10986/26392/114115-NWP-PUBLIC-add-series-86p-Kenya-Economic-Update-FINAL-Edition-15.pdf?sequence=5&isAllowed=y>

<sup>68</sup> Source: <https://qz.com/africa/1336045/kenya-kibera-slum-demolition-photo-shows-nairobi-inequality/>

<sup>69</sup> Source: African Cities, Chapter 5.

<sup>70</sup> Source: 'Honduras's Experience with Land Tenure Regularization in Urban and Peri-Urban Areas', Alain Adalberto Paz Quesada, World Bank Annual Land and Poverty Conference 2017.

Instead they paid for the value of the land area they occupied as well as their proportional share of any public areas e.g. social facilities, green spaces etc. The beneficiaries paid an average amount of USD 1.17/sqm, a social valuation (justiprecio) determined using the “fair valuation” technique based on pre-determined parameters (e.g. size of property, share of public areas) applied to the land prior to any improvements they may have made. This money was then put into a trust that compensated the alleged owners.

The overall RINP process was led by Property Institute with the participation of Ministry of Finance (Directorate General for the Administration of National Assets), courts, and institutions of the country’s financial system determining both the fair valuation and the alleged owner who would be compensated. The fair valuation process was led by an evaluating committee comprising three members: one from Directorate General for the Administration of National Assets, a beneficiary from the colonia under consideration, and an alleged owner, who would receive the compensation.

Colonias were selected based on eligibility criteria that included the presence of settlements before a certain date, lack of clear ownership etc. A Conciliation Meeting took place wherein alleged owners were invited to reach an agreement on who would be considered legal owners. If there was no agreement, the Property Institute proceeded with the ‘expropriation’, which allows to transfer the property into the State in order to provide the titles to the informal occupants of the colonia. Additionally, owners with documentation could also benefit from the RINP by exchanging their documentation for a formal title granted by the State through the Property Institute.

Once a colonia was selected, beneficiaries could submit a request for regularization. If the request was considered appropriate, the perimeter boundary of the settlement was determined. Following any dispute resolution that may have been needed, the Declaration of Expropriation was published in the official newspaper (La Gaceta). After the cadastral survey and quality controls, the beneficiary’s claim underwent a public display to validate the information. If there were no counterclaims at this stage, the area of the completed cadastre (area cadastrada) was declared and published in the official newspaper. Next, the trust was signed, which confirmed that the beneficiary would pay the negotiated fair valuation to a participating financial institution e.g. administration or mortgage-based trust. The field information was compiled with the trust information by the Property Institute and entered into the Automated System of the Expropriation System (APEX), which was used to send the information to the relevant financial institutions. Once the beneficiary fulfils the payment obligations, the financial institution confirms to the Property Institute that the property title can be issued. If the authorization of the financial institution clears the quality control processes at the Property Institute, the final title handed out at a public event by the President of Honduras.

Between its inception in 2004 and 2017, RINP benefited 97,000 properties in 21671 colonias, of which almost 50% have been legally recognized with the issuance of property titles. RINP was particularly successful in promoting women’s property rights as gender equity aspects were included in the Property law. As of 2017, 63% of the titles were issued to women either as sole owners (48%) or as joint owners in cases where they were legally married or in a domestic partnership as per the Honduran law (15%) As is the case with similar community-centric regularization programs, success depended on the public awareness campaigns to explain to beneficiaries the structure and advantages of the scheme so they would be more willing to participate.

RINP encountered some technical challenges, such as the determination of the perimeters and fair valuations. The consistency across trusts was also an issue and caused some confusion among beneficiaries. One major challenge for the scheme was that despite the low fair valuation payments, many beneficiaries were unable to pay. According to a 2013 study, this was primarily due to poverty (28%), unemployment (28%), and ill-health (16%). It was estimated that a quarter of the beneficiaries with payment commitments eventually stopped making these payments and would likely face interest payments, if they restart their payments. Another challenge was that the process was often long due to the need for beneficiaries to complete payments and the practice of handing-out titles at high-level public events, which are not always easy to organize.

The RINP demonstrates the possibility of using small-scale and targeted land tenure regularization in urban and peri-urban areas using an innovative program design. At the same time, RINP shows the importance of transparency, public awareness, and strong implementation with clear roles and responsibilities. The RINP experience also highlights the need to think about new financing mechanisms for land tenure regularization while recognizing that it is not always possible for low-income households to honor their commitments due to difficult circumstances.

