



**LETTER FROM THE MALAGASY FARMERS TO THE PRESIDENT OF THE REPUBLIC AND THE MEMBERS  
OF THE SUPREME CONSTITUTIONAL COURT**

Mr. President of the Republic,

Dear members of the Supreme Constitutional Court,

Following the approval of the bill regarding untitled private lands by the National Assembly on the night of June 30th 2021, **we, the 06 farmer umbrella organizations from the 22 regions of Madagascar (CPM, Réseau SOA, FVTM, FIFATA, KOLOHARENA, FEKRITAMA), representing 14 912 grassroots farmer associations and 529 250 families of farmers throughout the island, who are signing below and representing the farmer producers that make up more that 80% of the population in Madagascar,**

**Request the authorities not to infringe upon:**

- 1- the principle of private ownership presumption based on considering occupants of untitled private properties as their owners.**
- 2- the power of grassroots structures (the role of the Mayor, the “Raiamandreny” or the elders, the community, etc.) in managing the land through the BIF (Birao Ifoton’ny Fananantany), the local land office.**

**Demand:**

- 3- that the government take its responsibilities regarding LAND PLANNING (roads, dams and irrigation networks, health and education infrastructures, etc.) to enable peasant farmers to develop their lands.**
- 4- that the government take its responsibilities regarding THE SECURITY AT THE COMMUNITY LEVEL to enable farmer producers to safely cultivate and exploit their lands.**
- 5- the implementation of a clear policy regarding LAND ALLOCATION AND DISTRIBUTION to enable farmer producers to improve their livelihood.**

**THEREFORE, WE REQUEST THAT YOU REFUSE THE PASSING OF THIS BILL ON UNTITLED PRIVATE PROPERTY.**

We, peasant federations, are willing to continuously collaborate and consult with the government, and are committed to fully take part in the development of the country.

We demand these things upon the following reasons:

- 1) This new bill violates and completely modifies the important principle on which the status of « untitled private property » is based, in the spirit of the framework law n° 2005-019 that**



**determines the land status, which is paramount for peasants in defending their rights and exploiting the lands of their ancestors.**

**Mr. President, you often say: « we are going to change History ».** That was already the case in 2005 in terms of land ownership, since the principle of « *considering lands as property of their occupants* » in the spirit of the laws 2005-019 and 2006-031 is indeed a major revolution that has fixed the mistakes engendered by land management practices established by colonizers in our country. The 2005 law through the article 33 and the law n° 2006-031 of November 23<sup>rd</sup> 2006 governing the status of untitled private lands can be considered as having restored their dignity and the protection of their rights on land ownership to the Malagasy population. This new bill on untitled private lands, however, is nothing but a backslide to colonial times, during which the Malagasy population was deceived and unable to take advantage of their lands.

**Upon their arrival, one of the colonizers' first actions was to publish land laws** on March 09<sup>th</sup> 1896 (O.J of March 20<sup>th</sup> 1896), which were supported by different decrees and ordinances governing state-owned lands published on September 28<sup>th</sup> 1926 (O.J of April 16<sup>th</sup> 1927), August 12<sup>th</sup> 1929 (O.J of December 24<sup>th</sup> 1927) and August 25<sup>th</sup> 1925 (O.J. of March 22<sup>nd</sup> 1930). These laws, based on the principle that « all untitled lands belong to the State », even though they provided for the enjoyment of untitled lands by the indigenous population, have not been implemented for the Malagasy but rather for the monopolization of numerous lands by the colonizers, who had received a great number of large plots of titled lands, and had received assistance for their development. In contrast, it was particularly difficult for the Malagasy to obtain a title. Besides, the lands they had been given were limited to what they needed to feed their families, so they would not rebel.

**When Madagascar became independent in 1960, the Malagasy government continued to apply the principle that « all untitled lands belong to the State ».** This time, the government was a Malagasy government but not a French one. The law n° 60-004 of February 15<sup>th</sup> 1960 on public land ownership through the article n°11 expresses this presumption of state ownership, but the second paragraph of this article n°11 stipulates that presumption of state ownership does not apply to lands occupied and developed by Malagasy citizens for a certain period of time according to local customs and practices. This means that when Madagascar gained its independence, the law recognized the principle of « private property on occupied lands » along with the « presumption of state ownership ». Moreover, the law 60-004 through the article n°18 encouraged Malagasy citizens to develop their lands for 10 years in order to obtain a title. In practice, however, it was very difficult for the population to defend their rights on the plots of land they had been developing, as encouraged by the law. **Very few people could obtain a title on their names, especially peasants.** Many plots of land were even titled and registered under the names of people who had not developed them.

