



Partnership Network International

PNI for Human rights & sustainable development



## LAND, ENVIRONMENT, HUMAN RIGHTS & SUSTAINABLE DEVELOPMENT

*Insecure land tenure and poor access to information and public participation of Fokonolona grassroots communities is one of the major obstacles to the development of Madagascar*

Madagascar was the first country in Africa to adopt an environmental charter in the form of state law. And although such political will is infrequent, the government has linked local natural resource populations and international environmental organizations with protected biodiversity management to central and local public actors. In addition, since the land policy letter (August 2015) which guarantees the effective securing of land ownership through a certification procedure (formalization in writing of land transactions) huge progress has been made.

Decentralization should thus enable local communities to organize themselves as autonomous structures with the power to manage, administer and exploit local resources.

In the Malagasy society, the basic community structure Fokonolona remains unavoidable. It is a true territorial institution that is similar to the generational lineage. Each of the 25 million inhabitants of the Big Island is included in a Fokonolona. For example, the capital Antananarivo, made up of about 2, 61 million people forms the *Fokonolona* distributed in 192 fokontany (territories).

The traditional Fokonolona, a basic decentralized community, are communities bordering natural resources. In Madagascar, the majority of the Malagasy population lives on land and exploits the resources inherited from ancestors under customary law and lives outside the legal texts and regulations.

The various successive texts, relating to decentralization, establish *Fokonolona* as the basis for the construction of Malagasy decentralization. Thus, the basic communities must be empowered, equipped and participate in the development of the country. Community management contributes significantly to improving food security, health, education and personal security.

As one of the 10 poorest countries, Madagascar is considered the ninth most vulnerable country in the world. In a context of developing countries in rural dominance, the Big Island faces innumerable challenges in its struggle to reduce poverty and widespread corruption.

During the previous UPR, the State of Madagascar undertook to adopt all the recommendations received and to implement them. It has strengthened actions against poverty, corruption and environmental destruction and good governance of natural resources and land. For this purpose, and since about thirty and fifteen years respectively, the Government of Madagascar has been engaged in environmental reform and land reform.

However, the country fails to develop sustainably and the state fails to prevent the most serious violations of the insecure population, often illiterate and still extremely vulnerable to economic predation related to biodiversity and land.

The rush to the land and its resources in Madagascar could have major irreversible consequences. The local population can therefore be deprived at any time of its rights, lack of title opposable to these requests for concessions.

*The transfer of natural resource management to grassroots communities should not be limited to the responsibility / management of natural resources but should be extended to legal recognition and support and capacity building, governance inclusive. Inclusive governance means planning / management and participatory decision-making, wise use and sustainable use of resources in line with the principles and commitments of human rights and sustainable development.*

## AMONG THE MOST IMPORTANT ATTACKS ON THE FUNDAMENTAL RIGHTS OF THE LOCAL POPULATIONS

- Legal recognition
- Access to traditional resources, access to water and food
- Preservation, protection and transmission of land, economic and cultural heritage
- Live in a healthy environment and be protected against climatic hazards
- Access to land security
- Access to information and decisions concerning them
- The right of inclusive governance
- Right of appeal and restitution of property and land
- Pressure-free environment and use of force against communities and rights defenders



