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Land Reform as Conflict Prevention: the Case of Rwanda

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Abstract

A decade ago, Rwanda embarked on a major land reform programme. The authorities claimed that the new Land Law, and the Land Policy document in support, would contribute to social equality and the prevention of future conflict. The Land Law was finally passed in May 2005.

This paper provides a contextualized reading of key aspects of the law. Attention is also paid to other forms of recent legislation, especially villagization (*imidugudu*) and the new property law that regulates women's inheritance. The argument is in three parts. First, I document and argue that the 2005 Land Law has more potential for generating future conflicts than promoting peace. The law's emphasis on the need to consolidate fragmented family plots, and especially the likelihood/threat that up to half a million households may lose what little land they still own, will cause tension and opposition to the *nouveaux riches* who are involved in land speculation. I also pay attention to the state authorities' right to confiscate land not 'properly' managed.

Second, some of the potential for future violence may be reduced by the fact that Government is bound to allow some flexibility in the way the land law is locally interpreted and applied. As can be seen with other forms of state interventions in Rwanda - e.g. the restitution of property to repatriates who returned after the genocide; the villagization programme (*imidugudu*); or today's *gacaca* trials – the state imposes firm parameters, but gives local administrators some discretion in how to apply them.

Third, looking to the future, I contend that it remains to be seen whether the recent, pro-women inheritance legislation will find champions (politicians, administrators) willing and able to take on the full force of the language of public morality, which prevents women from exercising their legal rights. This may not happen. Although the Land Law declares a commitment to gender equity with regard to ownership (Article 4), the rest of the law is conspicuously silent on land in relation to gender.

Rwanda: Political backdrop

In October 1990, the Rwandese Patriotic Front (RPF), its fighting force composed mainly of exiled Tutsi, invaded Rwanda from Uganda. The 4-year war that ensued, coupled with abject poverty, culminated in anti-Tutsi propaganda by Hutu extremists and the emergence of murderous militia forces inside the country's (imposed) multi-party democracy. Following the assassination of President Habyarimana in April 1994, Rwanda's Hutu Power extremists mobilised a nation-wide militia, known as the

Interahamwe, to exterminate Tutsi and Hutu sympathetic to conciliation. Poverty and class, regional politics, land access, power and patronage all played their part in the build-up to the 1994 tragedy.

Research on how the killing machine was organized and driven (Fuji 2005) has revealed that its participatory nature is best understood in terms of the power of local ties. Lee Ann Fuji argues that 'genocide start[ed] at home' in the sense that in complex, multi-ethnic households, 'there were people targeted for killing, people targeted for recruitment [as killers], and people who somehow avoided joining the violence or becoming targets' (2005: 7). The multiplex, interpersonal ties that linked people also pulled them apart; it was a thin line that separated joiners from bystanders. Besides the fear of being killed should they refuse to join the killers, 'very ordinary people' also killed for economic gain, often for access to a victim's land. In areas where land disputes were rife, as in the densely populated Gisenyi prefecture, genocidal violence aimed not only at Tutsi but also at Hutu protagonists in land disputes (André and Platteau 1996). At the time of the genocide, many Hutu feared that the RPF, if victorious in their war, would confiscate land for redistribution to those who returned from the diaspora. Human Rights Watch (1999) found evidence that some extremist leaders circulated fake maps detailing which Hutu-owned lands would be redistributed.

Rwanda's first decade since the genocide has seen the centralisation of power in the hands of a ruling minority, along with an increase in intolerance towards the political opposition (Jefremovas 2002; Prunier 1997). For many analysts, this tightening of control from the centre found its first public expression when Prime Minister Twagiramungu and other Hutu Ministers left the government in 1995. It needs to be said, though, that Rwanda has a long history of centralized, exclusivist governance.

As a result of this new phase in the centralisation of power, civil society in Rwanda remains weak, while human rights groups generally are subject to pressure and co-optation by government. LandNet Rwanda, for example, is an umbrella network of local and international NGOs; it has an official of the Ministry of Lands (MINITERE) as *bonafide* member. Although the relationship between LandNet and the Government is good overall, tensions do arise from time to time, as when LandNet lobbied senior politicians without seeking prior approval from the MINITERE (Musahara and Huggins 2004: 24).

Post-genocide legislation

Analyses of the socio-political dynamic of conflict in Rwanda commonly state that a number of factors, long-term and immediate, contributed to the 1994 massacres. Among them, the inability to own or access land ranks high.

