Living customary tenure systems in Madagascar
An overview

Rebecca McLain, Patrick Ranjatson, Andrisoa Richard Fabrico Nomenjanahary, Tasha Heidenrich, Jean Mananga Rakotonirina and Ny Tolotra Ramboatsitoharana Razafimbelo

Key messages

- Forest landscape restoration in Madagascar is likely to target forests and pasturelands managed as commons under customary tenure claims that are unrecognized by the state.
- Efforts to promote policy reforms that recognize customary claims to commons are hampered by limited information about the tenure systems that govern these spaces.
- Policy makers must recognize the diversity in Malagasy tenure systems when crafting legislation that recognizes customary claims to commons.
- The extent to which traditional authorities retain legitimacy is arguably a major factor in whether customary tenure systems in rural Madagascar provide stable and effective frameworks through which rights to land and resources are allocated and conflicts resolved.
- Action-research is needed to bridge the gap between state law and local practices with respect to women’s land rights.

Introduction

Under the Bonn Challenge, Madagascar has committed to restoring 4 million ha of its forest landscape by 2030. Commons, such as forests and grazing lands, are the landscapes most likely to be targeted for restoration.¹ National law, however, does not recognize customary claims to these lands. In addition, efforts to provide rural residents with state-issued individualized land certificates risk further undermining those claims (McLain et al. 2019). The limited information on contemporary customary tenure systems in Madagascar, particularly with respect to commons, impedes statutory recognition of customary tenure claims to forests and pasturelands. This Infobrief draws on findings of a recent review of research on customary tenure in Madagascar (McLain et al. 2021) to help fill this knowledge gap. The review describes a broad range of the island’s customary tenure systems (Figure 1).

Prior to 2005, any land in Madagascar that had not been titled through the state titling process was presumed to belong to the state domain. However, few rural Malagasy had land titles and the state had limited land administration capacity. Thus, for all practical purposes, customary tenure prevailed in most parts of the country. Malagasy customary tenure systems are dynamic living systems that meld customary and state legal procedures and principles to a greater or lesser extent (Boué and Colin 2018; Valkonen 2018). Some hybrid tenure practices are formalized. In Madagascar’s forest co-management contracts, for example, community associations can apply local rules regulating access to forest products provided the rules do not violate national laws (Bérard 2011). Other hybrid tenure practices are ad hoc. For example, some land sales do not follow formal state procedures for registering land transactions. Instead, they are recorded through written documents signed and stamped by the fokontany President and, in some cases, the commune mayor (Di Roberto 2020).

¹ Recent studies question whether forest landscape restoration, which tends to emphasize tree-planting, is appropriate in grassy biomes (Dudley et al. 2020; Vetter 2020).

2 Madagascar has 23 regions, which are composed of districts. Districts are divided into communes. The communes are divided into fokontany, which are the lowest administrative units of the state. Districts are deconcentrated administrative units of the centralized state. The regions and communes are decentralized territorial collectivities. They are financially autonomous, and their leaders are selected by popular vote.

Figure 1. Regions in Madagascar where studies in the review were conducted.
that had been occupied and placed into production as untitled private land (propriété privée non-titrée, or PPNT). Cropland, residential plots, and tree plantations are included in the category of untitled private land. Conversely, customarily held forests and grazing lands are considered part of the state domain. Land Law 2022-013\(^4\) retained the principles of the 2005 Land Law and reaffirmed the role of the commune land office as the deliverer of individual and collective land certificates for untitled private land.

**Customary land governance systems: General characteristics**

Local customary land governance systems vary depending upon which of Madagascar’s 18 ethnic groups is or was historically dominant in a region, as well as the extent to which traditional authorities retain legitimacy. However, in all ethnic groups, lineage and clan affiliation influence who has access to land and under what conditions.

**Roles of clans and lineages**

Clans consist of individuals or families with a common ancestor, who may be real or symbolic (Barry et al. 2000). The founding clan of a territory includes the families who claim to have first settled in that region. Each clan has a name or symbol, taboos (fady) that guide clan members’ behaviour, and a shared oral history. The leader of the clan, who is typically an older man, functions as a religious authority, connecting humans with the spirit world.

Lineages are composed of the descendants of a common relative, who is real rather than symbolic (Barry et al. 2000). The lineage is the foundational social and political organizational unit throughout rural Madagascar. How an ethnic group traces descent affects who inherits land, as well as who controls lineage and clan lands. Patrilineal descent is more common among ethnic groups whose livelihoods depend on extensive cattle raising, such as the Sakalava and Tsimihety. Ambilineal descent is more common among groups whose livelihoods depend on extensive rice cultivation, such as the Betsileo and Merina (Southall 1971). Typically, the oldest male in the descent line is the lineage head. The lineage heads, known as rey amin’ndrey, administer lineage land. The lineages that first settled and cleared land in an area are considered tompon-tany, or masters of the land.

