

**LAND IN AFRICA: MARKET ASSET OR SECURE LIVELIHOOD
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ADDRESSING LAND ISSUES IN POST CONFLICT SETTING:

THE CASE OF RWANDA

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LAND CONFLICT : ADDRESSING LAND ISSUES IN POST CONFLICT SETTING: THE CASE OF RWANDA

1. INTRODUCTION

The present paper is not the first to deal with land conflict in Rwanda (Howegen 1998, RISD 1999, Johns 2000, Musahara 2001, Liversage 2003, ...). In the light of the past experience, previous debates and finds on land conflict in Rwanda, the paper seeks to suggest some critical issues to reflect and debate on. It also offers a framework for analysing some realities about land conflict at grassroot level. Some theoretical explanations are also provided to help in deepening the understanding of the pitfalls in the design and implementation process related policies.

Section two of this paper covers the effects of Rwandan conflicts and provides general socio-economic information in relation to land.

Section three looks at the historical of the land tenure in Rwanda and the root courses of the land conflict today.

Section four addresses the measures taken after 1994 to mitigate the conflicts, the underlying principles of the land policy and the way forward.

Finally section five dwells on the conclusions and lessons that can be drawn from Rwandan experience.

2. MAJOR LAND ISSUES IN RWANDA

Like many African countries, land in Rwanda is a precious resource and constitutes the basic foundation of the national economy and will remain such for a long time. From a socio-cultural point of view, Rwandans are also attached to land and it has a social, cultural and spiritual value.

However, this precious resource is threatened by a number of problems both conjonctural, structural and man made. They include:

High population growth rate and density leading to land resource scarcities

Rwanda's population is predominantly rural and lives mainly on subsistence agriculture,

Land area: 26.338 km² with 60% of arable Land,

Population: 8.1 million (2002 national census),

Population density: 308 inhabitants per km²,

Family holdings which are the main source of access to Land through custom inheritance have reached extremes in fragmentation (national average 0.5ha),

The Landlessness on the rise.

Environmental issues

Weak land use systems and management,

Irrational use of fragile and marginal Lands (wetlands, Protected forest...),

High rate of Land degradation and soil erosion,

High rate of deforestation and wood energy crisis

Weak policies, Legislations and institutional framework

Land rights with a duality customary and statutory systems of Land tenure,

The Poor systems of Land management and weak systems of Land administration,

The gender imbalance in matters of Land tenure,

Weak human resources; financial and material resources.

Political and economic related issues:

Long history of conflict since 1959 including the 1994 genocide; resulting into dual claim of ownership of Land,

Land locked and located in conflict ridden region,

Weak off-farm opportunities to reduce the pressure on Land,

Poverty and underdevelopment.

3. HISTORICAL BACKGROUND TO THE LAND TENURE IN RWANDA AND

LAND RELATED CONFLICT

3.1 Land tenure system in pre-colonial period

The pre-colonial land system was characterised by collective ownership of land, and was based on the complementary links between agriculture and livestock. This system facilitated economic production, stability and harmony in production. Families were grouped together under lineages, and these were in turn grouped under clans. A chief ruled each clan. A clan was normally spread throughout the national territory, in different proportions according to regions. The profits were thus based on the liberty to occupy any territory as well as the complementary links among types of production. Land was managed at the top level by the King in the general interest of Rwandans.

The main aspects of land tenure were as follows:

◆ The “**Ubukonde**” or clan law, enacted by the chief of the clan that was the first to penetrate the forest. Such a chief usually owned vast tracts of land, on which he would resettle several families, henceforth known as “Abagererwa”. The latter enjoyed certain rights over the land they occupied. These rights were subject to some customary conditions.

◆ The “**Igikingi**” or right to graze, accorded by the king or one of his chiefs known as “Umutware w’umukenke” to any family that reared livestock.

Right up to the advent of the colonialists, the “Igikingi” was the most common land tenure system, especially in the central and southern parts of the country.

◆ The “**Inkungu**” or custom authorising the local political authority (on his own, and on others’ behalf) to dispose of abandoned or escheated land. These lands were grouped into a sort of land reserve from which the ruler of the time accorded plots to any who required one.

◆ The “**Gukeba**” was the process of settling families onto grazing land, or on fallow land. “Gukeba”, or “Kugaba”, as it was sometimes called, was the responsibility of the authority in place.

As the socio-political and administrative structure became stronger and better organised, land resources became more important. The proper management of these resources was symbolised by the presence of a chief in charge of the land, “*Umutware w’ubutaka*” and a chief in charge of livestock “*Umutware w’ubukenke*”, both considered to be at the same level as the chief of the army, “*Umutware w’ingabo*”. All those chiefs were under the authority of the King.