On the basis of research carried out in Rwanda between 2000 and 2002, the Nairobi-based African Centre for Technology Studies (ACTS) has concluded that the

> role of land ... is critical to understanding conflict dynamics. ... [M]any reforms will be necessary to effectively manage the sources of conflict in Rwanda. The government has the responsibility to strengthen the security of rural livelihoods, and to create employment for thousands of unemployed

> youth... [T]he government [also] has a moral duty and responsibility to redress gross inequalities in land ownership... *Land distribution to benefit the poorest will be a necessary part of any strategy for meeting these responsibilities*. Doing so will reduce powerful tensions related to access to and control of land, and contribute to the process of national reconciliation and peacebuilding. (ACTS 2003; emphasis added)

Arguably their most sensitive reform project to date, the Rwandan authorities have taken some eight years to move from initial assessments of the land question (Barrière 1997; Banque Mondiale 1998) to the actual passing of the Land Law in May 2005. The sensitivity of reform can be explained, to some degree at least, by the fact that land disputes are increasingly common in Rwanda. Today,

> [m]any people consider land disputes to be at the heart of most conflicts between households, and a number of organisations have estimated that at District level, at least 80% of disputes reported to administrators are centred on land, and in certain areas the figure is as high as 95%. The National Unity and Reconciliation Council, which conducted consultations across the country, found that land disputes are "the greatest factor hindering sustainable peace." (Musahara and Huggins 2004: 8, referring to Republic of Rwanda 2001)

Land disputes commonly relate to women's desperate need to access land, the return of refugees (short- and long-term, Hutu and Tutsi), and the compensations promised in the case of a forced resettlement (*imidugudu*). A further source of conflict over land is the appropriation of large plots by powerful people for the purpose of speculation rather than agricultural production per se (Musahara and Huggins 2004: 9).

Rwanda passed its 2005 Land Law in the wake of other attempts at socio-political reform, namely the villagization initiative (1996 onwards) and the adoption of an Inheritance Bill (1999). The architects of the Land Law claim that the new departure will contribute to better soil management and productivity, will reduce the prevalence of land disputes, and thus contribute to social stability and the prevention of future conflict. The Government of Rwanda

> sees increased security of tenure or rights of access to land, and more effective land management, as important factors for the improvement of the agricultural sector and the economy as a whole, helping to create the resources needed to reduce poverty and *to consolidate peace and social cohesion*. (Musahara and Huggins 2004: 43; emphasis added)

Government's conviction that its quite radical land reform will result in a reduction in the potential for conflict is also stated in the PRSP.

> Land is the most important productive asset owned by most Rwandese households. It has also historically been a source of dispute and conflict. Rwanda has a legacy of disputed land rights, arising partly from the lack of legal status for land title and partly from the return of people whose land has been occupied by others. Hence the provision of security and the resolution of land disputes are important objectives of the Government. (Republic of Rwanda 2002: par. 133)

Recent legislative reforms in Rwanda have been heralded as breakthroughs in both national reconciliation and gender mainstreaming. The post-genocide government asserts that secure land rights for women are fundamental to regenerating social and domestic relations, and economic growth. In combination, the Inheritance Bill and Land Law are seen as constituting bold attempts to stamp out gender discrimination in the matter of land rights and access, including access to property more generally.

To better understand the magnitude of the 2005 Land Law and to consider its main implications, it is useful first to present a short historical overview of the relationship between land and state.

Colonial approaches to managing land

At the onset of the twentieth century, Rwanda was divided into two polities with distinctive land regimes. Roughly, there were regions controlled by the Tutsi Nyiginya central court (Nduga and its environs, Kinyaga) and regions that remained outside the court's influence. The latter included the north-west of contemporary Rwanda and the Hutu kingdoms of Bukunzi and Busozo. These regions became part of Rwanda when Belgium, the main colonial power, annexed them to the central court to bring about the country's administrative unification.

Before unification, regions ruled by the central court were governed by a land tenure system known as *isambu*, which specified that land invariably belonged to the divine Tutsi king (*mwami*). Working the land secured temporary entitlement, but the state remained the ultimate owner. In contrast, in regions outside the influence of the court/*mwami*, land was held by corporate lineages in a system of clientship known as *ubukonde*. Under *ubukonde*, lineage and non-lineage members could request land from the lineage head. As the first occupier, the lineage head allocated land to his parents, political clients and also to potential clients from outside the lineage. In return, non-lineage tenants pledged loyalty and offered gifts (hoes, beer) and occasionally labour (Newbury 1981: 139).

Under *isambu*, cultivators received land in return for hefty prestations in kind and labour, prestations more onerous than under *ubukonde*. Areas that through local conquest (e.g. during the reign of Rwabugiri) or European colonial conquest (e.g. the north-west) moved from *ubukonde* to *isambu*, experienced fundamental changes in the distribution and management of land. With this transition, a lineage head (*umukonde*) lost the inalienable right to control the land his lineage had cleared; from now on, only the king had the right and power to decide how land should be allocated. Essentially, king Rwabugiri rejected the principle that land could be collectively exploited in a way that honoured the rights of the first occupier. A second fundamental change was that lineage heads (*abakonde*) were replaced with Tutsi notables sent by the central court. *Abakonde* lost valuable land and important annual prestations.

