

# **Giving the Land Back to People: Solving Colonial Cases of Land Grabbing in Madagascar**

presented by Transparency International – Initiative Madagascar (TI-IM)

Author: Ketakandriana Rafitoson, *Executive Director*

With the contribution of :

Marie Elia Razafiarivony, *Consultant*

Landy Rakotondrasoana, *Land Program Officer*

Amélie Cournoyer, *Legal Advisor*

Rasaminiraina, *GIS Officer*

During the French colonial period (1896-1960), in order to make Madagascar a colony of exploitation, large agricultural areas had been issued to French, Greek, Creole and Indian companies and individuals. After the declaration of independence in 1960, these colonial lands could be separated into three categories. First, some parcels were abandoned by their owners, but remained registered in their names. Some other large-scale lands were transferred to the newly-set Malagasy state. Finally, some large-scale lands were taken over by heirs or bought back by agricultural companies. At present, most of these large-scale lands, which may span several hectares or even cover several *Fokontanys*<sup>1</sup>, are occupied by indigenous peasants, migrants, or descendants of farm workers. These occupants are considered as squatters, with a highly precarious tenure security. This issue, which has political, technical, and legal aspects, has remained unresolved for several decades. Such a situation impedes agricultural potentialities and threatens human rights of millions of Malagasy citizens who are considered as strangers on their own land.

Large areas have been delineated in the regions favored by the colonial administration for their great agricultural potential, i.e. the regions of Itasy, Ambatondrazaka, the North West coast (Nosy Be, Ambilobe, Ambanja, Analalava), Sainte-Marie island, the East coast between Toamasina and Manakara, the West (Betsiboka, Miandrivazo), and the South (Mandrare). According to Koerner (1969), a researcher at ORSTOM in the 60s and 70s, foreign-owned properties in Madagascar would have exceeded 1.5 million hectares (Ha). These lands were mainly dedicated to cash crops (coffee, cocoa, cloves, vanilla, pepper, ylang-ylang), to the production of cereals (rice and maize), and to industrial crops (sisal, tobacco, cotton, sugar cane, etc.).

Most of the large-scale lands that were abandoned by their owners are currently occupied by former farm workers or their descendants. These occupants originally came mainly from other regions such as Antandroy, Betsileo, Antesaka, Merina in the case of Itasy, and came in successive waves in the context of labor force creation during colonization. Some farms that were occupied by their owners

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<sup>1</sup> A *Fonkontany* is the smallest administrative division/administration? in Madagascar, which is approximately the size of a village.

may also have been subject to abandonment upon their death<sup>2</sup>. Hundreds of households currently live on these lands. Claiming rights by subsequent occupants over these abandoned large-scale lands is often a source of conflict.

Worried about the impact that such land insecurity has on an important portion of the Malagasy society, Transparency International - Initiative Madagascar (TI-IM), a Malagasy association specialized in anti-corruption activities, decided to take action and propose an innovative and corruption-free mechanism intended to solve this long-lasting issue. The association chose to act in three steps. First, it edited a Guidebook on land rights – the first one in Malagasy history, in order to help communities at the grassroots level to be aware of their rights. Then, TI-IM chose to deal with the case of colonial lands in the Diana region, in the North of Madagascar, in order to address the problem. Colonial lands were mapped, and a new legal mechanism was developed in order to be presented to official land authorities in Madagascar.

The aim of this paper is to present the results of this reform proposed by TI-IM which combines technical (data management, parcel mappings) and legal (land ownership reforms) solutions. This mechanism is tailored to be implemented through a lobbying and advocacy strategy targeting the Malagasy ministry in charge of land, the Parliament and all stakeholders. The aim is to give back the land grabbed by ancient colonizers to their legitimate owners: the Malagasy people.

## **PRELIMINARY INFORMATION**

Following the annexation of Madagascar by the French in 1896, the colonial administration of the time set up a land management system based on the Torrents principle<sup>3</sup>, legalizing land registration and the need for land ownership property title deeds (Collectif Tany, 2012; Collectif Sylva Terra, 2013). Land titles were awarded to French settlers in several regions of Madagascar to meet the need for raw materials to support the French economy. These lands are now abandoned by these former owners and are used and valued by nationals, posing a legal problem to the land administration authorities. Despite the existence of the acquisitive prescription through Ordinance No. 60-146 of 3 October 1960, the regularization procedure is long and costly<sup>4</sup> for the populations occupying these lands and constitutes a potential nest of corruption.

