

A Close Up of Malagasy Environmental Law

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I. Introduction

The black and red robe folded on the prosecutor's large empty chair symbolizes the state in the regional court of Mananjary on Madagascar's southeast coast. The wall at the back of the room in this modernist building consists of row after row of Official Journals. The large white pages of these printed Malagasy law texts, yellowed by age and perhaps by the warm climate of the coast, sit still with the look of not having been moved since the colonial era. The judge sits in front of the room posing questions one by one to the parties, to the witnesses, and to the lawyers in the court. A crowd of people sit in the courtroom or outside on this day waiting to plead their case or defend themselves, hoping not to have to return the next day.[1]

Perhaps one hundred kilometers from there, in a Tanala village accessible by a narrow footpath, a *kabary*[2] is taking place in the *tranobe*[3] in a village.[4] Seated on the floor made of the bark of palm trees that grow in the nearby forest, the *mpanjaka*,[5] and his counselors hear two villagers dispute a rice field. Before the *kabary*, the *mpanjaka* asked the ancestors to guide him in his deliberations and he poured *toka gasy*[6] as an offering. The *mpanjaka* recounts how his people managed their actions in their natural environment according to a traditional code. For example, their customary law prohibited hunting lemurs, on which the fame of the neighboring national park depended.[7] Ten years ago this same *mpanjaka* saw *vahiny*[8] come to establish this national park in the humid forest, the sacred places of his ancestors. The villagers living around this place, which became Ranomafana National Park, had little occasion to negotiate since these lands were habitat for animals identified for protection at national and international levels.[9]

Around the 1970's, Madagascar's unique biodiversity, already the concern of Malagasy scientists, attracted the attention of international parties.[10] Realizing the acceleration of the environmental degradation in Madagascar, especially deforestation, the international and Malagasy parties looked for legal means to give them additional protection.[11] Even today, Madagascar seeks to use law to promote conservation.

But the population around the national park wants the state authorities, the nongovernmental organizations, and the other *vahiny* not to deny them the right of deciding how they live in the region of their ancestors.[12] After all, they have their own code which is a legitimate law.[13] What concerns the people of this region where the majority of the population subsists on rice, beans and other subsistence agricultural produce, is that the lands of their ancestors be respected and that the earth provide them food.

At the same time that traditional law was evolving, the natural bounty of the Red Island[14] became well known to French and Malagasy governments. The trade economy of the country remained based on natural resources, and generally, agriculture remains the principal resource.[15] For two centuries under the Merina rule, the French colonists, and the Malagasy government, Madagascar's environmental law focused on natural resources. With Madagascar's Environmental Charter in 1970, Malagasy environmental law blossomed to include other problems, gaps and methods of precaution and management.[16] The following decades consisted of putting into place a framework of modern law including action plans, and implementing progressive texts to conserve the biodiversity.[17] Madagascar's government continues to build new environmental law, revamp older texts, and make them more effective.

The objective of this article is to explain the key points of Malagasy environmental law concerning the

conservation of natural resources. In order to do this, the first part will give some basic information on the history of Malagasy environmental law, through early law, customary law, especially as it manifests in the southeast around Ranomafana National Park, and civil law. The second part will familiarize the reader with the relations between positive law, including the new forestry law, the management of protected areas, decentralization, and customary law, especially the *dina*.^[18] The third part will discuss community management of renewable natural resources, one objective of which is to make concrete community participation in sustainable development. A conclusion will explain why community management of natural resources can succeed in Madagascar if the stakeholders increase their communication and if the local communities understand and implement modern techniques of sharing responsibility.

II. Historical background: Early, Customary, and Civil law

Early Malagasy Environmental Law

At the beginning of the nineteenth century, the island's forests belonged to the state or the Merina, the dominant monarchy. This dynasty, originating from Antananarivo lived on the high plateaus of the central region. It is the Merina royalty that achieved the political unity of the island in 1829. Seemingly, the Merina royalty forbade deforestation, for reasons of external security. However, even at that stage, the forest barely covered a tenth of the island, but *tavy*^[19] continued as in the past.^[20] As much as it enriched the soil, this practice became an expression of the anti-establishment mentality of the Tanala,^[21] a people who live in the southeastern forest. While the Merina royalty were progressively unifying their dominions that were finally named Madagascar, the Tanala evolved their legal system in parallel.^[23]

The Malagasy state recognized from the beginning the importance of natural resources to the life of the population. "The forest is a common patrimony where all those who lack the means to exist (widows, orphans, poor), must be able to continue to find something to subsist and to cloth themselves by gathering. In addition, she furnishes wood necessary to construction."^[24] Provisions forbidding deforestation, especially bush fires, were announced during the nineteenth century. At the beginning of that century, the first king of the Imerina, Andrianampoinimerina, limited deforestation, declaring as royal property all the forests in his kingdom. The book *Tantaran'ny Andriana* reports a declaration from the king: "However it is forbidden for people to come to forge clandestinely arms in the forest because they can prepare a rebellion."^[25] This initiative was the first known attempt among the pre-colonial African realm to conserve wooded regions.^[26] In 1868 the Code of 101 Articles appeared and in 1881, the Code of 305 Articles followed. Both pieces of legislation concerned civil law, criminal law, and procedure.^[27] Among these code articles, the numbers 101-106 forbade burning of the forests and settling of the people in the forest, still from concern of guaranteeing interior and exterior security.^[28] Article 105 forbade the practice of *tavy*: "One may not clear the forest by fire without the goal of cultivating rice fields, corn or other crops. One who clears by fire a new terrain or expands those which exist already, that person will be put in irons."^[29] For the inhabitants of the eastern forests, this Merina policy towards forests had less to do with conserving the state forests, and everything to do with closing the fields and control of very valuable natural resources.^[30]

Restrictions on forest resource use remain today. Following the French colonization, the Water and Forests Service, established in 1896, introduced the notion of the "*domaine de l'Etat*," which declared as public domain all of Madagascar's forests and "*zones en defens*" where all clearing was forbidden.^[31] The progressive disappearance of the island's unique flora and fauna prompted the creation of ten Integrated Natural Reserves closed to all human beings; including neighboring inhabitants, with the exception of authorized scientists.^[32] With Madagascar's independence in 1960, a more or less comprehensive environmental legislation was created.^[33] Property rights accented the obligation to develop the land and to put non-cultivated land under cultivation.^[34]

After a decade of closed socialism during the 1970's, Madagascar again concerned itself with the island's degradation. In 1984, Madagascar adopted the National Strategy for Conservation and Development.^[35] The Red Island was the first country in the African realm to have a national environmental policy.^[36] The legal foundation of Madagascar's modern environmental law is the

Malagasy Environmental Charter, adopted in 1990.[37] The Charter recognized the environment as a priority preoccupation of the country's general interest, the duty of each to protect it, and the right of each person to be informed of and participate in decisions capable of exerting some influence on the environment.[38]

To accomplish the objectives in the Charter, an Environmental Action Plan (EAP) was elaborated to protect and remediate the environment while working toward sustainable development. Implementing the EAP is a long-term endeavor divided into three phases, Environmental Programs I (1991-1995), II (1996-2000), and III(2001-2005).[39] During the first two phases of the Environmental Action Plan (EAP), the Malagasy government enacted several laws and decrees embodying the EAP's objectives. These texts included a decree requiring environmental impact statements for a variety of activities,[40] forestry legislation,[41] laws governing protected areas,[42] and a law governing the community management of renewable natural resources.[43] This government activity is impressive if one takes into account the fact that Malagasy legislative procedure limped on one leg. Of the two houses foreseen by the Constitution, the National Assembly existed for several years, and the Senate had just come into being in 2001.