A third fundamental change was that *isambu* transformed the prestations customarily rendered to the *umukonde*. Prestations in kind and in labour, the latter called *uburetwa*, became onerous, especially after Belgium arrived on the scene. Belgium had its own extractive needs. Once the Belgians encouraged (some say forced) chiefs

to become coffee entrepreneurs, while simultaneously racialising the Hutu-Tutsi classification, Hutu land clients became compelled to perform more manual labour. In addition,

> Belgium made *uburetwa* the responsibility of individual adult males. *Uburetwa* ceased to be an obligation met at the lineage level, as had been the case in Rwabugiri's time. Adult males were now 'called upon more frequently and more regularly to perform *uburetwa*' (Newbury 1981: 142). There was also more emphasis on money payments. (Pottier 2002: 183-4)

Post-independent policies on land: 1961-94

After independence, the onerous *uburetwa* prestation was abolished, as was the right to grazing lands (igikingi) previously reserved for royal herds. More land thus became available. But clientship itself remained the basis on which land was allocated. 'Post-independence governance,' Musahara and Huggins remind us, 'came to be characterised by exclusionary state policies and political networks which functioned through patron-client relations' (2004: 3). Despite the change in political regime, from elite Tutsi to elite Hutu, the country's new leaders showed little interest in alleviating rural poverty. Women's need for better access to land, for example, remained neglected. Instead, land continued to be an instrument men used for exercising control over women's lives (Jefremovas 2002: 74-75).

The land law in operation in Rwanda prior to the new law of May 2005 was the statutory order no. 09/76 of March 1976. The 1976 law registered/protected customary rights, and prevented the development of a land market. The law 'specified that the state is the sole owner of land in Rwanda, with all access being usufruct, granted on behalf of the state' (Musahara and Huggins 2004: 20). Better access to land through land reform was not a policy issue in Rwanda after independence, and the laws that did exist were rarely implemented. I offered some evidence of this in *Re-Imagining Rwanda*:

> For example, while the Constitution of 1962 stipulated that all land sales or gifts had to be approved by the Minister of Agriculture, few who obtained land ever registered their transactions because the procedure was too long or risky (Larbi 1995: 23). The prohibition of distress sales was [also] easily circumvented; unlawful sales of land escalated in the late 1980s (André 1995; von Braun 1991). Regulations were also circumvented in the case of Rwanda's resettlement schemes (*paysannats*), which for some time had remained the country's most important strategy for countering land scarcity and emigration (Silvestre 1974). (Pottier 2002: 181)

In addition, Musahara and Huggins (2004: 20) refer to efforts at legislated reform in 1967, 1978 and 1991. While these efforts pertained to areas exploited under *ubukonde*, they too remained unimplemented. Two reasons may explain the lack of implemention. First, farmers used long-term leasing arrangements to circumvent the law; second, many bureaucrats were interested in acquiring more land for themselves, and hence not too concerned about reforms that protected individual rights.

Nonetheless, as the population increased quite steadily over the years, and dramatically so in some regions, officials concerned with agricultural productivity became critical of Rwanda's common feature of dispersed settlements and farm fragmentation. Even President Habyarimana went on record as saying that 'the traditional system of random landholdings and scattered homesteads blocks the development of the countryside' (quoted in Nezehose 1990: 38).

The focus on farm fragmentation (due to inheritance practices) and the dispersal of plots may have pointed to a genuine problem, yet, the focus also deflected attention away from the fact that after independence, as before, serious inequalities existed in terms of land ownership. In 1984, for instance, the National Enquiry into Household Expenditure found that half the country's productive land was controlled by about fifteen per cent of the population (Minot 1989: 41). The imbalance reflected the fact that people involved in commerce, government and the aid industry were busy buying up fragmented land for the purpose of (unregistered) consolidation (Uvin 1998).

Gender inequalities in land access also remained outside the policy frame. Except in unique circumstances (e.g. divorce with children but without a prospect of re-marrying), women did not inherit land from their fathers. As in many other parts of Sub-Saharan Africa, women accessed land through marriage, and would only ever fully control the usufruct right to that land when widowed with male children. And even then, the husband's lineage would complicate matters by insisting on the widow's 'proper conduct', which meant either sexual abstinence or re-marrying the deceased husband's brother (Kairaba 2002: 9).

Post-genocide land policies

In Rwanda, the state has a long tradition of giving land and taking it back. This important point guards against the misperception that Rwanda today would be totally different from Rwanda before the genocide. Nothing could be further from reality. First and foremost among the 'continuities' is the power of the state. Ephrem Gasasira, who drew up the regulations for post-genocide land claims by repatriates, wrote in this respect:

> People need to understand first and foremost that all land belongs to the state. It is the state which grants use rights to individuals, and which withdraws these rights should the individuals no longer be able to properly exploit the land in question. *The development of the land must be the final goals of every land concession.* We cannot afford to have arable land that is not under cultivation because the land is there precisely to feed society. (Gasasire 1995)

Against this backdrop, post-genocide discussions on land reform focused on ways in which food production could be rationalised and improved. Officials and foreign agricultural experts, often without prior experience in Rwanda, agreed that Rwanda had been entrapped in a downward production spiral since the mid-1980s. To reverse the spiral, a study by Michigan State University argued (Clay et al, 1995), Rwandan farmers needed to make land use more sustainable (e.g. by having more cattle and using more organic material to enhance soil fertility), invest more in purchased inputs like chemical fertiliser and lime, and have more secure tenure systems. Rwanda needed 'real' land laws. Clay's team expressed concern over the country's high level

of environmental degradation, set at about 50% of the land surface. Rwanda also needed to promote income-raising activities, especially cash cropping and off-farm employment, a challenge still not met.