**The determination of peasants to demand a new land law in 2003.** Faced with a series of problems caused by the application of successive laws and the absence of any guarantee regarding the protection of land laws for Malagasy citizens, the peasants demanded in 2003 that the land laws be changed, leading to the publication of the 2005 new land policy and to the launching of the legislative reform by enactment of the framework law 2005-019 mentioned above. This law recognizes as landowners all Malagasy nationals who have occupied the land for a long time and in accordance with the customary law (art.33 of the law 2005-019). According to the framework law n°2005-019, of



October 17<sup>th</sup> 2005, stipulating the principles governing the land statuses in Madagascar, « untitled private properties » means presumption of property for anyone occupying untitled lands that do not overlap with state-owned private and public lands. This law, along with the law n°2006-031, empower the municipalities to manage lands by issuing land certificates to presumed owners as a proof of ownership. The municipality does not own the land but confirms property right by issuing the land certificate. Land occupation by the citizens gives them the right to own the land.

***This bill voted on June 30<sup>th</sup> 2021 aims to demean the Malagasy population by making them lose their right to property on their lands, if we consider the current situation and the system of applicable laws governing land ownership.*** The analysis of a few articles of this new bill voted on June 30<sup>th</sup> shows that it has completely changed the spirit fostering land ownership by the Malagasy citizens and that it will gradually deprive them of the privilege to possess lands in Madagascar because:

- ***It will be particularly difficult for Malagasy citizens, especially farmer producers to obtain lands.*** The article 2 paragraph 2 stipulates that land occupation of 15 years before the enactment of this voted law in 2021 is an important condition for a plot of land to be considered as untitled private property. In other words, the existence of untitled private properties ended in 2006. We believe that the decentralized land management by the municipal land office – the BIF – will also be phased out since the status of untitled private property is being eliminated. Furthermore, by what means will the Malagasy citizens obtain lands? In addition to the lack of clear policy regarding the method of allocation of state-owned lands, the reality shows that it is difficult for the Malagasy to obtain lands by application of the law 2008-014, since only the government has the power to decide to whom the lands will be allocated (article n°21 of the law 2008-014) – mainly to the wealthy, not to the majority of the Malagasy population.
- ***We notice that the condition regarding land development aims at eradicating the status of untitled private property.*** The article n°06 requires land development to be completed within 15 years of the effective date of this newly voted bill. Previous experience with this development has no clear basis for governing it, and is completely against the spirit of land planning act, which should be the determining law for land use but not a land law. Besides, the municipality is the main responsible for land planning at the local level. Furthermore, it is obvious that the pressure on the Malagasy to develop the lands they inherited from their ancestors in a context of poverty and impoverishment – yet according to statistics, more than 80% of the Malagasy population live under the threshold of poverty – is one way to evict them from their lands. We thus know beforehand, if we refer to the usual working method, that many Malagasy people will lose their lands when this law is enforced. It goes without saying that when the 80% Malagasy living in poverty are unable to develop their plots of land, they will be given to the 20% wealthy people or to foreigners. Successive governments also have a great responsibility regarding the citizens' inability to develop their lands since there are works – as part of the land development under the responsibility of the government – that have not been completed and cannot be done by citizens, such as roads, dams, schools, and safety



guarantee, which ensure the dynamism and facilitation of land development by each individual, and prevent people from crowding into the same places. So, is it fair that the government enjoys impunity when it fails in its duty to develop the land, whereas citizens immediately lose their lands? It is worth noting that the Government, according to the Constitution, has the duty to improve the social and economic well-being of its citizens (articles 17 to 39), so when the citizens are not in a position to develop their lands, it is not because of laziness, but because they have been exhausted from endless poverty and impoverishment.