The storm of conservationist activity since 1980 underscores how it is impossible to talk of Malagasy environmental law today without noting how the actions in the interior of the country attach to the framework of international law. First, the international community exercises much influence on Malagasy environmental law and policy. To fund its program, Madagascar had to look toward international lenders.[44] A result, as stated by one civil servant, is that the lenders drive all the environmental texts now. "There is no text without a project behind it." [45] Second, international law is part of national positive law and is felt at the communal level in Madagascar. Each law student in Madagascar learns that the Malagasy Constitution formally incorporates in its Preamble the African Charter of Human and Peoples' Rights and the International Charter of Human Rights.[46] Even people with less formal schooling in Madagascar have notions of the ramifications of the international community and international law.[47] Interactions on the ground of foreign officials visiting numerous projects, the establishment of infrastructure, new rules, and growing tourism give the impression that it is foreigners who drive the conservation works.[48] The Environmental Charter notes the strong influence that the United Nations had on the development of Madagascar's environmental legislation.[49] While Madagascar's own conservation law was an independent effort on the part of Malgaches, international policies and law have greatly influenced, and perhaps even driven, the country's environmental legislation since the island's biodiversity drew international conservation attention.

Customary Law

Added to the international law and modern law aspects in Madagascar's national law, is customary law of the Malgaches. In southeast Madagascar, customary law takes three forms: the *hazomanga*,[50] the *fomban-drazana*,[51] and the *dina*[52],[53] The *mpanjaka* holds the power of a Tanala clan or tribe. The *mpanjaka* assures the transmission of traditions and carriage of the *hazomanga*. This is wood that symbolizes the delegation of the ancestors' power and is used in rituals in all of Madagascar.[54] By means of the *hazomanga*, the *mpanjaka* has the function of directing all ancestral ceremonies, requiring respect for all traditional rules, giving counsel, and assuring other functions of arbitrating litigation in the society.[55] The *mpanjaka* shares this power with the *rayamendreny*. [56] The *rayamendreny* advise the *mpanjaka* when there are decisions to make, after the *mpanjaka* has consulted the villagers. The direct dialogue between the *mpanjaka* and the people is possible with the agreement and blessing of the council of *rayamendreny*. [57]

In addition to the *hazomanga* in traditional Malgache organisation, law is made up of the ensemble of *fomban-drazana*. *Fomba* consist of general Malagasy customs and those practices more particular to a region or a clan. For example, in the southeast, the *fomba* of *tavy* reflects the life style of slash and burn agriculture directing free access to the forests by the *fokolona*. [58] Now, *fokonolona* signifies the union of all the people who have a house in the village. [59] By living in the same village they accept the authority of the *mpanjaka*. This Tanala style of governance is found even in the mixed Betsileo and Tanala villages. The *fokonolona* assure participation and mutual aid of all the villagers, not only for large work, but also in simple daily relations. [60]

Besides the *hazomanga* and the *fomban-drazana*, customary law includes the *dina*. *Dina* is a traditional formal pact of *fokonolona* members that applies the customary law. There are several kinds of *dina* according to the field of action: those that regulate crimes, that tie traditional customs with modern laws, that interpret all contractual relations, that elaborate and adopt works in the community interest, and *dinas* that maintain security.[61] *Dinas* concerning natural resources, an economic good, are created in the following manner: Every individual who resides regularly in the *fokonolona* is a member of that *fokonolona*. The *fokonola's* deliberative body is the general assembly, or gathering of all the *fokonolona* members. A majority of the general assembly is required to establish a *dina* regarding the natural resources of their territory. In order to establish a legitimate *dina*, a majority of the *fokonolona* members must be present.[62] Often one records the *dina* on wood or paper.[63] For example, the security *dina* of the village of Sahavoemba, contains the different names of the guardians written on a tray-shaped piece of wood. But in this same village and the village of Ambatovy on the other side of the national park, the *dina* concerning the neighboring national park is written, instead, in pen on pages of white paper.

The violation of a *dina* should be resolved at the lower level by arrangements between the parties. If one is not able to resolve them at that level, there is a consultation with the *rayamendreny*. [64] If the dispute is still not resolved, then it is sent to the level consisting of both the *mpanjaka* and the counselors in a *palabre* called a *kabary*. At this point, the transgressor would be surely punished either by having to sacrifice a *zebu*[65] or by other punishments of which the worst is the "black banana", for which the transgressor loses the right to live in society.[66]

Among these three forms of customary law, it is the *dina* which most resembles modern positive law. Formalized by the majority vote, the *dina* reflects the character of a democratic society. The Malagasy state has tried to integrate the local legitimate law of the *dina*, into modern law. We will see later the texts which formalize this tie between the modern positive law and customary law. However, the value of the *dina* as an expression of the people's will appears limited. According to civil and policy law observations, Tanala move only by order of the *mpanajaka*. [67] For example, in more than one case, the habitants of a village appeared to enjoy their right to participate in politics when they have all voted in a state election. However, the villagers voted according to the *mpanjaka's* order, so they did not exert their own will in what concerned decisions outside the *dina* of the *fokonolona*. [68] To know the true sentiment of the individuals concerning a question outside the affairs of the *fokolona* requires, therefore, more than a reference to customary law. Besides, as one finds in many cases, customary law and the role of traditional authorities can change where the life of the people is shaken up by influences coming from the outside. In this respect, as we will see later, the region around Ranomafana National Park in Madagascar is no exception.

Civil Law

Like other civil law countries, Madagascar opens a new way to create a place for customary law in modern law. Malagasy heritage is varied. It is a population with roots in Africa and Indonesia, with an identity tied more to Indonesia,[69] and a government structure and written law modeled after that of France.[70] Having adopted much of France's juridical tradition, modern Malagasy law illustrates the significance of this civil law heritage. First, civil law countries have comprehensive codes, often the result of a single process.[71] On the other hand, the statutes from common law countries are originally ad hoc, often the result of judicial decisions.[72] Second, under the civil code, it is the choice of words of the text, their meaning, and the interpretive documents which determine how the judge is going to apply a given text.[73] Finally, the juridical science of civil law does not allow for consideration of other circumstances other than the positive law.[74] Seeing Malagasy environmental law through these three examples, one can recognize the influence of civil law. Such recognition helps in understanding some systemic difficulties in implementing the environmental texts and also the way in which modern law in Madagascar reflects Malagasy culture.

