

Perspective of Land Reform in Rwanda

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Key words: National Land Policy, Land Law, Land Tenure, Land Management, Villagisation.

ABSTRACT

Rwanda is a hilly and evergreen country located in East Africa, between the 1°04' and 2°51' Southern Latitudes and between the 28°53' and 30°53' Eastern Longitudes. The shortest route to the ocean is 1,200 km long.

Rwanda has an area of 26,338 km² with an estimated population of about 8 millions inhabitant, giving an overall population density of more than 300 people per km². Arable land is estimated at 1,3 million hectares. Marshlands are estimated at 165,000 hectares from which only the half is available for agricultural purpose.

Rwanda has also three main natural reserves as National Parks:

- The Volcano National Park where live the worldwide known mountains gorillas;
- The Akagera National Park and
- The Nyungwe National Park recently created as park to protect the natural fauna and flora.

In Rwanda, Land is one of the most important and fundamental natural resource. The land resource is the foundation of the national economy through agriculture which occupies more than 90% of Rwandan in rural area. However, problems related to land in Rwanda are varied. The main are the following:

- Very high population density and an extreme pressure on land, a shortage of cultivation land per household with an average of 0.6ha, when a cultivation plot economically viable per a household for Rwanda should be at least 0.90 ha, according to FAO.
- Land degradation particularly due to soil erosion and over exploitation by the dominated agricultural sector without restitution of nutrients and without any specialisation of both human beings and equipment
- Disastrous effects of war and genocide of 1994 with orphans and widows who can not manage properly the land let by their deceased parents and husbands
- A land system dominated by customary law which favours land partitioning through father to son inheritance
- Land system unfavourable to women and female children
- Insufficiency of human and material resources.

However, reforms have been engaged to ensure proper land management in the Country and following actions have been conducted:

- To put in place institutions dealing with land concerns like the Ministry of Lands, Human Settlement and Environmental Protection since 1999.
- To develop a National Land Policy and a new Land Law to promote a good management of land resource and to ensure security of land tenure system. The main innovations in the National Land Policy and the new Land Law are: - the legal framework regulating land registration and the delivery of land title representing an long term lease hold of 99 years and a legal framework regulating physical planning as a basic tool for proper land management and land administration.
- To propose an establishment of a centralized and computerized National Land Information System in order to facilitate the development of an accurate and complete database on land which is essential to conduct a proper and an efficient land management. The land survey process will be conducted by the National Land Survey of Rwanda which is proposed to be created. This Centre should have branches in each District for the processing of cadastral surveying and delivery of documents that support registration of land titles. Within the decentralisation process, Districts will be strengthened in terms of human capacity and required equipment to be able to achieve their objectives related to land management and land administration.
- To develop a National Settlement Policy with adoption of villages “*IMIDUGUDU*” as new model of settlement in rural areas. This policy will help to develop agricultural activities and to create other socio-economic activities.
- To propose the establishment of an environmental body called: “*Rwanda Environment Management Authority*” which will be focused on all technical aspects of environmental protection in general and a proper land management for a sustainable development in particular.

The implementation of those reforms is a big challenge for the Country and will need a goodwill and a strong support, mainly in capacity building.

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1. BACKGROUND TO THE LAND ISSUE

1.1 Land Tenure System in Pre-Colonial Rwanda

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.

The main aspects of land tenure were as follows:

- **The “Ubukonde”**, or clan law, which was enacted by the head of the clan who was the first to clear the forest. Such a chief usually owned a vast tracts of land on which he would settle several families called “*Abagererwa*” and in turn benefited from a land tax in kind that was subjected to some customary conditions established.
- **The “Igikingi”**, or the right to grazing land accorded by the King of one of his Chief known as “*Umutware w’umukenke*”; to pastoral families. Right up to the advent of the colonialist, the “*Igikingi*” was one of the most common land tenure system in Rwanda.
- **“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.
- **“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 socio-political and administrative structure became stronger and better organised, so did the land resources became more vitally important and their management more efficient, through the chief in charge of the land called “**umutware w’ubutaka**” and the chief in charge of livestock “**umutware w’umukenke**” both considered to be at the same level as the chief of the Army “**umutware w’ingabo**”.

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.

