

LAND IN RWANDA: WINNOWING OUT THE CHAFF

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Résumé

Face à une crise foncière grave, le gouvernement rwandais a mis en place une nouvelle politique nationale et loi foncière. Ces mesures s'insèrent dans un long processus historique d'élargissement du contrôle étatique sur la propriété, des terres et des vaches y compris.

La crise foncière manifestait une complexité énorme. Le résultat des densités très élevées des populations sur la terre et de l'épuisement des sols, le problème se compliquait par l'existence de trois systèmes juridiques, deux qui dataient de la période pré-coloniale et une autre créée à l'époque coloniale. En plus, des fuites et déplacements des populations suite à la révolution de 1959 et la guerre et le génocide des années 1990 permettaient aux détenteurs successives de prendre contrôle d'une partie importante des terres.

Les leaders du Front Patriotique Rwandais (FPR) qui a mis en place le gouvernement de juillet 1994, tenaient à reformer la vie rurale pour la rendre plus performante et capable à promouvoir un essor économique plus global. Pas très en contact avec des réalités des collines, ils ont établi une politique de villagisation forcée qui a eu comme résultat des nombreux abus. Ils ont aussi obligés des détenteurs des terres, surtout à l'est du pays, de partager leurs champs avec des réfugiés de 1959 qui sont revenus dans le pays. Ces mesures mettaient en question la sécurité de tenure des terres et produisaient de mécontentement sérieux et maintes litiges.

Le gouvernement cite la sécurité de tenure comme une des premières objectives de la nouvelle politique et loi. Les riches, dont les investissements sont tant sollicités par le gouvernement, se sentiront beaucoup plus rassurés que les pauvres. La loi prévoit encore des partages des terres pour doter ceux qui en manquent (en particulier les réfugiés de 1959), la villagisation, le regroupement des terres, et la conformité obligatoire à un schéma directeur d'utilisation des terres, y compris le choix des plantes à cultiver. Le rigueur et la rapidité de l'implémentation de ces mesures varieront d'une communauté à l'autre, comme la réaction des populations d'ailleurs. Le moins qu'on peut dire, c'est que certains se sentiront menacés par la nouvelle loi et agiront comme ils trouvent nécessaire pour protéger leur intérêts.

1. INTRODUCTION

In Rwanda there is too little land to sustain the people now trying to live from it. Much of the land that is available suffers from serious degradation due to overuse (whether for cultivation, grazing and the cutting of forests) and erosion. In addition, land holding patterns are highly complex, the result of several layers of historical accretions and large-scale movements of population. Given the current population growth, the situation will only worsen if not dealt with effectively. Rwandan authorities and foreign observers all agree that there has been and remains a strong correlation between issues of land use and conflict: the present precarious situation poses the risk of potentially widespread violence.¹

¹ For a review of the literature, see MUSHARA, H. and HUGGINS, C., "Land reform, land scarcity and post-conflict reconstruction: A case study of Rwanda", HUGGINS, C. and

Just over a decade ago, Rwanda suffered a catastrophic genocide that killed an estimated three-quarters of the Tutsi population.² Competition over land was one of the forces that drove that violence. In trying to resolve the current crisis over land, the government must be constantly aware that decisions will have – or in any case will be seen to have – ethnic connotations. The government has committed itself to distributing land to those who fled Rwanda for political reasons in the 1960's, most of whom are Tutsi. It has expressed no similar commitment to other landless Rwandans.

The Rwandan Patriotic Front (RPF), the dominant political force in Rwanda, arrived in power in 1994 with some of its leaders already critical of how Rwandans farmed the land. They expected agriculture to contribute to national prosperity but believed drastic changes in rural life were necessary in order to achieve this result. The attitudes and expectations of the RPF leaders formed yet another element in the complexities surrounding the land question, complicating its resolution in a clear and efficient manner. Following initial attempts to restructure rural life through a policy of villagization and a second attempt to make farmers share their land with landless returnees, the government took heed of both internal resistance and foreign criticism of its programs. It initiated five years of discussion on land issues resulting in a new land policy and land law, promulgated in 2005. Although authorities showed some receptivity to critical comments, they finally produced a policy and law that showed the same basic ideas that they had held from the beginning. They did adopt some small changes, some of which merely disguised continuing sensitive issues like the extent of land «ownership» guaranteed by the law and the kind of consolidation it was meant to promote. The new policy and law will be implemented by local administrative officials together with land commissions, thus continuing the pattern seen with the villagization and land-sharing programs where local administrative and political leaders enjoyed considerable autonomy in implementing a policy set at national level – provided they did nothing contrary to the perceived interests of those at the summit of power.

CLOVER, J. (eds.), *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa*, Nairobi, African Center for Technology Studies and the Analysis Programme of the Institute for Security Studies, 2005.

² DES FORGES, A., *Leave None to Tell the Story, Genocide in Rwanda*, New York, Human Rights Watch, 1999, pp.15-16.

2. THE COMPLEX INHERITANCE OF THE PAST

2.1. Customary rules and written law

Until the publication of the 2005 land law, landholding in Rwanda has been regulated by three systems, two customary and unwritten and one written and introduced by the colonial administration.