Land rights were respected and transmitted from generation to generation according to Rwandan tradition and custom. The colonial rulers of Rwanda

found this system in place. Over this system, they added a new method of land administration governed by written law. In this case, there was no smooth co-habitation. One would rather term this as a dualism modeled on the duplicity of the king's powers, and those of the colonial power.

3.2 Land tenure system during Colonial period

Colonisation introduced new elements to Rwandan society. These elements lead to causing changes and distortions in the social fabric.

The German colonisation, started right after the end of the 19th century and lasted till 1916. Concerning land, the German authority recognised the king's authority over land. The first Catholic and Protestant missions bought land properties and obtained the land ownership. The purchase of territory became more of a gift than a counter-value to an acquired territory.

While the political management was based on the control of Rwanda's economy which was based on 3 pillars: proper land management for agricultural purposes, livestock, and security, in order to guarantee prosperity; the Belgian colonisers introduced deep, managerial changes which were later to destroy the traditional leadership system.

The traditional trilogy, a well-balanced system, was completely dismantled and transformed into a centralised administration.

The Belgian Colonial administration established the decree of 1885 concerning land occupation. Two main ideas can be drawn from this decree:

- **Only the Colonial Public Officer** could guarantee the right to occupy land taken from indigenous Rwandans. Colonialists or other foreigners intending to settle in the country were to apply for the intervention of the colonial administration, follow its rules for obtaining land, as well as the rules for settlement.
- **Occupation of land** should be accompanied by a title deed. The natives should not be dispossessed of their land. Vacant land is considered as state-owned land. This very provision triggered off the dual land system of administration.

All occupied land remained subject to customary law, and only the colonialists and other foreigners could benefit from the new system that ensured the protection of the colonial administration. The written law was also applied to Catholic and Protestant Missions (decree of 24 January 1943 concerning free transfers and concessions to scientific and religious associations, as well as parastatals), urban districts, as well as trading centres.

The 1926 reforms divided the country into chiefdoms and did away with chiefs

owning vast tracts of land in different parts of the country; even though this aspect had underscored the chief's importance in the country's hierarchy. The removal of traditional structures, aiming at a more effective territorial control by the colonial administration greatly disrupted Rwandan society. Nevertheless this land system continued to borrow from traditional principles.

The colonial government also introduced the written law into the '*Codes and Laws of Rwanda*'. They imposed this legal structure to protect the interests of colonialists and any other foreigners who desired a plot of land in Rwanda.

Due to the high population density, and the need to exploit new areas, the colonial administration introduced the system called "paysannats", which is similar to the traditional system of "Gukeba". It was mostly developed in regions with a lot of grazing land, and other land reserves, and consisted of giving each household two hectares for cultivating crops such as the cotton of Bugarama, and the coffee of Mayaga. Thus a new aspect of economic development was introduced, based on agriculture.

Between 1952 and 1954, King Mutara III Rudahigwa abolished the ubukonde system and decreed that all abakonde would henceforth share their land property with their tenants, known as "Abagererwa".

From 1959 onwards, the land system became a conflict factor among the population. The chaotic political situation brought ethnical division among Rwandans and the first ever refugees from Rwanda were registered. Having fled to neighbouring countries, or resettled in new sites allocated to them, the displaced families had no choice but to forget about their properties.

3.3 Land tenure system after Independence

As compared to the colonial period, the situation after independence did not change much. As a matter of fact, 90% of the country's arable land was still governed by customary law. The written land law still applied to a very small number of persons, especially in urban areas, trading centres, as well as religious communities.

The start of the 60's saw the regime in place redistributed land which had belonged to the 1959 refugees. The 1970-1980 decade, however, saw an intensive migration from the densely populated areas of Gikongoro, Ruhengeri, Gisenyi and Kibuye to the semi-arid savannas of the East (Umutara, Kibungo and Bugesera) in search for vacant land. It is during this period that the Government attempted to reintroduce agrarian system called "paysannat". The purpose was to enforce a more even distribution of plots, that were becoming more and more scarce.

In 1976, the decree No. 09/76 of 04/03/76 concerning the purchase and sale of customary rights on land, or the Right of Soil Occupation gives the right to

purchase and to sale the customary property land with the condition of having the permission of the Minister in charge of lands and the obligation to remain with an area of 2 ha minimum. The buyer may also justify that he does not have a land property of at least 2 ha. Ever since, the state only recognizes the right of ownership based on land registration and, therefore, became the distinguished owner of the land.