As a first example, under the civil law, juridical norms of a given field of law are expressed in a comprehensive code. In this manner, Madagascar adopted the entire French commercial code.[75] However, instead of a single Malagasy environmental code, positive environmental law in

the country knits together in an ad hoc manner several laws, decrees, and regulations which have as an objective to implement on the ground diverse aspects of global policy of the Malagasy Environmental Charter. This has left legislative gaps. For example, the National Association for the Management of Protected Areas (ANGAP) was created according to a statute addressing the association rather than ANGAP's function of managing protected areas.[76] In addition, Madagascar does not possess a text regulating protected areas. At the present time, (ANGAP) takes care of protected areas under the authority of a statute governing associations. Furthermore, protected area lands cover an area of only five percent of the country.[77] The new forestry law applies to a much larger area, but its implementation has been very weak as we shall see later in this article. The law requiring Environmental Impact Studies is far-reaching, but has produced few such studies.[78] The complaint is that there does not exist a text that establishes standards for all actions affecting the environment. According to one official, "we have to put a ladder between the heaven and the earth. There must be a methodology." [79] As a result, jurists are presently considering how to create a code that can unite the various texts in a coherent process.

As a second example, one can see the importance of the words in the texts. In general, common law permits the judge to interpret a text according to precedent cases. But in civil law, the influence of precedent cases is negligible. Judges search for the provisions in the codes to resolve cases and apply the provisions of the appropriate code with the help of learned juridical treatises.[80] This field of diminished interpretation requires a correct and detailed writing of environmental law texts in Madagascar. Difficulties manifest sometimes by simple bureaucratic accidents. For instance, in the case of environmental impact statements, a preliminary part of an annex was adopted instead of its finalized version.[81] This made it so that the overreaching annex was adopted instead of a less comprehensive text. The resulting decree required an environmental impact statement for every placement of an irrigation ditch, which would have made it impossible to enforce even if there were enough resources.[82]

The solution is to redo the legislation, but the time lost in resolving such an error slows the implementation of the impact studies. Besides, environmental litigation is yet undeveloped in Madagascar, although it is prevalent in property law. Unless Malagasy jurists can refer to other countries' laws, Madagascar's environmental texts will continue to be difficult to enforce because of bureaucratic mistakes, overly broad provisions, or the lack of precedent cases.

The third example allows one to see that according to the civil law tradition, what is important in law are the principles derived from a careful study of only statutory law. Jurists analyze foundation laws (*codes de base*) and legislation to formulate general theories and to extract, enumerate and explain legal principles that they hold.[83] Characteristics of civil law do not automatically allow considerations of factors other than modern law, such as anthropology, sociology, political science, or economics.[84] However, to integrate customary law in Madagascar, where the population had already developed a strong tradition of customary law, requires a look at different disciplines. As we saw earlier in this article, Malagasy legislation took into account the natural resource and agricultural culture of the country since the early 1800's but repressed local cultural use. In contrast, recent texts show how Malagasy law appreciates and takes into account cultural and political realities of regions, communes, and even the level of *fokonolona*. It is perhaps at this last level that the effects of environmental law are felt the most. Focusing on civil law principles without accounting for culture and other effects reduces the chance of the law succeeding because elements key to implementing the law are left out.

Malagasy culture respects words. The ability to speak well is highly esteemed everywhere in the country. To tell a *tantara*[85] is an event reserved to those who are qualified. An anthropological study shows the accent that one puts on the order of words in a Malagasy speech, whether it is delivered by a *mpanjaka* or a state official.[86] It is therefore important to choose carefully the words of a text, such as the law relative to community management of natural resources that attempts to take into account customary law.

The availability of information is a cornerstone of public participation. Given the importance of legal texts, this participation is made difficult because they are not distributed more widely. It is texts

protecting the right to information that have become the first arrow in the quiver of US environmental law, for example.[87] But in the regional capital of Fianarantsoa, Madagascar, one must look in at least three offices to find a given text. Often a public service or even a court does not have a current text because the central level does not send them. In the academic community, there is no comparison between the university libraries in the region of Fianarantsoa and the one in the capitol, Antananarivo, the latter being much more endowed with books. For two centuries, information from the country has remained centralized in the capital far from the corners where it is applied. This absence of information is a gap, considering one of the purported policies of modern Malagasy environmental law is to foster community participation.

III. A Contemporary View: Implementing Devolution, Modern Forestry and Protected Areas Legislation, and the *dina*

Since the Malagasy Environmental Charter, several national texts were promulgated to implement the principles expressed in the Environmental Action Plan. The new texts take into explicit account the rights and responsibilities of the local communities (*communautés de base*) or the *fokonolona*. This part of the article begins by describing the decentralization policy and law that set a context for other laws. Then it discusses the principal texts that deal with the management of renewable natural resources and how Madagascar's government has sought to integrate *dina* into these modern laws.

Implementing Devolution

In former times, the government of Madagascar manifested a centralized policy with regard to natural resources. This aroused a negative local reaction. "The forest belongs to our fathers and our mothers. It is for us to do what we want with it." [88] The objective of devolution is to transfer the responsibilities and the benefits from the central level to the country's different regions. One of the Environmental Program II's strategies was to promote the responsibility of regional governments for natural resource protection.[89] The 1992 Constitution transferred some powers to the *fokonolona* including "taking appropriate measures to prevent the destruction of their environment, loss of their land, seizure of herds of cattle, or loss of their ceremonial heritage unless these measures jeopardize the common interest or public order." [90] Then, law 94-007 implemented this by identifying "the powers, competences and resources of the decentralized territorial collectives." [91] This law acts generally on the economic and social development.[92] For example, among other responsibilities, the region of Fianarantsoa would have to look over the area's water and sanitation management, the development of a regional development plan, the management of the roads, and the protection of the environment in the prefecture.[93]

The brother of law 94-007 is law 94-008 which creates the rules relative to the organization, functioning, and attributions of decentralized territorial collectives. It is by means of 94-008 that the Malagasy government attempts to formally integrate the *dina* into modern Malagasy law. This text prescribes the traditional functions of the state authorities. According to 94-008, the State's representatives serve in the individual litigations "as *rayamendreny*." [94] In addition, the law authorizes "the Mayor to take the initiative to study, to propose or to cause to be adopted, to diffuse, and to cause to be applied conventions of the *dina*. This is done with respect of the laws and regulations in force and usages observed and not contested by the commune." [95] However, these provisions contradict the existence of the *dina*. First, we have seen how the *dina* is a form of democratic, not executive rule. Furthermore, this text represents an imposition of positive law on the local milieu, which is a governance style that was strongly opposed historically. Thus, it seems that the text as written cannot succeed to integrate customary law in the modern law of the state. Besides, in spite of its recognition by the local state authorities, the implementation of this provision at the local level is not yet evident.