In areas where farmland, particularly land suitable for rice cultivation is scarce, nuclear families or households may hold ownership rights (Di Roberto 2020). Few landholders have state-issued land titles or certificates, and in general neither are needed for land claims to be viewed as legitimate by locals (Cullman 2013; Valkonen 2018; Di Roberto 2020). Within customary tenure systems, rural Malagasy can acquire land in a variety of ways. This includes through inheritance, clearing of unoccupied land, sharecropping, intergenerational gifts, borrowing, rentals, and, in some areas, purchase (Gezon 1997; Jones et al. 2018; c.f., Evers 2001; Di Roberto 2020). However, land purchases are relatively uncommon and when they do occur are generally transactions among family members (Di Roberto 2020). In-migrants who wish to establish a land claim must obtain approval from the tompon-tany of the area (Fauroux 2001; Moizo 2001). Getting such approval requires the migrant to integrate socially into the community, typically either through marriage or blood-mixing ceremonies (fatidra) (Gezon 1997; Jones et al. 2018; Di Roberto 2020).

**Women’s land rights**

Madagascar’s 2010 Constitution states that all individuals have equal rights regardless of sex. Additionally, the law on succession\(^5\) provides that male and female surviving spouses should be treated equally. The 2007 marriage law\(^6\) also specifies that property held in common must be divided equally between the husband and wife in cases of divorce. In practice, however, these state laws are often ignored (Widman and Hart 2019). The following examples illustrate regional commonalities and differences in women’s land rights in Madagascar.

**Among the Bara living in Atsimo-Adrefana Region**, rice fields and upland cropland are inherited patrilineally with women inheriting only access and use rights (Moizo 2001). Women can own cattle. However, if a woman leaves the village when she marries, her cattle are placed under the care of her brothers. Importantly, the principle that cattle stay with the village also applies to men. Consequently, if a Bara man moves away from his village, his cattle remain in the village, where they are placed under the care of a male relative.

**Among the Merina in Vakinankaratra Region**, inheritance is patrilineal and, when daughters inherit land, they inherit less than their brothers (Valkonen 2018). However, because women typically don’t inherit land or only inherit small parcels, they are not required to contribute towards family festivities, which can be costly. However, land inheritance rules are flexible, and some individuals leave equal amounts to all their heirs. Whether women feel secure in their claims to land depends greatly upon the nature of their relationships with their male relatives.

**Among the Antankarana in Diana Region**, both men and women can inherit land (Gezon 1997). However, less than 20% of the women interviewed owned

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\(^4\) Loi no 2022-013 du 1 juillet 2022 portant refonte des règles fixant le régime juridique de la propriété foncière privée non titrée.

\(^5\) Loi n°68 - 012 du 4 juillet 1968 relative aux successions, testaments et donations.

\(^6\) Loi n°2007 - 022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux.
land and most women landowners were single or widowed. Women can own cattle, but the cattle are placed in the care of their father or brothers. As in Vakinankaratra Region, women with social ties to economically and politically powerful families can offset their generally weaker rights to land by working through their male relatives to influence village and family land use and allocation decisions.

Although women’s rights to land are generally weak in rural Madagascar, in some areas, such as the Central Highlands, there is a trend towards women acquiring stronger land rights. This is due to changes in socioeconomic conditions and growing awareness of state laws supportive of gender equality with respect to land ownership and inheritance (Di Roberto 2020).

**Decision-making, social codes, and conflict resolution**

In rural Madagascar, the fokonolona typically make community-level decisions. Under national law, the fokonolona comprise all residents in a fokontany, both men and women, who are 18 years of age or older. Fokonolona are rarely democratic, and community members with higher social status and greater wealth tend to dominate deliberations (Blanc-Pamard and Farroux 2004).

A key feature of customary tenure systems in Madagascar is the use of dina, or social codes that govern behaviour at the local level (Karpe et al. 2007). Dina are rooted in local traditions but are also valid under state law. Once a fokonolona has adopted a dina, a ritual is held to consecrate it. The ritual emphasizes the dina is not merely a pact between humans: it is also an agreement between members of the fokonolona and Zanahary (God), the ancestors, and the locality’s spirits (Karpe et al. 2007).