SITUATION	DEVELOPMENT
<p><b>1. Living conditions</b> are increasingly precarious</p>	<p>Limited land necessary for the survival of populations and the visible impacts of climate change: The land but also forests, rivers, sea, soil, air and shelter of varieties of animals, fish and plants allowing communities to find food and medicine, shelter, and in particular a supportive and resilient community life organization in times of scarcity and recurrent and aggravated climatic phenomena.</p> <p><i>John Knox notes in his report: "The inhabitants of these areas without electricity or access to drinking water or sanitation are very few to continue their education beyond primary education, and many of them still depend on forest products for fuel and fuel production. "</i></p> <p><i>Food insecurity, health problems, loss of economic income, loss of cultural identity, ... even loss of life.</i></p>
<p><b>2. Implementation of the land reform</b> poses difficulties</p>	<p>At the communal level: skills and training of land and finance agents. Problems of slowness of the administration and absence of notaries in the field. Lack of modernization of decentralized land services tools.</p> <p>In addition, civil servants and court decisions do not necessarily take into account these land certificates or do not give them the value that is recognized by law.</p>
<p><b>3. Methods of distributing land certificates</b> that could be sources of corruption</p>	<p>It is in disregard of their rights, their activities and their mode of community governance (in accordance with the contracts of environmental reform and land reform) that rural populations are expropriated from their ancestral lands and that their biodiversity is plundered.</p>
<p><b>4. Lack of transparency and democratic control</b> over acquisition contracts</p>	<p>characterized by:</p> <ul style="list-style-type: none"> <li>o the sale of property titles to companies or individuals, or</li> <li>o foreign states,</li> <li>o expropriations of ancestral territories by armed force and bulldozers,</li> <li>o the desecration and destruction of cultural landmarks,</li> <li>o the destruction of zebu cattle - theft of cattle,</li> <li>o issuance of exploitation permits without the consent of the landowners, ... against the background of pressure exerted on the <i>Fokonolona</i> communities</li> </ul> <p>The voices of local people are rarely taken into account even when legal procedures provide for it.</p> <p>These land agreements, instead of supporting the basic communities <i>Fokonolona</i>, family structures and especially small farmers, small fishermen, breeders ... promote industrial agriculture, tourism and even the protection of the environment ... while moving populations and destitute populations who, precisely, have the capacity to evolve their community.</p> <p>The law does not provide for recourse in the event of refusal by the Government to respond to requests for information relating to the environment In addition, these land agreements lack transparency and regulations regarding the impact on the environment and the population.</p>
<p><b>5. Lack of information</b> about proposed projects and their effects</p>	<p>Local communities often can not afford to participate effectively in public consultations. (See A / HRC / 34/49 / Add.1 - April 26, 2017) Land and resources are plundered without any respect from the inhabitants and without any understanding of their importance and no assessment that would help to understand how their destruction will affect local communities and the environment.</p> <ul style="list-style-type: none"> <li>o Local communities do not have access to an independent mechanism for monitoring environmental licensing decisions.</li> <li>o The decision-making process is often corrupted by companies seeking permits.</li> <li>o the procedure does not provide for public participation at the beginning of the decision-making process,</li> <li>o The evaluation procedure is too costly for local communities</li> <li>o there is no obligation to publish the results of the evaluation;</li> <li>o data on air and water quality are not made public</li> </ul>