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<sup>2</sup> This is for instance the case of the former large-scale land of Colonel Gohier Camille in the rural commune of Analavory. Spread over more than 1,000 ha, Gohier's property currently covers 7 or 8 *fokontany*s and has been occupied by descendants of former workers since his death.

<sup>3</sup> According to the Torrents principle, once a piece of land is registered, the title becomes definitive and unassailable.

<sup>4</sup> From 200,000 to more than 600,000 Ariary, the local currency i.e. 50 to 150USD, a fortune to an average Malagasy citizen.

As these people play an important role in the food supply of the Malagasy population, their land insecurity puts the food security of the nation at stake. This is one of the reasons why TI-IM was motivated to undertake this project.

Regarding the methodology, TI-IM needed to start with an overview of the historical and legal background, as well as the collection of information regarding what is commonly called “the settlers’ titles” before it could propose an appropriate mechanism to be implemented. A consultant was then hired to collect the missing data. The Diana region was chosen as a pilot site, given the importance of French settlement in this location since 1896. This paper is partly derived from the consultant’s findings, combined with TI-IM’s lessons learned from other projects focused on land.

According to selected Malagasy historians, a high number of plots have been registered between 1896 and 1960, but the corresponding legal documentation have never been updated since. These plots are now occupied by the descendants of the ancient farm workers employed by French settlers, indigenous peasants or migrants who are today considered as squatters or renegades.

The "settlers’ titles" and corresponding plots<sup>5</sup> regularization process is subject to serious debates among land actors as different options are available. Should they be transferred to the State, or be nationalized and equitably redistributed to the nationals? The acquisitive prescription procedure<sup>6</sup> is lengthy and costly, and is not, in practice, accessible to the average households. According to the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, the transfer of settlers’ land titles and rights to the national occupants should be part of the whole decolonization process because land rights are also human rights.

It is a very sensitive and highly political subject which must be handled with care. In Zimbabwe for instance, former President Robert Mugabe led an agrarian reform based on the brutal expropriation of white farmers in the 2000s. It plunged the country into an economic crisis from which it has not yet recover. In South Africa, a constitutional reform authorized the expropriation of white farmers without compensation on February 27, 2018. The Parliament adopted this highly disputed bill presented by the far-left party. White farmers’ land plots are expected to be redistributed to the benefit of the black majority, a highly controversial subject that shakes the country's political life. (South Africa: White farmers chased off their land after the revision of the Constitution, March 1, 2018).

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<sup>5</sup> classified as lands with obsolete status by some practitioners of the land sector

<sup>6</sup> A procedure taken by the occupant at the court when their occupation of the plot exceeds 20 years. This occupation must be peaceful, undisputed, continuous and unequivocal.

## THE STATUS OF COLONIAL/SETTLERS' TITLES IN MADAGASCAR

In 1897, following the promulgation of two decrees issued by the President of the French Republic<sup>7</sup>, General Gallieni adopted several implementing texts. These include Circular No. 243 of July 20, 1897 completely dispossessing the natives of their ancestral lands and forcing them to emigrate to other regions; Order No. 1110 of November 4, 1897 on the organization and implementation of forest conservation services; and Decree n ° 1111 of the same day creating in Diego-Suarez and Nosy Be the offices of forest conservation where will have to be carried out the real estate registration (constitution of the titles of properties, conservation of the acts relative to the real estate) and the payment of fees and charges related to registered properties. As a result, the northern region has become the most colonized region of Madagascar and Paul Locamus, a French national, became the claimant beneficiary of "the largest large-scale land of Madagascar attributed by the President of the French Republic, Emile Loubet". (Ravalitera, 2017)

### *The scope of colonial land grabbing at the national scale*

At the time of colonization, the Department of Domains cleared 1,5 million ha of land for French large corporations and settlers, and 242,000 ha for other foreigners, mainly Chinese and Indian. The total number of areas allotted to foreigners is expressed in the following chart:

	Temporary large-scale lands		Definitive large-scale lands		Total per nationality (Ha)
	Number	Area (Ha)	Number	Area (Ha)	
Land granted to French nationals					
1899 – 1947	9,178	888,881	4,293	347,099	At least 1,298,856
1948 – 1960	1,670	62,876			
Land granted to other foreigners (mainly Chinese and Indians)					
1899 – 1947	3,307	60,479	1,829	27,736	At least 89,418
1948 – 1960	132	1,203			
<b>General total since 1899</b>	<b>14,287</b>	<b>1,013,439</b>	<b>6,122</b>	<b>374,835</b>	<b>At least 1,388,274</b>