#### **4. METTRE EN PLACE UNE ADMINISTRATION DÉDIÉE AUX OPÉRATIONS DE SÉCURISATION FONCIÈRE**

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<sup>71</sup> As of reports from 2020, 224 colonias have benefited from RINP and others are in the process of being selected.

#### **4.1. L'expérience de la Wilaya de Boumerdès, Algérie**

L'Agence de Gestion et de Régulation Foncières Urbaines de la Wilaya de Boumerdès est un établissement public local à caractère industriel et commercial doté de la personnalité morale et de l'autonomie financière.

Elle a pour mission d'acquiescer pour le compte des communes tout immeuble ou droit immobilier destiné à l'urbanisation ; de mettre en œuvre les opérations de régulation foncière conformément à la réglementation en vigueur ; d'assister les communes dans la préparation, l'élaboration et la mise en œuvre des instruments d'aménagement et d'urbanisme ; de promouvoir ou faire promouvoir des lotissements et zones de toute nature d'activité en application des instruments d'aménagement et d'urbanisme ; de réaliser les programmes de promotion immobilière et aménagement des lots de terrains à bâtir et des zones d'activités pour les besoins des projets d'investissement.

#### **4.2. L'Agence Foncière Rurale de Côte d'Ivoire, une innovation institutionnelle pour une sécurisation foncière massive**

En 2016, le Gouvernement ivoirien a créé une Agence Foncière Rurale en vue de relever le défi d'un enregistrement massif des droits coutumiers dans le domaine foncier rural. L'enjeu est de limiter le nombre d'intervenants et de disposer d'une force opérationnelle chargée de la mise en œuvre de la loi foncière. Rattachée au Ministère de l'Agriculture en charge du foncier rural, l'AFOR est un établissement public disposant de l'autonomie financière chargé de la coordination de toutes activités relatives à la sécurisation des terres rurales, à savoir les opérations de certification, de contractualisation, de délimitation des territoires villageois, de mise en œuvre d'un Système d'Informations Foncières et d'archivage. La direction de l'AFOR est tenue de rendre compte à un Conseil de Surveillance ad hoc où siègent plusieurs ministères sectoriels. Elle est financée par l'Etat ivoirien sur ressources propres et par plusieurs bailleurs de fonds (Union Européenne, Banque mondiale, AFD). L'AFOR a démarré ses activités depuis fin 2017. Elle dispose de son propre programme de travail, coordonne les appuis internationaux, et met en œuvre toutes les activités fiduciaires et techniques liées aux opérations de sécurisation foncière rurale (conception des opérations, passation de marchés, contrôle-qualité des interventions confiées à des prestataires privées, relations avec l'administration territoriale et technique, suivi-évaluation,...). Son personnel constitué de consultants et de fonctionnaires détachés est recruté sur une base compétitive.

En créant l'AFOR, le Gouvernement de la Côte d'Ivoire a transformé le paysage institutionnel du foncier rural. Cette agence permet d'aligner les démarches sur des outils nationaux (ex. : manuel d'opérations unique) et de coordonner les appuis en soutien à une politique nationale de sécurisation foncière rurale. Des décrets validés en mars 2019 confirment son rôle de maître d'œuvre unique de la sécurisation foncière rurale. Elle est l'interlocuteur principal du groupe des bailleurs de fonds intervenant dans le foncier rural. Ses premiers résultats lui ont conféré une grande crédibilité

### **5. AUGMENTER ET DIVERSIFIER L'OFFRE FONCIÈRE POUR AMÉLIORER SON ABORDABILITÉ**

#### **5.1. Le partage de la terre (*Land Sharing*) à Bangkok – Thaïlande**

Dans le cas de Bangkok, le partage des terres a été facilité par le régime foncier qui prévaut dans les quartiers de la zone urbanisée occupés par les ménages à bas revenus : les habitants sont propriétaires du logement individuel – des habitations individuelles en bois – dans lequel ils vivent, mais ils sont locataires de la parcelle de terrain. Dans les années 1990, plus de 15% de la population de la ville étaient concernés. Lorsque le propriétaire foncier souhaite récupérer sa propriété à des fins d'aménagement, il dédommage les occupants qui démontent leur logement et le déplacent sur un autre terrain locatif, un peu plus loin dans la périphérie urbaine. Mais certaines communautés installées de longue date refusent, se constituent en association et font appel à l'arbitrage des autorités. Celles-ci ont peu de moyens d'action mais pour éviter des tensions sociales elles font pression sur le propriétaire pour qu'il négocie un accord de partage du terrain (*land sharing*) avec la communauté des locataires.