Before the Rwandan state became strong in the seventeenth century, those who cleared land had the right to use it. In some places where forested land had been used previously by Batwa, a people who lived largely from hunting and gathering, the clearers of the land gave the Batwa small payments to acknowledge their previous claim to the area. Those who cleared the land, known as *abakonde*, shared land with others of their kin groups. These kin acknowledged the *abakonde*'s control of the land by providing them with some of the first fruits of each harvest. In addition *abakonde* could grant the use of land to others from outside the kin group known as *abagererwa* or clients. Terms of these land grants varied according to local circumstances, from very lenient in areas where men were few and needed to strengthen the lineage, to more demanding in places where land was scarce and workers were abundant. In the best of circumstances, clients could hope to marry women of the lineages that provided them with land. In that case they could become incorporated – or at least expect to see their descendants incorporated – as members of the kin group. In the worst of circumstances, particularly in the late nineteenth and twentieth centuries, clients were obliged to cultivate the land of the *abakonde* several days a week without pay as well as to deliver them a share of the harvest. In this system called *ubukonde*, control of the land was passed from father to son, as was the status of *abakonde* or *abagererwa*.

With the growth in state power in the seventeenth century, the ruler or *umwami*, used force, persuasion, and an apparent control over spiritual power to establish his right to rule over increasingly large areas. Those who counted themselves «Rwandan», in the sense of being among the *umwami*'s followers and subjects, acknowledged his suzerainty by delivering tribute and by serving in his armies, guarding his cattle, providing various services at his court, or – particularly beginning in the nineteenth century – by cultivating his crops. By the nineteenth century the *umwami* claimed to assure the wellbeing of all Rwandans and in return sought to require acceptance of his right to control their property, whether the land they occupied or the cattle they herded. In the late nineteenth and early twentieth centuries, many living within the boundaries of present-day Rwanda still contested the *umwami*'s claim to control their property. They included Tutsi and Hutu, some organized in large lineages, some organized in small states. The *umwami* called on his increasingly powerful armies to impose obedience to his dictates, including

his claim to control property. Although the *umwami* was Tutsi, as were many of his subordinates, the armies included Hutu and Tutsi, with the expansionary ruler Rwabugiri known particularly for his use of Hutu as military commanders. He seems to have counted on them for greater loyalty than could be expected from Tutsi military leaders thought more likely to contest his supremacy.

The colonial administrations, first German, then Belgian, favored the extension of central state control even as they sought in some cases to limit the personal power of the *umwami*. The Germans provided military assistance to the young ruler Musinga in putting down an uprising in northern Rwanda in 1912.³ The northerners were resisting demands that they provide labor service to the *umwami*'s representatives in return for the right to cultivate land that they regarded as their own. Similarly the Belgians assisted Musinga and his representatives in establishing their control over local administration, including over use of land, in small states like Bushiru in the northwest and Bukunzi and Busozo in the southwest.⁴

Even as control by the state and the colonial administration grew, many Rwandans found ways to assure relative autonomy of control over land they cultivated and cattle they herded. They could head into the still extensive forests and clear new land far from the eyes of intrusive officials. They could play off the rivalries among multiple political authorities and seek out the one who would provide the least demanding relationship. They could even migrate across what would eventually become international borders and seek an easier life on the other side.

By the early 1930's, however, colonial administrators were enforcing more rigorously the restrictions on the cutting of forests, as on the crossing of borders. The colonial administrators, hoping to make what they regarded as an admirable political system more responsive to their direction, also eliminated competing political authorities, leaving ordinary Rwandans increasingly obliged to heed the orders of the officials imposed by the *umwami* with colonial approval. The colonialists also codified some practices having to do with land and cattle, transferring some customary practices – or what they took to be customary practices – into written form. The Belgian administrators gave enforcement powers over these regulations to local officials and to a system of 'native' courts. These administrative and judicial authorities reinforced and implemented claims to control of property previously claimed by the *umwami* and enforced by his armies. Chiefs and sub-chiefs

³ DES FORGES, A., "'The Drum is Greater than the Shout': the 1912 rebellion in northern Rwanda", CRUMMEY, D. (Ed.), *Banditry, Rebellion and Social Protest in Africa*, Portsmouth, Heinemann, 1986.

⁴ DES FORGES, A., "Defeat is the Only Bad News: Rwanda under Musinga", Yale University, PhD dissertation, 1972.

representing the *umwami* found it increasingly easy to exercise the right to distribute vacant land (either previously unsettled or vacant because of the death or departure of all holders). They extended this right to the broader prerogative of actually dispossessing landholders who did not obey their orders.

Parallel to making these changes in the customary practices regarding land and cattle, the colonialists set up another system of written regulations to govern land ceded to or bought by landowners, most of them not Rwandan.⁵

Following the 1959 revolution that overthrew the *umwami*, the new republican government assumed the *umwami*'s right to control land use. It also maintained the distinction between land held under customary rules and that held under written law. A 1976 decree-law began by recognizing state power over land in its first article; it stipulated that all land not appropriated according to written law belonged to the state, whether occupied or not and whether encumbered or not by customary rights.⁶ The law also sought to control sales of land that were increasingly taking place among Rwandans as cash-poor farmers were forced into selling land when they needed money for such expenses as health care or education. The sales of land contributed to the increasing fragmentation of land holdings, a trend that had existed for decades as fathers parcelled out their holdings to their sons. To try to discourage fragmentation and the decrease in size of holdings, the law specified a minimum size for lots to be sold and required sales to be registered with government officials. This law remained essentially unenforced, leaving in legal limbo land that had been previously held under customary rules and then was sold in unregistered sales.

