

**Property Taxation in Francophone Africa 3:
Case Study of Democratic Madagascar**

Jean Jacques Nzewanga

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Abstract

The Lincoln Institute and the African Tax Institute (ATI), located at the University of Pretoria, South Africa, have formed a joint venture to better understand property-related taxation in Africa. Its goal is to collect data and issue reports on the present status and future prospects of property-related taxes in all 54 African countries, with a primary focus on land and building taxes and real property transfer taxes. Each individual report aims to provide concise, uniform and comparable information on property taxes within a specific country or region, considering both the system as legislated and tax in practice. This paper provides a detailed case study of property taxation in Madagascar.

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Introduction

The model used in drawing up our previous reports on property taxes has once again been followed. As with the preceding reports, our analysis falls into six parts that deal with:

- basic information on the country being researched;
- the organisation of the government;
- land problems and property transactions;
- an overview of taxes in the country concerned;
- taxes on fixed property and lastly
- the annual property tax.

In the chapter on basic information in Madagascar, apart from the information on the geographical location of the country, there are details on political development since colonisation and the origins of the Madagascan people in general.

The second chapter, which deals with the organisation of government starts with the country's institutions established under its constitution, and goes on to discuss the administrative divisions of the country, highlighting the degree of regional administrative and financial autonomy that permeates the Madagascan constitution and describing the sources of income available to decentralised administrative bodies (i.e., the region and the commune).

The third chapter, sub-divided into 3 sub-chapters, deals with the land problems that seem inescapable for this country, in particular the legal system for untitled private property, the national land programme that informs and allows a possible assessment of the approach that the Madagascan authorities can adopt towards solving the land problems and, finally, the management of land estates and services. The fourth chapter deals with taxes in general, and underlines particular aspects (both economic and social) that have been at the basis of tax reform since the end of 2007 and of which the results and recommendations (internal taxation and customs) feature in the specific details of the Tax Regulations of 2008 and the Finance Act of 2008.

The fifth chapter is subdivided into two main parts dealing with taxes on fixed property. The first sub-chapter examines current tax regulations on capital gains on property and the second the laws on registering deeds and transfers. Lastly, before the general conclusion, the sixth part on annual property tax is subdivided into two sub-chapters of which the first, using the legislation in force, deals in detail with property tax on land, and the second, property taxes on built property as set out in the Tax Regulations 2008.

1. Basic Information

Madagascar, or the Republic of Madagascar to give its official title, is an island state in the western part of the Indian Ocean off the coast of East Africa from which it is separated by the Mozambique Channel, 650 km wide. Its capital is Tananarive, called

Antananarivo in Malagasy. This island in the Indian Ocean was colonised by France for 64 years (from 1896 to 1960) after it abolished the Kingdom of Madagascar in 1895. For almost 30 years after its independence, this nation in the Indian Ocean was shaken by political crises after a period of military government at the beginning of the 1970s.

Opposition parties were legalised in 1990 and the country underwent democratic elections and finally installed a freely and democratically elected government. Although disputed, the Presidential elections of 16 December 2001 and the parliamentary elections of 15 December 2002 allowed the political crises to be resolved and the island's uncertain political climate to be stabilised.

Madagascar is the fifth largest island in the world in area, after Australia, Greenland, New Guinea and Borneo, with a surface area of 587,000 km² (the area of France and the Benelux countries combined). Located in the Indian Ocean and crossed by the Tropic of Capricorn, it occupies a strategic position with its coast facing the Mozambique Channel.

5% of the land surface is used for agriculture. Deforestation is reaching proportions that pose a major problem for the island's ecology and economy. The rapid rise in population is the main cause of deforestation of which an indirect consequence is the erosion of the meagre arable soil and the drying up of water reserves. Madagascar has the largest bay in the world after Rio de Janeiro's (Brazil). The Malagasy language, which has its origins in Indonesia, belongs to the "Barito" group of the Malay-Polynesian branch of Austronesian languages. The other languages in this group are spoken in the province of South Kalimantan on the island of Borneo.

2. Government Organisation

The Constitution of Madagascar (passed by referendum in 2007) states in article 41 that the institutions of state are:

- the President of the Republic, who is elected by universal suffrage for 5 years and can be re-elected once, and the Government;
- the National Assembly and the Senate;
- the Constitutional High Court.

The three functions of state, executive, legislative and judicial, obey the principle of the separation of powers and are practised by separate bodies. At the time of the Second Malagasy Republic (1975-1991) the country was divided into five tiers of administration. Now there are four tiers of subdivision which are:

1. Farita (region)
2. Departementa (department)
3. Kaominina (commune)
4. Fokontany

Madagascar is divided into six provinces which are:

1. Tananarive or **Antananarivo**
2. Diego-Suarez or **Antsiranana**
3. Fianarantsoa
4. Majunga or **Mahajanga**
5. Tamatave or **Toamasina**
6. Tuléar or **Toliara**

There are 22 regions – as listed in the table below:

	Region		Region
1	Anamalanga	12	Betsiboka
2	Bongolava	13	Boeny
3	Itasy	14	Melaky
4	Vakinankarata	15	Sofia
5	Diana	16	Alaotra Mangoro
6	Sava	17	Analanjirifo
7	Amoron'I Mania	18	Atsinanana
8	Atsimo Atsinanana	19	Androy
9	Haute-Matsiatra	20	Anosy
10	Ihorombe	21	Atsimo Andrefana
11	Vatovavy-Fitovinany	22	Menabe

The devolved local authorities, the **region** and the **commune** are incorporated bodies with administrative and financial autonomy granted under article 134 of the Constitution and have regulatory powers. The state is represented on them by a government official. The region is essentially an economic and social unit which is led (in an executive role) by a figure elected according to the provisions of the law, who is also its administrative head (article 143 of the Constitution). The decision-taking role is fulfilled by members elected by universal suffrage. On the other hand, communes may be either urban or rural units.

Resources for the local authorities are drawn from the following sources (article 150 of the Constitution):

- Income from duties and taxes voted for by its council and paid directly into the local authority budget;
- The proportion of duties and taxes paid into the state budget that it receives as of right;
- Income from subsidies, whether allocated or not, that are agreed by the state budget for all or each of the local authorities and which reflect their particular situation, or as compensation to these authorities for outgoings spent on programmes or projects that are decided by the state but implemented by the local authorities;
- Income from their assets;

- Sums levied for the use of local services.

3. Land Issues and Property Transactions

3.1 The legal system affecting non-titled private property

3.1.1 Preamble

Act No. 2005-019 of 17 October 2005, defining the principles governing the status of lands in Madagascar, established the right to property, including the right to non-titled land property, allowing the client to choose to secure his right to property between a procedure based on **registration** and that of **certification** under Act **no 2006-031**. This defines non-titled private property and defines how it is managed. It thus applies to all lands occupied by custom and practice that have not yet been subject to the properly constituted legal system, whether these lands constitute a family inheritance passed on from generation to generation, or whether they form traditional family grazing land that does not include the extensive grasslands that are the subject of specific legislation.

In accordance with the principle of decentralising land management, basic local authority units are responsible for establishing a Department known as the “Land Office” within their administration to manage arrangements for these non-titled properties. To achieve this, a certain number of conditions are required for the smooth running of the Office. For this reason, the basic local authority unit has to set up a local occupancy plan showing the different locations of property within its territory such as public and private estates of the state and local authorities or other public corporate bodies, areas that enjoy a special status, titled property and any boundaries of occupied lands existing on its territory. The land occupancy plan is a helpful cartographic information tool for the sound management of land by the local authority.

Moreover, the Authority is obliged to include provision for running this department in its budget, and must also have trained the staff at its disposal in property management. The purpose of this local property department is to recognise ownership rights over the plots occupied. A document recognising ownership, known as a “property certificate” is issued to the occupier after a well-established procedure has been completed.

Applications for the recognition of property rights must be made out individually, either by the local authority or groups legally constituted for the needs of their members, or by individuals.

The procedure set up for recognising this right is straightforward and essentially takes place at basic local authority unit level. Nevertheless, mechanisms have been put in place to settle disputes that might persist after the various measures advocated in the Act have been applied.

The certificate of recognition of a property right issued at the end of the procedure constitutes for the owner proof of his rights over his property, in the same way that the property title in the land tenure system recognises rights over titled properties. Thus the

owner can exercise any legal transaction relating to these rights or their subdivision that are recognised by the law in force and that are associated with titled properties, such as sales, exchanges, putting together a mortgage, lease, long-term lease and *inter vivos* deeds of gift. The property may also be passed on through inheritance.

Finally, a property certificate can be converted into a registered property title at the state regional department responsible for the management of property under a special procedure specified in law that deals with the private titled property system.

3.1.2 General provisions

Act no. 2006-031 that lays down the legal basis for non-titled private property was adopted by the National Assembly on 11 and 18 October 2006.

Under this Act, the legal basis for non-titled private property is that which applies to lands which are **neither registered nor recorded in the land registry**, and whose occupation is set out in a procedure defined under the same Act.

This law applies to all land, both urban or rural, that:

- is the subject of occupation but which is not yet registered in the land register;
- does not form part of a public or private estate belonging to the state or a local authority;
- is not in a zone subject to special statute;
- has been adopted in accordance with the local existing customs and practices.

This Act does not apply to lands that have never previously been occupied or adopted; these remain part of the states private lands. No local authority may lay any claim of private land ownership over non-titled private property.

The management of non-titled private property is the responsibility of the basic local authority unit. To discharge this, it sets up a special administrative office whose creation and operational procedures are established by Decree. In order to carry these out, the local authority sets up a budget, showing receipts and expenses, to facilitate the funding of the said office.

Procedures for recognising occupational rights cannot be started by the local authority before the office has been set up with a budget that has been previously voted on and ratified by the competent authority, or before a Local Land Occupancy Plan (PLOF) which is the basic cartographic instrument, has been put into place, otherwise they will be invalid. The Local Land Occupancy Plan:

- shows the boundaries of each area of land using a specific identifier;
- details the plots likely to come under the authority of the administrative office of the basic local authority unit;

- tracks the development of the situation with regard to lands and estates located within the territory of the basic local authority unit.

The basic local authority unit, in collaboration with the property and surveying departments responsible for the local area, implements the Local Land Occupancy Plan across its area as far as its resources permit. In particular, plots that are the subject of a property title or belonging to the public sector, are recorded on the Local Land Occupancy Plan.

The basic local authority unit also keeps information files on non-titled lands in accordance with the details given above.

Rights relating to the plots referred to on the Local Land Occupancy Plan are those determined under special legislation specific to each category of land. All alterations to and compulsory updates of information made on the PLOF are exchanged between the local government department and the department with area responsibility.

Information held on the Local Land Occupancy Plan by the local government department and the department with area responsibility must match.

3.1.3 Recognising private property rights over non-titled lands

An application to recognise private property rights over non-titled occupied lands may be either a joint or an individual one. It is dependent upon the prior creation of a Local Land Occupancy Plan using the procedures described previously, and upon application papers being filed in accordance with procedures laid down by Decree.

A joint application may come either from a local authority or a group of occupiers that have come together in accordance with the legal provisions in force. When this application is issued by a local authority it must be drawn up by an official of the local executive following the passing of a resolution.

A properly constituted group of native Madagascan occupiers may apply to the local territorial authority to implement the procedure of recognising a non-titled private property to benefit either:

- its members;
- the group as a whole;
- both together after a resolution has been passed under its constitution.

An application must refer to a description of its boundaries and the approximate dimensions of the area. When the application comes from a group, it must be drawn up by its legal representative or a person delegated for this purpose, under the terms of the constitution. If they so wish and legal requirements are met, the members of the group may ask the competent land authorities to draw up the property titles. When the application comes from an individual, he or she must be legally competent, be of

Madagascan nationality, and hold lands under the terms laid down in article 33 of Act no. 2005-19. In order to recognise property rights over non-titled occupied lands, the responsible department of the local authority implements a procedure that fulfils the following criteria:

a) The procedure must be public and open for discussion.