- ***Through this new bill, the land certificate is used as a tool to eradicate the status of untitled private lands.*** The articles 21 and 22 completely distort the principle of “presumption of private property” – according to which occupation of a plot of land by a Malagasy citizen is considered as land ownership – because the land certificate has become the basis of the right to untitled land property and not land occupation. According to the articles 21 and 22 of this new bill, if a person who does not have a land certificate is faced with a mining license holder, or faces expropriation within the framework of a declaration of public utility, he loses his rights. We would like to emphasize that it is land occupation which creates the right to land ownership, but not the land certificate. Therefore, the land certificate has become a tool to eradicate the status of untitled private lands, yet when occupying a plot of land, a person is considered as its owner. Consequently, a mining license holder should not proceed to mining operation without negotiating with the person occupying the land, even if the latter does not have a land certificate. It should be noted that only 1/3 of the municipalities in Madagascar have a land office (BIF). Thus, the citizens should not be blamed for not holding a title or a land certificate, since it is the duty of the government to create land offices.

2) **This new bill tends towards the gradual suppression of the power given to municipalities and grassroots bodies in land management** if we refer to the following articles:

- **An article that is completely unconstitutional and expresses distrust towards decentralization.** The article 03 paragraph n°03 of this new bill stipulates that “*the BIF cannot be created without authorization by the State*”, which is completely against the principle of the Constitution, which ensures the freedom of decentralized authorities pursuant to article n°03 which stipulates that “*the Constitution guarantees the administrative and financial autonomy of decentralized authorities*”. This is confirmed by the articles 139 and 157. The article 163 of the Constitution also points out the fact that one of the principles that cannot be modified is “*the administrative and financial autonomy of the decentralized territorial authorities*”. The article n°08 of this new bill governing untitled private properties emphasizes on the distrust towards decentralization, stipulating that the government is still looking for alternative means to check the land status and the real existence of the right to use and occupy the land. It is important to note that the PLOF is already in charge of that, but it is its method of implementation in accordance with the law that has been so far considered inappropriate.
- ***The possibility of cancelling the land certificate within six months after its release is unconstitutional and decreases its value.*** The article n°26 of this new bill authorizes the Mayor



who has signed the land certificate to cancel it within 6 months from the day it was signed if he is still in office. It should be noted that this article is not consistent with the principle of the Constitution, which is based on separation of powers. The Mayor, an executive authority that issued the land certificate – which protects the right to land ownership – cannot cancel it. It can only be cancelled by the judicial authority since the latter is in charge of protecting the right to property. Consequently, adopting this article undermines the reputation and value of the land certificate in all the ways it is used, especially as a mortgage, as mentioned in the article 29.

As a result of these analysis and observations carried out by us, peasants, it is clear that the members of the parliament have not delved into the fundamental insights of this new bill. We noticed that it is aiming at taking away the population's right to land ownership while removing the power to land management from local structures. However, Mr. President, these principles had significantly improved social peace regarding land matters. According to an article written by Mrs. Rakotobe Nelly, First Honorary Chairman of the Supreme Court, published in "La Revue MCI" for the 1<sup>st</sup> and 2<sup>nd</sup> term of 2020, n°89 and 90, pages 53-66, *"the protection of the right to land ownership by the land certificates greatly helps in decreasing the number of land disputes since certified lands are not really the subject of disputes in the courts (01% of land disputes in the courts)"* (page 64). Thus, taking such a success into account, it is wiser to reinforce the management by grassroots bodies instead of gradually annihilating it.

The root causes of the issue lie in the struggle for power and the overlapping responsibilities between the decentralization and the devolution of power. This, however, should have been resolved by the PLOF if the instructions stipulated in the law have been strictly followed, by clarifying the statuses of all the lands within each municipality. Technological developments have shown that it is possible to conduct a national land census (parcel inventory, parcel census) in a short time in order to know the exact status of the lands in Madagascar. This will provide useful information in decision-making concerning land planning in our country, and will allow peasants to freely do their work and move towards food self-sufficiency of the Malagasy and their descendants.

Antananarivo, July 7th 2021.

FIFATA,

KOLO HARENA,

FEKTRITAMA,

CPM,

FVTM,

RESEAU SOA