Land conflicts in rural Madagascar are often linked to ambiguities within families regarding who has rights to land; disagreements over land claims between long-established inhabitants and recent migrants (Moizo 2001); and tensions between livestock herders and farmers (Gezon 1999), and between local communities and outsiders, such as agricultural investors and conservation organizations (Gezon 1997, 1999; Horning 2004; Medernach and Burnod 2013). A high value, however, is placed on fihavanana, a Malagasy concept that translates roughly as “social solidarity”, and which encourages the maintenance of peaceful relations with others (Kneitz 2016).

When conflicts over land or resources arise, they are typically managed at the family or lineage level; only rarely do disputants take the case to the fokonolona to be judged by the rey-mandreny (lineage heads) (Gezon 1999; Di Roberto 2020). The fokonolona settles cases using the principle of fihavanana, with the primary goal to reconcile the disputing parties (Rosés 2016). Only in unusual circumstances will disputants seek to resolve the conflict in the state courts, which operate on the principle of assigning fault to one party rather than reconciliation (Rosés 2016). Application of fihavanana reduces the likelihood that an injured party will seek vengeance, but it also tends to reinforce social inequities (Sandron 2016).

**Rangeland tenure**

Zebu cattle are key elements of Malagasy culture: they are a walking savings bank and a source of protein, and play an important role as sacrifices in funerary and other rituals. Their manure is critical for the maintenance of soil fertility, and zebras are used to plough fields and draw carts. Zebu play a critical role in people’s lives throughout Madagascar. However, studies of customary rangeland tenure have focused primarily on extensive cattle-raising systems in the southwest and west. The following examples illustrate some key elements of Malagasy rangeland tenure systems.

**Among the Bara in Atsimo Andrefana Region**, the savanna near villages is used as a collective pasture by members of the village lineages (Horning 2004). In more distant grazing areas, each lineage is allocated area for its cattle to graze. Temporary cattle camps, known as toets’aoomby, serve as points for watching the cattle and monitoring passers-by. Other important elements for extensive cattle management in this area include watering points, cattle corridors, and areas where the cattle are gathered.

**Among the Bara on the Ihorombe Plateau**, founding villages hold collective management, exclusion, and allocation rights to communal grazing land

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**Box 1. Emerging rights to Euphorbia stenoclad**

- Marked samata: Individual trees found in community grazing areas that have been marked and claimed as private property; the claimant has rights to the trees but not to the land.
- Corral samata: Trees that surround privately held livestock enclosures on community grazing land; the claimant has rights to use the trees for livestock fodder and can sell those rights to others. However, the claimant does not have rights to the land on which the trees are located.
- Samata enclosures: Trees that an individual has fenced in, and which other clan members have the right to use; the claimant has rights to both the land and the trees.

Source: Goetter and Neudert 2016.
and determine access and use rules for outsiders (Gingembre 2017). If cattle thieves cross a village’s territory, the inhabitants are obliged to track the cattle. If the villagers are unable to identify where the stolen cattle left their territory, they must compensate the person whose cattle were stolen.

Among the Tanalana in southwestern Madagascar, the growing scarcity of samata (Euphorbia stenoclada), a tree used as cattle fodder, has led to privatization of what was once a resource open to all (Goetter and Neudert 2016). Box 1 describes the range of rights that exist for samata. Most locals have accepted privatized enclosures. They understand the need for such enclosures given the scarcity of samata trees and the prevailing cultural practice of allowing community members to claim open land. However, they disagree over how large livestock enclosures should be and what constitutes an acceptable distance for private use of samata around enclosures.

**Forest tenure**

Like rangelands, forests are integral to rural Malagasy lifeways. Forests are a source of subsistence products (e.g., fuelwood, construction materials, food, game), a land reserve for future generations, and home to spirits and the ancestors (Scales 2012). The following examples illustrate the importance of functional customary tenure systems for sustainable forest management in rural Madagascar but also point to some of the challenges these systems face.

In the Androy Region in southeastern Madagascar, in one site where the customary system still functioned well, new permanent settlers had to go through the clan authorities to acquire access to land (Elmqvist et al. 2007). Additionally, anyone wishing to harvest a tree had to first get permission from both the fokonolona and the state forestry service. However, because few people lived in the area, it was difficult for the local communities to monitor and enforce forest use restrictions against outsiders. In another site where the customary system also functioned well, all forested land had been allocated to clans or lineages. Some forested areas were considered taboo forests, with strict rules about who could enter them and what resources could be harvested from them. The population density in the area was relatively high, and the local communities had the capacity to monitor the forest and ensure respect for rules regarding access to and use of the forested areas.