The Forestry Law

The Constitution also recognized the need to conserve natural resources and the duty to protect the right of each citizen to have a clean environment and a cultural identity. These provisions serve as "mandate for the political authorities to attack the roots of environmental problems" assuring that governments have an uncontested mandate.[96]

Under this authority, the Malagasy government promulgated a new forestry law in 1997. The forestry regime is the ensemble of the legislative and regulatory actions that have the protection and good sustainable management of forest resources as an objective.[97] This text reflects the same policy as devolution and repeals all previous dispositions that are contrary to the present law.[98] The new forestry law permits harvesting which would be established by decree and the usage rights of the *fokonolona*. At the same time, it incorporates the dispositions of the ordinance 60-127 of October 1960 which regulates deforestation, clearing and burning. The new law applies broadly by including in the definition of a forest a great variety of surface areas. It also assimilates even more ecosystems, including mangroves, marshes, as well as others. In addition to forests of the State and the Decentralized Collectivities, other privately owned forests can be subjected to this forestry regime.

But the shell of the forestry text hides some large gaps in implementation. The Direction of the Water and Forests (DEF) is the only body that takes care of forest police matters. DEF's responsibilities and the definition of a forest are as broad as the capacity of the service is small. At the national level there have been suggestions of a great reform of the DEF.[99] In addition, the implementation of the forestry code on the ground is prevented by a lack of personnel and material resources. For example, a single forestry agent, Chief of the Canton, takes care of all forestry activities in the *fivondronona*, or the sub-prefecture, of Ifanadiana. This sub-prefecture covers thirteen communes and a large surface area including Ranomafana National Parks. Without a means of transportation, this agent tries to plug the holes with the help of non-governmental organizations, a retired person, and collaboration with ANGAP. The failure to implement the forestry law does not alleviate the pressure on the park. Second to *tavy*, the illegal exploitation of wood species from the park and its whereabouts constitutes a primary pressure on the park.[100]

The Association for the Management of Protected Areas (ANGAP)

DEF and ANGAP have to work with each other in Ranomafana even though they each have a very different structure and work method at the national level. DEF is part of the impoverished Malagasy government and ANGAP is a private non-profit association well financed by lenders.[101] The forestry regime is the ensemble of legislative and regulatory measures having the protection and the sustainable management of forestry resources as a goal. Like DEF, ANGAP must also manage development, although this is a secondary goal to conservation. One of the seven components of the Environmental Plan, the Protected Areas Program, identified one priority: establishing a system of fifty protected areas, developing a sustainable agriculture associated with the conservation action in the peripheral zones of protected areas, and reinforcing the protection and the sustainable exploitation of classified forests. The mission of ANGAP is to establish, conserve, and manage in a sustainable manner a system of national parks and reserves representing the unique biodiversity and environment of Madagascar.[102] As much as the forest occupies a priority place in the country, the Protected Areas, given their extraordinary biodiversity, are a source of national pride for the present and future generations.

Even though ANGAP manages protected areas, only DEF can sanction people for violations committed within protected area borders. Therefore, agents from the two organizations must coordinate their activities. The ANGAP agents which patrol the park play the role of getting information and then report this information to the Chief of the Canton. It is ANGAP that furnishes the means to look for and follow the guilty parties. In following up violations cases, ANGAP and DEF make joint inspection rounds. The alliance of the services in this locality is essential, and at times surreal, for example when it is a matter of following up with a local political authority to finally extricate the guilty party in a case concerning illegal exploitation in which it is implicated.

This partnership between ANGAP and DEF in Ranomafana will evolve even more, depending on ANGAP's status. The difficult enforcement of the forestry law at the local level has caused the lenders to require that ANGAP conservation agents have authority to enforce legislation.[103] In addition, the greatest challenge ANGAP must face, is the sustainable financing of a system of parks and reserves.[104] ANGAP must learn to manage its resources with the goal of self-financing, a daunting goal given that no national park has yet succeeded in this task.[105]

The relationship between ANGAP and communities next to the protected areas, especially at the local level, will also evolve. Since the creation of Ranomafana National Park in 1991, ANGAP fulfilled its duty to promote sustainable development unilaterally. Failed promises and the lack of negotiation, among other difficult relations, reinforced the historic barrier of suspicion that the local indigenous people in the Tanala and Betsileo villages had for the *vahiny*. Their suspicions included two things: first, the Malgaches coming from the center of the country to direct the park works and development projects, and second, the arrival of foreigners.[106] As long as one notices that the goal of the conservation of the park cannot be achieved without the full participation of the local communities in the peripheral zone, the communication will increase among park personnel, development agents and the local population. When the park was created, *dina* were written to incorporate conservation in traditional law of the *fokonolona*. Six years after the creation of the national park, for the first time, park management met with a group of representatives from Tanala villages invited to Ranomafana. This order of events signals the first steps to integrate customary law with modern law.

Modern Environmental Law and the dina

The creation of national parks next to or in the traditional boundaries of villages provoked local communities to change their *dinas*. In 1996, the population around Ranomafana National Park revised their *dina*, incorporating the ideas of the forestry law.[107] For example, Savahoemba village's *dina* concerning Ranomafana National Park forbade spreading cultivation to new land, cutting trees to construct houses and spades, or looking for palm trees in the park. Furthermore, everyone who wanted to do *tavy* and look for construction wood had to obtain a cut permit. This same *dina* prescribed procedures to follow the *tavy* and to look for construction wood in the peripheral zone of the park. According to this *dina* written on a sheet of white paper, whoever did not respect this *dina* would have to be sent to the *fanjakana* or the state authorities. However, the existence of this *dina* does not keep the park personnel from noticing a continuous degradation of the land due to *tavy* close to Sahavoemba. This village sees few park visitors, perhaps because of its distance from the road and that there is no school in the neighborhood of the *fokonolona*. This isolation seems to be a factor in the lack of respect for state authority and the predominance of traditional law.

As the example of Sahavoemba shows, attempts to integrate the *dina* in modern law on the ground raise questions of legitimization. The local population, which does not experience a full solidarity with the Malagasy state government, recognizes customary law as the legitimate law.[108] This puts into question the legitimacy of a *dina* created on the initiative of outsiders, such as the *dinas* forbidding the traditional activities in the national park boundaries. Furthermore, there are diverse experiences of the changing nature of customary law. On one hand, the *dinas* are adapted to respond to new necessities of community life. On the other hand, it is difficult to navigate *dinas* which can change, especially in the case where the *dina* is very current and the judges of the *dinas* are very corrupt.[109] In this case, ANGAP agents, especially those who come from another part of the country, have difficulty distinguishing between a legitimate *dina* and those that are merely expedient.

Also, the integration of traditional law is done in a changing context in southeast Madagascar. According to observations of diverse Malgaches, the form and the influence of traditional institutions has changed since the arrival of foreigners. In the peripheral zone of Ranomafana, for example, several mixed Tanala and Betsileo villages organized themselves more or less according to the structure of the Tanala, but the *Rayamendreny* exert more influence. In one case, for example, the *Rayamendreny*, who is essentially the father of the clan, act as *mpanjaka*. In addition, in some Tanala societies, the *mpanjakas* notice respect for the hierarchy is falling apart. They understand the influence of foreigners and the need to respond to this disturbance, and they respond in diverse fashions. The itinerant culture makes it so that the people of this region in the southeast are very able to adapt themselves to new conditions.[110] For example, the *mpanjaka* of a picturesque village a few kilometers from the national park led his village to open itself to the park, establishing a camping site and an atmosphere welcoming tourism. This *mpanjaka* noticed that the park personnel and foreigners respect the authority of the *manjakas*, but the people do not obey them. "Before, the *mpanjakas* were respected and they worked with local state authorities. Now, people forget this respect and it is the *mpanjakas* rather who are afraid of the people." [111] In Sahavoemba, about ten kilometers from a road, the *mpanjaka* expressed the approach of his own clan: "We can work with the park if they tell us

what they want. Only we want to manage our resources ourselves. We can do it. I have children, grand children who are literate." [112] This lively autonomous spirit is still evident in the region of Ranomafana. This same *mpanjaka* declared his desire to speak, "I like this interview. I would like also to talk on television. But I cannot do that without respecting our ancestral Malagasy customs because it is a great thing."