To this end, steps are taken to publicise it so that any interested parties can make their observations or raise objections. Methods of implementing this procedure are laid down by Decree.

b) This procedure is led by a Local Survey Board, which is made up as follows:

- the Head of the Executive of the basic local authority unit where the lands are located, or his representative;
- the Leader(s) of the Fokontany of the place where the occupied lands to be recognised are located;
- the Raiamandreny of the Fokontany chosen from a list drawn up annually by the Leader of the Fokontany put forward by its inhabitants, and published on the display boards of the local authority and of the Fokontany or Fokontanies involved.

The members of the committee choose their chairman. An official from the administrative department of the basic local authority unit acts as secretary to the committee.

c) The Head of the local Executive decides on the date of the survey, and appoints and convenes the committee members. In addition to being communicated to the applicant, the decision is affixed to the display boards of the basic local authority unit until the date of its survey on site. The decision date marks the beginning of the period when it is advertised and when objections can be received, and the length of this period is laid down by decree.

d) The process of recognition, publicity and objection consists of:

- identifying the plot(s) of land that are the object of recognition application;
- ascertaining occupancy rights in accordance with the provisions of article 33 of Act No. 2005-019 of 17 October 2005;
- receiving any comments and objections
- amicably resolving any disputes or objections.

At the end of the recognition process, a report is immediately drawn up and signed, giving reasons for the decision, by the members of the committee, residents and applicants after it has been read out to those present.

Objections can be raised verbally during or at the end of the recognition process, or by sending them in writing or filing them at the land office of the local authority responsible. Objections can be received from the date that the application was filed until 15 days after the date of the recognition procedure.

Objections are only admissible if they have an actual bearing on the situation under the terms of article 33 of the above-mentioned Act. Objections remaining unresolved at the recognition meeting must be recorded in the report. The resolution of objections is subject to preliminary arbitration by the chairman of the decision-making body, assisted by two councillors. The award decision may be appealed before the Civil Court within twenty days of its notification; this will make a final ruling in summary proceedings. The issue of a certificate recognising non-titled private property rights is suspended until a final decision is made.

At the end of the objection period, the administrative office responsible shall draw up a recognition certificate of non-titled private property rights relating to the occupied land(s) that are the subject of the application. The property certificate is signed by the Head of the Executive of the basic local authority unit. The property certificate cannot be handed over until the appropriate duties and fees have been paid. The administrative office responsible shall update the Local Plan of Land Occupancy by entering the plots of land that were the subject of the recognition of rights procedure. Property rights recognised through the certificate may be opposed by third parties until proven otherwise. Disputes and challenges to these property rights are settled under the provisions of chapter 5 of Act no. **2006-031**.

If the entries made on the property certificate and those on the documents of the administrative office of the basic local authority unit do not agree, the latter shall be deemed authentic, whereas in the event that a property certificate becomes damaged or lost, it may be replaced following the procedure laid down by Decree,

3.1.4 The management of non-titled property

The right to non-titled private property recognised by a property certificate allows its holder to exercise any legal transaction relating to these actual rights or their subdivision that are recognised by the law in force.

The legal basis for these actual rights over the titled property also applies to those over non-titled property, subject to the provisions of Act no. 2006-031. For them to be opposed by a third party, these transactions must be entered in the records of the relevant government office. Procedures for distraining property rights are determined by the Civil Code Procedure relating to property that is **neither registered nor entered at the Land Registry**. The methods for updating these records are established by Decree. When a transaction entails the transfer of a non-titled property right, the original certificate is taken from its holder, cancelled and replaced by the new certificate in the name of the new titleholder.

Suspension of the exercise of a non-titled property right constitutes a reason for the right held by the titleholder to be forfeited. Suspension in this instance means the person holding the right not behaving as the owner for an uninterrupted period of ten years, unless this is caused by a force majeure. A special procedure to establish this suspension of rights is laid down by Decree.

The forfeiture of rights determined by the Civil Court at the place where the property is located triggers the establishment of a trusteeship under the local state property office to manage the property for a maximum period of two years. After which the Court, in the absence of any interest manifested by the owner holder of the property certificate, shall rule that the property right shall be transferred to the private lands held by the state.

All entries or amendments made in the documents at the administrative offices of the basic local authority unit must be notified to the local state offices so that the information they hold on property matches; the procedure for this is determined by Decree. Under the provisions of article 24 of Act no. 2005-019 of 17 October 2005 governing the principles of land legislation, the holder of a certificate can ask for this to be converted to a property title under the procedure laid down by Decree and in compliance with the provisions on titled property.

The conversion of a certificate recognising a property right for a property title can only occur after the plot has been marked out in accordance with the legal and regulatory provisions in force, and after any disputes have been finally settled. The marking out date is the starting point of a period of 15 working days to allow objections to be removed and to register applications. The methods by which a property certificate is converted to a land certificate are laid down by Decree. After the plot has been registered and a property title created, the area estates department shall notify the relevant administrative office of the basic local authority unit of the creation of a title, so that the Local Land Occupation Plan and the Parcel Register can be updated.

3.1.5 Penalties

All the formalities and procedures described in articles 2 to 14 of Act no. 2006-031 are subject to invalidation. This may be invoked by any individual with an interest or when checks on legality are made under the decentralisation laws.

3.1.6 The resolution of disputes and disagreements

Any dispute, initiated either by the authorities or by an individual, that arises from the application of Act no. 2006-31 regarding a property right, comes exclusively under the purview of the Civil Court.

The settlement of disputes among individuals over non-titled property must be first sought through a process of conciliation and legally recognised arbitration procedures undertaken by the local authority concerned before it is placed before the relevant court.

3.1.7 Transitory provisions

Until the administrative offices for the basic local authorities responsible for managing non-titled property were set up, the local state offices, in addition to their powers over estates and property under ordinary law, managed the parcels of land under the terms of Act no. 2006-031 and the law on basic local authority units.

3.2 The National Land Programme

3.2.1 Introduction

In Madagascar, the time gap between the needs of individuals for security of land tenure and the ability of the central state to issue property titles is a major inhibitor of development. Since March 2004, the Madagascar Ministry of Agriculture, Animal Husbandry and Fisheries has initiated a huge programme, called the National Land Programme, that was designed to bring the country out of this land crisis and which has drawn interest from a great number of financial backers.

The principal objective was to respond to the huge demand for security of land tenure, within the shortest possible time period and for prices appropriate to the economic climate, by formalising unwritten property rights and by safeguarding and correcting anomalies in written property rights.

The purpose of this new land policy was to manage land in such a way as to favour private investment, agricultural production, the management, protection and renewal of natural resources and the development of local authorities by making the tools for local management and taxation available to them.

3.2.2 The Land Policy Letter

The land policy letter was the preliminary stage to land reform. This statement detailed the direction taken by the government in respect of land and property. Enjoying a large measure of agreement and offering an overall vision as to how to improve the management of land rights, it is the basis of a Land Policy, a strategic framework ensuring consistency in the activities of the public authorities. These activities relate to programmes of securing land tenure in urban and rural areas, to the preparation of new legislation appropriate for the current economic, institutional and technological climate, and providing job training for land management at a national level.

Approaches to Land Policy were presented and debated with the Technical Unit for the Preparation of a National Land Programme, in the course of which representatives from three groups – elected members, government departments and civil society – expressed their views and made their contributions.

The Land Policy Letter is a public document, accessible to all and easily consulted. It is intended for elected representatives, those involved in economic development and for the technical and financial partners of the state of Madagascar. It comprises several chapters, including:

1. The current situation with regard to land regulation: The facts as they stand (changes in land management, low capacity for issuing title deeds, rare registration of transfers, the high land registry costs, paralysis in the public sector and ineffectiveness of the systems in place), **The consequences of the property crisis** (general insecurity of land tenure, development of conflicts over property, corruption), **The impact of the property crisis on economic life** (reluctance to invest, deterioration of the social climate, overburdening of the courts, obstruction of the decentralisation process, loss of credibility in the state) **and the causes of the property crisis**.
2. The institutional context: a letter in harmony with the guiding principles of national and sectional interests: The Land Policy Letter subscribes to government approaches to policy as defined by:
 - “Madagascar, Naturally!” general state policy for the year 2005;
 - The Document on the Strategy for Reducing Poverty;
 - The Policy Letter on Rural Development;
 - The Action Plan for Rural Development;
 - The Five-Year Master Plan for Rural Development (2004/2009).
3. The objectives of land policy: The main objective is to meet the huge demand for security of land tenure, within the shortest possible time period and for prices appropriate to the economic climate, by **formalising unwritten property rights and by safeguarding and correcting anomalies in written property rights**, and other specific objectives.
4. The guiding principles and main thrusts of Land Policy:
 - a) Restructuring, modernising and computerisation of the land registry and Survey Departments;
 - b) Improvement to and decentralisation of land management;
 - c) The renewal of land and property legislation;
 - d) A national programme of job training for land management.
5. Implementation of the Land Policy: a body to steer and monitor developments and to generate information (contracting authorities, determining the course of developments and monitoring them, Steering and Monitoring Committee, information unit, monitoring and evaluation, single management body).

The implementation of the Land Policy through the National Land Programme occurred in three stages:

- a) **The preparation phase** – the purpose of the preparation phase was to establish the strategic direction of the Land Policy and consult representatives from the different economic and social sectors on the proposed institutional innovations. This phase ended on the date that the Land Policy Letter was ratified.
 - b) **The start-up phase** – The aim of the start-up phase, two years in length, was to draft a new law and its provisions for implementation.
 - c) **The extension phase** – Using the methods and tools refined during the start-up stage to implement the strategic thrust of the Land Policy on a national scale, according to the requirements and demands of the local authorities and the decentralised land services.
6. Evaluation of the National Land Programme: Evaluation methods, benchmarks.

3.2.3 The modernisation of land services

3.2.3.1 Introduction

A cursory audit of the land registry will clarify the fact that the Head of the District Land and Property Administration is automatically the Land Registrar within his area. He is responsible for recording in the land registers the actual rights and liabilities on the land after its registration (ownership rights, beneficial rights, rights of use and long lease occupancy, building rights, public rights of way etc.).

The custody of information on the identification of alleged owners and the definition of the basis on which fees are assessed are within the power of Land Registry and Survey Records Offices, whose creation, area of jurisdiction and offices are the same as for those of the Land Registry Office.

The shortage of resources is at the heart of the basic problems of the Land Services in general and the Land Registry in particular. If nothing is done, the most likely scenario is that documents will deteriorate even more markedly. Even now, the inability of departments to find necessary information is becoming more the rule than the exception.

Initially, this implies increasingly extending the time to process transactions. This is a situation ripe for off-the-record transactions, fraud and corruption to develop. Then finally a situation of general bankruptcy and abandonment of the system occurs. Such a situation causes significant economic upheaval with the legal security of a property or investment no longer ensured.

3.2.3.2 Blueprint for modernisation

The modernisation of the land registry must target precise objectives and be integrated into the rationale for a wider picture. At the very least, the land and Survey Departments

must eventually have a computerised database containing all the land and survey information for Madagascar. All the different districts must be networked for remote searching and to integrate all the bases into a single reference system covering the whole country. According to the blueprint, the system must fulfil the following conditions:

- Be easily searchable and offer the best quality of service
- Provide improved processing of operations
- Offer better governance

The purpose of the land registry and survey is to allow information contained in documents to be preserved for future use. This objective focuses on preserving information rather than the document itself (the data medium). Thus, it is vital that a suitable solution allows information to be researched and located in the future, to be retrieved and read, and to be updated after processing.

The stages of modernisation and the technological options for each stage are:

- Conserving the documents and setting up a map reference system;
- Creating an alphanumeric database and a vector database of land parcels;
- Setting up the system;
- Making the system secure.