Ce procédé constitue une alternative à un processus d'expulsion conflictuel, coûteux et incertain qui peut prendre des années. Le propriétaire de la totalité du terrain accepte de ne récupérer que la partie de sa propriété qui bénéficie d'un emplacement privilégié (en front de rue, le long des principaux axes), dont la valeur marchande est élevée et de vendre en dessous du prix du marché le reste du terrain sur lequel les ménages locataires peuvent ensuite être réinstallés.

## 5.2. La grande trame d'équipement, Ethiopie

Comme alternative d'un développement urbain informel observé dans les villes africaines, le *Stern Urbanization Project – NYU* a développé une méthodologie intitulée « *Making Room for Urban Expansion* », qui propose de sécuriser le strict minimum de réserves foncières publiques nécessaires à une croissance ordonnée - un réseau de grandes voies et une hiérarchie d'espaces publics ouverts.

En partenariat avec le gouvernement éthiopien, cette méthodologie a été testée dans dix-huit villes éthiopiennes de taille intermédiaire, où le niveau de corruption est moins élevé que dans les grandes villes et où les promoteurs privés impliqués dans le foncier en périphérie urbaine sont moins présents. « Cette initiative d'expansion urbaine en Éthiopie (*Ethiopian Urban Expansion Initiative*) a abouti à la désignation et à la protection de centaines de kilomètres de routes artérielles et de grandes réserves d'espaces publics ouverts. Elle a entraîné de réels changements sur le terrain, allant de la construction de plusieurs kilomètres de routes, à une augmentation spectaculaire de l'offre de terrains sur le marché dans ces villes. La conclusion est claire - une nouvelle méthode viable a été mise au point pour faire face à la croissance rapide des villes africaines ».

## 5.3. Les Associations foncières solidaires (Community Land Trust)

Les Associations foncières solidaires sont des organisations communautaires sans but lucratif, conçues pour assurer la gestion communautaire des terres. Elles peuvent être utilisées pour de nombreux types de développement (y compris commercial), mais sont principalement utilisées pour assurer l'abordabilité des logements sur le long terme. Pour ce faire, l'association acquiert un terrain et en conserve la propriété de façon permanente. Avec des propriétaires potentiels, elle conclut un bail renouvelable à long terme au lieu d'une vente traditionnelle. Lorsque le propriétaire vend, ce n'est pas au prix du marché mais à celui fixé par l'association. Le reste est conservé par l'association, ce qui préserve l'abordabilité pour le nouvel acquéreur, à revenu faible ou modeste lui aussi.

Elle a été mise en œuvre aux États-Unis, au Canada, au Royaume-Uni, en Australie, en Belgique, en France et, en Afrique, dans les villes secondaires du Kenya depuis le milieu des années 90, comme moyen d'accès à la terre pour le logement. L'objectif est de combiner les avantages de la tenure communautaire avec la propriété individuelle. En conservant la propriété au sein d'un groupe et en permettant aux membres de détenir des baux à long terme, il est possible de contrôler les transferts et de décourager la spéculation. Les principes de base des associations est de tirer le meilleur parti des avantages des communautés locales pour obtenir des permis et des infrastructures, de garder toutes les terres sous un seul titre et d'encourager ses membres à améliorer l'habitat et l'environnement.

## 5.4. Land pooling in Thimphu, Bhutan and Huambo, Angola

Dubbed as the “Kingdom of Happiness”, Bhutan is small, landlocked country undergoing major urbanization. Its capital city Thimphu has nearly quadrupled in built-up area from 7.1 sq km in 1990 to 26.5 sq km in 2008. With major rural-to-urban migration at play, Thimphu has struggled under demographic pressures to ensure adequate urban infrastructure and access to services. In order to keep pace with the demands on a growing population, Thimphu looked at the development proposed under the Master Spatial Plan and Local Area Plans (LAPs). What became clear to the local authorities was that despite the legal feasibility of eminent domain, land acquisition would prove to be insufficient to meet land needs to meet infrastructure development. Changing times also proved that land acquisition was not always easy to implement as it led to the landowners' loss of land often at very modest compensations.