These traditional chiefs are not reticent to seize the future. As the two examples show, it is a matter of increasing and individualizing the approach of the *fokonolona*. The language in the texts of Laws 94-007 and 94-008 concerning the Decentralized Collectivities do not correspond with the culture that produces the *dina*, so they will probably not succeed in integrating customary law into modern law. As for the forestry law, one can see that as long as there are great gaps in the enforcement of the text itself at the local and national level, people will refer more to ANGAP to implement conservation in the region of Ranomafana. As ANGAP plays its manager role in true collaboration with the *fokonolona*, the local population can legitimize the national park's objectives in their own code. In this respect, it is necessary to foster this collaboration which accentuates the local population's autonomy over the resources in their terrain. A recent text which formalizes relations between the local community and the management of natural resources reflects the progressive quality of modern environmental texts in Madagascar.

IV. Local Management of Natural Resources, Governance, and the *Dina*

A juridical vehicle which promotes local autonomy is Law 96-025 regarding Local Management of Renewable Natural Resources. [113] The Malagasy state promulgated this text with the goal of making rural populations participate in the direct and sustainable management of certain natural resources. The law implements the Local Securisée Management, or GELOSE, component of the AP II. [114] According to Law 96-025, the base community, given the moral propensity and function of a non-governmental organization, can conclude a contract with the state, transferring the management of a specified resource to the local community. The management contract includes a schedule of conditions organizing the conditions of management transfer and the prescription and rules of exploitation that the community must respect. The agreement makes the community a beneficiary during an indicated period of the use of specified natural resources. The community participant can manage, access, conserve, exploit, and valorize the resources and derived products. [115]

Governance

Among Malagasy environmental texts, Law 96-025 implements the obligations prescribed by the International Charter of Human Rights and the African Charter of the human and peoples' rights to assure governance of native peoples. [116] Madagascar is an exception to countries expressly integrating both of the texts into internal Malagasy law. [117] The first text assures the right to manage and profit from biodiversity. The second requires the Malagasy government to respect governance by native peoples of their own territories. [118] One can define governance as the exercise of political, economic, and administrative powers in management where this exercise is effectuated and evaluated at all levels in the structure of the national, regional and local levels. [119] Governance by native peoples in Madagascar includes *dinas*, which regulate the administration of community things. The community management of natural resources constitutes one of the types of *dina* regulating the economy of the local community. [120] Where decentralization assures administrative governance of the local community's territory, community management authorizes and structures economic governance of renewable natural resources.

The principles of governance manifest in community participation by which the interests of all the villagers are represented. There appears to be a conflict between this concept and the structure of the old social order where the *mpanjaka* held the last word and the population voted according to his order. The negotiations for the management of natural resources near Ranomafana National Park show the way in which contributions from other members of the community were solicited. In one case where the negotiations were more advanced, the park representative described an existing *dina* to the villagers without the father of the clan attending. The park staff member talked of a *dina* created early in the park's development. This *dina* was redacted during a period where the lack of public participation is

well documented. It also aroused a suspicion that the village did not legitimize the park program. The document forbade the research of honey and *pandanus*, a plant which furnishes primary materials for weaving mats, inside the park boundaries.

In this case, it seemed necessary to furnish technical assistance where the mediator takes more initiative in advancing the first steps of the negotiations. That would help the community understand the process of negotiating management, let alone a contract between the state and the community. In another village, facilitators drive the process, which lasts years, with a series of visits to villages. As a relationship establishes itself, one can hold other meetings with villages. The facilitators learn the opinions of the villagers by modern methods of communication in rural areas. This coming and going is the first step in the direction of an eventual management contract.

Local Management and the Dina

Achieving community management makes the ties between traditional law and positive law concrete, however, these ties are problematic, beginning with the text. Like the text regulating the decentralized collectivities, Law 96-025 relative to the local management of renewable natural resources incorporates the *dina*. The text recognizes the *dina* and its role in the community: "The relations among the members of the base community are regulated by means of the *Dina*."^[121] In these provisions, the text utilizes the *dina* as a base law. Effectively the *dina* establish the norms by which the local actions are measured and the appeal to justice can only be engaged after exhausting procedures previewed by the *dina*.

However, this same text contains provisions inconsistent with the nature of *dina*, which is local legitimate law. According to Law 96-025, the *dina* takes second place behind the state law. The prescriptions that the *dina* contain must conform to constitutional, legislative, and regulatory dispositions in force, as well as to practices recognized and those practices not contested. The text submits the *dina* to the authority of the Mayor, or the national government's representative at the communal level: "The *Dina* do not become executory until after the visa of the Mayor of the Rural commune of attachment."^[122] As redacted, this text submits the *dina* to the state law and does not reflect its traditionally established field of application.

In addition, the definition of the local community, such as it was conceived juridically, could be a source of conflict between the population of a same *fokontany* or the different *fokontany*.^[123] A "communauté de base" according to Law 96-025, can include two or several base communities in the management of resources. Conflicting *dina's* in the different *fokantany* would make implementation difficult, because the *dina* applicable to members of each group conforms to rules regulating each community. Therefore, the text of 96-025, although it is better adapted to realities on the ground than Law 94-007, leaves problems of application.

Constraints and Solutions in Implementing Community Management

As with the problem of texts, implementing community management is long-term work. The process strikes against all the contemporary obstacles including the lack of comprehension of the directing texts that are not available at the level of the local government, the urgent constraints of limited resources, the agricultural calendar and illness that delay meetings until a later date and corrupted officials who do not care about the cases of their constituents. To respond to the challenges, park officials, Malagasy NGOs and foreigners have formed a work strategy that has as a goal to facilitate the process of negotiation and methods of sustainable development. The community management law identifies environmental mediation as the means to facilitate negotiations between different partners. This can be optional or mandatory. A benefit of the local management process is that the management aptitude for the Malgaches involved increases during the process of negotiation. These concrete experiences highlight the negotiation know-how and skills esteemed in Malagasy culture. Consequently, the community management and the implementation of the texts has the possibility of effectively integrating the social skills.

In the case of Ranomafana, community management must still break through historical suspicions. A

success is being produced by the frequent visits of the "outsiders" to the villages at the edges of the park as well as the invitations of the residents to decision meetings or conferences. This communication is a basic element of community participation, on which the transfer of community management is founded. At Ranomafana, communicating regularly with villages in the peripheral zone is a new phenomena. During a first meeting in 1998 between the park management and the leaders of Tanala villages, the group spent two days discussing and comparing their experiences while learning about the conservation and the functioning of the park. Community management requires a negotiation between village and state park authorities. As a result, the visits among the parties should multiply.