A 1979 law on expropriation continued the distinction between land held under written law and that held under customary rules: it specified that compensation had to be paid when land held under written law was expropriated and that another plot of approximately the same value was to be provided for any expropriated land that was held under customary rules.⁷

2.2. War, genocide, and population movements

The issue of land tenure, already complicated by the existence of three legal systems, was rendered far more complex by massive movements of population in the second half of the twentieth century. With these movements, hundreds of thousands of people lost land while others took possession of land that was not theirs under any of the existing legal systems.

⁵ SCHABAS, W. and IMBLEAU, M., *Introduction to Rwandan Law*, Cowansville, Quebec, Les Editions Yvon Blais, 1997, p.95.

⁶ Decree-law 09/76 of 4 March 1976.

⁷ Decree-law 21/79 of 23 July, 1979, article 19.

In the 1960's some 20,000 Tutsi were killed and another 300,000 fled the country following the 1959 revolution.⁸ The new republican authorities took control of their property and distributed it to local residents build their own political bases. Those who benefited from this distribution of property counted their new holdings as part of «the gains of the revolution» (*les acquis de la revolution*).

This distribution of land in the 1960's helped to delay the land shortage that was bound to result from the rapidly growing Rwandan population. In the years following independence in 1962, the annual growth rate reached 3.1 percent a year, making Rwanda the most densely populated African nation at that time.⁹

Some of the refugees from the 1960's and others organized into the Rwandan Patriotic Front (RPF) began a war against the Rwandan government in October 1990. From that time through April 1994 hundreds of thousands of people – at one point some one million – were forcibly displaced by the conflict, most of them fleeing north-eastern Rwanda. As the displaced people moved south to the zone controlled by Rwandan government forces, some of the Tutsi who had been in exile began returning to occupy the land they had left behind in the north-eastern provinces of Mutara and Byumba.

The RPF and the Rwandan government appeared to have settled the war through the Arusha Accords, finally signed in August 1993, but the Rwandan President Juvenal Habyarimana was assassinated by an attack on the plane in which he was travelling on April 6, 1994 and the war resumed. At this time, military, administrative, and political authorities of Hutu ethnicity led a genocide against the Tutsi, killing three-quarters of the Tutsi then resident in Rwanda and causing the others to flee or go into hiding. Authorities played upon both fears and hopes related to land in order to recruit participants in the genocide. On the one hand, they insisted that the Tutsi intended to re-establish the rule of the *umwami* and to reclaim the lands distributed to other Rwandans after the Tutsi flight in the 1960's. On the other, they promptly distributed lands vacated by the killings or flight of Tutsi, thus rewarding participants and encouraging their further involvement.¹⁰ Propaganda during the genocide stressed the solidarity of the Hutu majority, who were identified as people of the land, meaning both that

⁸ PRUNIER, G., *The Rwanda Crisis, History of a Genocide*, New York, Columbia University Press, 1995, p.62.

⁹ REPUBLIQUE RWANDAISE, MINISTERE DU PLAN, Service National de Recensement, *Recensement général de la population et de l'habitat au 15 août 1991*, Kigali, 1993.

¹⁰ DES FORGES, A., *Leave None to Tell the Story. Genocide in Rwanda*, New York, Human Rights Watch, 1999, pp.299-300 and pp.561-565.

they lived from cultivation of crops and that they claimed to own the land because, they said, they had occupied Rwanda before the arrival of Tutsi.¹¹

In July 1994 the RPF defeated the Rwandan government army. The authorities of the defeated government led a massive exodus of nearly two million Rwandans across the borders into neighbouring countries. With the establishment of the RPF-dominated government, some 600,000 persons who had been living in exile – some since the 1960's – returned to Rwanda. Most of them were Tutsi and many brought with them large herds of cattle that had been their main source of livelihood abroad. A small number returned to properties held decades before, but many more occupied houses and lands just vacated by those who were about to become a new generation of refugees.

In late 1996 hundreds of thousands of the new generation of refugees returned home, most of them to find their property occupied by those who had returned in 1994 and 1995.

2.3. Attitudes and Expectations of RPF leaders

The problems relating to land and agriculture were enormous at the end of the twentieth century, whether viewed from the perspective of the actual conditions of population density and soil exhaustion, from the perspective of the several legal systems, or from the perspective of the population movements that had led to hundreds of thousands of persons suddenly losing or gaining land. In addressing these problems many of the RPF leadership faced a further constraint to developing effective solutions: they knew too little of the realities of rural life to translate their vision of land reform and agricultural prosperity into workable policies. The RPF leadership was dominated by soldiers and intellectuals. Many of the soldiers valued cattle-raising – the association between military and cattle has a long history in Rwanda – but few had close links with growing crops. A small number of intellectuals returning from the Diaspora had been educated in rural and land specialities, but most were urban-based members of the elite more experienced in commerce, education, or law than in cultivating crops. Not surprisingly the use that genocidal propagandists had made of the Hutu association with the soil and the glorification of 'Hutu-as-cultivator' only increased the animosity of returnees towards rural Hutu.¹²

¹¹ A song frequently broadcast on the radio during the genocide praised the Hutu as the sons of Sebahinzi, the original great cultivator.