Measures to support the process of modernising arrangements for conservation were also planned. These relate to the following aspects:

- *Reform of the budget:* Responsibility for renewal costs and future running costs.
- *Financial reform:* The right of departments to invoice for the services performed and to retain the revenue.
- *Legal and regulatory reform:* Review of the extent of the Registrar's personal responsibility as soon as the system is computerised; Definition of the legal status of a digitised government document; Establishing the length of time that stored paper documents should be conserved.
- *Institutional reforms:* Strengthening the amalgamation of the property and Survey Departments; Setting up a National Property and Survey Office or Granting public service concessions to form a public- private partnership.
- *Management of the information system:* Setting up a facilities management contract covering the installation, renewal, updating and maintenance of the system.
- *Management of human resources:* Increasing the capacity of training centres to produce more survey and property employees and managers, especially training in modern surveying techniques; The integration of IT training modules into

employees' initial training; The training of existing employees so that they understand the specific characteristics of the property and Survey Departments; the training of employees in basic computer skills (operations systems, office technology), and in the principles of managing a computer database, geographic information systems and the interpretation of imaging data; Training in the use of a computerised system (searching, publishing); Specialised training for employees responsible for inputting and updating the database.

3.2.4 The decentralisation of land management

3.2.4.1 Preliminary phase

The preliminary phase for land decentralisation was based on a **regional land diagnosis**, the stages of which were:

- An inventory of the different legal statuses involved;
- Local land management practices;
- Identifying the advantages, constraints and opportunities involved in creating a Land Office.

After the regional land diagnosis, the programme went on to **Information sessions with those involved at regional and local level**, undertaken in several phases, including:

- Briefing the regional authorities;
- A regional information forum on land tenure;
- An information campaign in the communes involved.

The third stage of the preliminary phase was dedicated to the **choice of the systems and methods of land management**, undertaken in the following five stages:

- Analysis of lands held by the commune;
- Local authority views and agreement on possible systems of land management;
- The choice of system and drafting an Order for setting up the Land Office;
- Briefing the competent authorities;
- Conditionality for the creation of "Land Offices".

3.2.4.2 The setting-up phase for the Land Office

This phase lasts from the commune's decision to create a land office of a specified type, to the first day of the office's operation. All of the conditions necessary for running the office have to come together, in terms of qualified human resources, sustained financial resources, tools and equipment. During this period, the land office is still not in operation and cannot issue property certificates.

- a) Determining and delegating responsibilities

This stage is to allow the clear establishment of responsibilities between the different parties involved in creating and supporting the Land Office.

Even special arrangements for Land Offices shared between communes have been made. Authorities in partnership for the creation of a decentralised land management system must, in addition to drawing up a contract of agreed objectives, set up a system of inter-communal co-operation and draft the necessary bylaws. Arrangements must be defined for the smooth flow of funds between the different member communes and the inter-commune organisation.

It was then necessary to determine the scope of the commune's powers by defining the status of land tenure and the powers of the land office. The scope of the local land office is defined by:

- the prior establishment of the boundaries of the commune or the projected inter-communal organisation;
- the exclusion of lands which have the status defined below:
 - titled private property
 - public estates
 - private estates
 - lands having a special status (protected areas, reserves....)

In consequence, the Land Office has total power over a non-titled land right.

It seemed vital to collate land and survey information into a geo-referenced database that was made available to the commune services and sourced from information stored by the land services. This database integrates with a system for storing spatialised information, known as the "Local Land Occupancy Plan" (PLOF).

This Plan also determines the extent of the respective powers of the Local Land Recognition Committees by establishing the geographical boundaries of the Fokontany.

The PLOF integrates with the new location system, managed and eventually to be used both by the Survey Departments and the local land offices.

b) The mobilisation of qualified staff

The mobilisation of qualified staff is carried out firstly through recruitment and then by the initial training of Land Office employees.

As Land Office officials are officials of the commune responsible for implementing the procedures of decentralised property management and the daily running of the office, the commune is their employer. It shall be responsible for their wages and employer's contributions within the time period specified in the contract of agreed objectives. The commune is therefore responsible for their recruitment.

As a guide, the following headings may serve as a framework for communes as a method of recruiting Land Office employees:

- Land Office employees are agents of the commune or contract workers having a contract of employment that may be renewed;
- their wages will be in line with the normal local authority scale;
- If the commune or OPCI deem it appropriate, they may receive a housing allowance and an office motorcycle or bicycle.

The recruitment process recommended is as follows:

- Invitation for applications and pre-selection of employees by the commune using documentary evidence and interview methods
- Initial training (4 areas)
- Selection by competition and final exam
- Recruitment and drafting of contracts

Employees are trained by qualified personnel and by the regional land services.

The content and practical methods used for this training relate to the four following areas:

- Introduction to the law – The basic concepts of property law. The bases of civil and administrative law. Knowledge of the regulations governing the status of land. The bases of local authority law and a knowledge of the regulations on devolution and decentralisation;
- Practical introduction to decentralised land management – Approaches to the practices of decentralised land management. Knowledge of decentralised land management handbooks and documents administered by the Land Office,
- IT training – Competence in basic information technology and the most up-to-date software.
- Introduction to mediation – Acquisition of conflict resolution skills and knowledge of how the legal system operates.

These modules are detailed in the training manual for Land Office officials.

c) Carrying out checks

Land recognition boards are responsible for ascertaining on site, in a way that is public and open to debate, the actual occupancy of land for which certificate applications have been filed at the Land Office. Land recognition boards are commissioned by the commune and the Land Office according to the number of applications for a particular area. They issue a report on their findings which serves as evidence for the Office to drafting of property certificates and for the Mayor to ratify them.

Local Land recognition boards are constituted according to the customs in each region. As a minimum, they must include a representative from the local council, a representative of the Fokontany and at least two key figures chosen by the Fokonolona.

The procedure for constituting a land recognition board is as follows:

- Informing and raising awareness among the local population in the Fokontany (in districts, associations or any other civil organisation as necessary);
- The proposal of a list of suitable figures by the Fokonolona;
- The appointment of the board from the list above, by Order of the head of the local authority executive;
- The appointment by the mayor of his representative.

These boards are temporary and may be periodically renewed under provisions made by the communes.

The members of the local recognition board receive initial and ongoing training. Initial training is given after their appointment and before any reconnaissance on site. One or more additional training courses are organised by the commune and any support organisation it has according to requirements and developments in regulations or techniques.

3.2.4.3 The operation of the Land Office

In their operations, Land Offices tackle two specific tasks which are: **the implementation of the certification procedure** and **the implementation of the transfer procedure** (e.g. sale, legacy, gift...).

- a) Implementing the certification procedure

The certificate procedure is organised into four stages which are:

1. **Investigation of the application to issue a property certificate:** this investigation includes the filing of the application (clients are briefed by Land Office staff on the formalities, costs and time periods involved); Filling in the form and producing a file for the client; Checking by the Land Office official that the application does not encroach on other lands registered on the PLOF, Compilation of a file by the Land Office official, Entry of applications in chronological order in the register, Creating a file and starting a folder for the plot concerned, Making an inventory of supporting documents. Paying of filing charges, Issuing an invoice, Settling costs with the local tax office and issuing a receipt, Entering the sum paid in the parcel folder and Issuing a receipt for the application (with date and reference number).

2. **Publicity:** Displaying the application for the occupied plot, Drafting a display notice by the Land Office official, The signing of the notice by the Mayor, Displaying the notice (in the Land Office and Fokontany). This display may be accompanied by information broadcast by radio in certain areas (depending on the findings of the Land Diagnosis and in the case of joint recognitions). Provision for a radio announcement may also made when a Land Office is opened, Announcement of display confirmation by the chairman of the Fokontany, Entering objections and claims (Receiving challenges to the application , Entering these challenges in the parcel folder for the file concerned), Re-appointing or replacing members of the Local Land Recognition Board, Identical Procedure for local council appointments, Scheduling of Local Land Recognition Boards (Proposal of a Local Recognition Board timetable by an official of the Land Office according to the number of applications filed. Ratification by the Mayor), Calling a meeting of the members of the Land Recognition Board and briefing those attending (Preparation for meetings of members of the Land Recognition Board, Signed by the Mayor).

3. **Recognition:** Identification of the plots of land and their occupants (On-site visit with the parcel folder and copy of the PLOF, Questioning of those present), Receipt of objections (Collection of any objections, Analysis of objections with supporting documentary evidence and any on the Fokonolona evidence base), Settlement of disputes and mediation (Mediation and search of consensus in the event of disputes, before taking the matter to court. after arbitration by the local authorities). Drafting a report authorising local recognition (the Land Recognition Board draws up a report whatever the outcome of the application, All members sign the report and all members of the Fokonolona present sign the attendance sheet, The report is placed inside the parcel folder).

4. **Drawing up a property certificate:** Publishing a property certificate (Contents of the parcel folder checked by an official of the Land Office, Any corrections are made to the boundaries of the plot, Possible publication of a plan of the plot, Classification of the certificate and final numbering of the plot, Publication of the certificate), Ratification of the certificate (Sending the published certificate to the Mayor, Signature of the Mayor and embossed stamping by the Mayor), Payment of costs of formalities and drafting of the property certificate (Issuing an invoice, paying costs to the commune tax office. Issue of receipt), Handing over the certificate (The property certificate is issued by a Land Office official and signed by the Mayor, An acknowledgement of receipt is signed by the client, The sum paid is recorded in the parcel folder). If the property certificate is lost (Statement of loss by the Fokontany), Notice of loss given at the Land Office, together with further application by the client, Checking in the parcel folder, Investigation of the application to issue a duplicate, Payment of service charges, Publication of a duplicate property

certificate, Signing by the mayor, and Issuing of the duplicate certificate by a Land Office official.

- b) Implementing transfer procedures (e.g. sales, legacy, gift...)

The transfer procedure is carried out in the following successive stages:

1. **Demand of fee from title holder:** In the event of a sale or gift (Registration of the bill of sale or deed of gift in the commune, Payment of transfer fees on a scale predetermined by the commune, Drafting an application or applications, Presentation of documents at the Land office), In the case of a legacy (registration of the will or affidavit), Payment of transfer fee at rates predetermined by the commune, Drafting an application or applications, Presentation of documents at the Land Office).
2. **Examination of the deeds filed and entry on the Land Office deeds:** In the event of subdivision of land (examination of files, creation of new parcel folders, New boundary markings on the plan, on-site verification and marking out if necessary). In the event that there is no subdivision (Examination of files, entry of details about the new owner in the same parcel folder). Issue of a certificate to the new titleholder (Removal of former property certificate to be stored in the records, Drafting of new property certificate(s). Signing by the Mayor of the new certificate(s), Transfer costs are collected by the council land agent on behalf of the Land Office).
3. **Recording property rights:** (lease, shared and single tenancy, mortgage): Filing the contract at the Land Office (Drawing up and registering the agreement or contract using a framework predetermined by the commune. Payment of fee for registering the contract or agreement at a rate predetermined by the commune, Presentation of documents at the Land Office, Entry of documents at the Land Office).
4. **Updating the PLOF:** Inserting the new certificates and transfers (Periodic entry of new certificates into the PLOF by the Land Office: marking in the areas of certificated parcels and updating the “certificates” database), Inserting the new title deeds using the new applications to register or to convert certificates, Entry of the new titles in the PLOF by the regional land services: marking out the areas of the newly registered plots and updating the “titles” database), Exchange of information between the Land Office and land services. Design of a system for the exchange of information, Periodic exchange of information when the land services offer support to the Land Office or when Land Office officials make visits to these departments, two copies of the PLOF are kept, The saving of information (Information on the PLOF saved on removable storage devices at the Land Office and at the regional land departments), Storage

of this saved information (with password) in a secure place within their premises.