This is when Thimphu began to consider land pooling (also known as land readjustment), a tool for urban development wherein governments pool together privately held land plots and each owner gives up a certain percentage of their land area (25-30% in Bhutan's case). This ‘released’ land is then used for public infrastructure development (e.g. roads, social housing, public spaces etc.), which, in turn, leads to an increase in land values. As a result, the landowners, who now have less land by area, are still able to benefit as the value of their remaining land has increased. An attractive feature of land pooling is that the infrastructure investments it enables tend to be largely self-financing as there is no need for upfront capital costs to buy out the landowners.<sup>7273</sup>

The World Bank-financed Second Bhutan Urban Development Project supported Thimphu municipality with the design and implementation of land pooling in LAPs in Taba, Dechencholing, and Lanjopakha where farmland was converted into residential developments. The program saw 2.28 sq km (564 acres) of released land being made available for developments when 778 landowners agreed to part with a portion of their plots. The plots were then re-

<sup>72</sup> Source : <http://documents.worldbank.org/curated/en/249541468330350173/pdf/wps6312.pdf>

<sup>73</sup> Source : <https://www.theigc.org/reader/informal-settlements-and-housing-markets/policy-towards-existing-informal-settlements/land-readjustment-schemes/#land-readjustment-schemes>

planned based on the landowners' contribution amounts and proximity to trunk infrastructure. The released land was redeveloped to bring to the participating landowners new infrastructure investments and services, such as water, drainage, roads, street lights, and community facilities. As a result, the landowners benefited from increased land values of their slightly smaller plots and retained the option to keep farming.<sup>74</sup>

Given the success of these projects, Thimphu began to see land pooling not only as a technical tool for urban development but also a social tool for the empowerment of landowners as consultations are a critical element of land pooling schemes and the initiative cannot move forward unless a certain percentage of landowners do not get on board. With an increase in government capacity to design and implement these schemes, Bhutan was able to expand the use of land pooling for urban development to 14 cities in addition to Thimphu.

What is evident is that initiatives like land pooling rely on vibrant land markets and are not possible without clearly defined land rights. Indeed, Bhutan has been able to leverage land pooling due to its well-established system of land registration, even though the lack of up-to-date digitized records and good valuation information has created some challenges.<sup>75</sup> At the same time, Angola presents a good example of land regularization done in the context of land pooling schemes the government wanted to implement.<sup>76</sup>

Angola's third-largest city Huambo has seen its population increase by a factor of 25x between 1940 and 2020. Most of the municipality's urban growth and development has been unplanned and has taken place at the periphery perpetuating the sprawl and fueling informal settlements. Struggling to manage urban expansion and to provide basic infrastructure and services, the local government administration asked Development Workshop (DW), a human settlement NGO, to design and implement two participatory LP schemes over 3 years between 2006 and 2008 in Bairro Fátima and Bairro Camussamba neighborhoods. After chalking out the implementation plan and conducting major public awareness and consensus-building campaigns, the work shifted to the crucial step of land rights regularization.

The regularization work began with a household census and community diagnostic. This was followed by surveying and mapping wherein handheld GPS devices and GIS software were used to go door-to-door and demarcate property boundaries along with neighbor validation to minimize boundary-related disputes. In the case of conflicting claims, boundary negotiations were done in the field and the final agreed upon boundary lines recorded on new community maps.

Next, land pooling was done in a way that 35% of the land was redistributed to the original land occupants in proportion to the shares they had contributed, 30% of the land was reserved for infrastructure investments, and the remaining 35% was set aside for sales to cover the costs of the planned infrastructure developments.

With respect to the legal rights, the occupants who received a part of their land back also received "provisional tenure licenses" (licença de arrematação) or temporary occupation licenses, which could be renewed as 2-year licenses before the right for conversion into a full title. While this was a somewhat contentious approach, the local government was able to explain that the benefits of this approach compared to a more traditional land acquisition where occupants would likely not receive compensation.

As a result, in both neighborhoods the land pooling initiatives addressed the issue of lack of maps and land rights before proceeding with other steps. In Bairro Fátima, the land pooling scheme was deemed successful and brought much-needed infrastructure investments and services to the neighborhood, including upgrading roadways, installing boreholes for water, and social housing. The previous land occupants who became owners also benefitted from an increase in their land values from infrastructure investments and upgrades. Despite a similar design, the second project in Bairro Camussamba was not a success due to a key legal change in the years between the two land pooling projects. A major shortcoming of the 2007 decentralization law was that it took away the local revenues generated from the land pooling scheme and gave them to the central government, effectively weakening local government capacity and incentives to realize an increase in land values, which not only make the project financially viable but is also the incentive for land occupants to participate in the first place. The Camussamba scheme fell prey to rent-seeking by wealthy landowners<sup>77</sup> and did not generate socioeconomic benefits similar to those in Fátima.