¹² For attitudes on agriculture see also ETHRINGHAM, N. and VAN HUYWEGEN, S. "Power and Identity in post-genocide Rwanda", DOOM, R. and GORUS, J.(eds) *Politics of identity and economics of conflict in the Great Lakes Region*, Brussels, VUB University Press, 1999. For attitudes generally see the column "Diaspoman" that appears in *The New Times*, a newspaper that generally meets with approval from Rwandan government authorities.

From the early days of its rule, the RPF recognized the potential of agriculture as a force for economic development. But if they foresaw its bright future, they also saw its dismal present with too many Rwandans painfully eking out a living from holdings that were too small. They attributed low productivity in the agricultural sector to the size of holdings, the way the fields of a cultivator might be scattered in several locations, and the dispersed settlement pattern where farmers lived in or near their fields. In statements on land policy and in the land law, they described land tenure and farming methods as «archaic», «anarchic», «lacking in specialization» and «badly managed». Because of lack of knowledge or prejudice about farming in Rwanda, many RPF leaders failed to appreciate those advantages that the current practices did offer. Far from unsophisticated about the conditions needed for successful agriculture, most cultivators understood the costs of dispersed holdings, such as the time needed to go from one field to another. But they also saw that dispersed holdings could serve as form of insurance: if rains failed or insect pests struck some hills, others might escape damage. In addition, plots in different locations offered the opportunity to exploit soils with a range of nutrients and fertility. With holdings on several hills, cultivators could grow a greater variety of crops. In the early 1990's, some cultivators in southern Rwanda grew fourteen crops in fifty rotations in an effort to enhance fertility of the soil.¹³ The generally negative assessment of small-scale agricultural productivity by RPF and government officials ignored data from the first Rwandan Poverty Reduction Strategy Paper showing that at current levels of technology, the smallest farmers were the most productive.¹⁴

From the start, the RPF aimed for radical change, ushering in an era of improved agriculture carried out by «modern, professional» farmers. They spoke of consolidating land holdings to produce blocks of 50 hectares or so that would be used for cash crops and cattle raising. They supposed that a substantial number of cultivators would be displaced by this consolidation but that they would find work on the land of the professional farmers or in the urban centers that they expected would develop.¹⁵

¹³ MUSHARA and HUGGINS, *op. cit.*, p.328.

¹⁴ GOVERNMENT OF RWANDA AND DEVELOPMENT PARTNERS, *op. cit.*, p.12.

¹⁵ HUMAN RIGHTS WATCH, *Uprooting the Rural Poor in Rwanda*, New York: Human Rights Watch, 2001, section X., Land. Accessed on the web at <http://www.hrw.org/reports/2001/rwanda/rwnvilg-10.htm>.

3. THE NATIONAL HABITAT POLICY

The participants who negotiated the Arusha Accords affirmed the inviolability of property but at the same time recognized that attempts by the 1959 returnees to reclaim their property would cause serious conflicts. They agreed therefore to «recommend» that anyone out of Rwanda for more than ten years not seek to reclaim land lost at the time of flight, although Rwandan law, which allowed land claims to be pursued for thirty years, would permit such claims for some of them. Instead the government promised to provide land and housing elsewhere in new settlements that were called *imidugudu*.

In December 1996 the RPF-led cabinet adopted a National Habitat Policy, meant as the first step in reorganizing rural life by getting rural dwellers to move into villages. The plan was also meant to «resolve the problem of land scarcity by redistributing the land.» The policy aimed to encourage urbanization, which was expected to yield more jobs to draw workers off the land. An additional goal for government officials was to ensure compliance with government orders; according to officials, the pattern of dispersed homes made it difficult to «persuade» residents to follow directives (*rend difficile la sensibilisation de la population*).¹⁶ The policy, adopted over considerable opposition in the government, foresaw gradual implementation of the reform and proposed establishing markets and services before trying to get people to move to the new sites. The policy also called for compensating persons whose land would be taken for settlement sites.

As originally proposed, the policy had little to do with the crisis in housing that was provoked in the last days of 1996 and early 1997 by the return of hundreds of thousands of second generation refugees. But before a month was out, the government had linked the habitat policy to the need to provide housing for returnees, both those of the first generation and those of the second generation displaced by those of the first generation. It was under this guise rather than in its original formulation as a policy for reorganizing rural life that the habitat policy won large-scale international support. Playing successfully upon the sense of guilt that many international leaders felt for not having intervened to stop the genocide, the new government received substantial financial support for the villagization program that was presented as necessary to assure adequate housing in order to minimize conflicts and promote reconciliation.