From these actions is born *fihavanana*.^[124] *Fihavanana* is one of those words that does not need explanation on the island of Madagascar; it is the traditional primary source of confidence, necessary characteristic to a successful exchange.^[125] *Fihavanana* exists between individuals tied by blood. For those people who have no relational ties, confidence of *fihavanana* encloses the idea of proximity, of solidarity and cohesion, which creates a sort of symbolic family relationship between two or more persons. The dependability of contracts in Madagascar depends on this confidence.^[126] Young in its conception, community management will depend on the *fihavanana* that develops among the parties.

By means of a contract, Malagasy law attempts to weave a juridical base to implement community management of renewable natural resources. As much as one can redact contracts according to the will and capacities of the parties, this vehicle offers a practical means of achieving the goals of conservation and community participation in diverse local communities.

Conclusion

Many legal systems have taken up the risks of a social disequilibrium and an economic depression brought on by the degradation of the environment. Environmental literature deals with the "American model," the "Japanese model," and the "French model" as well as many others.^[127] None of these however, seems transferable to Madagascar, which does not present the same territorial, climatological, or cultural characteristics.

Malagasy environmental law evolves in a context of urgency from conservation, strong international and national pressure and the intersection of modern and traditional law. With the degradation of the island well established, law focuses more directly on preserving biodiversity than preventing pollution. This program is due as much to the Malagasy conservationist history as to the influence of international lenders and donors who push both economic reform and environmental protection. The parallel legal systems of modern and customary law in the regions, where the population leads a lifestyle closer to the ancestral traditions, show the key role that culture plays in law generally. In reconciling these different factors, like several other countries, the environmental program in Madagascar is progressive.

Malagasy environmental law is also surprising in its qualities. In spite of its progressive program and a young promising constitution, the changing current of the government and the devolution make implementing laws, not to mention uniformly applying them, difficult. Added to these difficulties are institutional blocks, corruption in services, and the pressure of time and money. Furthermore, the enforcement of the environmental program has not yet been supported in the courts. Although the island has benefited from assets favoring environmental protection for at least the last twenty years, environmental law it is still at an early stage of development.

The scenes in the courtroom and the *tranobe* described in the beginning of this article show these contrasting qualities of Malagasy environmental law today. At bird's eye, one sees that the government tries to conciliate the modern texts with the customary law. Integrating traditional law in the management of natural resources represents the newest of what exists at the international level in this implementation. Negotiating contracts represents a means to integrate the newest of what there is in environmental law with customary law. We will have to wait to know the result of that marriage.

In any case, local management of renewable natural resources represents what is most progressive in environmental law. Several developing countries are trying to increase governance of local

populations, including communities situated next to protected areas on natural resources located in their territories. To ask the population living around a national park like Ranomafana to manage natural resources that the population uses regularly, seems to be like inviting the wolves to guard the sheep. One U.S. observer likened this plan to the idea of asking ranchers next to Yellowstone National Park to manage vast stretches of that park. However, as these ranchers are learning to live with the wolves reintroduced there, the neighbors of Malagasy protected areas, the state and park authorities, with the help of non-governmental organizations, are taking small steps toward the necessary sustainable development. Furthermore, there are Malagasy themselves who are manipulating the different tools at this stage, including mediation, private associations, use of contracts with local communities and the integration of customary law; all done under urgent ecological pressures.

As any country is unique in the ensemble of its culture, its environment, its history, its economy and the combination of these elements, Madagascar is no exception. However, its juridical approach towards environmental protection deserves a closer look. The ensemble of Malagasy environmental law represents a model instructive for its own methods of environmental management.

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The author and the Editors of Vermont Journal of Environmental Law would like to thank Maharo Rakotoarison, Fianarantsoa, Madagascar, and Professor Richard Marcus, Yale University, for their assistance in verifying sources.

[1] This description and others throughout the text are based on the author's personal observations made during eight months of field work conducted in Madagascar from October 1997 to June 1998.

[2] Malagasy word meaning "public discussion" similar to a public hearing.

[3] Malagasy word meaning "big house" or the principal house where village affairs are discussed, visitors met, etc.

[4] The following paragraphs are based on a series of visits made between January and May 1998 to two Tanala villages, Sahavoemba and Ambatovory, both located in the peripheral zone of Ranomafana National Park in southeast Madagascar's cloud forest, and the respective Mpanjakas of these villages.

[5] Malagasy word for king of the village.

[6] Malagasy distillation of sugar cane water.

[7] *Dina* of several *tanala* communities forbade the hunting of certain kinds of lemurs. *See also* Lalaina Rakotoson, "La Rencontre du Dècret de Création du Parc National de Ranomafana avec les Coutumes et Traditions Locales," 29 at 27, 28 (1994) (unpublished M. Private Law thesis, Université de Fianarantsoa).

[8] *Vahiny* means foreigners from other countries and Malagasy people coming from other parts of the country. DIKSIONERA MALAGASY FRANTSAY, 91, 69 (1974).

[9] *See* Christian Kull, *The Evolution of Conservation Efforts in Madagascar*, 8 INTERNATIONAL ENVIRONMENTAL AFFAIRS 50, 61 (1996); Lalaina Ravelomanantsoa, La Mission de Service Public d'un Projet de Conservation et de Développement Intègrè, Cas du Projet Parc, Nationale de Ranomafana 1-2 (1995) (unpublished M. Public Law and Political Science thesis, Université d'Antananarivo).

[10] Kull, *supra* note 9.

[11] Kull, *supra* note 9, recounts a history of this collaboration of Malagasy and international parties in conserving Madagascar's biodiversity.

[12] See Sherry Olson, "The Robe of the Ancestors: Forests in the History of Madagascar," JOURNAL OF FOREST HISTORY 174, 183-184 (1984); Lalaina Rakotoson, "La Rencontre du Dècret de Création du Parc National de Ranomafana avec les Coutumes et Traditions Locales" 29 (1994) (unpublished M. Private Law thesis, Université de Fianarantsoa).

[13] See Christophe Maldidier, "1996-2000: La Décentralisation de la gestion des ressources renouvelables à Madagascar," (2000) (unpublished study).

[14] LEE HARING, VERBAL ARTS IN MADAGASCAR 3 (1992). One of the names Malagasy people have christened Madagascar with, on account of the red soil of the island.

[15] COUNTRY COMMERCIAL GUIDES, MADAGASCAR: EXECUTIVE SUMMARY, U.S. Dept. of Stat, Doc. 1156 (1997).

[16] *Charte de l'Environnement*, ARTS. 6, 8, Loi No. 90-033 du 21 décembre 1990, J.O. 2035, 2540-2589 (Madag.) [hereinafter CEM].