Source : Kœrner F., 1992

According to Kœrner, the provisional large-scale lands granted to the French, whether freely or onerously, are not the only lands “freed” by the French government for its nationals, to which must be added the lands devolved to large corporations, that is to say large-scale lands over 10,000 ha. In 1923, the Government had distributed 585,000 ha to seven companies, among which 475,000 ha had been the subject of large-scale land acquisitions. The total increases with the land granted by transformation of emphyteutic leases (314 leases in 4,114 ha).

<sup>7</sup> One on land ownership in Madagascar and the second on the organization of the public domain.

In 1923, Madagascar appeared as one of the colonies that had cleared the most land for colonization. At that time, provisional and definitive large-scale land acquisitions by large companies amounted to 992,856 ha. In 1952, it was estimated that the colonizing power was in possession of 1,500,000 ha in Madagascar, which also came partly from direct purchases to the Malagasy.

**The specific case of Antsiranana (Diego-Suarez), in the Diana region**

The following chart shows the importance of land clearance for colonial settlement purposes in three areas, namely Diego-Suarez, Toamasina and Mahajanga.

Year	Toamasina		Diego-Suarez		Mahajanga	
	Number	Area (Ha)	Number	Area (Ha)	Number	Area (Ha)
1948	5	82	12	191	56	1129
1949	9	37	24	237	15	700
1950	7	38	24	246	13	731
1951	22	494	17	237	21	467
1952	39	682	8	53	15	499
1953	49	660	25	193	19	739
1954	21	643	19	141	23	1329
1955	37	1337	12	16	18	2395
1956	13	99	3	5	7	386
1957	12	88	4	39	19	1181
1958	18	87	1	10	15	1755
1959	8	12	1	1	6	3
1960			2	1		
	240	4259	152	1370	227	11 314

Adapted from Koerner, F. 1992

Historically, Antsiranana (now known as Diego-Suarez) was, along with Nosy-Be and Toamasina, among the oldest centers of colonization. With 15.3% of concessions granted, Diego-Suarez covered 8.6% of the total surface area. The following chart shows the scope of land grabbing made by foreign settlers in Antsiranana since 1899.

Period	Temporary large-scale lands		Definitive large-scale lands	
	Number	Area (ha)	Number	Area (ha)
1899 - 1947	1,518	81,115	757	63,020
1947 - 1960	152	1,370		
<b>General total since 1899</b>	<b>1,670</b>	<b>82,485</b>	<b>757</b>	<b>63,020</b>

Source: Koerner, F. 1992

The demands for large-scale state lands were particularly important under Gallieni's rule and in the 1920s. As Koerner (1992) explains, the allocation of large-scale lands in Madagascar was governed throughout the colonization period by the fundamental decrees of November 2, 1896 and February 10, 1899 (*Journal Officiel de Madagascar et Dépendances*, February 23, 1899), supplemented by the decree of August 20, 1912 on state legislation in Madagascar. The large-scale lands greater than 10,000

ha were granted by decree, while those of less than 10,000 ha were simply attributed by the General Governor. They could be granted for a consideration or free of charge. Any French national could have obtained a free large-scale land, provided that it did not exceed 100 ha.

For land pieces entitled to a payment, prices were set at 2 franc (F) per hectare on the West Coast and in the North, and at 5 F on the East Coast and in the Highlands. The procedure was as follows. Anyone wishing to acquire a large-scale land had to submit an application to the head of the province with specific information such as the width of the land wanted and the boundaries of the lot. This application had to be accompanied by a drawing of the requested piece of land. The Department of Domains assessed the admissibility of the drawing or the chief of the province designated an agent to carry out this operation. The provincial chief posted the application and launched an inquiry. If no opposition from a third party was received, a provisional title was then issued to the applicant.

The holder of the temporary occupancy title was required to start using the land and to register the plot within three years. The development of the land was verified by a commission which necessarily included a delegate of the chief of province, a delegate of the Service of the Domains and the concessionaire or his representative. In major centers and suburbs, land grants were auctioned. That was also the case in the surroundings of the Tananarive-East Coast railway.