National authorities set the policy and ensured its rapid dissemination by visits to areas targeted for implementation and by publicity on the radio. But they then left the details of implementation to local administrative

¹⁶ REPUBLIQUE RWANDAISE MINISTERE DES TRAVAUX PUBLICS, «Politique Nationale de l'Habitat», Kigali, December 1996, p.20.

officials who sought to win the approval of national authorities by the speed and efficiency with which they performed the task. When local officials found people unwilling to leave their homes to move to new sites, they used coercion and outright force, even making people destroy their own homes if they showed hesitation in leaving them. Once these abuses became known, national officials denied responsibility for the excesses and attributed them to local officials having misunderstood the policy. They rarely disciplined local officials for the abuses and, indeed, promoted some known best for their rigorous enforcement of the policy, suggesting that national authorities in fact approved the harsh measures used to implement the villagization. Once faced with documentation of the abuses in implementing the policy, international donors reduced their financial support and the program slowed in the eastern part of Rwanda, the area in which it had first been launched.

The habitat policy stipulated that those who lost land under the villagization program would receive compensation, but few did so – or if they received land in exchange for land lost, it was often land of less good quality or considerably farther from their homes. In some cases, land appropriated under the guise of creating *imidugudu* ended up in the hands of military officers or wealthy and powerful persons, many of them based in Kigali.¹⁷

In the meantime some of the people in north-western Rwanda had risen against the government, led by soldiers and militia of the former government who were based across the border in the Democratic Republic of the Congo. To suppress this uprising, the military forcibly displaced residents into large camps. When the security situation improved, authorities directed the people of the affected region to move to new settlements rather than return to their original homes. Few international donors could be found to support these new settlements and conditions of life in them were far worse than in settlements in the east. As recently as 2005 a study by the Global IDP Project found that only 12,000 of 192,000 families needing housing had been assisted in *imidugudu* in north-western Rwanda. According to this report, none of the residents of the settlements has enough land, with none having access to the one hectare set by the government itself as the minimum for sustainable agriculture. As a consequence of the land shortage, many suffer from lack of food and resources to pay educational and medical expenses. As was the case with villages created in eastern Rwanda, some of the land confiscated as part of the process was later taken over by military officers. In order to stay alive, some village residents had to seek day labor on the land they used to own. Some working as laborers for others now earn only about 100 Rwandan francs

¹⁷ HUMAN RIGHTS WATCH, *op. cit.*

a day, about one third of what they earned before being obliged to move to the villages.¹⁸

After several years during which relatively few new villages were created, at least two have been established in the last year near the former Gishwati forest in north-western Rwanda. At least some of the residents of these villages are still waiting for compensation for land they lost at the time the villages were created.

Rwandan authorities put forward the villagization policy as a way to improve the lives of ordinary Rwandans, but the perceptions of many residents of these settlements is that they are poorer now than they were before they moved. Recent research done at the National University of Butare and at universities abroad seems likely to confirm this perception.¹⁹

4. LAND SHARING

With hundreds of thousands of first generation refugees to resettle in the late 1990's, the government allotted considerable amounts of national park and forest land for their use as fields, pastures, and villages. In addition, they granted them vacant land found elsewhere in the country. When land provided this way proved insufficient, local administrators, particularly in the eastern part of the country where the number of returnees was largest, were permitted (or directed) to initiate a program whereby local residents had to share their fields with the returnees. With no legislation or decree-law to give a legal basis to the program, administrators simply required farmers to divide their fields – generally in half – and to make the second part of their land available to returnees with no payment or other kind of compensation. Rwandan authorities claimed that land sharing was carried out on a consensual basis after discussion among members of the community, but many of those who handed over part of their field tell a different story: they say they were coerced or forced to participate.²⁰ The loss of land through the creation of *imidugudu* or as a result of land-sharing underlies many conflicts and disputes continuing years later. One study found, for example, that just over half the conflicts concerning land in the former Kibungo province were related to land sharing.²¹ Thousands of Rwandans fled the country beginning in April 2005, claiming the status of refugees in neighbouring countries. In interviews with

¹⁸ GLOBAL IDP PROJECT, “Ensuring durable solutions for Rwanda’s displaced people: a chapter closed too early”, 8 July 2005, found on the web at www.idpproject.org.

¹⁹ TWAHIRWA, A., “Les chercheurs d’IRST à Butare dénigrent l’habitat en agglomération”, *Umuco* 11, March 31-April 14, 2005; HUMAN RIGHTS WATCH, *op.cit.*

²⁰ HUMAN RIGHTS WATCH, *op. cit.*

²¹ CENTER FOR CONFLICT MANAGEMENT, National University of Rwanda, *Land Conflict Project: A Case Study of Kibungo Province*, 2005.

researchers from Human Rights Watch, a significant number of them expressed continuing anger at having had to sacrifice some of their land at official order some seven or eight years before.

5. THE RWANDAN LAND LAW OF 2005

The 2005 land law and the January 2004 statement of land policy show the underlying continuity in solutions to the land crisis proposed by RPF and Rwandan government officials. The modifications from earlier versions of the same documents are small but in themselves significant in showing both movement towards increasing support for the elite and wealthy landholders as opposed to poorer Rwandans and increasingly clear commitment to providing land for the returnees who fled Rwanda in the 1960's.