Michigan State University (MSU) was particularly critical of the 1980s ban on poor people selling small plots of land (a ban by and large ignored), and of the rental practices that ensued from it. Renting meant low conservation investments and fertility. MSU argued that the key to a more rational approach to land management was to privatise land; a position endorsed both by the Rwandan government and by the World Bank. Soon after the publication of the MSU study, Rwandan officials claimed that 'the people of Rwanda' had organised participatory workshops to consider privatisation – and were now requesting the right to privately transact land. Land titles would need to be introduced through legislation, which meant breaking with the past. As Muhayeyezu (1996: 6) has observed, the mentality that prevailed among Rwandan farmers was as follows:

> 'Whether the land is registered or not makes no difference to a Rwandan. It is his land, and that's it.' (Muhayeyezu 1996: 6, quoted in Barrière 1997)

Policy discussions, however, paid little attention to the ever-widening disparities in land access and control. A study in the late 1990s concluded that 6.6% of households controlled roughly one third of all arable land (Newbury and Baldwin 2000: 7). The attention, instead, focused on the need for land to accommodate Rwandans now back from the diaspora. Those returning from the diaspora, Tutsi mostly, were commonly referred to as 59-ers.[1]

59-ers reclaiming land

Tutsi returning from the diaspora in the second half of 1994 were told to observe clear guidelines should they want to reclaim the property (land, houses) they or their families had owned when fleeing Rwanda in 1959. Drawn up in Arusha in 1993, the guidelines stipulated that only 'the repatriate who left the country ten years ago or less has the right to recuperate his properties' (Gasasira 1995: 14). Since the guidelines could not be clearer, officials were optimistic that repossession would be dealt with *internally*, i.e. without international assistance, and that this would be done speedily (Pottier 2002: 187-88).

But implementation was not so straightforward. On reviewing the social variables that might interfere with a to-the-letter implementation of the guidelines, I concluded as follows.

> Repossession claims and counterclaims [will] be made and resolved not through recourse to the guidelines but through palavers at the commune level, where repossession will be tackled with the protocol, wit and intrigue so typical of local-level debate (see Pottier 1989a, 1989b). Most importantly, repatriates [will] argue their cases before commune-level authorities with whom they [have] already built relationships, so there will be no need to follow [the guidelines drafted in] Arusha to the letter. (Pottier 2002: 189)

[1] They or their forebears had fled Rwanda in 1959 when the Tutsi monarchy was overthrown.

I added, however, that it would be wrong to assume that the relative autonomy of commune-level authorities would always work in favour of the repatriates, especially in areas where a large percentage of the (Hutu) population had fled to the refugee camps in 1994. In fact, repatriates were often well aware that their claim to land and property was weak, as I observed in Muvumba commune, Mutara, in 1995 (Pottier 2002: 190). Not working land they could legally claim to be their own, repatriate farmers in Muvumba exploited the land to no more than 30 per cent of its capacity, and this despite the aid received from a well-run seeds and tools campaign.

Imidugudu (1996-)

The power local authorities have to interpret official directives has also been noted in the case of *imidugudu* (forced villagization). In December 1996, villagisation became the only legal form of rural settlement in Rwanda, but was implemented hastily and erratically. The scheme received foreign financial support as well as a lot of criticism, inside and outside of Rwanda, for example for favouring 'old caseload' Tutsi refugees and failing to stimulate agricultural growth (RISD 1999; Pottier 2002: 193-96; Van Hoyweghen 1999). The forceful manner in which households were told to move to new sites, often having to rebuild homes just a short distance away, has also attracted criticism, as has the fact that women have reported forms of intimidation and sexual molestation (HRW 2001; Newbury and Baldwin 2000).

The proclaimed justification for *imidugudu* was that putting an end to dispersed settlements and ever-fragmenting plots, would enhance productivity. Conclusive proof of the claim, however, has yet to be offered. Perhaps as a consequence, and partly because of the government's lack of transparency, donors have withdrawn significant amounts of funding for the scheme.

The inheritance bill (1999)

After the 1994 war and genocide, there was a steep rise in the number of de facto female-headed households, with women either widowed or having husbands in prison on account of their suspected participation in the genocide. The number of households with more than one adult in residence fell to about 16 per cent (Van Hoyweghen 1999: 375). The demographic change forced women to take on new roles in the domestic economy; their predicament underscored the need for a legislative response. Women needed to have better control over the land resource.

Passed in 1999, the inheritance bill (1999) denounced gender imbalances and abolished gendered discrimination in land inheritance practices for 'all legitimate children of the *de cujus*' (Republic of Rwanda 1999: article 50). The law proclaimed that all legal children, whether male or female, would inherit property without discrimination. The law also stipulated that women could inherit from fathers and husbands, and that women could keep what they brought to the marriage should they survive their husbands.

While the inheritance law appears to be a positive step towards institutionalising gender parity, three caveats must be noted. Firstly, in the absence of proper marriage contracts (legal or customary), children are deemed illegitimate. Since the majority of

unions in Rwanda are informal and not contractually sanctioned, the vast majority of Rwandan girls and young women are easily labelled as illegitimate. This disqualifies them from the new-style inheritance (see André 1995; Burnet 2000: 13; Pottier 2002: 190-93). The situation is unlikely to change in the near future, since the cost of a legally recognised marriage in Rwanda is today rising fast. Not surprisingly, many rural women declare being confused about the new inheritance bill (Burnet 2000: 15).