[17] Dècret No. 91-250 portant création du parc national no. 4 de Ranomafana, J.O. No. 2065 du 17 juin 1991, 925 (Madag.); Dècret No. 95-377 du 23 Mai 1995 relatif à la mise en compatibilité des investissements avec l'Environnement, J.O. du 18 mars 1996 (Madag.); Loi 96-025 du 10 septembre 1996 relative à la gestion locale des ressources naturelles renouvelables, J.O. du 14 octobre 1996, 2377-2385 (Madag.); Loi No. 97-012 du 9 juin 1997 modifiant et complétant certaines dispositions de la loi no. 90-033 du 21 décembre 1990 portant Charte de l'Environnement malgache, J.O. 2436, 1171-1172 (Madag.); Loi No. 97-017 du 8 aout 1997 portant révision de la législation forestière, J.O. 2449, 1717-1725 (Madag.); ANGAP statute 2000.

[18] Malagasy word for customary law.

[19] Malagasy word for slash-and-burn agriculture.

[20] HUBERT DESCHAMPS, HISTOIRE DE MADAGASCAR 346 (1965); J. VALETTE, ETUDES SUR LE RÈGNE DE RADAMA IRE (1972) *reprinted in* Francois Julien-Laferrière, "Les Institutions de la IIIe République Malgache," 3 REVUE DU DROIT PUBLIC ET DE LA SCIENCE POLITIQUE EN FRANCE ET À L'ETRANGER [R.D.P.] 635-673 (1994).

[21] The Malagasy word "tanala" means "forest people" and signifies a community whose way of life is based on the exploitation of the forest by the gathering and slash and burn agriculture.

[22] BODO RAVOLOLOMANGA, ETRE FEMME ET MÈRE À MADAGASCAR 23 (1992).

[23] See Rakotoson, *supra* note 7; and PHILIPPE BEAUJARD, PRINCES ET PAYSANS, LES TANALA DE L'IKONGO (1983), for descriptions of the *tanala* justice system.

[24] C. Ratovoson, "Les Problèmes du Tavy sur la Cote Est Malgache," 35 MAD. REV. DE GÉO 148 (1979) *citing* Rev. Père Callet, *Tantara ny Andriana teto Imerina*, traduit de G.S. Chapus et E. Ratsimba. Academie Malgache Tome III.

[25] *Id.*

[26] Daniel Gade, "Deforestation and Its Effects in Highland Madagascar," 16 MOUNTAIN RESEARCH AND DEVELOPMENT 101, 106 (1996).

[27] Ratovoson, *supra* note 24, *citing* Rev. Père Callet, *Tantara ny Andriana teto Imerina*, traduit de G.S. Chapus et E. Ratsimba. Academie Malgache Tome III.

[28] *Id.*

[29] *Id.* (Code 105, translation by author).

[30] Paul Hanson, "*The Politics of Need Interpretation in Madagascar's Ranomafana National Park*" 370 (1997) (unpublished Ph.D. dissertation, University of Pennsylvania); *See also*, Rakotoson, *supra* note 7, for a discussion of the *tanala* customary use and rights to forest resources as disrupted by the creation of Ranomafana National Park; and Ratovoson, *supra* note 24, for a discussion of pros and cons of *tavy*, the term for slash-and-burn agriculture in Madagascar.

[31] Gade *supra* note 26, at 106; Ratovoson, *supra* note 24, at 148.

[32] Decree of December 31, 1927.

[33] Kull, *supra* note 9, at 54.

[34] *Id.*

[35] Such strategy was called for by the IUCN. IUCN/UNEP/WWF, *World Conservation Strategy* (Gland, Switzerland: IUCN, 1980).

[36] While Madagascar is not an African country either geographically or ethnically, it is a member of various regional African organizations, such as the Organization of African Unity (OAU) and explicitly adopts the African Charter of Human and Native Peoples' Rights in its constitution. Laferrière, *supra* note 20, at 644.

[37] CEM *supra* note 16.

[38] *Id.* at 4.

[39] Charte de l'Environnement, Loi No. 90-033 du 21 décembre 1990, relative à la Charte de l'Environnement malgache, Journal Officiel de la République Démocratique de Madagascar No. 2035 du 24 décembre 1990, 2540-2589.

[40] Dècret No. 95-377.

[41] Loi No. 97-017.

[42] Loi No. 96-025.

[43] *Id.*

[44] Kull, *supra* note 9.

[45] Interview with Levy Rakotoarison, Office Nationale de l'Environnement, in Antananarivo, Madagascar (April 15, 1998) [hereinafter Rakotoarison Interview].

[46] MADAG. CONST. pmb. (1992); G.A. Res. 217A, U.N. GAOR, 3rd Sess., U.N. Doc. A.810 (1948).

[47] Aspects of the U.S. culture have permeated communities of southeast Madagascar. Commercial products, such as U.S. brand soft drinks are found far from the highway in small communities.

[48] USAID vehicles and ex-patriots are common in Madagascar's conservation efforts.

[49] Loi No. 90-033.

[50] Malagasy word signifying wood from a certain tree, and is associated with the power of the *mpanjaka*.

[51] Malagasy expression for ancestral customs.

[52] Malagasy word for customary law especially in southeastern Madagascar.

[53] *See* Rakotoson, *supra* note 7; Beaujard, *supra* note 23; and RAVOLOLOMANGA, *supra* note 22 for more information on Malagasy customary law.

[54] Beaujard, *supra* note 23, at 334.

[55] *Id.*; *see also* Rakotoson, *supra* note 24, at 14.

[56] Malagasy word for the elders of the clan who serve as the mpanjaka's assistants and counselors.

[57] Lalaina Rakotoson, "La Rencontre du Dècret de Crèation du Parc National de Ranomafana avec les Coutumes et Traditions Locales," 12-18 (1994) (unpublished M. Private Law thesis, Université de Fianarantsoa).

[58] The "people" include members of the *fokonolona*. Beaujard *supra* note 23, at 491-494. In *tanala* society, *fokonolona* was, in the past, a lineage the descendants of the same ancestor unifying in one *fokontany*, or geographical territory. RAVELOLOLOMANGA, *supra* note 22, at 25; Beaujard, *supra* note 23, at 143-144.

[59] RAVELOLOLOMANGA, *supra* note 22, at 25.

[60] *Id.*

[61] Jean Rakotonirana, "Le Dina et La Protection de la Foret à Madagascar" (1997) (unpublished masters of law thesis, Université de Fianarantsoa).

[62] *Id.* at 49.

[63] In spite of the high level of illiteracy in the *fokolona* located far from a road, there always seems to be a literate person who can serve the function as scribe.

[64] Interview with Tongavelona, Justin, Mpanjaka of Ambatovory in Ambatovory, Madagascar (March 6, 1998).

[65] Malagasy word for a kind of cow, valued in Malagasy society.

[66] Rakotoson, *supra* note 7, at 17.

[67] *Id.* at 20.

[68] *Id.*

[69] HERRING, *supra* note 14.

[70] Francois Julien-Laferrrière, "Les Institutions de la IIIe République Malgache," 3 REVUE DU DROIT PUBLIC ET DE LA SCIENCE POLITIQUE EN FRANCE ET À L'ETRANGER (R.D.P.) 652 ((1994).