#### ***Difficulties in accessing data on land***

Data related to settlers' titles, in Antsiranana and in other localities concerned, is not accurate due to the lack of an inventory for which the State services are responsible. Maps of certain lands registered in the names of former settlers are available, but they are few in number. In addition, the settlements can only be identified on the basis of legal status documents issued by the estate services or during the acquisitive prescription procedures performed by the occupants. However, there are little claimants because of the cost and the heaviness of this type of procedure. As a result, most of the settlers' lands remain illegally occupied. A study of the actual situation of the settlers' titles requires an accounting of the cancellations of concessions which will only be available after the inventory is completed.

#### ***The existing procedures at a glance***

Two kinds of procedures are currently used to solve the problem of settlers' titles, but they both have their limits.

The first one is the prescriptive acquisition ruled by provision 82 of Ordinance No.60.146 of October 3, 1960 related to the land registration system. The acquisitive prescription is initiated by the claimant if the effective land development according to the vocation of the ground during at least 20 years is proven. This development is assessed by the court, based on a request expressed by the claimant.

Once the court has stated the effective development of the land, the claimant must submit a second request to the court, aiming at the publication in a local newspaper of an extract of that judgment. If no opposition occurs after that publication, the claimant must submit a third request asking for a prescriptive acquisition of the land which will lead to the delivery of a title to the claimant. This process may take several years, except in cases involving corruption of the judicial system.

The second type of procedure is the transfer of unexploited land plots to the state, which is ruled by Ordinance No.74.021 of June 20, 1974 amending Order No. 62-110 of 1<sup>st</sup> October 1962 penalizing the abuse of property rights and pronouncing the transfer to the State of unexploited properties. This procedure mainly targets rural land plots with an area greater than 5 ha or urban ones greater than 10 ha left unexploited by their owner during the last 5 years. The verification of the state of exploitation of the properties is carried out by a commission chaired by the head of the district or their deputy. The absence of exploitation is assessed and established by court order or decision which is posted at the land location. If no opposition occurs within 2 months after this posting, the prosecutor delivers a certificate of display which leads to the transfer of the case to the land registration service. The transfer to the State is pronounced by decree of the minister in charge of the Domains for rural land inferior to 100 ha and by a Decree taken by the council of the ministers for the urban and rural grounds exceeding 100 ha. The title is then published in the Official Journal of the Republic of Madagascar (JORM) and notified to the owner. This procedure is subject to appeal before the administrative court.

## **HOW TO GET THE LAND BACK TO PEOPLE?**

The need to solve the settlers' titles problems through a process that is both legal and social including all possible arbitration entities (magistrate, agents of land services, mayors, chief Fokontany or village), in order to implement sustainable, socially just, and legally ethical solutions is persistent. However, legal solutions need to be accompanied by technical ones in order to be more reliable and impactful.

### ***Preliminary steps***

Before seeking to initiate and implement legal reforms, it is crucial to raise awareness about the settlers' titles situation. Most of the occupants of such land plots ignore that their occupancy is illegal. Moreover, it is important to sensitize the public opinion about the importance of having land titles and being legally safe. TI-IM has already begun this awareness campaign across the country through the production and dissemination of a guidebook on land procedures. 8,000 copies of this guidebook have been distributed in various regions, but it is clearly insufficient given the fact that Madagascar counts almost a 27 million population. Part of TI-IM's strategy in 2019 is to translate this guidebook into a

short video which can be broadcasted on national TV channels. This would ease people's access to information as an important part of the population is illiterate.

Then, a baseline study on land problems should be conducted by the Ministry in charge of land at a national scale. It would be useful in estimating the types of land problems currently existing in Madagascar and the efforts to be deployed across the country for setting up a long-term land tenure security program. This step would be impossible to implement without the collaboration of land authorities and services. Thanks to a signed partnership with the Ministry in charge of Land in 2018, TI-IM has already secured this step which will ease the lobbying phase described below.

### ***The proposed legal reform: the Land Restitution Act***

The review of international available practices related to colonial land grabbing shows that the promulgation of a law authorizing the state to transfer the ancient titles to the occupants of the land is the first step to be taken. But the content of this law shall be handled with care in order to avoid political and social troubles such as those which currently occur in Zimbabwe and South Africa.