Secondly, the inheritance law cannot be applied retrospectively. It does not apply to the tens of thousands 'legitimate' girls and women whose fathers and husbands died in the genocide. Thirdly, at article 51, the law upholds patriarchy by stipulating that 'the family council shall determine the part of the patrimony earmarked for the raising of minors and the part to be shared between all the children' (Republic of Rwanda 1999). The implication is that whoever controls the family council can decide whether or not a woman will inherit. This stipulation strengthens gender inequities.[2]

The 2005 Land Law: overview[3] and critique

The consultative process through which the 2005 Land Law came into being has been dominated by the convergence of FAO, World Bank and Government of Rwanda narratives on the need for reform. Despite claims to the contrary, the voices and concerns of ordinary Rwandans remain only weakly articulated in the new law.

What the Land Law says

Broadly speaking, the Land Law covers three areas: i) land scarcity, population pressure, and landlessness; ii) soil degradation and anti-degradation measures; and iii) the shortcomings of customary law and existing statutory laws. (In what follows all three areas will be covered, though not separately.) For a complete picture of the way post-genocide legislation has shaped up it is necessary to refer also to the (Draft) Land Policy, 2004.

The preparatory work for the 2005 Land Law began in 1997 with a study by Olivier Barrière, FAO consultant. The approach Barrière and others (Clay et al. 1995; Banque Mondiale 1998) advocated for Rwanda was a mixture of continuity and change. Continuity in that the state/Government should retain overall control over land; change in that the logic of subsistence farming needed to be broken in order to promote a free-market approach. Rwanda's minute, fragmented farms, Barrière argued, had reached their maximum production capacity; a radical break with 'custom' was called for. Barrière, however, equated 'custom' with *isambu*, and was thus in favour of continuing the 'custom' of seeing the state as the ultimate owner/guarantor and distributor of all land. This feature of *isambu* was not found under the *ubukonde* regime.

With the new Land Law, *ubukonde* has been formally abolished (Article 86). In the same way that *ethnicity* is banned from official discourses, so the discourse on Rwanda's former land regimes has become outlawed. In their desire to bring all land

[2] I am grateful to Rachel Dore-Weeks (MSc student at SOAS, 2004-5) for bringing this to my attention.
[3] I obtained a copy of the 2005 Land Law in French. The quotations that appear in this paper are therefore translated from French; they do not conform to the official text in English.

matters under a modern single system, the authorities have ruled that *ubukonde* must belong to the past.

Embracing market liberalisation and privatisation, and hoping to make a dent in the country's tradition of subsistence farming, the 2005 Land Law promotes the creation of a private land market through registered land titles. It is envisaged that the promotion of land registration, combined with a concerted effort to consolidate fragmented plots (Article 20), will open up the country's potential for commercial mono-cropping.

Under Article 20, farmers must consolidate their land, but those whose consolidated land remains under 1ha stand to lose it since they will be deemed to have insufficient land for its efficient exploitation (see Articles 62-65). This ruling follows the recommendation of the Poverty Reduction Strategy Paper (PRSP), which advocates that

> households will be encouraged to consolidate plots in order to ensure that each holding is not less than 1 hectare. ... [This] will be achieved by a family cultivating in common rather than fragmenting the plot through inheritance (Republic of Rwanda, June 2002). (Musahara and Huggins 2004: xxx)

The underlying rationale resonates with the widely accepted view that (consolidated) plots below 0.75 ha, which incidentally is roughly the national average a household controls,[4] may not be sufficient to meet the family's nutritional requirements. To be nutritionally viable, a household farm must have at least 0.90ha, a limit set by the FAO (see Mosley 2004). As a result, households possessing plots totalling less than 1ha face being barred from registration. The threat comes from Article 20, which grants local authorities the power to decide 'to consolidate parcels of land in order to maximise their exploitation.'

Most crucially, farmers can have their land confiscated by the state when they fail to exploit it diligently and efficiently (Articles 62-65). That the Land Law authorizes local authorities to judge farming abilities and outputs is not only noteworthy, but also in line with Rwanda's long tradition of 'hill power'. What causes concern here is that the law is entirely silent regarding the criteria against which a farmer's 'ability' is to be judged. Thus Articles 62 and 63 state (in *rough* translation from French):

> Every private person who rightfully owns a piece of land is obliged to keep it productive according to his nature and disposition. Productive usage requires the use of effective anti-erosion measures, fertility enhancement measures and sustainable management techniques. ...
>
> The development and productivity of a piece of land are to be judged in view of local approaches to land allocation, management and utilisation, and of the choice of crops adopted by the local authorities. (République du Rwanda 2005: Article 62)

[4] The average total household land holding in Rwanda is said to be 0.76ha (Musahara and Huggins 2004: 47). The PRSP puts the average holding at 0.71ha (Republic of Rwanda 2002: par.49).

Farmers who - in the eyes of the law - are deemed not to comply will have their land confiscated for the purpose of redistribution to more needy citizens (Article 87).