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<sup>74</sup> Source: <https://blogs.worldbank.org/endpovertyinsouthasia/bhutan-urbanizes-its-farmers-become-landlords>

<sup>75</sup> Source: Community-based feedback to improve land pooling for planned urbanization: A Case Study of Thimphu, Bhutan. Land Use Policy, ADB.

<sup>76</sup> Source: Global Experiences in Land Readjustment, Urban Legal Case Studies: Volume 7, UN Habitat. [https://unhabitat.org/sites/default/files/documents/2019-05/global\\_experiences\\_in\\_land\\_readjustment\\_urban\\_legal\\_case\\_studies\\_volume\\_7\\_1.pdf](https://unhabitat.org/sites/default/files/documents/2019-05/global_experiences_in_land_readjustment_urban_legal_case_studies_volume_7_1.pdf)

<sup>77</sup> Source: <https://www.theigc.org/reader/informal-settlements-and-housing-markets/policy-towards-existing-informal-settlements/land-readjustment-schemes/#land-readjustment-schemes>

These international examples demonstrate the benefits and challenges associated with land pooling schemes. They also show how the project is simplified by land rights regularization but can also become an impetus for recognizing the rights of informal inhabitants. The examples also demonstrate that while the process can take place with a specific legal framework (as in Bhutan) or without it (as in Angola), its results are highly dependent on the quality of public awareness and beneficiary buy-in as well as local government capacity and incentives.

## **6. PROMOUVOIR LE SECTEUR LOCATIF POPULAIRE**

### **6.1. Le Tiers-partagé : cas de Casablanca, Maroc**

Au cours des deux dernière décennies, d'importants efforts ont été faits dans les villes marocaines pour résorber l'habitat insalubre et faciliter l'accès à un logement décent.

Le *Programme villes sans bidonvilles* initié au Maroc en 2004 avait pour objectif de résorber les bidonvilles dans l'ensemble des 85 villes et centres urbains du Maroc (380 000 ménages).

En 2018, soit près de 15 ans après le lancement effectif du *PVSB*, 62 villes sur les 85 concernées ont été déclarées « sans bidonville » et près des deux tiers des ménages ont été relogés. La part de ceux résidant dans les bidonvilles au niveau national est passée de 8,2 à 3,9% entre 2004 et 2010 permettant ainsi d'améliorer les conditions de vie de près de 250 000 ménages, soit environ un million d'habitants, principalement en recourant à des opérations recasement, à l'auto-construction assistée, la restructuration et l'équipement des bidonvilles existant et, dans une moindre mesure, au relogement en habitat collectif.

Parallèlement à ces pratiques, une nouvelle forme d'intervention, dite mécanisme du « tiers associé » a progressivement émergé.

C'est dans l'agglomération de Casablanca, où 13% de la population vivaient dans des bidonvilles qu'elles ont été mises en œuvre.

#### **La reconnaissance et l'accompagnement d'une pratique spontanée**

Cette pratique s'inspire de celles qui, depuis plusieurs décennies autorisaient l'attributaire d'un lot de recasement qui, faute de moyens, ne pouvait y construire son logement, de s'associer avec une tierce personne pour financer la construction. Il fallait donner un cadre plus formel à cette pratique, évitant ainsi qu'un associé « externe » ne bénéficie pas de la subvention publique sur le prix de cession du lot.

« Elle consiste à attribuer à 2 ménages bidonvillois (appelé binôme) un même lot d'habitation (d'environ 80m<sup>2</sup>) pour y construire en immeuble à 4 étages (R+3) dans lequel chacun va bénéficier de 2 étages. Malgré un prix de terrain subventionné, le coût moyen de construction, à la charge des ménages représente entre 18 000 et 21 000 euros, une somme souvent difficile à assumer. Ceux qui ne peuvent pas mobiliser le financement nécessaire ont la possibilité de s'associer avec un « tiers associé », investisseur extérieur qui s'engage par contrat à financer et réaliser la construction des logements des 2 familles ainsi que le paiement du coût du foncier normalement à la charge des bidonvillois. ...Il récupère en contrepartie les deux étages restant (le plus souvent le rez-de-chaussée et le 1er étage) qu'il pourra soit habiter lui-même, soit louer ou vendre ». (Toutain, 2018).