In Ibara, in southwestern Madagascar, two distinct types of forest tenure situations existed in forested areas in the state domain where the state’s presence was weak (Horning 2004). Local forest protection was effective in remote communities located near the forest, with homogenous populations, and strong customary authorities. Lineage or clan leaders set the rules governing forest use, and community members generally respected the rules. Community members considered the forest to be the sacred home of their ancestors and believed they would receive supernatural punishment if they broke the rules. Moreover, the risk of being caught was high because local herders camped at the forest edge could easily monitor the area. In contrast, local forest protection was ineffective in communities located at a distance from the forest, and where many migrants or multiple ethnic groups were present and traditional authorities were no longer respected. Forests near these communities suffered from illegal forest uses, and commercial timber harvesting was facilitated by easy access to local markets.

**Forest management contracts: The new dina**

In 1996, Law 96-025 introduced Gestion Locale Sécurisée (Loi GELOSE), or secure community-based management. This permitted local communities to acquire management authorities over lands in the state’s private domain. Forest management contracts authorized under the Loi GELOSE and a subsequent decree issued in 2001, are now the primary means by which communities have state-recognized rights to forests in their territory. Forest management contracts

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**Box 2. Tensions in Makira National Park (Cullman 2015)**

In Makira National Park in northern Madagascar, the Malagasy government delegated management authority to an international conservation organization, which then entered into a forest management contract with local communities for the park’s buffer zone. The conservation organization’s project managers assumed the forest was managed communally under the local customary tenure system. However, in this area, the traditional leaders (tangalamena) allocate most forested land to specific households or extended families. Tensions soon emerged once the forest management contract went into effect because the households and extended families with customary rights to specific portions of the forest felt their rights were being disregarded. The conservation organization further angered local inhabitants by declaring the park a taboo forest (alafady), a decision that only the tangalamena could make under the customary system.
must be created through a process modelled after traditional dina to increase the likelihood that locals will respect the rules. To be recognized as valid by the state, these dina, which are known locally as dina GELOSE or dina vazaha, must be compatible with Madagascar’s state laws and regulations.

Most dina vazaha are based on a template created by international conservation organizations. Unlike traditional dina (Bérard 2011), which seek to facilitate social cohesion, dina vazaha emphasize prohibitions and fines. Community support for dina vazaha is low, and because the dina apply only to community members, local authorities have difficulty enforcing infractions by outsiders (Bérard 2011). Box 2 illustrates the tensions that can arise when conservation organizations lack an understanding of the tenure systems in the area where they seek to restore forest landscapes.

Research implications

Despite sharing some core features, Madagascar’s customary tenure systems exhibit considerable heterogeneity geographically, and across and within ethnic groups. Moreover, these systems are complex and dynamic, with local communities, pastoralists, and others finding innovative ways to secure access to land and resources. Efforts to recognize customary tenure rights in Madagascar will need to acknowledge and support the diversity of tenure and livelihood systems that occur, while also recognizing that communities differ considerably in their capacity and political will to manage their commons.

To guide future research and legal reforms, we put forth the following hypotheses:

Hypothesis 1 – In areas of Madagascar where traditional authorities retain widespread legitimacy, customary systems already provide reasonably stable and effective frameworks through which rights to access, use, manage, and transfer land or resources are allocated and enforced, and over which conflicting claims are adjudicated. In such areas, identifying ways to support these systems rather than seeking to replace them, may be the most viable pathway for providing tenure security for rural inhabitants.

Hypothesis 2 – In areas where the legitimacy of traditional authorities is broadly questioned, community members and outsiders are more likely to make use of the state tenure system. In such areas, one would expect to see more conflict, particularly if the state has a limited presence as is the case in much of rural Madagascar. In these areas, the most viable pathway for providing tenure security may be to encourage the emergence of innovative hybrid approaches.

Research that explores these hypotheses in more detail can help shed light on what constitute the key elements of still-functional customary tenure systems and emerging hybrid systems – as well as for whom, and in what sense, they are functional and for whom they are not. Such research can help identify elements of those systems that need to be modified so they are more inclusive and equitable in how they distribute benefits and costs.

We end with a call for more research on women’s rights to land and resources in customary and hybrid tenure systems in Madagascar, an area of study that our review indicates has been greatly neglected. Work on women’s land rights in sub-Saharan Africa (Santpoort et al. 2021) is instructive in this regard. It suggests that action-research aimed at co-producing knowledge about women’s land rights and decision-making authorities, while co-designing approaches for strengthening those rights and the ability of women to realize them, is likely to prove most effective at helping bridge the gap between state law and local practices. In particular, initiatives aimed at supporting convergence between state and customary tenure systems with respect to women’s rights need to focus on the whole community, given that women often have access to land through the group rather than as individuals (Abebe and Flintan 2021).

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