- 5. Briefing and ongoing training:** Regularly briefing the authorities and technical services (Designing a framework and media for the new technologies, new guidelines, new methods and responses on furthering operations and responding to difficulties...), Regularly briefing the authorities and devolved technical services on the above-mentioned subjects, either by the support staff responsible, or by officials from the Centre for Land Resources and Information or the Land Office, Regular briefings for clients (Designing a framework and media for Land Officer clients on procedure, law, and costs of certification by Land office officials, possibly with the help of the support unit, Regularly briefing clients on these subjects in the Fokontany and hamlets), Regular training of the land and commune services (Designing modules and training aids for the new technologies, new guidelines, and new methods and responses... for land services employees at regional and commune level, Regular training of this target audience by the support unit), Regular training of members of the Local land recognition board (designing modules and training aids for the local reconnaissance procedures and mediation, reading satellite images and aerial photos, Regular training of this target audience by Land Office officials with the help of the support unit).
- c) The management of estates and land services

Transactions currently carried out by the land registry

a) Straight transfer (total transfer)

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Death	Death certificate - affidavit after death – payment receipt for transfer fees – will (if any) – duplicate of title – requisition order (or copy of land parcel from survey office).	See notes	Property titles and duplicates recorded in the names of heirs
Sale Compulsory purchase	Bill of sale - duplicate or copy of land parcel from survey office – clearance for transaction – possible demand of title – final judgement on compulsory purchase.	See notes	Property titles and duplicates recorded in the name of purchaser
Exchange	Deed of exchange - duplicate of titles – possible clearance for transaction – requisition order	See notes	Property titles and duplicates recorded in the names of the beneficiaries

Gift Division of land	Deed of gift – division of land - possible clearance for transaction – requisition order	See notes	Property titles and duplicates recorded in the name of the donee
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b) Transfer with subdivision of property (partial transfer)

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Death, sale, exchange, gift etc.	Same documents as above + plans of the property – parent version on which is marked the plot(s) to be detached – clearance for division of land and transaction, if any	See notes	Property title and duplicate – daughter documents produced. Property area: parent version updated on the land titles and duplicates

c) Mortgage: publication or release

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Loan	Mortgage agreement – powers of the representative of the borrower if this is a corporate body – duplicate title – requisition order	See notes	Mortgage and related provisions entered on the title deed and duplicate

d) Long-term lease – lease (publication)

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Lease	Contract to lease – duplicate of title deed – possible clearance for transaction – requisition order	See notes	Lease and related provisions entered on the title deed and duplicate

e) Acquisitive prescription (publication)

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Final judgement	Final judgement or order – certificate of non-appeal or non-recourse – plans of the property if part acquired by prescription – duplicate of title – requisition order	See notes	Land title and duplicate entered in the name of the beneficiary of the prescription or title and duplicate of daughter property entered in the name of the beneficiary and area of the parent property updated

f) Pre-emption entries, compulsory entries (publication)

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Interlocutory judgement	Interlocutory judgement or order – requisition order	15 days	Pre-motion entry on the land title

g) Issue of a second duplicate

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Final judgement	Judgement – certificate of non-appeal – requisition order	20 days	Second duplicate of the title deed drafted – note of this entered on the land title – former duplicate declared to have lapsed

h) Registration of land granted by the state

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Property title	Property title – sketch plan – survey report – the documents on property procedure – requisition order	See notes	Land title and duplicate drafted and provisions entered

i) Drafting of Certificates of Refusal

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Requisition order	Requisition order	15 days maximum	Certificates of refusal drafted and issued

j) Drawing up an analysis statement

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Requisition order	Requisition order	15 days maximum	Analysis statement to be drawn up and issued

k) Drawing up true copies

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Requisition order	Requisition order	15 days maximum	True copies to be drawn up and issued

I) Registration following a judgement of the Roving Land Court

Reason for transaction	Documents and evidence to be filed	Time period for completion	End product
Final judgement of R.L.C	Judgement – R.L.C certificate – cadastral survey map – various transfer documents (sale, inheritance...)	See notes	

Notes:

The completion period for transactions 1 to 5 and 7 depends on:

- The complexity of the files;
- The availability of material resources;
- The number of agents in the field;
- The state of the registers and the property documents used.

Lateness penalties: If there is a delay of 6 months in the publication of a deed (sale, inheritance etc.) at the Land Registry from the date of authentication, a penalty equal to **10%** of the wages of the Registrar shall be due each month.

3.2.5 Existing processes for updating land survey documents

Initial location plan

Triggered by:	Property application on a job sheet issued by the Property Office
Supporting documents:	Application + sketch map of the area
Fees charged:	10,000 Fmg (Malagasy Francs or Ariary)
Completion period:	10 days
Outcomes:	Land boundary marked in pencil on location plan
Notes:	When marking out: to be done in pencil to avoid encroachment as this may be modified after checking on-site.

Follow-up location plan

Triggered by:	Property application on a job sheet issued by the Property Office
Supporting documents:	Application + (corrected) sketch map or printed plan
Fees charged:	10,000 Fmg
Completion period:	10 days
Outcomes:	Mark out in ink of the boundaries of the land applied for (with any corrections to the initial mark-out)
Notes:	Completed by assistant surveyor to the land recognition board

Division (partitioning) or amalgamation of properties or partitioning and reconstitution

Triggered by:	Job sheet issued by the Property Office
Supporting documents:	Deed + partitioning or amalgamation plan
Fees charged:	(1)
Completion period:	(1)
Outcomes:	Former plans updated, location plan updated. If new property created: new mark-out plan.
Notes:	If partition: boundaries of subdivisions entered and new area recorded. If amalgamation: all property recorded under new name, former property declared void.

3.3 The documents preserved at the Land Registry

The format and lay out of the registers and forms kept at the Land Registry is the subject of an Order from the Estates Department that facilitates the publishing of land documents. These documents are:

- The title deed;
- The land registers;
- The duplicate files register;
- Owner's forms and property forms;
- The register of preliminary procedures;
- Former title deeds;
- The property file and the land registry file.

(a) Title deeds

Title deeds are entered in a register called the **Property Register** kept by the commune where the land is sited. The title deed is a working document, that is to say that recorded on the first page are the number of the title deed to which is allocated a separate letter for each commune, the name of the property, the origin of the title, the date the title was created and the number and volume of documents filed.

Each page of the title deed is numbered and initialled by the President of the Court or judge within whose jurisdiction the Registry falls. Furthermore, the title deed must include pages giving details of:

The name or names of owners with full details of their descendants and marital status;
The provenance of the property rights;
The name and composition of the property (location, composition, area, boundaries);
Changes to the area;
Changes in composition of the property (reduction or enlargement);
Changes to the exercising of property rights (those resulting from partitioning of property, reasons for unavailability);
Privileges and mortgages;
Total and joint transfers of rights.

Forms summarising the title deed transactions that have been made public are affixed to the duplicate of the title.

It should be pointed out that a title drawn up after a registration procedure is final and unassailable; in the courts of Madagascar, it is regarded as the basis of property rights and charges that exist on the property at the time of registration and it excludes any other unrecorded rights. A title deed can only apply to a property that is held in ownership by one or more persons.

Note: A duplicate title deed is a certified copy of the original title. Each sheet of the duplicate must be signed (with first and last name) and initialled by the Registrar before use. Any entry on the title deed must, apart from a few exceptions, be made on the duplicate at the same time. The duplicate and the attached plan must be given to the owner, or one of them if there are several, and his name must be entered on the title deed and its duplicate. In the event that the first is lost, a duplicate shall be issued following the final ruling of a competent court. If a duplicate title cannot be produced, the Registrar shall refuse to make any entry.

(b) The land register

For the Land Registry, the land register corresponds with the property register and the abstract of the land register with the duplicate of the title. The land register is a document specific to the land concerned, viz.

- The first sheet includes full details of the owner or owners, the section, register numbers and the folio. There are also spaces for total transfers made subsequently and for copies to be made;
- The second sheet shows the location, number, composition, area and boundaries of the parcel;
- The third is given over to the fees and charges incumbent on the land parcel;
- The fourth sheet details parcel increases subsequent to the creation of the abstract;
- The fifth is for subsequent reductions;
- The sixth and seventh sheets are for abstracts of the cadastral plans.

The title deed and the registry title have the same weight. The registry title introduced by the Decree of 25 August 1929 can be converted into a registered title deed on the application of the owner under article 122a of amended Land Order no. 60-146 of 3 October 1960.

(c) The duplicate file register

In this register, the Registrar lists in chronological order all of the deeds received at the Land Registry that need to be published on the property title. This register records the serial number of the file, the surnames, forenames and addresses of the parties to the deed,

a summary of the deed with details of prices, if any, and changes and other clauses inserted in the contract.

This is drawn up in duplicate, of which one copy is sent to the court and the other kept at the Land Registry office.

(d) Owner's sheet

This sheet is updated for each transaction and created under the name of the owner of titled land or a property right that has been published in accordance with the law. It details the surname, forename and heirs of the owner, the surname and forenames of the spouse and the numbers of the property titles belonging to him.

(e) Property sheet

This is a sheet drawn up by the Land Registrar of the names of the owner or owners of a registered property. It details the name of the property, its location, the number of the title deed and its area.

3.3.1 The register of preliminary procedures

This is a register designed for lands currently being registered. The requisition order number is used in this register in place of the number of the title deed. It shows columns giving details of the land (name, area, location etc). It also tracks the process of registering the property until the relevant title deed is drawn up.

3.3.2 Former title deeds

This is also a property register but drawn up during the colonial period and whose number in certain Registries is considerable. The distinctive characteristic of the former title compared with a new one is that the former title is not allocated a letter for each commune, and the contract summaries relating to the property (sale, mortgage, transfer on death, mortgage release etc), are made on the property deed using indelible ink. There are thus no summary forms for former property titles, and as for the new titles, each entry referring to publication is signed by the Registrar.

3.3.3 Property file – Land registry file

The property file and the land registry file respectively comprise the evidence and documents needed to produce the title deed to which they relate, and evidence and documents from which the land register is produced. The property file must contain:

- Transfer documents (bill of sale, evidence of inheritance, deeds of partition etc);

- The plan attached (a sketch plan showing the boundaries of the plot sold if land is being subdivided);
- Clearance for conveyance and/or subdivision of property, if any.
- A copy of the official plan;
- A copy of the summary sheets;
- Other evidence that the Registrar has called for.

The land registry file contains:

- Transfer documents;
- The cadastral plan;
- A final certificate issued by the Roving Land Court;
- A copy of the judgement if possible.

For lands that have been the subject of individual registration, the property documents particularly contain procedural evidence (the recognition report, publicity notices, estate title, sketch map, etc.).

The conservation of the files held by the Land Registrar is the latter's responsibility.

The storage system for files varies from one office to another depending on the availability of premises for this purpose.

The registry title introduced by the Decree of 25 August 1929 can be converted into a registered title deed on the application of the owner under article 122a of amended Land Order no. 60-146 of 3 October 1960.

3.4 Documents preserved by the Custodian of Survey Documents

3.4.1 Individual plans

The individual plan is a version of the property in the form of a drawing and comprises three parts:

The principal part is a drawing of the property in question (the boundary of the property of which the corners are marked out by posts, the make-up of the property etc). And everything that exists within a radius of ten centimetres (sic) around the property (properties with their names, number of title, topographical details etc.).

In the top right-hand corner of the plan (top left of this is not possible), in a square with 10 cm sides), an inset showing the plan (or map) of the location. Preferably at the bottom right, there is a box containing:

- The name of the property
- Its requisition order number, if any;
- The number of the title;
- The geographic location of the property;

- The scale of the plan;
- The date the property was marked out;
- The name of the person marking out the property and creating the survey plan;
- The name of the surveyor who made the survey plan, if appropriate;
- And, as a caption under the box, the area of the property.

The plan, in A4 or A0 format may sometimes contain several properties.

3.4.2 The cadastral plan

This is a drawing (line plan) or photographic (aerial photo) representation of part of the area surveyed showing all the details of its partition into plots, road and river routes, etc. The surveyed area is subdivided into sectors. Each sector, identified by name and alphanumeric code (for example, Ac for Antsahamadio), is made up of all the parcels included on a single A0 sheet which may be made of Canson paper, tracing paper, and plastic (polyester) or polyester film.

3.4.3 The location map or plan

This is a large, medium or small-scale graphical representation of an area, allowing the property to be located from documentary information (other properties, salient topographical features, land or river routes etc.).

3.4.4 The collective boundary-marking report (PVCB)

Drawn up by survey sector, the plots in the sector are recorded in chronological order. By each plot number are entered:

- the name and forename(s) of the presumed owner(s);
- the numbers of the plots surrounding the plot in question;
- the composition of the plot;
- the area of the plot;
- the objector, if any, and the reasons for objection.

The last part of the register comprises an alphabetical list of presumed owners and its purpose is to facilitate the identification of a plot from the name of the presumed owner when the plot number is not known. For recent surveying operations, the fixed sheet register has been replaced by sheets for each plot.