A partir de 2013, une autre formule se met en place dans laquelle le tiers ne récupère que le RDC (ou un étage) et livre en contrepartie les 3 appartements restants semi-finis. Le 3e appartement est alors divisé par les deux bénéficiaires ce qui leur permet de loger les enfants

#### **Le succès de la pratique du tiers associé**

« Dix ans après son lancement, ce dispositif a connu un succès considérable. En témoigne son adoption par une très grande majorité des ménages bénéficiaires du *PVSB* à Casablanca. Il aura ainsi permis à des milliers de familles à revenus parfois très modestes d'améliorer leurs conditions de logement et de devenir propriétaires de leur nouvelle habitation, souvent gratuitement ou sans s'endetter. Il aura également suscité une dynamique d'investissement et de construction exceptionnelle et la production sur le marché casablançais de plusieurs dizaines de milliers de logements sociaux (20 000 à 30 000 logements selon les estimations) contribuant ainsi à répondre à une partie de la demande. Ce mode d'intervention est aujourd'hui étendu à l'ensemble du grand Casablanca. Il a notamment été adopté pour le projet de cité nouvelle de Zenata » (Toutain, 2018) qui donne lieu à la plus grande opération de relogement de bidonvilles au Maroc. Ces opérations sont parvenues à produire un modèle d'habitat plurifamilial plus adapté aux pratiques sociales des populations que les logements collectifs.

Le recul sur l'expérience permet d'apprécier la dynamique suscitée par ce dispositif à Casablanca à travers l'évolution continue des contrats d'association entre le tiers et le binôme

#### **Les avantages et les limites de la pratique du tiers associé**

Plusieurs facteurs expliquent le succès du dispositif tiers. Son premier avantage est la possibilité pour un ménage bidonvillois de devenir propriétaire d'un logement quasi gratuitement alors que le financement apparaît comme l'une des plus grandes difficultés des familles ciblées par le *PVSB* (ibid). Son deuxième avantage tient à l'attractivité du rendement offert aux investisseurs privés qui tient au levier de la subvention sur le foncier, aux investissements publics effectués pour équiper les sites en infrastructures, en équipements collectifs et à l'économie très largement informelle de la filière d'autoproduction

Le dispositif du financement de la construction du logement des ménages bidonvillois par un tiers associé est aujourd'hui un acquis du *PVSB*. Cette pratique montre que d'autres formes d'accès au logement social et à son financement sont possibles en dehors des circuits classiques et des réponses publiques conventionnelles à grande échelle

**Cette formule n'en présente pas moins des limites, dues :**

- à la non reconnaissance systématique de la possibilité d'association avec une tierce personne par les binômes dans les contrats de vente ;
- aux litiges, conflits et procédures judiciaires entre binômes et tiers du fait du non-respect de leurs engagements réciproques
- aux conflits et procédures judiciaires entre binômes et tiers du fait du non-respect de leurs engagements réciproques et à l'absence de médiation et d'arbitrage en cas de litiges
- à sa répliquabilité, conditionnée au partenariat public-privé proposé, au dynamisme des marchés immobiliers locaux.

## **7. RELANCER LE DIALOGUE MULTI-ACTEURS DANS LE SECTEUR FONCIER**

### **Sénégal. Plateforme multi-acteurs sur les Directives volontaires et la gouvernance foncière**

#### **Création et rôle de la plateforme**

Depuis 2014, le Sénégal a mis en place une plateforme nationale de dialogue multi-acteurs sur les Directives volontaires, avec le soutien financier de la France, du Fonds international de développement agricole et de l'Italie, et l'appui technique de la FAO. L'objectif de cette plateforme est d'assurer le dialogue sur la gouvernance foncière, l'élaboration de consensus nationaux, la préparation de plans d'actions de mise en œuvre des Directives volontaires et d'effectuer le suivi et l'évaluation de la gouvernance foncière au Sénégal. La plateforme est devenue un espace de débat de premier plan pour discuter des orientations politiques relatives au foncier dans les secteurs des terres, des pêches et des forêts, et des enjeux de la gouvernance foncière à la lumière des principes et des recommandations des Directives volontaires.