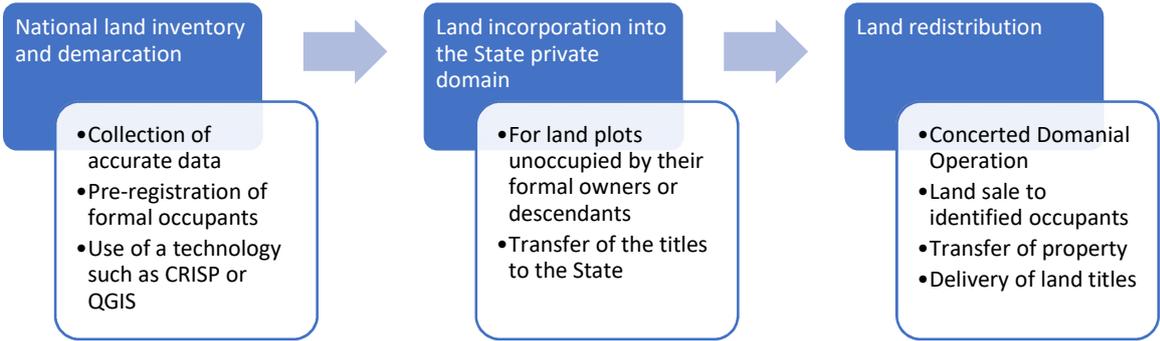
In Morocco for instance, between 1963 and 1966, the State took over only the lands of official colonization, i.e. only 250,000 ha. Private settlement land, representing more than 500,000 ha, were nationalized only in 1973. In 1974, a law authorizing the Kingdom to take over agricultural land occupied by foreigners and settlers was promulgated. According to the available information, more than 6,000 deeds of ownership were registered in the names of French settlers in Morocco, of an average of 166 ha each. Some settlers owned 1,000 hectares of agricultural land, particularly in the Meknes region.

Promulgating a law authorizing the Malagasy state to take over titled lands owned by former settlers, as in Morocco, would allow an increase of the private domain of the State. This legal reform should be preceded by a constitutional revision aimed at sustainably protecting the process. In the same way as the terms and conditions for the sale of land and emphyteutic lease for foreigners are determined by law specified in Article 1 of the Constitution, a paragraph mentioning that "the terms and conditions for the transfer of settlers' securities to local and national users are also determined by law" should also be added to this provision. As the newly-elected regime plans to hold a referendum followed by an amendment of the constitution this year, the insertion of such provision in the text should not be difficult.

Regarding the bill of law itself, which should be named "The Land Restitution Act", an advocacy and lobbying phase should be conducted towards the to-be-elected Parliament which shall be operational in the second semester of the year. A national petition aiming at pushing for the promulgation of the law will be launched and the collected signatures will be brought to the parliament. TI-IM's staff and

volunteers will be in charge of conducting this petition and the collective mobilization in favor of the Land Restitution Act.

The mechanism created by this law relies on three main steps: (i) a national land inventory and demarcation using a technology such as CRISP, (ii) the land incorporation into the State private domain, and (iii) the land redistribution to their current occupants through the systematization of the Concerted Domaniial Operation (ODOC standing for Opération Domaniale Concertée in French), with the delivery of a formal land title.



The first step is dedicated to the national land inventory and demarcation. The aims are to formally identify the problematic land plots and their occupants, and to collect accurate data which are currently lacking as stated beforehand. This will permit to know accurate percentage of remaining colonial land in Madagascar. At the same time, illegal occupants would be sensitized and asked to approach the nearest land services in order to be registered on a preliminary list. Then, the land demarcation will be processed using technologies such as a Cadastre Registry Inventory Without Paper (CRISP) or QGIS, which are tools that have already been tested by TI-IM in the past years<sup>8</sup>. The idea of relying on such technologies is to avoid data errors and ease its storage. In fact, the loss of data is one of the biggest problems of the land administration in Madagascar. Land data is stored on paper-based registers which are easily burnt, torn or soaked up. Huge numbers of data and land-related documentation have already disappeared in various circumstances, because of this lack of storage safety.

Once all the land and occupants are formally identified and registered in a preliminary list, the land plots are incorporated into the State’s private domain. This in one of the core pillars of the Land Restitution Act. All land plots unoccupied by their formal owner (the foreigner settlers) or their descendants are targeted by this procedure. The property of the land, i.e. titles and the maps, and/or

<sup>8</sup> In 2017, in the Belobaka community, four teams led by TI-IM’s staff members were employed to survey 2,100 parcels of land using GPS tools, mobile-software, and photos. The process lasted 72 days, with the team identifying various claims, settling disputes and registering transitory titles in favor of the land owners. Community recognition and consensus were key elements of identifying ownership. Once all the data was collected, it was stored securely on a cloud-server.

other data and information gathered about the land through QGIS or CRISP if the title is missing, is transferred by court order from the foreigner settlers to the Malagasy State's private domain, before being transferred definitely to their current occupants, in exchange of a preferential fee.