1.2 Land Tenure System during the Colonisation

The 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 24/01/43 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. This practice emerged after the suppression of the “Ubuhake” system, and the distribution of cattle in grazing areas “Ibikingi”, favoured the extension of arable land, to the detriment of livestock. Thus a new aspect of economic development was introduced, based on agriculture. This completely disrupted the balance that had always existed between agriculture and livestock. The same development had the potential to create conflicts; both latent and real.

Between 1952 and 1954, King Mutara III RUDAHIGWA abolished the “ubukonde” system and ordered to all “Abakonde” to share their land property with their known as “Abagererwa”

From 1959 onwards, the land system became a conflict factor among the population, and the first ever refugees from Rwanda were registered. Having fled to neighbouring countries, or resettled in new sites allocated to them.

1.3 Land Tenure System after Independence

As compared to the colonial period, the situation 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 entities, trading centres, as well as religious communities.

1.4 Land Tenure System during the First and Second Republic

After independence, the government of the time recognised the very important role played by the commune in the administration of land. Through the “communal law” of 23/01/1963, the conservation of rights concerning registered land under customary law is the responsibility of the commune. However, the provisions of this law were practically nullified by the Decree No. 09/76 of March 1976 concerning the purchase and sale of customary land rights or right of soil occupation.

If, at the beginning of the 60s, the then government counted on the suppression of the “Igikingi” system and their “communalization” and on the recuperation of land belonging to the 1959 refugees to acquire new lands, the decade 1970 – 1980 has been characterised by intensive migration of population from densely population areas of Gikongoro, Ruhengeri, Gisenyi and Kibuye to East and South-east semiarid savannas (Umutara, Kibungo, Bugesera) to recover lands still available.

During this period the Government tried to organize the habitat in “paysannat” system for the rationalization of the land use and land occupation.

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, the “new” land no longer existed, and serious problems began to emerge; the reduction of soil fertility as well as land for cultivation, family conflicts stemming from land expropriation, scarcity of land, etc. 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 is experiencing a deadlock in the land issue. The problems include 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 has strengthened its role in the appropriation of vast stretches of land. Reafforestation 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 reafforestation can be considered as a long-term form of land appropriation.

1.5 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 Rwandan Republic, 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 infringe 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".

The mass return of the 1959 refugees resulted in a new form of land-related problems mainly because it was difficult to apply the Arusha peace accords after the genocide. Temporally, some refugees have occupied abandoned lands. This situation brought the land regulation of 1996 on temporary management of abandoned lands.

In a concomitant way, other 1959 refugees received state lands to enable them to 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,
- In certain Provinces where people still have big properties, namely in Kibungo, Umutara, and Kigali Rural, many family plots were divided up and shared between the owners and the old case refugees (1959 refugees).

Despite these actions, many families are still landless and the land issue has not yet been resolved. Those problems add the already existing problems such as excessive partitioning of plots, deforestation, and the progressive degradation of the soil.

2. THE LAND ISSUE

Land-related problems in Rwanda are multiple and varied. Some originate from the morphology of the land, while others are rooted in social demographic and social economic situations as well as the inadequacy policy, law and regulations related to land. Rwanda being a densely populated and hilly country; there are serious problems concerning the scarcity of land, the settlement and the environmental protection. The evolution of agriculture, long considered as the foundation of the national economy, has become uncertain because the land is badly managed. However, for over 90% of the Rwandan population, it is their means of subsistence. Soil erosion has worsened due to continuous and uncontrolled cultivation, exploitation of marginal land that is unsuitable for agriculture, and the lack of reliable soil conservation methods. Those problems have been exaggerated by the genocide of 1994 where many orphans and widows have so much difficulties to manage lands let by their deceased parents and husbands

3. LAND REFORM IN RWANDA

3.1. Objectives

The Government of Rwanda sees increased security of tenure or rights of access to land and more effective land management as important factors for improvement of the agriculture sector and the economy as a whole, helping to create the resources needed to reduce poverty and to consolidate peace and social cohesion. For this, land reform is envisaged:

- To put in place mechanisms which procure security of land tenure for the promotion of investments in land.
- To establish an appropriate land allocation and land use.
- To avoid the land fragmentation and to promote the land consolidation in order to enhance optimum production
- To establish mechanisms which facilitate an optimum exploitation of land, targeting the social-economic development of the country
- To orient land management towards a more profitable and sustainable production, by making good choices among methods of land development.
- To develop appropriate methods of land protection and conservation and to avoid land degradation.
- To promote research as well as the education of the public on all aspects concerning land tenure, management, and land markets.
- To strengthen discipline in land acquisition as well as in land markets in order to control the pressure on land, inappropriate development and any kind of land speculation.
- To involve and sensitise the population at all levels in order to ensure protection of the environment and good management of the land.