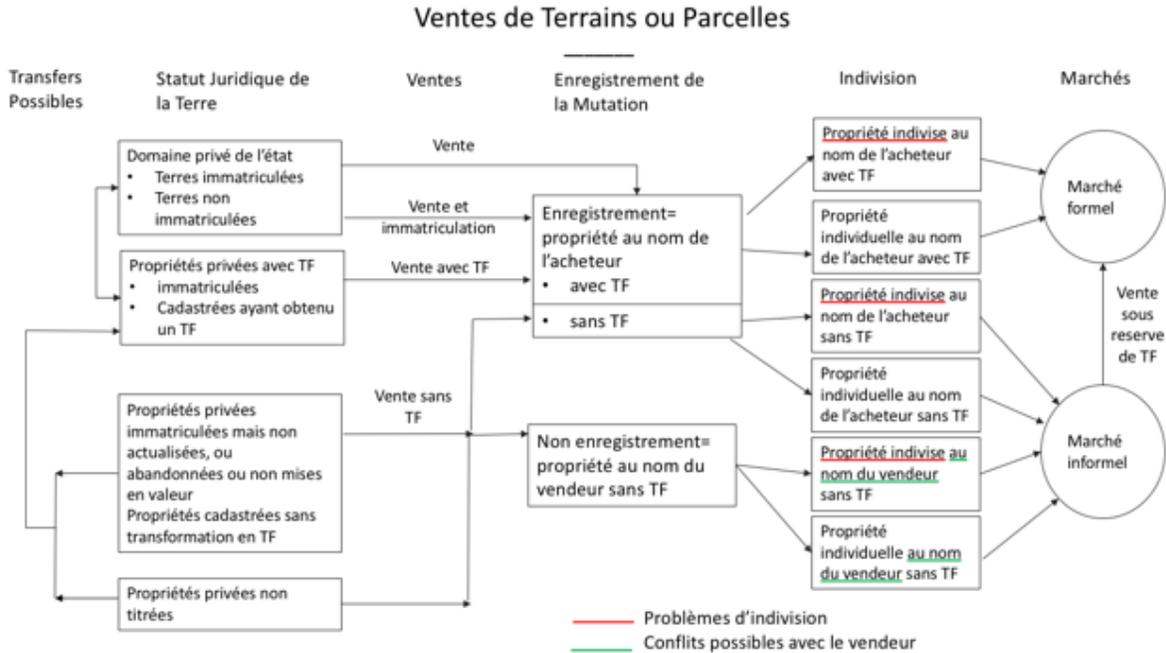
#### **Structure**

La plateforme est interministérielle avec une composition élargie qui réunit des représentants des ministères, des représentants des Organisations de la société civile, du milieu universitaire, du secteur privé, des collectivités territoriales et des organisations paysannes. L'engagement de ces acteurs a conduit à la création du Comité de pilotage pour la mise en œuvre des Directives volontaires au Sénégal. Le Comité de pilotage est présidé par un représentant désigné par le Ministère de l'agriculture et de l'équipement rural et est co-présidé par un représentant du Conseil national de concertation et de coopération des ruraux. Les membres comprennent, entre autres, des représentants du Ministère de la pêche et de l'économie maritime (MPEM), du Ministère de l'élevage et de productions animales (MEPA), du Ministère de l'environnement et du développement durable, la Direction générale des impôts et domaines (DGID), de l'Agence nationale chargée de la promotion de l'investissement et des grands travaux (APIX), des organisations non-gouvernementales. L'Initiative prospective agricole et rurale héberge le secrétariat du COPIL.

#### **Contribution aux politiques relatives au foncier**

Depuis sa mise en place, plusieurs initiatives ont été développées par le Gouvernement du Sénégal et ses partenaires dans le sens d'une prise en compte des Directives volontaires dans les politiques publiques. Il s'agit entre autres : i) du processus d'élaboration du code de la pêche continentale, en instance de validation; ii) de l'évaluation des politiques forestières au regard des Directives volontaires et iii) de l'élaboration du document de politique foncière faisant référence aux Directives volontaires, qui a été remis au Président de la république le 07 avril 2017.

**Annex 4: Different means of land transfers and sales in the CUA depending on their legal status and the type of market.** Note the close ties between the informal and the formal market.



## Annex 5: Status change procedure for a titled property.

Annexe n°5 Procédure pour la mutation d'un terrain titré – DB 2019 (applicables pour les actes notariés)				
Étape	Procédure	Institution	Durée	Coûts
1	Demande de 2 CSJ datant moins de trois mois.	Circonscription domaniale et foncière	21 jours	4.000 MGA
2	Demande de reproduction de 2 plans topographiques avec coordonnées Laborde. En cas de morcellement, un géomètre assermenté devrait tracer les limites de la partie à distraire.	Circonscription topographique	21 jours	10.000 MGA (*)
3	Demande d'autorisation de transaction	SRAT	11 jours	Pas de frais
4	Etablissement de l'acte de vente notarié	Notaire	3 jours	1.361.063 MGA
5	Acquittement du Droit d'Enregistrement (5 % de la valeur d'acquisition du terrain)	Centre fiscal	4 jours	3.370.212 MGA
6	Enregistrement dans le livre foncier	Circonscription domaniale et foncière	60 jours	1,363,084 MGA
Total			120 jours	6.108.360 MGA

(\*) le rapport DB précise que la durée et le coût estimés à l'étape 2 correspondent à une simple transaction sans morcellement, donc sans considérer l'intervention d'un géomètre assermenté.