5.1. Security replaces equity

The first of a list of specific objectives for land reform presented in the December 2000 draft land policy is to «promote the distribution and equal access to land» for those who use it. In the 2004 policy statement, this first objective is dropped and replaced by the objective of ensuring security of land tenure as the essential pre-requisite to development.²²

It is ironic that the government accords such importance to security of tenure when it is agents of the state who have been the primary source of insecurity of landholding in the past decade (and earlier as well). Through state-directed policies of villagization and land-sharing, officials have forced hundreds of thousands of Rwandans to sacrifice their homes and farming land, usually with no or scanty compensation. The 2004 policy and the 2005 law indicate that the same forms of insecurity will continue because both the villagization and the land-sharing will continue.²³

The same readiness to disregard security of tenure is displayed concerning expropriation of property as discussed in the draft law on settlement. The drafters were ready to permit «automatic expropriation», a formula that has no legal meaning, as an expeditious way to deal with 'difficult' landholders who resist expropriation. The draft law on settlement ignores the requirement that expropriation be in the public interest, as specified in current Rwandan legal practice and as proposed under the new

²² REPUBLIC OF RWANDA, Ministry of Lands, Environment, Forestry, Water and Natural Resources, "National Land Policy" (Draft), January 2004, p.18.

²³ Ibid., pp.36, 38; Organic Law No. 8/2005 of 14/07/2005 Determining Use and Management of Land in Rwanda, articles 15 and 87.

law on expropriation. It also empties of real meaning the guarantees of secure land holding provided in the 2005 land law.²⁴

In addition to being empowered by law to deprive landholders of land in various ways, officials also act unofficially to coerce landholders to cede their property outright or in return for pitifully small amounts of compensation. Sometimes officials profit personally from grabbing the land; in other cases they grab it for the benefit of other members of the elite. Some cases involve farming or ranching land, as described above, but dozens of others involve land near Kigali or other urban centers where officials assist entrepreneurs in obtaining fields or pastures to transform into commercial or residential developments.²⁵

5.2. Land holding, land use, land owning?

The draft policy on land recognizes that Rwandan farmers, like city dwellers, believe they own their land. It recognizes also that Rwandans believe that once land has been recognized as theirs it cannot be taken from them. At the same time, the document says that the Rwandan state regards itself as the owner of the land.²⁶ The land law and the land policy avoid a clear resolution of these contradictory views and dance around the problem by using vague and ambiguous terms.

According to Rwandan nongovernmental organizations that participated in officially-sponsored debates on land questions and who tried also to influence the thinking of lawmakers on these questions, Rwandan farmers were most concerned to defend the idea that they owned their land.

The 2004 policy document, like the 2005 law, and like earlier drafts treat «ownership» in a very ambiguous way, talking of landholders and landlords and even using the term landowners, apparently always in reference to the same category of people. They talk both of the right to use the land and of the right to own the land. Rights of ownership are presented sometimes as virtually absolute, at other times as subject to a variety of conditions set by the government. The 2005 law says that land holders enjoy full rights of ownership if their land is used for commercial, industrial, or a series of other enumerated uses, but the list does not mention agriculture, suggesting that the lawmakers were more ready to attribute full ownership to any who were not engaged in farming. But a later article in the law specifies that «landlordship»

²⁴ REPUBLIC OF RWANDA, Ministry of Infrastructure, Draft Law on Settlement, articles 32-35, 57, 58. See also the Draft Expropriation Law of October 2005.

²⁵ Examples reported in the press include MUGABE, G., "General Ibingira decries land-grabbing leaders", *The New Times*, 20 November 2005 and GAHIGANA, I., "Evictees seek compensation", *The New Times*, 7 May 2006.

²⁶ REPUBLIC OF RWANDA, National Land Policy, pp.22, 46.

means in fact the right to a long-term lease for use of the land rather than full rights of ownership as the term is usually understood.²⁷ At several places in the 2004 land policy document the words «based on leases of 99 years» are added to phrases that in earlier documents speak only of land ownership without the notion of a lease. Thus it appears that the 2005 law moved further from the notion of «ownership» as usually understood and that the arguments of the farmers had little effect. In coming down in favor of long-term leases, the government seems to be saying that only the right to use the land, not its actual ownership, is assured to land holders.

5.3. Land Registration

Reflecting perhaps the influence of international theorists like Herman DeSoto who attach great importance to land titles, Rwandan officials also stress the importance of the piece of paper that will legitimate and document rights over land. The land policy states that «The action of registration of land titles is of the utmost importance, since such an action guarantees land rights.»²⁸ Although referred to as a title deed, the registration document appears rather to be the evidence of a leasehold arrangement between the Rwandan state and the landholder.

Given the importance attributed to the document itself, it is crucial that registration of land holdings and the distribution of the validating documents be carried out fairly and in a transparent fashion. The 2005 law assigns responsibility for registration to local officials who are to work in cooperation with the relevant land commission. According to the land law, the duties and membership of land commissions are to be established by presidential decree.²⁹

The competent authorities and commissioners are to allocate or lease land «on a sustainable basis», giving priority in the registration process to persons with a «proven intention» to develop their land well. Immediately after this directive, the policy document says that not every Rwandan will be able to receive a plot of land for farming.