[71] JAMES G. APPLE & ROBERT P. DEYLING, A PRIMER ON THE CIVIL LAW SYSTEM, 36 (Federal Judicial Center 1995).

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] USAID is currently revising Madagascar's commercial law. See USAID, FY 2001 PROGRAM DESCRIPTION AND ACTIVITY DATA SHEETS, available at http://www.usaid.gov/pubs/bj2001/afr/mg/madagascar_ads.html.

[76] Ordonnance No. 60-133 du 10 mars, 1980 portant régime générale des associations (Madag.).

[77] Madagascar covers 230,500 square miles, or about the size of the state of Montana and Wyoming combined. The island's protected area network is less than 12% of this. Richard Swanson, "National Parks and Reserves, Madagascar's New Model for Biodiversity Conservation: Lessons Learned Through Integrated Conservation and Development Projects," USAID 1 (1995).

[78] Rakotoarison Interview, *supra* note 45.

[79] *Id.*

[80] APPLE, *supra* note 70, at 36-37.

[81] Rakotoarison Interview, *supra* note 45.

[82] Dècret No. 95-377.

[83] APPLE, *supra* note 70, at 37.

[84] *Id.* at 39.

[85] Malagasy word meaning "story", often the history of a village.

[86] Hanson, *supra* note 30. See HARING, *supra* note 14, at 6-9 for a discussion of the traditions of storytelling, riddling, speaking proverbs, and formal dialogue (*kabary*) and the oral culture of Malagasy culture generally.

[87] The Freedom of Information Act (FOIA) requires the United States government agencies to publish in the Federal Register or make available for public inspection or copying various types of information including descriptions of agency organization, procedural rules, some substantive rules of general applicability, final adjudicatory opinions, etc. 5 U.S.C.A. §§ 552(a)(1)-552(a)(2).

[88] Interview with Velotsara, Mpanjaka of Sahavoemba village, Sahavoemba, Madagascar (March 24, 1998).

[89] Law 97-012 modifiant et complétant certaines dispositions de la loi no. 90-033 du 21 décembre 1990 portant Charte de l'environnement malgache, Journal Officiel No. 2436.

[90] MADAG. CONST. Art. 35 (1992).

[91] Loi No. 94-007 du 26 avril 1995 relative aux pouvoirs, compétences et ressources des Collectivités territoriales décentralisées, J.O. (Madag.). This law is associated with the Loi No. 94-008 du 28 mars 1994 fixant les règles relatives à l'organisation, au fonctionnement et aux attributions des collectivités territoriales décentralisées, J.O. (Madag.).

[92] *Id.* Loi 94-008 Chapitre Premier.

[93] Loi No. 94-007. Titre II, Art. 9.

[94] The law itself includes this phrase.

[95] Loi No. 94-008 du 28 mars 1994 fixant les règles relatives à l'organisation, au fonctionnement et aux attributions des collectivités territoriales décentralisées.

[96] See Raul Branes, "*Institutional and Legal Aspects of the Environment in Latin America*," Inter-American Development Bank (1991) *noting* the role of constitutional provisions in promoting environmental protection.

[97] Loi No. 97-017.

[98] *Id.*

[99] See recent forestry laws revamping forest regulation and policy. Also, from the author's experience, DEF's corruption was a common rumor in 1997-98. According to one report, process for authorization to exploit national forests has been arbitrarily assigned and open bidding for lumber rights has not existed. Hilton Root, "Environment for Investment in Madagascar: Institutional Reform for a Market Economy, Final Report," Center for Institutional Reform and the Informal Sector 42 (1993).

[100] Ranomafana National Park, 1998.

[101] ANGAP was originally financed by international donors including USAID and the World Bank. Swanson, *supra* note 77, at 9.

[102] Association Nationale pour la Gestion des Aires Protégées (1997).

[103] USAID.

[104] Interview with a representative of ANGAP, Ranomafana National Park, (1998). ANGAP is modeled after South Africa's National Parks Board network which, according to one report, is about 80% self-sufficient. Swanson, *supra* note 77, at 3.

[105] ANGAP's status is in the midst of being revised which could change the nature of the association. A protected Areas Code (COGAP) may become the reference document for Protected Areas. See USAID, *supra* note 75.

[106] See Hanson *supra* note 85, Rakotoson, *supra* note 7; and DESCHAMPS, *supra* note 20, at 267-272.

[107] Interview with Tantely Razatimandimby, Sector Leader, Ranomafana National Park, at Ranomafana, Madagascar (March 17, 1998).

[108] See Rakotoson, *supra* note 7, at 21. In *tanala* communities, *adidy* are the social code of the community. This customary law seems to be the same as the *dina* known in other communities.

[109] Interview with Charles Rakotondrainibe, ANGAP Regional Director, Fianarantsoa Region (May 7, 2001).

[110] Clarisse Rasoamampionona, Anthropologist, Musée Faniahy-Université de Fianarantsoa, 1998.

[111] Interview with Tongavelona Justin, Mpanjaka of Ambatovory, in Ambatovory, Madagascar (March 16, 2001).

[112] Interview with Velotsara, Mpanjaka of Sahavoemba in Sahavoemba, Madagascar (March 25-26, 1998).

[113] Loi No. 96-025.

[114] Loi No. 97-012, du 6 juin 1997, modifiant et complétant certaines dispositions de la loi No. 90-0333 du 23 décembre 1990 portant Charte de l'environnement malgache, J.O. 9 juin 1997, 1171-1172.

[115] These advantages, instituted by legislative means, are essentially of an economic character. Loi No. 96-025.

[116] *Universal Declaration of Human Rights*, G.A. Res. 217 A(III), (U.N. GAOR, 10th Sess.) (1948).

[117] Julien-Laferrrière, *supra* note 20, at 644.

[118] *African Charter of Human and Native Peoples' Rights*, OUA Doc. (October 21, 1986).

[119] JEAN RAKOTOARISON ET AL., "VERS LA GESTION ET LA GOUVERNANCE COMMUNAUTAIRE DES RESSOURCES FORESTIÈRES DANS LA CONTEXTE DE LA POLITIQUE DE DÉCENTRALISATION À MADAGASCAR: CAS DES PARCS NATIONAUX DE RANOMANFANA ET MASOALA, DIMENSIONS SOCIALES, ECONOMIQUES, ET LÉGALES," (Center for International Forestry Research 1997).

[120] *Id.*

[121] Loi No. 96-025.

[122] *Id.*

[123] Narson Rakotoninindrina, "*Dina et Communauté de base*," Atelier ver la mise en place du droit effectif de l'Environnement Madagascar, Université de Fianarantsoa, (1999).

[124] Malagasy word for good relations.

[125] R. Razafiminiarantsoa, "La Confiance et les Contrats Chez les Paysans: de la Tradition au Droit Positif," (1992) (unpublished masters of law thesis, Université de Fianarantsoa).

[126] *Id.*

[127] See Jean Rakotoarison, "*Le Role du Droit de l'Environnement dans le Processus de Développement Durable*," Atelier ver la mise en place du droit effectif de l'Environnement à Madagascar," Université de Fianarantsoa (May 18-20, 1999).