3.2 General Principles of Land Reform

Following principles will guide the land reform in Rwanda:

- Land is the common heritage of past, present and future generations.
- According to the constitutional principle of equality for all citizens, all Rwandans enjoy the same rights of access to the land without any discrimination whatsoever: According to this principle the women, married or not, could not be excluded to the process of land access and land acquisition and land control, and the female child could not be excluded to the process of land property inheritance.
- Land tenure and land administration should guarantee the security for the holder of a title deed, and should ensure optimum development of land: To achieve this, all Rwandans should accept the principle of registering all land property. This principle will be supported by the establishment of a cadastral system that is applicable both in the urban and rural milieu. This will ensure that the land is given its real value.
- The guarantee of right to land is a pre-requisite to sustainable management and proper use of land, being the source of development and life.
- Methods of management and use will differ according to whether it refers to urban or rural land, the latter comprising hilly terrain, marshlands, and natural reserves.
- Fragile zones that are of national interest should be protected.

- Good land management should include a good planning system, including organisation of houses and regrouping of plots for a more economic and productive use of the land resource.
- Land market should be streamlined, and should target an optimum development of the land: this principle increases the value of land and allows its use in a more productive manner. It also helps to attract investors in land production.
- Cadastral maps, cadastral index maps and cadastral systems are the best instruments of land administration and land management.
- A well-defined and strengthened legal and institutional framework is indispensable for the establishment of a land policy.

3.3 Guidelines of Land Reform in Rwanda

3.3.1 Land Tenure

The land tenure will be guided by provisions within the written law and the security of tenure will be guaranteed by a certificate of ownership of a long leasehold of 99 years.

The minimum limit of land tenure will be 1 ha when the maximum limit will be 50 ha in rural area for agricultural production. Residential plots should not exceed 6 ares.

In urban areas, the limits of acquisition of residential plots should range from 4 ares to 12 ares maximum, while the dimension of commercial and industrial plots differ according to the type and scope of the project but should not exceed 10 ha.

3.3.2 Land Administration

A good land administration will:

- Secure land tenure by the guarantee of delivery of land titles.
- Support the process of land taxation which generates revenue to the state.
- Procure the security of bank loan through the guarantee of mortgage.
- Develop land markets.
- Protect the public domain and private domain and facilitate the good management of the land.
- Regulate land disputes and contribute enough to the stability of the society and to national reconciliation.
- Boost the national economy and increase the land value by regulating the land market.

The Rwandan system of land administration will be based on a modern cadastral system.

The land administration will be focused on three following concepts: the long term lease of 99 years, the land value and the land use for the good land management process.

In order to put in place an efficient land administration a number of operations must be considered, like the assessment of farmers needs, the creation of new administrative rules through the process of decentralization, the preparation of land law and land regulations, the establishment of new system of registration with a land data bank system and a land information system.

Practically, the Rwandan land administration will be characterized by the:

- Establishment of a Land Information Centre doted with a geographical system of information, and with a central bank of all land information in the country;
- Establishment of national, provincial, and districts land commissions to carry out urban and rural land management in the spirit of involving local powers, and their attributions will be defined by the law.

There will be registrars of land titles in each commission. The secretary of each commission will ensure the function of land registrar. The action of registration of land titles is of the utmost importance, since such an action guarantees the land rights. The mechanisms of property registration, enquiries into transfers, and mortgage registration will be stipulated in order to guarantee the homogeneity of the registration of land titles throughout the national territory.

3.3.3 Land Use and Land Management

To make a good land use and a good land management, It is necessary to make distinction between urban land and rural land because the management and the use of those territories are different. The separation of land into two categories 'urban and rural land' should be based on the function, allocation, and destination of land.