<p><b>6. Lack of updating</b> of title deeds and <b>unofficial Dina multiplication</b></p> <p><i>Land insecurity catalyzing the prevalence of land conflicts and human rights violations</i></p>	<p>Customary law remains in force in many cases and continues to grow. The situation of inapplicability of the provisions, the heavy and complex procedures led to the establishment of their own regulation</p> <p>The majority of land occupiers or developers do not hold land titles and instead use custom or other practices to assert this occupation.</p> <p>Logic of duplication or circumvention of decision-making systems in contradiction with the commitments of human rights, the sustainable development and the protection of the environment of which the State of Madagascar is part. The <i>dina</i> system maintains its own rules of conduct, most often contrary to the general interest and leading to abusive behavior. Indeed, the self-regulation of individuals can contradict the human rights to which Madagascar adheres and harm the interests of other individuals not subject to the rule of collective conduct.</p> <p>Double punishment for one and the same offense (the sanction of the <i>dina</i> added to that of the court), the violation of the right of defense, the public lynching, the death penalty, the principle of the personality of penalties by extending the sanction to family members and close relatives ...</p> <p>The dichotomy between Malagasy environmental law and the self-regulating nature of <i>dina</i> is not contradicted by the state, which intervenes afterwards to validate these conventions.</p>
<p><b>7. A legal framework</b> that does not sufficiently protect the rights of local communities and is sometimes contradictory</p>	<p>On land, the protection of fauna and flora, fishing, mining resources, management of protected areas, the environment, forestry, industrial pollution, waste, ... For example: The Fisheries Code does not guarantee a privileged right of access for small fishermen</p>
<p><b>8. A rush</b> of land and natural resources</p> <p><b>9. Traffic of all kinds</b> (precious woods, sapphires, ...) are installed.</p>	<ul style="list-style-type: none"> <li>○ Trafficking of all kinds (precious woods, sapphires, ...) are installed.</li> <li>○ Degradation of food security: loss to local people of access to their livelihoods.</li> <li>○ Destruction of biodiversity, pollution, environmental degradation</li> <li>○ Vectors of extreme poverty, conflicts and increased insecurity related to land ownership and resource management are growing and intensifying.</li> </ul> <p>Despite efforts by the State party to combat corruption, it persists with impunity and violates human rights that impede the enjoyment by all of economic, social and cultural rights, civil and cultural rights of the Malagasy population.</p>
<p><b>10. The voices of local people</b> are rarely taken into account even when legal procedures provide for it.</p>	<p>It is in disregard of their rights, their activities and their mode of community governance (in accordance with the contracts of environmental reform and land reform) that rural populations are expropriated from their ancestral lands and that their biodiversity is plundered. .</p> <p>Land and resources are being plundered without any respect from the inhabitants and without any understanding of their importance and no assessment that would help to understand how their destruction will affect local communities and the environment.</p>
<p><b>11. Degradation of food security:</b> loss to local people of access to their livelihoods and livelihoods.</p>	<p>Damage to crops, forests, livestock and biodiversity threatens the right of people in basic communities to food and their right to an adequate standard of living, and the pollution of water and air endanger their right to health and drinking water and food in particular.</p> <p>"The loss of habitats, forests and land is a major problem (...) and the first victims are often indigenous peoples and other local populations dependent on forests, rivers, wild fauna and flora and other natural resources destroyed by the extraction of mineral resources (...) (See A / HRC / 34/49 / Add.1 - April 26, 2017)</p>
<p><b>12. Destruction of biodiversity,</b> Pollution, environmental degradation</p>	<p>Not only does this change the territory, the environment and lifestyles, but it can also disperse and annihilate populations and deplete and contaminate water resources, agricultural, mining, forestry, fisheries, medicinal plants ... pollute the air, provoke the deforestation, and increasing the risk of landslides, earthquakes, contamination, diseases, proliferation of species ....</p>

**13. Extreme poverty vectors**, conflicts and increased insecurity related to land ownership and resource management are growing and intensifying.

With the rush to the land, the amount of available land becoming insufficient, organizations not / badly anchored legally, widespread corruption: A feeling of insecurity is widespread throughout the country.

Cases of intimidation, attempted corruption, violence, arrests and death threats against local leaders, populations, women and children, fishermen, farmers, foresters, conservationists the environment of endangered species (turtles, lemurs, frogs ...), human rights and environmental defenders and journalists.

If these conflicts are not resolved, they may cause livelihood and environmental degradation, project disruption and violent responses.

## THREATS

- Degradation of livelihoods and the environment,
- Danger of aggravation of food, health ...
- An interruption of projects and
- Violent reactions
- Maintains the vicious cycle of extreme poverty and corruption
- Loss of legitimacy of institutions with regard to the Malagasy population increasing dependence on food assistance and marginalization
- ... see the disappearance of communities of peasants and herders, fishermen, craftsmen.

## CHALLENGE

### **Extreme vulnerability of the population, especially local communities of basic *fokonolona***

The challenge is not only an increase in land insecurity, but it is also an attack on human dignity and lifestyles, community governance and the right of people to organize their way of life. , to produce their own food, food sovereignty ... can go as far as genocide of population!

The implementation of land reform and resource management involves:

- Rigorous control of the legal** systems that apply not only to the management of rights on the ground, lakes, rivers and the sea, forests but also to local management such as agriculture, fishing, livestock farming, the conservation of biodiversity ...;
- It is **imperative to take into account** the civil, political, economic, social and cultural rights of local people, small farmers, women and children, all the Malagasy population whose survival depends on it.
- Create **a local land administration** to allow rational basic land management; An approach aiming at the negotiation of the actors and foreseeing a succession of stages which will allow a progressive process, under the control of all the actors.
- Equipping and supporting **grassroots communities** in the process of decentralization and democratization of environmental and land reforms.