3.4.5 The boundary-marking report (individual registration)

As the name suggests, this describes technical operations carried out. The report is signed by those taking part in the operation,

3.5 Laws and regulations on land security

(a) National private lands

TYPE AND NO. OF ACTS and ORDERS	PURPOSE	National Gazette Reference
Act 60.004 of 15-02-60 Order 62.047 of	Relating to national private lands Amending Act 60.004 of 15-02-60	27-02-60 p.411 04-10-62 p.2042
Act 64.026 of 11-12-64	Amending and adding to certain provisions of Act 60.004 of 15-02-60	12-12-64 p.2813
Act 67.029 of 18-09-67	Extending to 31-12-72, the time-periods specified in art. 81 amended and supplemented by arts. 77 and 81 (arts. 77 and 81: new procedure for collective or cadastral registration)	23-12-67 p.2080
Order 72.031 of 18-09-72	Amending certain provisions of Act 60.004 of 15-02-60	11-11-72
DECREES		
Decree 63.256 of 09-05-63	Establishing the composition and work of the committees described under art.20 and 27 of Act 60.004	01-08-63 p.1493
Decree 64.205 of 21-05-64	Governing the terms of application of Act 60.004	30-05-64 p.1035
Abstract of land title	Land property	Paper
Unabridged copy of land title	Land property	Booklet
List of properties in a region belonging to one (or more) owners	Land property	Paper
Decision of the Roving Land Court to award property rights, and any charges	Land property	Paper

(b) Public lands

TYPE AND NO. OF ORDERS	PURPOSE	National Gazette Reference
Ord. 60.099 of 21-09-60	Regulating National Public Lands	24-09-60 p.1909
Ord. 60.137 of 03-10-60	Amending art. 18 of Ord.60.099	15-10-60 p.2099
Ord. 62.035 of 19-09-62	Amending arts. 4,14, 18,19,25 to 27 and 31 of Ord. 60.099 of 21-09-60	28-09-62 p.1975
Ord. 62.086 of 29-09-62	Fixing the rules for establishing the ownership of fixed and movable property constructed or acquired with public funds by the project supervisor.	12-10-62 p.2265

Ord. 73.060 of 28-09-73	Determining the territorial waters and continental shelf of the Republic of Madagascar	20-10-73 p.3517
Ord. 83.030 of 027-12-83	With the purpose of strengthening the protection, safeguarding and preservation of National Private Lands and Public Lands	
DECREES		
Decree 63.131 of 27-02-63	Establishing the limits of territorial waters	12-10-63 p.663
Decree 64.291 of 22-01-64	Determining the rules governing the use, conservation and supervision of Public Lands	01-08-64 p.1493

(c) Registration

TYPE AND NO. OF ACTS and ORDERS	PURPOSE	National Gazette Reference
Ord. 60.146 of 03-10-60	Relating to the land registration system	22-10-60 p.2205
Ord. 62.036 of 28-09-62	Amending arts. 4, 6, 38, 92, 100, 108,110 to 112, 116, 118, 122a, 128	03-10-64 p.1976
Ord. 66.022 of 19-12-66	Repealing arts. 53 to 80 of Ord. 60.146 of 03-10-60	01-08-70 p.2600
Ord. 74034 of 10-12-74	Amending and supplementing certain provisions of Ord. 60.146 regarding the land registration system	21-12-74 .p.3926
Act 2003-029 of 27-08-03	Amending and supplementing certain provisions of Act 60-146 on the land registration system.	No. 2853 of 28-08-03 p. 2273
DECREES		
Decree 60-5299 of 28-12-60	Implementation measures for amended Ord. 60-146 of 03-10-60	07-01-61 p.28
Decree 64.396 of 24-09-64	Amending arts. 2, 3, 5 to9, 11, 13, 29, 30, 46, 51, 53, 59 to 63 and 66 of Decree 60.529 of 28-12-60	31-12-66 p.1937
Decree 70.413 of 28-07-70	Amending art.1 of Decree 60.529 of 28-12-60	01-08-70 p. 1655

(d) Compulsory purchase in the public interest

TYPE AND NO. OF	National Gazette
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ORDERS	PURPOSE	Reference
Order 62.023 of 19-09-62	Relating to compulsory purchase in the public interest and the amicable acquisition of fixed property by the state or local authorities, and real estate betterment	
Decree 63.030 of 16-01-63	Establishing the implementation methods for Ord. 62.023 of 19-09-62	

(e) Abuse of property rights

TYPE AND NO.	PURPOSE	National Gazette Reference
Order 74.021 of 20-06-74	Re-working of Ord. 62-110 of 01-10-62 recognising the abuse of property rights and ruling that unworked property should be transferred to the state.	22-06-74 p.1682

(f) The farming of agricultural lands

TYPE AND NO. OF	PURPOSE	National Gazette Reference
Order 66.025 of 19-12-66	With the purpose of ensuring that agricultural lands are farmed.	No.2525 of 24-12-66

(g) The classification of land by area

TYPE AND NO. OF	PURPOSE	National Gazette
Order 62.125 of 01-10-62	The classification of lands in Madagascar into forested, pasture and agricultural areas	

(h) Approaches to rural development policy

TYPE AND NO. OF	PURPOSE	National Gazette
Order 73.073 of 01-12-73	Relates to approaches to rural development policy	

(i) Approaches to the land system

TYPE AND NO. OF	PURPOSE	National Gazette
Order 74.022 of 20-06-74	Defining approaches to the land system and specifying in general terms how development work in the rural environment should be carried out.	

(j) Migration

TYPE AND NO. OF	PURPOSE	National Gazette
Order 74.187 of 20-06-74	Relating to the organisation of migration.	
Decree 74-187 of 20-06-74	Relating to the organisation of migration.	
Edict 4009/94 of 06-09-94	Approving the provisions of the general terms and conditions applicable in migration areas.	No. 2268 of 10-10-94 p.2432

(k) Long term lease

TYPE AND NO. OF	PURPOSE	National Gazette
ACTS		
Act 62.064 of 27-09-62	Relating to the long term leases	No. 2381 p.1800
Act 96.016 of 13-8-96	Amending certain provisions of Ord. 62.064 of 27-09-64	
EDICT		
Edict 3976/92 of 09-07-92	Relating to the approval of a model long lease contract for state land or land registered in the name of the Malagasy state	10-08-92 p.1992

3.6 Acquiring land property in Madagascar

Under Madagascan law, acquiring land property depends on:

(a) The nationality of the applicant

For people who are of Madagascan origin or who have been naturalised Madagascan for more than ten years, land may be acquired by purchase, lease (ordinary or long-term lease) or, by occupancy on a precarious revocable basis.

Persons who are not of Madagascan nationality may also have recourse to the rights enjoyed by Madagascan citizens (*Act No. 60.146 of 20/09/1960 amended by that of 2003.29 of 27 August 2003*).

(b) The legal status of the land concerned

Acquisition varies according to whether the land:

- belongs to an individual (regardless of nationality);
- belongs to the state of Madagascar and is categorised as available national private land;
- belongs to the state of Madagascar and is categorised as public land that is inalienable and imprescriptible.

In all cases, whatever the method of acquisition, the procedure remains the same for acquiring land property. It should be noted that the departments responsible to the survey authorities, and the property and land authorities, have been devolved to region, province and commune level.

3.6.1 Land belonging to individuals

The procedure is as follows:

- (a) Identifying the land: Verification with the regional department responsible for regional or urban development

This consists of ensuring that use of the land is consistent with the overall plan for urban development (1) and regulations.

Documents to be produced: ground plan – the certificate proving the legal status of the land, if any;

Cost: - plan (cf. survey)

- certificate **3,000 Fmg** + **500 Fmg** additionally from the 4th owner

Document to be obtained: permit to proceed (no permit given for rural property).

- (b) Drawing up the contract: This is either done by the individual themselves (by private deed), or by a solicitor, or by a public official (certified as genuine).
- (c) Authentication of the signatures on the transfer contract for private deeds
- (d) Registration of the contract and the Registration and Stamp Duty Office

Documents to be produced:

- Ground plan, if any
- Transfer deed
- Permit to proceed, if any

Cost: **10%** of the current value

Document to be obtained: registered transfer deed

Within: **48** hours

- (e) Producing the contract at the Area Estates and Land Office or, in special circumstances, at the Land Registry for Antananarivo

Documents to be produced:

- Application on plain paper (2 copies if the land is being sold/subdivided);
- Ground plan (2 copies if the land is being sold/subdivided);
- Duplicate of title deed or abstract of the land register as appropriate;
- Certified registered deed of transfer (2 copies if the land is being sold/subdivided);
- Permit to proceed;
- Copy of the constitution if a company;
- Delegated powers of representation, if appropriate.

Cost:

- Transfer charges assessed at **1%** of the price assessed at registration;
- Fixed fee: **10,000 Fmg**

Document to be obtained: updated duplicated title deed;

Within

- In the case of total transfer and if the land register is available: 15 days
- If land is to be subdivided, according to the availability of the land register and the date the boundary marking folder was returned: 15 days.

3.6.2 National private lands

The procedure for acquiring state lands is as follows:

(a) On site reconnaissance and location of the lands at the Survey Department

If the land has not been surveyed or registered, the applicant must have a proper ground plan drawn up by an accredited independent surveyor.

(b) Production of a certificate showing the legal status of the land and a facsimile of the ground plan, to be requested from the local Estates Office and Survey Department respectively.

Within: depending on the availability of documents: **8 days**

Cost:

- Transfer charges assessed at **1%** of the price assessed at registration;
- Fixed fee: **10,000 Fmg**

(c) Application for lands

Application for lands is again made at the Area Estates and Land Office.

For land purchase The Estates Section	For long leases One-stop Long Lease Office
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Documents to be produced:

- Duly filled in application form no. DPF 58a (2 copies);

- Enquiry folder no. DPF 15 (2 copies);
 - Ground plan drawn up by an accredited surveyor or an official facsimile of a plan of the property, as appropriate;
 - Copy of the constitution, if a company;
 - Delegated powers of representation, if appropriate.
 - Certificate proving legal status, not less than 3 months old if the land has been registered or surveyed;
 - Fiscal stamps to be affixed to one of the applications and one of the plans.
 - Guarantee deposit of 1,000 Fmg to be paid for urban land and 200 Fmg/ha with a minimum of 1,000 Fmg for rural land
 - Document to be obtained: receipt for the guarantee deposit.
- (d) Investigation by the Area Survey Department to check whether there are other applications for the same land
- (e) Display of the notice of application at the request of the *sous-préfecture* where the property is located:
 Period: 15 days
 Document produced: proof of display
- (f) Survey of land by the Area Board
 Documents produced:
 - Certificate of attendance at meetings;
 - Land survey report
 Cost: the various travelling expenses incurred by members of the land recognition board.
- (g) Making the file available for public scrutiny
 Period: 1 month
- (h) Drawing up a filing certificate for the recognition report
- (i) Views of the technical services involved that may be collected without waiting for a month to elapse
- (j) Second ground survey by the Area Survey Department
- (k) Decision by higher authorities on the method of transfer and price
- (l) Summons or notification of applicant
- (m) Granting of land if there are no objections and/or no encroachment
 Drawing up a draft deed

Payment of charges by the applicant and signature of the draft deed

- If a sale
 - Cost of land
 - Cost of compiling the file
 - + 10% of the market value of the land if the sale is provisional (subject to the terms of development)
 - + 5% of the market value of the land if the sale is final
 - Registration costs: 10% of the market value of the land
 - Dispatch charges for transfer deeds: 15,000 Fmg to 18,000 Fmg
 - Cost of duplicate and section of the title deed: 10,000 Fmg
 - Storage costs: 1% of the value with a minimum charge of 15,000 Fmg

- If a lease
 - Cost of annual fees
 - Cost of compiling the file: 1/20 of the total rental value, not exceeding the annual fees;
 - Registration:
 - + 4% of the total rental value if the land has not been surveyed or registered
 - + 5% if the land is registered or surveyed
 - Dispatch charges for transfer deeds: 15,000 Fmg to 18,000 Fmg
 - Cost of duplicate and corresponding section of the title deed: 20,000 Fmg (bare ownership; surface rights);
 - Storage costs: 1% of the total rental value.