The third and last step of this legal mechanism is the land redistribution which sounds like a compensation for the loss and prejudice suffered by the local population, most of which have been expropriated by the settlers during the colonization. The land redistribution process will be carried out through the ODOC system which has already been experimented in the past. The ODOC is a method of massive land tenure security process in a specific area that must be associated with its development (delimitation of roads, parcels intended for the public: parking, market, green spaces, etc.).

In the district of Ambanja (Diana region) for instance, which has 250,000 inhabitants scattered over an area of 6,148 square kilometers, there are currently only 3,310 legally constituted titles. An ODOC initiative for access to land ownership was conducted in 2016 by the Ministry at the Presidency in charge of Presidential Projects, Spatial Planning and Equipment, called "*Hetsika fizaràna titra faobe*".

The land affected by this large-scale distribution of land titles belonged to the French Compagnie Nosybéenne d'Industrie Agricole (CNIA) before being transferred to the State and subsequently transferred to the occupants. The 1968 CNIA Board of Directors had already decided to surrender the land to the State. It was only 48 years later that the State assumed its responsibilities and began the process of redistribution of land to the occupants. Most of 150 villagers from Maevatanana, Ambohitrandriana, Bemaneviky, Haut Sambirano and Marotolàna have benefited, for the first time in their lives, from a land title, thanks in particular to this operation which aims to ensure the security land and to facilitate access to land ownership. The price of public lands sold to the local population was exceptionally set at 5 Ariary per square meter, instead of 80 Ariary in normal times.

The price of the land would vary depending on its geographical location and on the nature of crops growing on it. The valuation of the land must be done by a committee composed of representatives of local population and authorities, along with technicians from the land services. The preferential fee must take into account the social status of the occupants and their sources of revenues. Ideally, local civil society members and the office of the ombudsman should also be involved in the ODOC commission, in order to protect local communities against any kind of abuse.

Once all the land sale process is done, the transfer of land titles from the State to the new owners shall be conducted through court order, along with the assistance of the land services. In order to be efficient and effective, the ODOC operation should be undertaken simultaneously, and at only one time, in all the regions concerned by the settlers' land problem. The law should also limit the timeframe of its own implementation to two or three years, in order to accelerate the land tenure security process and respect Malagasy people's right to land.

## CONCLUSION

According to researchers' estimation (Koerner, 1992; Razafiarivony, 2018), the land titled in the name of the former foreign settlers are about 1,500,000 ha in Madagascar, and are distributed mainly in the large-scale lands of former settlers in the following regions: Ambatondrazaka, Marovoay, Ambanja, Antalaha, Itasy, etc. Most of them are illegally occupied by descendants of ancient workers, small farmers, migrants or other local population. Land insecurity, aggravated by land corruption, is a persistent problem, and is one of the most salient problems of the country, one of the poorest in the world.

As part of its work on land (within the Land and Project in Africa, LCA), aiming at freeing the land sector from corruption and granting a better access to land tenure security for Malagasy, TI-IM has decided to develop a mechanism for recovering the land titled in the name of former settlers and transferring their property to the nationals. Given that existing procedures, such as acquisitive prescription procedures are cumbersome, expensive and generate few regularizations, it was necessary to find an incentive and light mechanism, accessible to the majority of the people. TI-IM proposes to adopt a new law – the Land Restitution Act – authorizing the Malagasy state to take over those titled lands and redistribute them to their current occupants.

A three-step mechanism is included in this new law, chronologically allowing the inventory and recovery of the lands concerned, their registration in the name of the Malagasy State and their transfer to the occupants after a symbolic sale at a preferential rate. Even if the payment is symbolic, it reinforces the future owner's sense of ownership of the land and deters the profiteers. This mechanism cannot be adopted without the political will of decision-makers and parliamentarians who will have the task of adopting this new law. A large-scale citizen mobilization at the national level is therefore necessary to support this initiative and TI-IM, with its partners, proposes to be the spearhead of this reform that will definitively put an end to land grabbing done by the ancient settlers. It will restore a part of the Malagasy people's dignity which has been neglected for decades.

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