Doing Business prend l'exemple d'un terrain de 500 m<sup>2</sup> situé en péri-urbain. Les coûts se rapportent donc à ce cas dont la valeur est environ de 67 millions Ariary. Le cas n'est pas forcément représentatif car : (i) les transactions d'un terrain de 500 m<sup>2</sup> ne sont pas si courantes ; (ii) dans ce cas retenu, le terrain n'est pas morcelé et s'affranchit donc des coûts et délais de l'intervention d'un géomètre et de toute la documentation des différents droits de succession ; (iii) il s'agit d'un acte notarié qui n'est pas à la portée de tout le monde.

## **Annex 6: The multi-purpose cadaster, a long-term perspective.**

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Les règles d'utilisation des sols sont définies sur la base d'un plan d'occupation des sols (PLOF) et des plans d'urbanismes (directeur ou de détails) qui sont appliqués. Toutefois, peu de villes disposent d'un PLOF pour construire ces documents de planification qui de facto sont décalés de la réalité foncière. Cependant la superposition du plan d'occupation des sols ainsi que des orientations urbanistiques, avec les autres informations géographiques permettrait d'estimer la valeur des terrains et immeubles.

Cet outil pourrait voir le jour avec le Cadastre multiusage ou cadastre polyvalent. En effet, le cadastre polyvalent (ou à buts multiples) poursuit plusieurs objectifs : fiscal, légal et/ou technico-urbanistique. Il est à la fois un instrument permettant d'attester et de garantir des droits sur les terrains et les immeubles et de déterminer des valeurs, et un instrument de gestion du foncier et des équipements, donc un outil d'aide à la décision en matière d'urbanisme et d'aménagement. A travers un format numérique sur la base d'un système de coordonnées géographiques, le cadastre est intégré dans différents systèmes d'information géographique existants et les autres couches d'information (topographie, réseaux routiers, infrastructures, affectations du sol, zonage, évaluation).

## Annexe n°7 : Forces et faiblesses des différents modes opératoires d'aménagement foncier en milieu urbain

Source: *Memo to the Mayor. Improving Access to the Urban Land for All Residents: Fulfilling the Promise.* World Bank Group, 2011

Les points à prendre en considération pour la mise en œuvre des opérations d'aménagement foncier en milieu urbain sont traduits dans le tableau suivant :

	Associations	Aménagement par le foncier	Remembrement foncier	Partage du foncier
Solutions apportées				
Augmente l'offre sur les zones urbaines/ périphériques	Oui	Oui	Oui	Non
Augmente l'offre dans les centres-villes	Peut-être	Non	Peut-être	Non
Orienté le développement futur	Non	Oui	Oui	Non
Aide au logement supplémentaire	Oui	Oui	Non	Oui
Promue le partenariat public-privé	Peut-être	Peut-être	Oui	Oui
Maitrise de l'étalement urbain	Non	Oui	Oui	Oui

Mise en œuvre				
Complexité juridique	Fort	Faible	Moyen	Fort
Facilité administrative	Fort	Moyen	Moyen	Fort

Coût financier				
Coût pour la municipalité	Faible	Important	Moyen	Faible
Coût pour les groupes communautaires	Important	Faible	Faible	Moyen
Coût pour le secteur privé	Faible	Important	Moyen	Important

Soutien politique				
Gouvernement local				

<b>Ministère des travaux publics</b>	Neutre	Soutien	Soutien	Opposition
<b>Ministère en charge du logement</b>	Neutre	Opposition	Soutien	Soutien
<b>Communauté locale</b>				
<b>ONG et résidents</b>	Soutien	Soutien	Opposition	Soutien
<b>Résidents voisins</b>	Opposition	Opposition	Soutien	Neutre
<b>Propriétaires terriens</b>	Opposition	Opposition	Soutien	Soutien
<b>Secteur privé</b>				
<b>Développeurs</b>	Neutre	Soutien	Soutien	Soutien
<b>Milieu des affaires</b>	Neutre	Neutre	Soutien	Opposition