This appears to suggest that those landholders who can bring together larger holdings or who have access to capital for development are more likely to get the needed leases and registration. Since not everyone can receive a plot, those who lack the resources to increase their holdings or who refuse to

²⁷ REPUBLIC OF RWANDA, Organic law No. 8

²⁸ REPUBLIC OF RWANDA, «National Land Policy», p.27, also pp.19, 25.

²⁹ There is some talk of having commissioners elected.

regroup their lands with others seem likely to be the losers and may be driven to sell their land to the more fortunate.³⁰

5.4. Minimum Holdings and Regrouping Plots

In line with the emphasis on creating larger units of farm land, the Rwandan authorities decided that one hectare of land is the minimum that can sustain productive agriculture. Neither the land policy document nor the law gives a scientific justification for this choice; in a previous land policy document, the minimum was two hectares, a choice that was not explained there either.³¹

Those who hold too little land to meet the minimum level may not pass their land to heirs unless they find a way to increase their holdings. Similarly, as mentioned above, they may be last in line to be considered for the registration procedure that is said to be essential for guaranteeing their rights to the holding. If their holdings are judged too small for «sustainable» agriculture, they may not be allowed to register;³² they would then have no security of tenure and would be in violation of the law. The procedure for ensuring productive use of land, described below, poses another risk to small holders who may find themselves judged to be making poor use of their land and hence be subject to its loss.

Apart from finding the resources to buy land (or rather the right to use land) from others, the only other recourse for the person short of land is to regroup his holdings with others. The government clearly favors regrouping of small plots although they fail to make clear what they mean by regrouping. Some speculate – or perhaps hope – that regrouping is just for ‘operational’ purposes, meaning that farmers will cooperate in planning and executing their agricultural activities but that each will retain ownership of his or her land. They base this interpretation on article 20 of the land law, which says that holders of lands that are regrouped will retain rights over their own parcels. But the land policy document suggests a possibly different interpretation where it speaks of regrouping of plots involving also redistribution of land, a process in which some will inevitably lose their land and be compensated in some way, financial or otherwise.³³

³⁰ REPUBLIC OF RWANDA, “National Land Policy”, p.25 and Organic law 08/2005, articles 24-26.

³¹ With about 75 percent of households now holding less than 1 hectare, regrouping plots to 1 hectare minimum would leave nearly half a million households, nearly one third the total, landless. MUSHARA and HUGGINS, *op. cit.*, p.314.

³² Ministry of Land officials have given verbal assurances that such small holdings will be registered but the interpretation of the law remains unclear until it is implemented.

³³ REPUBLIC OF RWANDA, “National Land Policy”, pp.37-38; Organic Law 98/2005, article 20.

5.5. Ensuring productivity of the land

Land commissions are charged with supervising implementation of a master plan for land usage that will be prepared for the entire country. According to some interpretations, the plan will attempt to push forward specialization of agriculture as well as the growing of cash crops. It may dictate the growing of a single crop for one or more parts of Rwanda. Conformity to the dictates of that plan, including growing the specified crop or crops, is one of the criteria for determining whether a landholder is using his land to best purpose and ensuring its productivity. Thus landholders are assured of their rights to use the land but must use it as directed by authorities in charge of the land plan.

Farmers who refuse to conform to the master plan for land use or who in other ways fail to meet expectations regarding the productive use of their land may see their lands confiscated by the land commission for a period of three years, a period that may be extended to six years. In the interim the land commission may grant use of the land to others. The landholder who fails to learn how to use his land productively, as defined by the land commission, will in the end lose all rights to the land. If the Minister of Land «or any other competent person» decides that the land is in danger of immediate degradation, then he or she may requisition the land without delay.³⁴

5.6. Favoring the elite

The Rwandan authorities have pinned their hopes for agricultural development on a small class of elite, professional farmers. It is clear that those with resources will meet the criteria for success under the new land system: they will be able to purchase large blocks of land, particularly as the poor are driven to sell their plots; they will have the capital to invest in the equipment, better seeds, and other expensive inputs to make their land productive. One sign that the authorities have decided to favor the large-scale farmer (or perhaps farming entrepreneur would be a better term) is the elimination of any maximum for land holdings. Earlier statements of policy set 30 hectares or 50 hectares as the maximum holding allowable to any one person. Neither the 2004 land policy statement nor the 2005 law mentions any maximum on holdings.