Approval of the deeds by:

	Rural land (area)	Urban land (market or rental value)
Chief Executive of Province	50 ha or less	< 200,000 Fmg
Minister responsible for Estates Department	50 – 500 ha	> 200,000 Fmg
Head of Government	> 500 ha	-----

(n) Registration formalities and duplication of documents

(o) Notification

Documents to be obtained:

In the case of registered or surveyed land, and for final sale or long lease:

- Title deed;
- Facsimile of plan.

In the case of unregistered or unsurveyed land and/or provisional sale:

- Facsimile of plan;
- Dispatch of deed.

(p) Registration of land already granted

If the land granted still has not been registered or is not the whole of a registered property, the Area Estates and Land Office shall register and/or partition the land at the expense of the applicant.

He will therefore be responsible for compiling and sending the necessary boundary-marking folder to the Area Survey Office for their use.

3.6.3 Lands in the public estate

Lands forming part of the public estate can only be subject to an occupancy or concession order for a period not exceeding 30 years; this may be renewed.

The procedures are the same as for access to state lands.

However:

- 1) During the survey process, the presence of a representative from the department of public works is compulsory;
- 2) An Occupancy Order approved by the Minister responsible for the Estates Department must be issued;
- 3) Instead of signing the deed and the attached plan, the applicant must sign and produce a submission by which he undertakes to comply with the provisions of the Order.

Charges:

- Annual fee;
- Fees for compiling the file: **1/10** of the total rental value, not exceeding the annual fees;
- Registration charges: **4%** of the total rental value;
 - Charges for recording registration: **1%** of the total sum of the annual fee
 - Marking out fees;
 - Cost of duplicate and corresponding section of the title deed: **10,000 Fmg**

3.6.3.1 Explanatory notes

a) Long leases

To allow traders and other property speculators to enjoy peace of mind when they invest, although access to full ownership is not open to everyone, the long term lease for from 18

to 50 years specified under Order no. 62.064 of 27 September 1962 and amended by Act no. 96.016 of 13 August 1966 has been extended to 99 years.

The rights granted by a long term lease are surface rights (transferable, mortgageable property rights that can be used for collateral security) for which the superficiary may apply for a special title deed for his rights.

In the case of a long lease for state land, the application is investigated for the normal departures from the regulations, but the processing period is reduced to 60 working days by virtue of the One-stop Office for long leases, whatever the size of the investment and the length of the lease.

b) The precarious and revocable title to occupancy

Public lands, which are by definition inalienable and imprescriptible, cannot be subject to private acquisition.

Nevertheless, certain outbuildings of this property may be subject to private use for not longer than 30 years, a period which may be renewed, either through concession contracts, or through the granting of a permit or licence for temporary occupation that may be revoked at any time.

Concessions so granted confer on their beneficiaries the right to use an asset of the public property concerned.

The permit or licence that grants occupancy on a precarious and revocable basis gives its holder the right to use it exclusively for his benefit in return for a part fee for the public property.

3.6.3.2 The procedure for investigating a long lease application

The documents to be provided are as follows:

- Standard surveyor's plan, if the land is unregistered, or an official plan if registered;
- Two copies of the application on a special form (DPF 58a);
- A certificate showing its legal status, if the land has been registered and surveyed;
- For companies, the constitution and powers of delegation, entries in the commercial register, and the decisions of the supervisory body authorising the application;
- Application investigation folder in duplicate (DPF No. 15). The process is as follows:

OPERATION	LENGTH OF TIME
Filing the application together with the payment of a security bond by the applicant at the One-stop Office for Long Leases (GUBE)	0
Location of plot by the Survey Department	2 days
Publicising the application	9 days

Sending the file to the office at the Sous- préfecture for the application notice to be displayed for 15 days
 Drafting a display certificate at the end of the 15 day period
 Survey of the property 20 days
 Preparing the survey folder
 Setting the date for and calling a meeting

Carrying out the survey and making any corrections to the plan attached to the application
 Drawing up and signing of the report by members of the board and those present at the operation
 Views of the sous- préfet and the public technical services involved in the application 7 days

N.B.: Objections may be received for the period allowed by law at the sous- préfecture offices, the area estates and land office, and the One-stop Office.

Higher Authority decision 7 days

Second survey to determine the area to be granted
 Drawing up a draft lease 4 days

Preparing a draft deed

Payment of charges and fees due

Signing of the draft by the applicant

Formalities for approving the deed 7 days

Preparing the file for approval

Dispatching the file to the competent authority for approval

Post-approval formalities 4 days

Registration

Issuing a facsimile of the plan

Notifying the lessee about the deed

Post-notification formalities 60 days

Registration, if the land is unregistered, and issuing the surface title deed to the lessee

Entering the lessee's rights on the title deed if the land is already registered

3.6.3.3 Documents issued to customers by the land registry and survey departments

PROPERTY		SURVEY	
Document	Type	Document	Type
Certificate of Legal Status (CSJ)	Text	Copy of individual plan	Drawing
Duplicate T.D.	Text	Abstract of survey plan	Drawing

Detailed account of property	Text	Abstract of cadastral plan	Drawing
Abstract from the land register	Text	Abstract from PVCB	Text

4. Taxes

4.1 Introduction

In 2007, tax legislation in Madagascar had established the following taxes through the Finance Law (Code of Taxes) 2007:

- Value Added Tax (VAT);
- Tax on company profits (IBS);
- Capital gains tax (IRCM)
- Tax on income from wages and other earnings (IRSA);
- Tax on non-salaried income (INRS);
- Excise duties (DA);
- Fixed transfer tax (TFT);
- Business tax (TP);
- Tax on transactions (TST);
- Tax on motor vehicles (Tax disc);
- Tax on private company vehicles (TSVTE);
- Tax on insurance contracts;
- Stamp duty;
- Tax on the licence to manufacture and sell alcoholic drinks;
- Fees for surveillance operations.

At the local level, local taxes in 2007 were largely made up of:

- Land tax;
- Land tax on built-up property;
- Supplementary tax on built-up property;
- Tax on registration rights.

Several amendments were made to the finance law from previous years in 2008 for various reasons, particularly changes in the economic and social climate which affect taxation. The causes of these changes are diverse, growing competition among businesses, accelerated regional growth, the fight against corruption, the attraction of direct foreign investors, the demand for transparency among the people and increased professionalism among the players involved.

The aim of the tax reform introduced in 2008 by ACT No. 2007-033 OF 14 DECEMBER 2007 is threefold: to make the system simple, attractive and consistent for businesses; to bolster people's purchasing power while at the same time eliminating environmental

taxes and strengthening the resources of District Authorities through a genuine process of decentralisation.

4.2 The 2008 tax reform

4.2.1 Internal taxation

Radical changes have been implemented as far as income tax is concerned. The tax on company profits (IBS), the tax on non-salaried income (INRS) and the capital gains tax on property (IPVI) have been merged into a single tax called income tax (IR) at a single proportionate rate of 25%. The taxation system varies according to the annual turnover excluding tax, without taking account of the legal status of the person or body taxed: the actual tax system for taxpayers achieving an annual turnover excluding tax of Ar. 200,000,000 or more and the simplified actual tax system for those achieving an annual turnover excluding tax of between Ar. 20,000,000 and Ar. 200,000,000. The synthetic tax system (IS) is retained for taxpayers achieving a turnover figure under Ar. 20,000,000. The tax rate for capital gains tax (IRCM) is in line with that for income tax at 25%, and, from now on, yield from dividends will be exempt. Furthermore, the tax on private company vehicles (TVTE), the business tax (TP), surveillance fees (RS) and the fixed transfer tax (TFT) are abolished. The tax threshold on income from wages and other earnings (IRSA) has been revised upwards from 50,000 Ar to 180,000 Ar, with a minimum tax for each bracket and a single proportionate tax of 25% to make calculation easier.

Some significant reductions and simplification to registration fees have been introduced: single reduced rate taxation on documents creating or extending companies: lowering the registration fee rate by abolishing the supplementary tax and the cadastral tax: exemption for any purchase of property for agricultural purposes: simplification of the methods of collecting, and a reduction of, inheritance tax, and the abolition of a stamp duty on movable property, but with the revision of some tariffs.

As far as tax on consumables is concerned, the current provisions provide for a drastic reduction in the list of goods subject to excise duties (DA) by placing outside its scope, goods including essentials like sugar and flour, but also perfumes and toilet water, mineral and sparkling water, hair preparations and certain half-finished mining products. New methods of collection and better monitoring of the effectiveness of taxation on tobacco and alcoholic drinks, are ensured before and after the taxation process. Lastly, DA is extended to all forms of communication, including data, and the rate has been raised to 7%. As far as the tax on turnover is concerned, the tax on transactions (TST) has been abolished. The rate of valued added tax (TVA) has been raised to 20% so as to compensate for the loss of net resources, through transfer, to the regions.

As far as land tax (IFT) and the land tax on built-up property (IFPB) is concerned, with the aim of making more resources available for the communes, simplification and more detail has been introduced as to how tax is calculated and collected, particularly by abolishing the tax roll. Moreover, the supplementary land tax on built-up property (TAFB)

has also been abolished. Taxes on the licensing of alcohol and alcoholic drinks will solely benefit the commune budgets, and their tariffs have been revised upwards. Other provisions, in addition to the standardisation of penalties and fines and a reduction in the rates concerned, include window-dressing operations, simplification of the wording used, the updating of chapter headings and corrections to substantive errors.

4.2.2 Customs

So as to make an effective contribution to a vigorously growing economy, the Customs Office has made it a priority to facilitate trading between Madagascar and abroad. Nevertheless, it also has a duty to ensure effective customs controls and adherence to the laws in force. With this in view, the Customs Code has been amended. To this effect, the provisions on procedures for clearance through customs have been revised to allow sea and air forwarding agents the opportunity to file cargo manifests electronically, and allow the tax declarant to register declarations after the validity of the Single Administrative Document has been checked. Furthermore, a revision of the payment deadlines for dues and taxes covered by a customs and excise bond is necessary, and side by side with this, a provision for a customs and excise bond on oil products has been already introduced.

Certain provisions on the economy need to be corrected. These relate to methods of streamlining the arrangements of temporarily admitting goods for outward processing and establishing a procedure for processing, under customs control, the customs value of goods when released to the market.

In addition, so as to ensure the effectiveness of the actions of the Customs Office in court proceedings, it is imperative to amend the provisions of the Code regarding the Customs Conciliation and Assessment Board and to include an Agreement on Intellectual Property Rights as they affect the World Trade Organisation. Lastly, to overcome the difficulties of what should be done with prohibited goods, there is good cause to authorise, under the control of the Customs Office the destruction of banned goods that have not been seized.

4.2.2.1 Customs tariffs

In accordance with the recommendations of the World Customs Organisation (WCO), the Madagascan Customs Office applied the 2007 version of the Harmonised Commodity Description and Coding System from January 2007. National tariffs are thus based on this latest version. Nevertheless, there are some adjustments to be made; some resulting from corrections by the WCO, others caused by developments in the national commercial and technological environment. The adjustments made include insertions, additions, corrections and removal of certain subheadings. The insertions and removals arise from a correction to the initial framework of the Harmonised System. At a national level, the importance of “software” (applications other than sound or pictures) has led to the creation of sub-headings to make them more specific; the same is true of computer operations carried out electronically (text input, proofreading, map work....). Furthermore, so as to make the price of sugar more affordable and to facilitate the export of local

production of this commodity to countries that give Madagascar preferential prices, the taxation rates for sugar have been revised and standardised.

In addition, corrections have been made to the wording of some sub-headings where there were typing errors or other omissions.

Finally, in application of the provisions of the General Tax Regulations for 2008, the VAT rate has been raised to 20%.

5. Taxes on Fixed Property (ACT No. 2007-033 OF 14 DECEMBER 2007)

5.1 The capital gains tax on property (IPVI)

5.1.1 Principle

Under article 01.05.01 of the Tax Regulations 2008, a Capital Gains Tax on Property has been created and is paid into the General State Budget.

5.1.2 Scope

Gains acquired by individuals when they transfer fixed property for payment are subject to this tax. The tax is due whatever the type or origin of the vendor's acquisition of these assets.