The new land law also states that 'all land owners are required to register their land' (Musahara and Huggins 2004: 57). The cost of registration, however, is to be borne by the owners (Draft Land Policy 2004: 19). Peasant farmers registering land of under 2ha will do so locally at relatively low cost; farmers registering over 2 ha are to pay both a local and a national registration fee. Where the cost of registration proves prohibitive, farmers will lose the legal right to their land, and thus the capacity to use that land as collateral.

Addressing gender imbalances in 'customary' land management, the Land Law connects with the Inheritance Bill (1999) in Article 4, which confirms that any forms of discrimination in matters of land ownership, including gender discrimination, is prohibited. The land law also reminds women that only legally married spouses and their children can inherit (Article 36).

Comments

Responses to the adoption of the final draft of the land policy bill, as adopted by Rwanda's ministerial cabinet in February 2004, suggest that 'the most contentious issues include the process of consolidation of fragmented plots; and the resolution of disputes over land-sharing' (Musahara and Huggins 2004: 23). Regarding the mechanisms to be employed to ensure consolidation, Musahara and Huggins express concern that there is *a lack of clarity as to which mechanisms will come into play*:

> the PRSP states that households will be 'encouraged'; and the [Draft Land] policy states that 'one needs to carry out the regrouping of plots'. MINITERE personnel suggest that land consolidation will be focused on encouraging increased production, through formation of adjacent plots with similar crops. According to policy-makers, this means that 'nobody will lose their plot'. Farmers will be encouraged to adopt cash crops including tea, coffee, flowers, and rice, in large mono-cropped areas, but each person will have the responsibility to register his/her plot separately. (Musahara and Huggins 2004: 48)

What adds to the uncertainties is that the policy/law makers who insist on consolidation have never produced evidence to suggest that the consolidation strategy boosts productivity. On the contrary, even B. Blarel, who researched the economics of farm fragmentation in Rwanda on behalf of the World Bank, has argued that 'land consolidation policies are unlikely to increase land productivity significantly' (Blarel et al. 1992).

Then there is the vexed issues of what compensation will be paid to those who become landless. Questions need to be asked not only regarding the timing and appropriateness of the compensation, but also regarding the availability of alternative livelihood strategies. Will any alternative strategies open up for the landless? Although Rwanda has a poor track record when it comes to searching for off-farm employment opportunities (Pottier 1993), the PRSP takes an optimistic view on landlessness. The PRSP believes that better land management through consolidation,

which is the objective of the Land Policy and the Land Law, will generate a real boost in non-agricultural incomes. The rise will be such that the resulting diversification of income sources will make it easier for land-poor farmers to be persuaded that it is now sound to reduce their reliance on the traditional insurance mechanism. The latter, the PRSP reminds us, consists of households working several plots at different altitudes (Republic of Rwanda 2002: par.136). Sharing the firm belief that 'a degree of optimism is justified' in Rwanda (Mutebi, Stone and Thin 2003: 253), the authors of the PRSP are asking resource-poor Rwandan farmers for a formidable leap of faith. They are asking farmers to espouse the unfamiliar logic that

> Agricultural growth [based on land consolidation and better fertiliser use] will create a demand for non-agricultural good and services. These goods and services will form an increasingly large share of expenditures as people's incomes rise. Hence they should grow faster than the agricultural sector. It is estimated that a 5.3% rate of growth in agriculture would generate non-farm rural growth of 6.7%. (Republic of Rwanda 2002: par.95)

Given that 'the "right to decide" of local communities on development priorities is central to the PRSP' (2002: par.211), we may well forecast that resource-poor farmers are unlikely even to consider taking the leap of faith voluntarily. In this same context, Jason Mosley (2004) has argued that UK Policy vis-à-vis land tenure reform in Rwanda should insist on the need to separate tenure reform objectives from land management objectives. There are good grounds for supporting Mosley's suggestion.

Well before the 2005 Land Law was passed, the thought of registering consolidated lands already produced widespread anxiety and controversy. The reason for this, Musahara and Huggins (2004) point out, is that 'tenure security' means different things to different people. What peasant farmers want is 'security from land disputes'; what Government has in mind is security through land registration. Worryingly, the poor fear 'that those with land holdings smaller than 1ha, or unable to afford the [registration] fee, [will] not be able to register, and [will] be forced to give up land for consolidation' (Musahara and Huggins 2004: 56-57).

The architects of the Land Law will also be asked why they have set the minimum plot size allowed at 1ha, whereas it is agreed, even by the Draft Land Policy (2004) itself, that 0.75ha is a viable minimum.[5] The question, Musahara and Huggins warn, is far from academic, since only three-quarters of the rural population own (dispersed) land of 1 ha or more. This could result in half a million households having to give up their land! Musahara and Huggins forecast that 425,000 households could be without access to land by the year 2010 (Musahara and Huggins 2005: 277, referring to Donovan et al. 2002).

Knowing how fear can be manipulated, and was manipulated in the run-up to the 1994 genocide, I agree with Musahara and Huggins that popular fears surrounding land registration need to be addressed by the authorities as a matter of urgency (Pottier 2005: 71). Moreover, as with villagization, land registration efforts in other parts of sub-Saharan Africa have not proved very successful (Pottier 1999: 59-60).