At the beginning of the 80s, serious problems of land scarcity began to emerge. From 2 ha in 1960, the average surface area of a family's cultivation plot was reduced to 1.2 ha in 1984, according to the agricultural survey carried out at that time.

Since the beginning of the 90s, the country experienced a deadlock in the land issue. The problems included insufficient agricultural production, an increasing population pressure on natural resources, a growing number of landless peasants, and steep competition among projects of agriculture, livestock, and natural reserves. The government strengthened its role in the appropriation of vast stretches of land. Reforestation has been given priority in the midst of all land accumulation by the state and private individuals. These forests are being extended onto cultivated areas, as well as marshlands. Thus reforestation can be considered as a long-term form of land appropriation.

3.4 The Land Situation After 1994

The massacres and the Genocide of April - July 1994, decimated a section of the Rwandan population estimated at over one million. The Genocide also resulted in millions of refugees and displaced persons.

After the genocide, the return of the 1959 refugees had been stipulated in the framework of the **Arusha Peace Accords**. The Article 2 of the Arusha Accords between the Government of the Republic of Rwanda, and the Rwandan Patriotic Front, concerning the Repatriation of Rwandan refugees and the resettlement of displaced persons states the following: *"...each person who returns is free to settle in any area, within the country, of his/her choice, as long as he/she does not attempt on somebody else's rights."*

Article 3 of the Accords states the following, *"in order to resettle the repatriates, the Rwandan Government should release all unoccupied land, after identification by the Repatriation Commission. The commission will be at liberty to prospect sites for resettlement in any area within the national territory"*. Afterwards, the mixed (Government and RPF) Commission traveled throughout the country, and identified potential receiving sites. On the other hand, in article 4, the Accords stipulate that *"the right to property is a fundamental right for all Rwandans. Consequently, the refugees have a right to return with their belongings"*. However, the two parties recommended that *"with a view to promoting social*

harmony and national reconciliation, refugees who fled the country over 10 years ago should not claim their property if it has been occupied by other individuals. To compensate them, the Government will put land at their disposal, and will assist them to resettle".

In the first place, the return of the "1959 refugees" gave rise to some serious land problems, mostly because it was difficult to apply the Arusha Accords which had been violated during the 1994 Genocide (Articles 2, 3, 4 of the Arusha Accords).

As they returned, some of the former 1959 refugees briefly occupied land and property that had been abandoned by the refugees of 1994. Other former refugees were granted public state land, and vacant land on which they could resettle and produce.

They received to this effect:

The Mutara Game Reserve, two thirds of the Akagera National Park, and the Gishwati Mountain Forest; as well as land belonging to certain state-owned projects were partitioned and distributed to the 1959 refugees,

Communal land, woody areas on fertile land, pastures, and areas near the shallow sections of marshlands were allocated to the 1959 refugees.

Also, in some provinces, the Government policy of plots sharing has been encouraged to allow old case refugees of 1959 to get a piece of land in order to earn a living.

3.5. Summary of the land related conflict

The low urbanisation level (about 12%) and rapid increase in population density has resulted in smaller and fragmented farm holdings, an increase in land related conflicts within households and between neighbouring families, increasing pressure on marginal land, shorter fallow periods and longer cultivation periods and growing soil erosion.

Since the late 1950s until the mid 1980s many people were dispossessed of their land rights through politically and ethnically motivated reasons. Most people ended up as refugees in neighboring countries. The right of these refugees to return was one of the key issues for negotiation in 1993.

In the aftermath of the genocide most of the "old case" refugees returned. Many were resettled in grouped settlements on excised parts of the Akagera National Park but others did return to the lands that they had lost in previous decades. Others occupied properties abandoned by "new case" refugees in towns. During the same period, many people from inside the country had fled mainly into the

Congo and Tanzania. Hence when the “old case” refugees returned some found “their” lands which had been allocated to other subsistence farmers vacant. In the late 1990s most of the “new case” refugees returned and in some cases land was occupied by the original owners, particularly in Kibungo, Umutara, Cyangugu and Kigali Ngali (Provinces at the border with neighboring countries (Tanzania, Uganda, DRC and Burundi)

Facing these complex and potentially conflictual situations, the new transitional government attempted to resolve the differing land claims and land needs by either persuading competing claimants to share the land or by settling people in grouped settlements and allocating them with vacant state land. Although land sharing and grouped settlement helped resolve an immediate emergency, issues of land shortages and land disputes, which were already large problems prior to the genocide, continue to be a big challenge.