5.1.3 Exemption

The following are exempt from tax on gains derived from property:

- 1) Earnings from the disposal of fixed goods by the state or the decentralised local authorities;
- 2) Earnings derived from compulsory purchase in the public interest.

5.1.4 Setting the tax due on a capital gain

The gain subject to tax is made up of the difference between:

- the transfer price, sum or the consideration for which the vendor disposes of the asset;
- the cost price, established under article 01.01.05 and 01.05.06 of this section.
Under article 01.05.05, the cost price includes:

1) The acquisition price

If the asset is acquired free of charge, the acquisition price is the estimated market value at the date of acquisition. However, if the vendor acquired the asset by gift more than a

year previously, the gain is calculated from the date and from the value at which it was acquired by the donor.

2) The costs of acquisition are their true sum if these are given in documents that are clearly dated. In the absence of proof, they are set at a fixed rate of 16% of the costs of acquisition. The following comprise costs of acquisition:

- charges for deeds;
- solicitors' fees;
- transfer duties.

3) Expenses for:

- major repairs;
- fitting out;
- renovation;
- improvements if proof is provided that these have been carried out. These expenses are assessed at their actual cost on proof of payment.

4). Expenses on construction or reconstruction costs at their actual cost on proof of payment. They are only taken into account for work carried out by the vendor after the property has been acquired.

When the taxpayer is not able to produce proof, these expenses are estimated at a flat rate of:

- 80% of the transfer price for buildings more than ten years old;
- 60% of the transfer price for buildings from five to ten years old;
- 45% of the transfer price for buildings from two to five years old;
- 30% of the transfer price for buildings less than two years old.

These percentages apply to transfer prices less the uprated acquisition price of the land.

5) Interest on loans taken out for purchase, construction or reconstruction.

Article 01.05.06 makes it clear that every cost price item is assigned an exploitation index calculated on the actual year of the expenditure.

The indexes that apply are published by the Minister responsible for tax regulations.

However, this provision does not apply:

- To expenditure on construction or reconstruction which has been fixed at a flat rate (under article 02.09 05 - 4°);
- To interest on loans taken out for purchase, construction or reconstruction.

5.1.5 Calculating the tax due

The tax is calculated by applying a rate of **25%** to the taxable gain.

The tax is cleared for payment by the Collector of Taxes responsible for registering deeds and declarations of property changes, at the same time and on the same occasion as the formalities to dispose of the property.

When a bill of sale within the meaning of the law concerned is received by public officials responsible for verifying deeds, they send the Tax Officer a certified copy of the deed. The Collector of Taxes liquidates the rights and sends the person liable for tax a payment advice. If payment is not made within the statutory period, proceeds to recover it are started as in the case of registration.

5.1.6 Recovery of tax

The tax due by the person disposing of fixed property who realises a profit thereby is paid to the Collector of Taxes at the same time as the registration fees, either by Ministerial officials responsible for paying dues or by the party presenting the private deed, subject to recourse against the person liable for the tax. A counterfoil receipt is issued without receipt stamp and the registered deed is returned to him/her at the same time.

Capital gains tax paid on documents for which transfer fees are borne by state or local authority funds can be claimed directly from the person disposing of the property by the Collector of Tax. No payment may be authorised for the benefit of the seller unless he has previously proved that his taxes have been paid.

Public and Ministerial officials and government officers vested with the same power are, in all cases and subject to the exceptions referred to above, held responsible for the payment of the tax due for the deeds they receive, or the documents they commandeer or make use of.

If clerks of civil or administrative courts ask those owing tax at a hearing to pay the taxes they owe at the same time as registration fees, and they fail to do so, the former are absolved of any responsibility for this. In this case, recovery of the tax is pursued directly against those involved by the Collector of Taxes. If this occurs, the Clerks of the Court shall send him certified copies of the judgement and other notes giving evidence of tax liability during the fifteen days following the delivery of judgement.

5.1.7 Obligations of the taxpayer

The transfer deeds or declarations must include the provenance of the property, the date and method it was acquired and its value at the time of acquisition by the vendor. This information must also give the date on which the deeds, papers, judgements or documents relating to the property were registered and, as far as possible, details of the registration.

5.2 Registration fees for deeds and transfers

5.2.1 General remarks

Registration fees go to the General Budget and are levied on the basis of and following the regulations laid down by the legal provisions below. They are flat rate or proportionate according to the deeds and transfers to which they are applied.

A fixed fee is applied to deeds that certify neither the transfer of property, beneficial rights or enjoyment of moveable or fixed goods, nor goods contributed as the result of a marriage or to a company, or the partition of moveable or fixed goods and, in general to all other deeds, even to those exempt from registration and which are produced voluntarily for scrutiny whereas **the proportionate fees are applied to the transfer of property, beneficial rights or the enjoyment of moveable or fixed goods either *inter vivos* or as the result of death, and for deeds that certify that goods have been contributed as the result of a marriage or to a company, or that moveable or fixed goods have been subdivided.**

These fees are based either on the cost supplemented by any charges that can be added, or, if there is no price or the actual value is higher than the cost supplemented by charges, on a valuation made by the parties concerned that is monitored by the Tax Office. When proportionate fees or taxes of any kind under this classification are collected, **fractions of amounts and sums lower than Ar 100.00 are deducted.**

As far as transfers and agreements subject to a condition precedent are concerned, the tariffs applied and the amounts subject to tax are determined with reference to the date when the condition was applied. When a deed is subject to two different rates of tariff, which, because of their interrelationship do not allow for the fees to be applied more than once, the basis of tax which give rise to the highest tariff is the one which is applied.

Article 02.01.11 of the present Tax Regulations details the periods allowed for the registration of documents as below:

a) Within a period of fifteen days from the day they are dated:

All powers of attorney, undertakings to sell, property transfer deeds and, in general, all documents relating to the role of an intermediary in the purchase or sale of a property or business or to that of a person who is an owner because he regularly buys the same assets with a view to reselling them, either in their entirety, or in plots or lots, whether in urban or suburban areas, unless such documents were drawn up by a notary.

b) Within a period of two months from the day they are dated:

- Deeds relating to the transfer of the ownership or beneficial rights of fixed property, business, custom or vehicles, or the transfer of right to a lease or the enjoyment of a promise of lease on all or part of a property;
- Deeds relating to the transfer of ownership of or beneficial right to moveable goods;
- Deeds relating to the transfer of enjoyment of moveable or fixed goods;
- Deeds certifying that moveable or fixed goods are being subdivided for whatever reason;

- Deeds and documents of any type intended for filing in a land registry or in a survey office, except for requisition orders for registration or those for deeds to be recorded.

5.2.2 Proportionate fees

The bare ownership value and the beneficial right of moveable and fixed goods are determined by the settlement and payment of the proportionate fees below:

a) For the transfer for payment of assets other than rights to monies, annuities or pension at the given price, plus any capital charges;

b) For the same assets contributed to a marriage, the value of the bare property and beneficial rights is determined as a proportion of the value of the whole property as per the scale below:

Age of the life tenant	Value of entire property	
	Beneficial right	Bare property
Less than:		
20 complete years	7/10	3/10
30 complete years	6/10	4/10
40 complete years	5/10	5/10
50 complete years	4/10	6/10
60 complete years	3/10	7/10
70 complete years	2/10	8/10
More than 70 complete years	1/10	9/10

c) For fixed-term assets, annuities whether or not in perpetuity, and pensions created or transferred for whatever reason, and for the paying off of these annuities or pensions, fees are determined as a proportion of the value of the whole property established using the rules given in the previous paragraph and based on the capital sum, as set out under articles 02.02.30 and 02.02.31 of the Tax Regulations.

Nothing is payable for bringing together the beneficial right and the bare property when this occurs because the period of beneficial right has come to an end, or because the person enjoying that right has died.

5.2.2.1 Transfers for valuable consideration

Under article 02.02.08, the value of the bare property and beneficial rights for moveable or fixed goods is determined by the settlement and payment of proportionate fees as follows:

a) For the transfer for valuable consideration of assets other than rights to monies, annuities or pension at the given price, plus any capital charges;

b) For the same assets contributed to a marriage, the value of the bare property and beneficial rights is determined as a proportion of the value of the whole property as per the scale below:

Age of the life tenant	Value of entire property	
	Beneficial right	Bare property
Less than:		
20 complete years	7/10	3/10
30 complete years	6/10	4/10
40 complete years	5/10	5/10
50 complete years	4/10	6/10
60 complete years	3/10	7/10
70 complete years	2/10	8/10
More than 70 complete years	1/10	9/10

c) For fixed-term assets, annuities whether or not in perpetuity, and pensions created or transferred for whatever reason, and for the paying off of these annuities or pensions, fees are determined as a proportion of the value of the whole property established using the rules given in the previous paragraph and based on the capital sum, as set out under articles 02.02.30 and 02.02.31.

Nothing is payable for bringing together the beneficial right and the bare property when this occurs because the period of beneficial right has come to an end, or because the person enjoying that right has died.

5.2.2.2 Exchanges of property

Exchanges of property are subject to a **4%** duty. This duty is based upon the value of a plot of land where there is no return on investment. If there is a return, the duty is paid at a rate of **4%** on any portion thereof and, as for sales, on the return or gain.

Property of whatever kind is assessed on its actual market value at the time of transfer, based on a valuation made by the parties.

5.2.2.3 The division of property

The straightforward partition of moveable and fixed property between joint owners and joint heirs, providing there is proof of them, are subject to a fixed fee of **Ar 10,000.00** per joint participant.

5.2.2.4 Sales and other transfers of property or beneficial rights of fixed goods in return for payment

a) Auctions, sales, re-sales, transfers, reconveyances and redemptions after the period agreed in contracts of sale under option to repurchase have expired, and any other civil and legal deeds relating to the transfer of property or the enjoyment of beneficial rights to fixed goods in return for payment, are subject to a duty of **6%**. This duty is based upon the given price plus capital charges and allowances specified by the transferor, for whatever reason or purpose.

When the transfer relates both to actual immovable property and fixtures, the latter must be given a specific price and a detailed description. Notwithstanding the above provisions, the proportionate fees for the above transfers also apply to acquisition of fixed goods by prescription under article 82 of Order no. 60-146 of 3 October 1980. Duty is based on the market value of the property transferred on the date of the judicial decision (judgement, order or decision) pronouncing that the prescription period has finished. This value is determined by a valuation written and signed at the foot of the judgement by the new owner and under the supervision of a public services official.

b) Sales of estate property are subject to the fees described in paragraph 1 above. However, allowances for occupancy without title are not considered as charges that should be added to the price. These allowances are only subject to a fee for lease.

c) However, under an exemption to the provisions of article 02.02.43, the transfer of stocks and shares, both of companies which build or purchase property so that it can be subdivided and allocated to associates who own or enjoy the property, or which manage or maintain the said divided property, and of companies that build, purchase or manage building complexes made up of multi-unit properties or individual houses and their shared services and intended for use by associates who own or enjoy their use, are subject to the fees described in paragraph 1 above.

The provisions of this paragraph remain applicable even if the companies described carry out at the same time as the activities described above, any operations that are either of a commercial, industrial or agricultural nature, or are non-commercial, whether or not they are run for profit.

It should be noted that the acquisition of agricultural property is exempt from sales duty. To take advantage of this preferential arrangement, the purchaser must produce a certificate from the Chairman of the Fokontany or his representative of the district where the property is located, stating that it is used for agricultural purposes.

5.2.2.5 The simultaneous sale of moveable and fixed goods

When a deed transferring property is for moveable and fixed goods, the registration fee is levied on the total price, **at the rate stipulated for fixed goods**, unless a particular price is specified for the moveable goods and they are described and valued item by item in the contract.

5.2.3 The responsibilities of those acquiring property

a) Any person acquiring property or business rights in Madagascar as the result of inheritance cannot be released from the liabilities of the purchase price without producing a certificate issued free of charge by the Collector of Taxes certifying either that he is absolved from or not liable to transfer tax, unless they decide to retain and keep a sum equal to the amount of tax due based on the price, as a Treasury guarantee until the Tax Collector's certificate is produced.

b) Entries on deeds and documents at the land registry and surveyor's office relating to the transfer of property rights, entries into the land register relating to the transfer of these same rights, or entries in the commercial register of transfers of funds, can only be carried out on the production of a certificate issued free of charge by the Collector of Taxes.