In the urban context as well, officials support the development of rich and middle class neighbourhoods and favor quick eradication or restructuring of poor and working class neighbourhoods. The land policy speaks with approval of plans to clear poorer areas to make possible the construction of

³⁴ REPUBLIC OF RWANDA, Organic law 08/2005, articles 61-62 and 74-76.

buildings that are «larger, taller, and more luxurious.»³⁵ In July 2006 the Minister of Infrastructure announced that packed mud houses would be banned in Kigali.³⁶

5.7. Commitment to the Returnees

The RPF and the government have repeatedly emphasized their obligation to provide for those who had lost land and other property when they fled the country after the 1959 revolution. The Minister of Local Government Protais Musoni reiterated this commitment in July 2006 when speaking of the return of some 60,000 Rwandans who had been living for years in Tanzania. He said, «Every Rwandan who happens to return home has a right to own a plot of land in any part of the country. It is your (mayors') role to secure such land, even if it means redistributing it among natives.»³⁷ The land policy spoke of returnees from the 1960's «feeling cheated» because they had not yet received the land to which they felt entitled. As Minister Musoni indicated, land may be taken from other Rwandans if needed to provide for the returnees. That these others will – and some already do – feel «cheated» of their land seems not to have been seriously considered by the authorities.

In theory the obligation to find land for the returnees hinges in part on their accepting the recommendation of the Arusha Accords not to press claims to get back the land they lost more than ten years before the signing of the agreement. But in fact some returnees have reclaimed their land, in some cases obtaining it without difficulty, in other cases going to court – or using various channels of influence – to get the land restored. Given the lack of a consistent policy on returnees' land claims, an earlier land policy document called on the legislature to pronounce clearly on this issue.

In the 2005 law and the 2004 national land policy, however, there is no real resolution of the issue. Although the texts seem to suggest that the returnees will not press land claims, it nowhere says they are prohibited from doing so. The 2004 land policy even says that their lands were lost through improper and unjust dispossession and the 2000 version says their land was taken by force and in an illegitimate way.³⁸ The land policy also specifies that land taken by force may be exempt from the usual thirty year limit on legal action. Thus returnees may presumably claim that their land had been unjustifiably taken by force in 1959 or the years right after and should be

³⁵ REPUBLIC OF RWANDA, "National Land Policy", p.34.

³⁶ MUSONI, E., "Government to Ban Mud Houses," *The New Times*, 19 July 2006.

³⁷ GAHIGANA, I., "24 billion for Tanzanian Returnees", *The New Times*, 7 July 2006.

³⁸ REPUBLIC OF RWANDA, "National Land Policy", pp.22-23 and "Projet de Politique Nationale Foncière du Rwanda", 2002, p.10.

returned to them. According to the 2005 land law, land commissions are empowered to examine such cases and to give exemptions to the thirty year rule.³⁹

5.8. Equal treatment for all Rwandans

If groups like the elite and the wealthy are likely to benefit from the new land system, others are bound to suffer from it. Despite insistence that the law recognizes rights established under the customary system, it simply abolishes the *ubukonde* system, thus doing away with whatever rights belonged to the *abakonde*. It also insists that customary users of the marsh lands have no right to continue such use; the Batwa, a small and much disadvantaged minority group, rely on the marshes for clay to make the pottery that is an important source of income for them. In addition, some of the poorest and most vulnerable farmers customarily were able to cultivate marsh lands to supplement crops grown in fields elsewhere. These groups are likely to be excluded now from marshlands that are to be used for cash crops.

As currently written, the land policy and land law seem likely to push a substantial number of poor farmers off the land. Although the policy and law talk of the towns drawing off the surplus from the land, there is no indication of how in fact the poor would be trained, housed, or employed in urban settings. Experts assessing the situation of land and environmental protection warned of the risks of the current policy:

«Without effective safeguards, the emphasis on optimizing land use, and encouraging a land market and the consolidation of holdings could even make poor people worse off, if they have to give up the little land they have, without alternative livelihood opportunities»⁴⁰.

Further impoverishment of the poor will increase the risk of conflict and given the recent history of Rwanda, such conflict is likely once again to take an ethnic coloration. Such a risk obviously concerns Rwandans and should concern international actors as well. Much will depend on the implementation of the new land law and the implementation will be vested in local officials and the land commission. If past patterns continue, these local actors will seek to implement the policy as national authorities desire while at the same time protecting local interests that are important to them. Variants in local power dynamics mean that the shape and speed of implementation will probably differ from one community to another but it is likely that nowhere will there be a community that will protect the interests of its poorest and most vulnerable members.

³⁹ *Ibid.*, p.26.

⁴⁰ REPUBLIC OF RWANDA AND DEVELOPMENT PARTNERS, "Environment and Land Use Management, 2006 Joint Sector Review", p.4.

6. CONCLUSION

For centuries agents of the Rwandan state have been extending control over the property of subjects and later citizens. The recent land policy and related laws represent both the current government's response to an immediate crisis over land and the latest stage in this long historic process. State authorities once offered protection in return for acceptance of certain demands. Now they promise security in exchange for compliance with the new policy and laws. But the policy and laws appear to offer more security for the prosperous and powerful, eagerly solicited for their capacity to invest, than for the majority of Rwandans who make a bare living from their plots.

Depending on the flexibility and speed with which the policy and laws are implemented, small landholders may believe their very livelihood to be threatened by certain requirements, such as those about further sharing of land or villagization. Some may contest implementation through the orderly processes of courts and other forms of institutional appeals but others may flee across the border or even turn to violence. Even in the most optimistic scenario, where the aggrieved appeal through the judicial or administrative system, disputes will likely multiply and continue for years, leaving tenure in continuing insecurity.

Buffalo, July 2006