4. THE LAND REFORM PROCESS AS THE WAY OF ADDRESSING LAND ISSUES

As clearly indicated the land tenure security issue is one of the most complex and socially sensitive question faced by the Government of Rwanda and ordinary Rwandans. It is within this difficult context that the Ministry responsible for Lands has formulated, after widespread consultation, a new Land Policy and Land Law. These have been presented to Cabinet and approved in February 2004. The Land Law was also adopted by the Parliament (Chamber of deputies) on 2nd November 2004 and will soon be submitted to senate.

4.1 Key elements of the land policy and draft Law :

Promotion of the registration of all land holdings: The objective is to strengthen security of tenure of all Rwandans as a basis for ensuring greater social stability, encouraging greater investment in land and improving people’s access to credit. This will be done by giving land titles to all land owners.

There will be two levels of land registration : *local level*, with minimum cost for rural people who have 5 ha or less; the survey will be done smoothly without any complicated or conventional surveying instrument and the boundaries will consist of natural mark (trees). The process will be done by using a community participatory approach. There will be the participation of CDC (Community Development Committee), District land office’s technicians, District and Sector land commissions and beneficiaries. Community mapping will be used. The use of established techniques based on high resolution/large scale photomaps will help much in the process ; *at national level*, with maximum cost for those with more than 5ha which suppose a land development and exploitation for a high economic value; this will use conventional methods of surveying and registration. This will be done by the Land Centre to be created in the near future.

Promotion of rational land-use, improved land-use planning and land management: Taking into account that land is a vital and scarce national resource, the objective is to improve land management from the local to national level.

The grouped settlement programme (*imidugudu*) is an important option in a situation of land scarcity whereby more land may be released for agricultural production. By grouping people into villages an exit strategy from agricultural dependence may eventually be effectively instituted. Utilisation of farm inputs, marketing and transportation of farm inputs all need basic infrastructural facilities, which can be provided more easily in *imidugudu* than in scattered settlements. This form of settlement can also be a basis for socio-economic development. One of the possibilities to be considered could be micro-credit technology, which enables savings and skills formation among the people (Musahara 1999, RISD 1999). However, the challenge is to produce a successful policy through the devising of a mechanism for better grouped settlement planning that is provided with both financial and technical support.

Promotion of land consolidation : The land consolidation process will be encouraged but not forced. The land consolidation will be focused on productive purpose . This means that no body will lose his plot; plots are going to be consolidate to facilitate adoption of any kind of cash crop like tea, coffee, flowers rice etc... but each person will have the possibility to register his plot and receive a certificate of his own plot.

Development of land dispute resolution mechanisms: Land commissions will also be established at national, provincial and District levels. they will work closely with the “Mediator Committee /ABUNZI”, a judicial institution at Sector level with a mandate to resolve conflicts and disputes, especially those related to land. It is recognized that land scarcity and competing land needs can lead to land disputes and accessible, transparent and appropriate land dispute resolution mechanisms are required at the local level.

Decentralisation of land administration: Here, it is recognized that effective land administration will be best achieved through decentralisation to the local level.

4.2. The way forward

The implementation of the Land Policy and Law need to take into account other government Policies, notably vision 2020, the PRSP Programme. The decentralisation and the community development initiative;

Creation of required Land institutions for effective Land administration(Land commissions, district Land offices and the National Land information management Centre) ;

Mainstreaming Gender land concerns in the overall implementation of the Policy and Law;

Developing strategies and mechanisms for Land registration, Land use planning and management and conflict management;

Develop strong public awareness and sensitisation programmes on the Policy and Law;

Capacity building of the Institutions and Human Resource concerned with the management of the Policy and Law.

5. CONCLUSIONS AND LESSONS THAT CAN BE DRAWN FROM RWANDAN EXPERIENCE

Security of tenure is a rapidly evolving phenomena that provide both challenges and opportunities for developing countries. As tool rather than a fashion true security of tenure provides promising opportunities for our countries to achieve **sustainable future free of conflicts.**

Land Policy is a political issue; it is not possible to disentangle its determinants and impacts from the material and Political interest of the individual and groups involved

Being a product of Politics, Land Policy and Law can never satisfy all constituent parts of a national population (e.g.: gender, class, age, occupation etc...)

Making Land Policy choices cannot be avoided because a country needs clear Policies to be governed

Important to introduce reforms and regularly framework in order to avoid controversial aspects that might arise in the future

Ensure that a wide range of stakeholders take part and get involved in making decisions of issues concerning their lives

Ensure that all decisions and initiatives made are promoted, communicated and supported as they represent practical means to resolve and manage conflict while addressing the objectives of sustainable future

The application of these principles and the type of regulatory measures put in place are major policy issues that need attention if we as Africans are to achieve sustainable livelihood