In Rwanda, the rate of urbanisation is very low. Only about 12%, or approximately 960,000 inhabitants out of the country's total population of 8 millions. According to the results of the 1978 and 1991 censuses, the urban population increased to an annual rate of 5.5% year. Currently, the growth rate is approximately 8% year. The bulk of the urban population is concentrated in Kigali City which today has about 600,000 with an annual growth rate of 10.4% per year. Rwanda's urban growth appears to be an inevitable and desirable phenomenon especially since towns facilitate the integration of surplus agricultural population. They are therefore an employment-creation center that should be open to all social categories. Town growth allows for the easing of demographic pressure on arable land that can consequently offer optimum production. Even if urbanisation is inevitable and desired for economic development in Rwanda, the process should be well planned in order to avoid the development of slums. Most of the low-income housing (90% in Kigali city, and also in other agglomerations) is developing in a spontaneous manner.

Several actions should be undertaken in order to ensure proper land use and land management. In urban areas, the actions to undertake are:

- Development programs will define appropriate sites to be opened for urbanisation while considering the infrastructure (roads, water, electricity) and the protection of sites with a high agricultural potential.
- The formulation and updating of masterplans for territorial physical planning and urbanism to ensure a better organisation of territorial and urban development.
- Densification of Urban housing in order to avoid wastage of space (promotion of construction in height: tall buildings, apartments).
- The establishment of banks for housing projects.
- Encouragement of real estate development, as well as land development, and promotion of companies (on behalf of municipalities), charged with the production and property markets.

In rural areas, the actions to undertake are:

- Re-organisation of habitat in rural areas and adoption of “imidugudu” as appropriate way to settle in rural areas.
- Demarcation of agricultural areas.
- Establishment of the general master plan of land use and land development (physical planning).
- Guidance of land consolidation
- Maintenance of marshlands in the state’s private domain, and establishment of clear regulations concerning their sustainable use in order to avoid their anarchical exploitation with negative environmental consequences.
- Complete inventory of marshlands, and clarification of their location, as well as their allocation.
- Specialization of marshland users, and establishment of appropriate measures which can increase the yields of the chosen marshlands for agricultural purposes.
- Complete inventory and delimitation of protected spaces, and other fragile ecosystems.
- Planning for the development and management for each protected area.
- Development of ecotourism infrastructures.
- Research and promotion of technologies adapted towards the proper use of biological resources.
- Development of a comprehensive political and legal framework geared towards sustainable conservation and use of resources in protected spaces.
- Creation and strengthening of structures carrying out a common management of protected areas.

4. CONCLUSION

The land reform in Rwanda will be guided by clear and concerted principles that are summarised as follows:

- The right to land ownership should be co-related to a certain number of obligations in order to guarantee the development of the land, which is the common heritage of past, present and future generations.
- According to the constitutional principle of equality for all citizens, all Rwandans enjoy the same right of access to land, without any discrimination whatsoever.
- Land tenure and administration should guarantee land security for all holders of title deeds, and should promote optimum development of land.
- The process of land management should consider different land categories, such as represented by the various master plans and maps for classification and development.
- The methods of management and use will differ, depending on whether they apply to urban or rural land.
- Proper land management should include a land use planning, including the reorganization of urban and rural settlement and the land consolidation for a more economical and more productive use of the land.
- Land market improves the value of land and lead to a more productive land use.
- An appropriate cadastral system is essential in a key of a good land administration.

As long as land remains the basis for the sustainable development of the country, the land reform will be the engine of the development and will play an important role in enhancing peace, equity, unity and reconciliation of all Rwandan who have been covered in bruises by the genocide and massacres of 1994. It will definitely have a role to play in the process of poverty reduction in the Country.

By clarifying the land tenure system and by having an appropriate land policy and land law, Rwanda will have built a society that is ready to face the challenges of the present and of the future.

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BIOGRAPHICAL NOTES

Mr. Eugène Rurangwa (1958) : An Engineer in Agriculture, Specialised in Soil Science since 1984. Worked in the Ministry of Agriculture, in the Soil Conservation Department from 1995 to 1997, in the Land Management Department in 1998. Joined The Ministry of Lands, Human Settlement and Environmental Protection since 1999 as Director of Lands and Land Registrar. Took part in National Land Policy and New Land Law formulations since 1996. Member of LandNet Eastern Africa.