The issue of land grabbing to secure capital and make it profitable is certainly a detrimental path for livelihoods, the environment and national interests, and the goals of human rights and sustainable development. It systematically undermines international human rights law because it destroys the environment and lifestyles necessary for the enjoyment of human rights for the people.

**1 LEGALLY RECOGNIZE LOCAL ORGANIZATIONS** and local good practices legitimately put in place for thirty years in the context of Environmental Reform; To legally recognize the legal personality of the Fokonolona, as expressed in the preamble of the Malagasy Constitution and its article 152, and to ensure that the lands are registered legally in their name in terms of land. **Protect local organizations against predation and ensure the sustainability of community governance.**

**2 SECURING THE LANDS, PROPERTY AND RESOURCES OF THE MOST VULNERABLE OF THE MALAGASY POPULATION AND IN PARTICULAR THE BASIC COMMUNITIES Fokonolona:** Harmonize and enforce the laws relating to the management of natural resources for local communities. Rehabilitate and / or amend existing laws and regulations; **Intensify the commitment towards massive land security.**

**3 ENSURING THE ENVIRONMENTAL AND LAND LAW:** Pursue the implementation of the land reform by revising the laws relating to the land management of large industrial, mining, oil, quarry, coastal, agricultural and tourist exploitations to enable those concerned to fully enjoy their rights. **Unify and end a complex system.**

**4 LEGALLY RECOGNIZING PROPRIETORS in land and real estate:** Encourage people who have occupied land for years without having formalized their rights to have them recognized; Provide family farms/fishers.... with written documents guaranteeing their rights on land easily accessible and at an acceptable cost **Recognize certificates and land titles by the population, institutions and courts in the interests of rural families and most vulnerable individuals who live in a risky activity for too long even as their survival depends on these places and traditional living condition.**

**5 ACTING IMMEDIATELY** that looted land be returned and damage repaired **Put an end to this resurgence of cases of repeated human rights violations in Madagasc**

**6 IMPROVING ADMINISTRATIVE MANAGEMENT:** Effective establishment of a local land service and training of land agents; Perform a rigorous control of these services; Recognition of certificates by the courts; Strengthen various institutions regulating access to land and the management of natural resources. **Reconcile the legitimacy of land practices with the legality of laws and regulations.**

**7 PROTECTING THE HUMAN RIGHTS OF THE POPULATION AND SAFEGUARDING THE ENVIRONMENT:** Before contracts are awarded to investors, carry out a public consultation with the Malagasy population and the local community and ensure that sales are made with the consent of the authorities customary and other family members. Take concrete measures to fight against corruption, in particular by strengthening the judicial system and urge entities working in Madagascar to respect the principle of free, informed and prior consent; **Clean up the business climate and make more transparent the lease agreements, land grants to firms and large foreign agricultural and mining companies.**

**8 STRENGTHENING DECENTRALIZATION AND DEMOCRATIZATION PROCESSES:** Decentralize decisions and involve grassroots Fokonolona communities in land management and exploitation and take into account the rights of people to participate in decisions that affect them; **To leave the necessary autonomy to the local communities in the accomplishment of their mission.**

**9 STRENGTHENING COMMUNITY CAPACITY TO MANAGE AND CONTROL THEIR RESOURCES:** Supporting local communities as UNDP GEF SGF does. It is a means of protecting a safe, clean, healthy and sustainable environment that is essential for the realization of human rights and sustainable development while improving the livelihoods of a predominantly rural developing country and ensuring the setting up of effective remedies. **To empower grassroots communities to assume authority, management and land use with adapted modern tools.**

**10 INTENSIFYING THE FIGHT AGAINST POVERTY in collaboration with UNDP and other relevant expertise:** Aim to ensure that in the areas of intervention and in particular vulnerable populations access to food security, income and employment opportunities, improve their resilience capacities taken quickly and efficiently, **To build trust in institutions and anticipate the resolution of potential conflicts.**