[5] Interestingly, the PRSP refers to research by Michigan State University, which concluded that 'on all major crops, smaller farms have been found to yield more than larger farms in Rwanda as in other countries' (Republic of Rwanda 2002: par.49).

Related to the dangers of manipulation, it must be said that the Draft Land Policy (2004) justifies the formal abolition of customary land rights against the backdrop of 'a very rosy picture of pre-colonial land tenure systems, which "facilitated economic production, stability and harmony in production"' (Musahara and Huggins 2004: 58). This glorification of pre-colonial conditions, already manifest in the preparatory report of FAO expert Barrière (reviewed in Pottier 2002: 198-99), omits to draw attention to the hardships imposed by the *uburetwa* labour prestation that was at the centre of *isambu*. The attempt officially to erase the collective memory of an exploitative past may well have the opposite effect of reinforcing and reifying distant memories, as happened in Hutu refugee camps in Burundi (see Malkki 1995).

The authors of the Land Policy and Land Law may have overlooked that 'from a conflict prevention viewpoint, the cultural aspects of land access are highly significant' (Musahara and Huggins 2004: 58). Musahara and Huggins add that they are concerned about an existing research gap, a gap unlikely to be filled. The Land Policy pays scant attention to *ubukonde*, which was reinstated in 1961 and is now formally abolished again in 2005. The Land Policy and Land Law imply that customary land systems in Rwanda 'have fallen into irrelevance, when in fact they may still have a relevance' (2004: 58). The PRSP process in Rwanda may have been broadly consultative, as some who were involved claim (Mutebi, Stone and Thin 2003: 253), yet, when it comes to understanding agricultural practices in Rwanda, we must note 'the absence of robust multi-sectoral systems for popular consultation and participation in decision making' (Musahara and Huggins 2004: 65). Indeed, there is quite a contrast to be noted between land policy making in Rwanda and the rest of sub-Saharan Africa, where policy reform is showing a healthy interest in the way in which customary land tenure systems have evolved (Pottier 2005).

As a first conclusion then, it is fair to say that the new land law threatens to make a vast number of Rwandans landless, either because they have insufficient land to consolidate or because they cannot meet the registration fee or because, in one way or other, they come to be labelled as unworthy farmers. If this happens, the creation of an 'army' of landless people who are not offered alternative livelihood strategies, has the potential for generating significant future conflict.

That the situation could turn explosive is not too difficult to grasp. First of all, Rwanda has a long history of failing to create opportunities for off-farm employment; secondly, land scarcity played a huge part at the time of the 1994 genocide, when Hutu demagogues effectively exploited the memory of 'Tutsi land privilege' in colonial days. Land was not the only economic factor in the build-up to the genocide, but contributed significantly to the ease with which ruthless extremists turned young desperate men into ruthless thugs. Killing for land was a personal motive for many *génocidaires*. Since the new land law does not address current class-based inequalities in the distribution of land ownership, it may give extremists an unnecessary opportunity to exploit discontent and frustration.

In Rwanda today, class divisions are strongly reflected in the way land is distributed.

> Currently, there is a burgeoning elite, composed mainly of town dwellers owning large swathes of land in the rural areas. It has been suggested that they

> ... have strong links to the political, military and business networks, which are the domain of those with high positions in government. It is likely that without effective checks and balances, those with political connections will continue to have preferential access to the little land that is available. (Musahara and Huggins 2004: 17)

The potential for serious future conflict grounded in class differentials must not be underestimated. Rather than address (and redress) existing class imbalances in land ownership, the Land Policy sets the permissible land ceiling at 50 ha. While the PRSP endorsed this 'generous' upper ceiling, the document also reminded us of the role inequality had played during the genocide:

> Perceptions of inequality and social exclusion in the broadest sense have been a major feature of Rwanda's history and were the basis for the manipulation of the Rwandese people and *ethnicisation* of all aspects of life which laid the foundation for the genocide of 1994. (Republic of Rwanda 2002: par.263)

But land scarcity today also has a strong gender dimension. Although the Land Law refers to the Inheritance Bill, it does not make explicit what women can expect to gain from the new regulations. The sarcastic/sad answer – women should not expect anything – seems borne out in Article 87, which declares, rather elusively, that the state has a duty to pass on confiscated lands 'to those who have been deprived of their right to land'. The lack of explicit reference to social categories will make many Rwandans fear that Tutsi 59-ers are the preferred social category, a point Van Hoyweghen also noted in her research on *imidugudu* (Van Hoyweghen 1999). Unlike the Land Law, the (Draft) Land Policy document is explicit on the matter of need: 'The Land Policy ... defines the landless specifically as "old caseload" refugees who have returned: Rwandans who fled the country in 1959 or later and stayed outside the country for more than ten years. No other type of landless person is mentioned' (Musahara and Huggins 2004: 53).