6. Annual Property Tax

6.1 Land tax

6.1.1 Principle

Land tax (IFT) is an annual tax based on the circumstances existing on 1 January of the tax year and allocated to the budget of village settlements.

6.1.2 Scope:

6.1.2.1 Taxable property

Notwithstanding the exemption described under article 10.10.03 of the Tax Regulations, all lands irrespective of their legal status and the use to which they are put, are taxable in the name of the owners or actual occupiers from 1 January of the tax year.

6.1.2.2 Exempt property

The following are permanently exempt from land tax:

- 1.- All lands belonging to the state, local authorities and other public bodies which provide a public service or a service recognised as being of public benefit, and producing no revenue;
2. - Lands that are used free of charge and exclusively used for:
 - charitable purposes that are free of charge
 - the teaching or practice of religion.
- 3- Lands which form a necessary and immediate part of buildings such as courtyards, passages or gardens not exceeding 20 acres.
- 4- Lands specified under articles 10.03.02 of the Code on Taxes 2008.

Lands recently put under cultivation and constitute an actual extension to farmed land are only liable to tax from the sixth year after that during which they were developed. This exemption measure is granted for lands where coffee has been planted and where the coffee trees have been harvested, and lands where trees are to be grown and are newly planted.

For reforested land where the tree density is **1,500 live trees per hectare, the exemption period is extended until the end of the year when the first crop is actually harvested.**

To take advantage of the exemptions described, the owner or the actual occupant must send in a declaration to the offices of the commune where the property is located, before 15 October of each year, indicating the location and area of the land, the type of crop and the date that work was begun on developing or re-farming the land.

6.1.3 Place of taxation

Tax on land is laid down at the principal town of the commune where the land is located.

6.1.4 Calculating tax

Lands are categorised into six classes, according to their use, for the purposes of tax calculation.

The tax is obtained by applying a tariff expressed in **Ariary per hectare** for the first to the fifth category approved for four years by the town council for each category below, and a percentage of the market value for the sixth category. If no vote on the tariffs and rates are taken, those approved for the previous period are renewed.

First category (for single or mixed plantations)

Cocoa, coffee, sugar cane, coconut trees, cotton, cloves, oil palms, aromatic plants, pepper, sisal, vanilla.

Second category

Woods, forests, lakes, swamps.

Third category (for single or mixed plantations)

Market gardening and fish rearing, rice and other plants not listed elsewhere in this article.

Fourth category

Natural and artificial pastureland, unproductive land, fallow.

Fifth category

Unworked land that could be productive

Sixth category

Lands used for purposes other than agriculture, unbuilt land within the built-up area of a commune, recognised by Order of the Mayor and in keeping with the town planning scheme (if one exists), and lands containing disused buildings and those containing traditionally constructed buildings that are not in keeping with the site or location, excluding those lands used for rice growing, market-gardening, fish-rearing or orchards

which remain subject to the fixed rate for their category: **1% of the market value of the land.**

This market value is determined from the most recent land transfers, or in the absence of these, by comparison with standard prices established by the Board described in article 10.03.08 of the Code on Tax 2008.

The penalty payment for **repeated failure to pay is raised to 100%**. Tax calculated under the terms of this article may under no circumstances be lower than **500 Ariary** each time that the tax is applied.

6.1.5 Taxpayers' responsibilities

The owners or actual occupiers of lands subject to tax must send to the office in the commune where the property is located, before 15 October each year, a written declaration including the following:

- 1- The location of the land or lands;
- 2- The area under each type of cultivation or other uses;
3. The names and forenames of the tenants and the amount of rent.

However, in rural areas, the declarations above may be replaced by a straightforward verbal declaration that will be recorded in a register for this purpose kept in duplicate by the Mayor or his representative, who must send the copy to the relevant local tax office before 31 October.

If, between 15 October and 1 January of the tax year, there are changes to the rental conditions, the owners are obliged to send corrections to the declaration before the beginning of the tax year.

If necessary and in any eventuality, commune officials from the area where the property is sited, or their representatives may make an on-site inventory of, or carry out checks on, goods that are liable to tax.

6.1.6 Specific penalties

Delays in filing the declaration described in article 10.02.08 of the Tax Regulations are liable to a penalty of **5% per month of delay** up to a maximum of **100%**. Exceptionally, the penalty sum laid down is Ar. **10,000**. Notwithstanding article 20.01.54 on the application of the above tax heading, the penalty sum laid down is **50% of the tax evaded**.

The fine is raised to **100% for repeated offences**.

6.1.7 Sundry provisions

In the event of partial or total loss of crops or harvest due to circumstances beyond the control of the taxpayer, such as whirlwinds, floods, locust invasions, fires, landslides etc... he may ask for tax relief or a reduction in tax for the lands affected.

Claims made in accordance with the procedure described under articles 20.02.01 ff. of the Code must be sent to the department responsible for the tax base within three months of the incident leading to the tax relief application. Relief granted is proportionate to the loss of gross income for the tax year in question.

In the event that a disaster strikes all or the majority of lands in a commune, the Mayor of the commune affected may apply for collective relief or tax reduction for all of the taxpayers within his area. A decision on blanket relief on all or part of the tax burden may then be taken according to the procedure described in the Tax Regulations 2008.

6.2 Built-Up Property Tax

6.2.1 Principle

Built-up property tax is an annual tax based on the circumstances existing on 1 January of the tax year and is collected for use by the local communes.

6.2.2 Scope

6.2.2.1 Taxable property

Subject to the exemptions specified, the following are taxable in the name of the owner on 1 January of the tax year in question, or in the name of the holder of a beneficial right whose name appears on the register under that of the bare owner in the case of a beneficial right, or, failing this, of an apparent owner:

1 - any construction whatever the nature of the materials used. In the event that different parts of a property are completed over a period of time, each part is taxable independently from the time of its completion.

A completed property or part of a property is one that is capable of being lived in or is actually lived in.

2 – lands under industrial or commercial use such as work yards, depots for merchandise, materials or goods and other sites of the same type, whether the owners occupy them or they are occupied by others in return for payment or free of charge;

3 – industrial equipment that is fixed and permanent and falling within the terms of the first paragraph of article 525 of the Civil Code or resting on special foundations that form an integral part of the building, and all commercial installations comparable to these structures.

6.2.2.2 Property that is exempt

The following are permanently exempt from built-up property tax:

- 1.- All property belonging to the state, local authorities or other public establishments that are used for a public service or general public benefit and which do not generate an income.
- 2.- Property or sections of property given over exclusively and free of charge to:
 - charitable works,
 - teaching,
 - the practice of religion.

Subject to the provisions of article 10.03.05, new buildings, rebuilds and extensions to buildings are exempt for five years from the year of their completion.

Exemption applies to the person, and lapses when there is a change of owner; however, heirs continue to benefit from the exemption granted to a deceased person for a period of five years from the date of the property's construction.

To benefit from the exemption described under article 10.03.04 above, the owner must send to the Commune offices where the property is located the residency or occupancy permit, or a duplicate, for the property or part of the property for which he is requesting exemption.

In built-up areas where this occupancy procedure is not required, the owner must produce a certificate from the Mayor of the commune where the property is located certifying that the building in question has indeed been completed.

In all cases, exemption is granted from the year following that when the occupancy permit or certificate was produced, and expires at the end of the fifth year following the year when it was completed.

However, when a construction is completed during the last quarter of the calendar year, exemption is granted from the following year and the occupancy permit or certificate is produced before 1 April of that year.

6.2.3 Tax base

Tax is based on the **rental value of taxable property**.

This rental value is equal:

1- To the rental due for the year, which must not be lower than that obtained by applying the assessment criteria in the report of the Board described in article 10.03.08 of the Tax Regulations 2008.

2 – **30%** of the rental value obtained by applying the assessment criteria in the report of the Board described in article 10.03.08 below, for owner-occupied property, if this is his main place of residence.

6.2.4 Place of taxation

Built-up property tax derives from the commune where the property is located.

6.2.5 The tax system

Assessments on which built-up property tax is based are made by the commune on the advice of the Municipal Board that is comprised as follows:

- Chairman: The Mayor or his Deputy;
- Members: The Leader of the District or his Deputy;
- Representatives of the people at a ratio of two people per **50,000** inhabitants appointed half by the Mayor and half by the Leader of the District;
- Two highways or public service engineers;
- The representative of the Tax Department who is secretary to the Board.

The Board's decisions are valid if they are taken with at least **50% of its members** present. The owners must be informed in good time if the Board wishes to make an on-site monitoring visit.

The Board may also ask engineers of the highways, public services department or any other competent department for their advice when setting the rental value. The Board meets when called by its Chairman and at place which he appoints.

This meeting must be held within thirty days of receiving the assessment proposal presented by the office responsible for setting the tax base.

If the Board does not approve the proposal, it shall return it with its comments to the Tax Office within fifteen days of the meeting. The Office responsible for setting taxes then has thirty days from receiving this file to present a new proposal or supply new evidence to support the initial proposal.

The Board then has fifteen days from the date it receives back the file to make its observations. After this period, the Office can make its final assessment with or without the Board's comments.

Assessments that form the basis of the Built-up Property Tax (IFPB) may be revised each year.

If there is no revision, **an increase of 5%** in the tax base will be applied for a further three years. However, if the revision is carried out during this period, the resultant assessment will be applied immediately.

6.2.6 Calculating tax

Tax is calculated by applying a proportionate rate to the rental value determined as laid down under the provisions of article 10.02.06 of the Tax Regulations 2008. The rate is voted on in the band between a maximum of **10%** and a minimum of **5%**.

However, the tax due must not be less than Ar. 2,000 per property.

6.2.7 Taxpayers' responsibilities

Owners of taxable properties must send in to the local Tax Offices, before 15 October of each year, a written declaration on a Government form that includes the following details:

- 1- The name and forenames of the tenants, the nature of either the bare premises let or the furnished premises let, and the cost of the rent;
- 2- The nature of the premises occupied by the person making the declaration;
- 3- The name and forenames of those occupying the property free of charge and the nature of the premises they occupy;
- 4- The nature of vacant premises.

However, in localities other than the principal towns of communes, the above declarations may be replaced by a single verbal declaration that will be entered into the register used for this purpose which is kept in duplicate by the Mayor of each commune or his representative at the offices of the commune where the property is located.

If, between 15 October and 1 January of the tax year, there are changes in the conditions of the rental, the owners must submit a corrected declaration before the beginning of the tax year.

Any property transfer deed produced for the Tax Office must be accompanied by a certificate attesting to its legal status.

In all cases, officials from the commune where the property is located, or their representatives, may make inventories or carry out checks of taxable items on site if this proves necessary.

6.2.8 Specific penalties

Notwithstanding article 20.01.52 of the Regulations for the application of the above tax heading, the penalty sum laid down is **Ar. 10,000**. Notwithstanding article 20.01.54 for the application of the above tax heading, the penalty sum laid down is **50% of the tax evaded** but not less than **Ar. 10,000**. Refusal to comply shall be punishable by a fine of **Ar. 200,000**.

The above breaches are recorded, prosecuted and punished in accordance with the provisions of article 20.02.45 ff. of the Tax Regulations 2008.

7. Conclusion

An in-depth analysis of property tax in Madagascar aids an understanding of the situation common to almost all African countries: the existence of systems (both legal and legislative) that are in place for the good management of property. This is a reason why, particularly for Madagascar and especially because they were available, the various regulations on land security form an integral part of our report and that, unlike other countries analysed, the property system has not been included in the report.

It is becoming clear that economic considerations (people's purchasing power, and human and financial resources for local or devolved authorities) and social considerations (fraud, corruption, growth in the informal sector) play a major role in earnings from tax in African countries in general and Madagascar in particular.

The scarcity of resources (financial and human for devolved areas) is at the heart of the fundamental problems experienced in general by property and tax services in Madagascar.

The research was devoted mainly to the collection of data relating to property management and taxation (e.g. property tax and duties on fixed goods), and not to the policies to be pursued.