In the same context, the 2005 Land Law (par. 62-65) grants local authorities the power to judge farming skills and outputs. An area for concern here is that Hutu refugees who spent time in the camps in DR Congo or Tanzania are among those deemed to have lost their farming expertise (Van Hoyweghen 1999: 364-65). It is here that the Land Law is most likely to be interpreted and contested – thus fuelling discontent and adding to the potential of future violence. The terminology used in Articles 62 to 65 (see above) is very slippery, and fails to provide clear definitions and criteria. For example, how and by whom will it be determined that a given farmer performs not according to her/his 'nature et sa réelle destination' (Art. 62)? How and by whom will it be determined that someone's farm management techniques are adequate or inadequate? How does one determine that a given plot of land is 'inadequately protected against erosion' (art. 65)? The same Article 65 also disapproves of fallowing, claiming that 'agricultural land not covered by plantation or crops over at least half of its surface' will be considered as 'not properly managed'. What criteria come into play here? And whose criteria?

My second general comment is a delicate one. Somewhat paradoxically, I suggest that some of the potential for future violence may be offset by the fact Government does allow flexibility in the way the law is locally interpreted and applied. As can be seen

with other forms of state interventions - e.g. the restitution of property to 59-ers/repatriates who returned to Rwanda after the genocide, *imidugudu* (above) or today's *gacaca* trials (Waldorf 2005) – the state imposes firm parameters, but allows local administrators a significant degree of discretion in how to apply them. Local authorities in Rwanda do not follow the law like automatons, but instead see opportunities for local interpretation and action. If the politics of restitution for 59-ers is anything to go by (see Pottier 2002: 186-90), some local authorities will do a tremendously positive job, while others will be corrupt.

Local-level discretions may also apply to the crop selection strategy adopted in the PRSP and the Draft Land Policy. Here we have to question the wisdom of promoting mono-cropping (for cash crops) as an agricultural policy. The PRSP tells us that MINAGI has identified five major crops for expansion – rice, maize, potatoes, soya and beans – in addition to the traditional cash crops of tea and coffee. MINAGRI has warned, however, that 'currently, small stands of coffee are grown in some areas where it is not competitive' and that Rwandese rice derives from poor-quality seed stocks and is not competitive full stop (Republic of Rwanda 2002: par.119).

The promotion of mono-cropping as a 'poverty reducing strategy' raises several problems. For a start, pro-poor farming in Rwanda must capitalise on drought-resistant crops, ideally in combination with 'improved' varieties. Drought-resistant bean varieties, for example, are the poor farmer's ideal weapon against periodic drought, especially when mixed with 'improved' ones (see Pottier 1989a, 1996; Voss 1992). Intercropping coffee with beans or bananas is another ideal strategy, particularly in low-lying areas (Fairhead 1990, Pottier 1999: 37-8). The association works well ecologically and financially, and is now being tried out by many Rwandan coffee farmers (Musahara and Huggins 2004: 51). To persuade farmers to grow coffee as a mono-crop does not make environmental sense. Farmers are more likely to vote with their feet, as they have done in the past when regional specialisation, that is specialisation according to altitude, was forced upon them (see Pottier and Nkundabashaka 1992).

Finally, it remains to be seen whether the new pro-women inheritance legislation will find champions (politicians, administrators) willing and able to take on the full force of the language of public morality, which condemns those 'not properly' married. This may not happen. Although the Land Law declares a commitment to gender equity with regard to land ownership (Article 4), the rest of the text is conspicuously silent on gender and land. This will not please the tens of thousands of genocide survivors who already feel bitter that Government is not doing enough to give them land rights and ease their plight (ICG 2002). The Land Law's silence may cause further anger and frustration.

Conclusion

Post-genocide Rwanda is a historical construct. Many aspects of society and economy do *not* result from the 1994 genocide, but have well-established historical roots. This is relevant to Rwanda's current efforts to reform land rights, land access and management, which, as seen, are predicated on the ruling that all land belongs to the state.

Today, the RPF-led Rwandan government insists on uniformity, e.g. by doing away with ethnic labels (in official discourse if not in day-to-day parlance). One direct result of this insistence on uniformity is that the official view on past land management regimes reduces past complexities in an attempt to homogenize the collective memory. This watering down of complexity, which extremists may construe as a re-interpretation of history that masks Tutsi privilege, is not conducive to building peace. Using the law to abolish 'customary practices' – in other words, wishing away their memory – takes insufficient account of the fact 'custom' lives on regardless, albeit in ever-transforming ways.

It may well be that many Rwandans, including those working for MINITERE, feel that customary systems have 'broken down', as Musahara and Huggins observe (2004: 12), yet this does not mean that contemporary debates on what is/was proper in 'customary land tenure' will suddenly stop. Policy makers may decide that custom can be abolished, as the land Law has indeed decreed, yet this official decree will not stifle local discussion regarding the value of customary land systems. Such debates continue in lively fashion throughout Sub-Saharan Africa (Pottier 2005).

The greatest concern is that no progress has been made in terms of Rwanda's agricultural impasse. Villagisation has failed in other parts of Africa, so why would it succeed in Rwanda? In addition, and most importantly, implementing the 2005 Land Law will amount to an endorsement of Rwanda's widening class differentials. While the power of discretion of the local administrators who implement the law must not be underestimated, they are unlikely to want to reverse the current situation in which the urban rich are buying up large swathes of land in impoverished rural areas. As for women farmers, their rights to more secure land access may now seem guaranteed by the Inheritance Bill (1999), yet women continue to face serious cultural struggles when attempting to actualise those rights. The 2005 Land Law is not offering women any relief or reassurance, and may make them a little more invisible.

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