

# Drawing a line under the crisis: Reconciling returnee land access and security in post- conflict Rwanda

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## List of abbreviations

ACORD	Association de Cooperation et de Recherche pour le Développement
ARD Inc.	Associates in Rural Development (Burlington, VT)
COHRE	Center on Housing Rights and Evictions (Geneva)
DFID	Department for International Development (UK)
CAURWA	Communaute des Autochtones Rwandais
FAO	Food and Agriculture Organization of the United Nations
HRFOR	UN Human Rights Field Office for Rwanda
IOM	International Organisation on Migration
IRC	International Rescue Committee
MINAGRI	Ministry of Agriculture
MININFRA	Ministry of Infrastructure
MINALOC	Ministry of Local Government
MINITERE	Ministry of Lands, Environment, Forestry, Water and Mines
NRA	Norwegian Relief Association
NRC	Norwegian Refugee Council
NURC	National Unity and Reconciliation Commission (Rwanda)
OECD	Organization for Economic Cooperation and Development
PRSP	Poverty Reduction Support Programme
RDI	Rural Development Institute (Seattle, WA)
RISD	Rwanda Initiative for Sustainable Development
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
SIDA	Swedish International Development Association
UNAMIR	United Nations Assistance Mission for Rwanda
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development

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## Chapter 1: Introduction

This report is part of a broader comparative effort by the Overseas Development Institute's Humanitarian Policy Group on Land Tenure in Conflict and Post-Conflict Situations, which aims to inform and improve the policy and practice of humanitarian action and to inform related areas of international policy. It seeks to understand how land issues affect and are affected by violence and conflict resolution, what responses are appropriate and what lessons can be learned from specific contexts of land tenure interventions, both during and after conflict.

ODI selected Rwanda for one of the country studies because, as the project document suggests:

*The experience of civil strife in Rwanda presents a stark example of the link between access to land and the precipitation of conflict ... It also provides an example of a situation where refugee and IDP resettlement, land claims and land reform were major features of the post-conflict setting.*

As the author worked with colleagues in Rwanda, two other important dimensions of the Rwandan experience became clear. Refugee return and land access in Rwanda has been an extraordinarily complex matter, with some refugees leaving just in time for others returning to take up their homes and lands. Rwanda has important lessons to teach us about the need to maintain flexibility in dealing with complexity, and raises questions about whether obviously well-meant but very specific requirements in international conventions can be applied with full rigour in all cases. In addition, the Rwandan experience highlights the fact that conflict and post-conflict are not two ends of a simple spectrum, but overlap. Refugee return and economic reconstruction similarly overlap, and this creates challenges in framing policy and legal responses that address adequately the diverse claims and needs that arise.



## Chapter 2: Land and conflict

Today there are a score of post-conflict states around the world seeking to rebuild functioning economies, many of them in Africa. Establishing security of land tenure after years of dislocation and insecurity is a critical step. Land will often have been an important factor in the conflict, and it is rarely absent from discourse about conflict. It has great value in what are still largely agrarian societies, but it also has unusually strong symbolic value through identification of land, territory, ancestors and peoples.

Effective management of competition for land in the decade after the end of a conflict may in such circumstances be critical to the maintenance of peace. In planning for the post-conflict period, it is essential to be clear on what role land has played in the conflict. In Rwanda, as will be indicated later, intense competition for land was a factor in the events leading to conflict. In South Africa, the fundamental issue can be argued to have been black majority rule, but loss of land to whites was a major grievance among black South Africans, and resentment over land did much to fuel the struggle. But even when land figures prominently in accounts of conflict, it is not always a contributing cause. How many remember a brief conflict between Senegal and Mauretania about 15 years ago? In that case, a dispute over the use of land on an island in the Senegal River triggered the conflict, but was hardly a cause. The dispute was rooted instead in ambiguities concerning the roles and loyalties of ethnic groups along the river border between the two countries. More recently, the border war between Ethiopia and Eritrea was framed largely as a struggle for territory, but was in fact about economic competition between the two countries. It was not about land, but the actions of the two governments resulted in a war fought over some very marginal land along the border, a war that cost many thousands of lives and was accompanied by a political discourse on both sides that suggested that land was the main issue.

Of course, where land is the primary or a contributing cause of conflict, it becomes a major issue in the reconstruction process. It may also become a major reconstruction issue where the conflict itself has created land problems. For example, in Sudan conflict has forced many groups

to flee their home areas and re-establish themselves elsewhere, among strangers. What land rights do they have when the conflict is over? If they wish, may they stay and farm in those areas? In post-conflict Mozambique, as state farms collapsed at the end of the civil war, conflicts emerged between local inhabitants, former farm staff and labourers, and displaced persons who had been resettled on those farms by the government. In Uganda, land registry records going back half a century were destroyed in some districts. In the wake of conflict, technicians and administrators are also often gone, and facilities destroyed. The ability of governments to administer land, often quite limited even before the conflict, has been seriously reduced.

Where land has been a factor in causing the conflict, or land issues have emerged in the course of the conflict, these will often be addressed in the peace negotiations. In both Rwanda and Sudan, for example, the peace accords include key provisions on land. These may focus on the allocation of publicly owned resources, or who will have the power to legislate about and administer land. The issue may be land itself, or related resources. In Sudan, the emphasis in the negotiations was on subterranean resources, oil in particular, though the restoration of customary law over land was also a major theme. In Rwanda, because of land scarcity and the need to accommodate returnees, land itself was the resource at issue. In these negotiations, tensions may emerge between international standards regarding the rights of refugees and displaced persons, and the compromises that need to be struck to obtain (and maintain) peace. That tension will extend into the post-conflict period. It is also not unusual for some stakeholders to be absent from the negotiation process, and one useful role for the international community is to represent the interests of these absentees. What is clear is that the making of post-conflict land policy often begins at the peace negotiations.

As countries coming out of conflict try to re-establish their economies and build peaceful societies, land policies need to accommodate a number of needs. First, where there are historical grievances over land, there will often be demands for redress. There may be specific conflicting claims waiting to be resolved, and peace may be hard to maintain if these are ignored. Second, there is the challenge of providing



land access for returning refugees and internally displaced persons. Will returnees get back the land they left behind through a restitution process, or will they be resettled on alternative land? From where will this alternative land come? Third, there are the more general demands of good land policy, such as security of land tenure. It is regrettably not uncommon for members of elite groups taking power after conflict to move very rapidly to appropriate land on their own behalf, taking advantage of the uncertainty and insecurity.

Reconciling these different demands is fundamental. In agrarian societies, land is important in ways that few of us in industrial and post-industrial societies can fully realise. Land is a means of production, and a hope of survival. It is also an element in identity and culture: you hold your land because of your descent, but the fact that you hold that land shows who you are, and places you in the social landscape. If you hold land securely, it gives you confidence in the future. It is hope for your children, a basis on which to build through investment, and an opportunity for economic betterment. In many countries it is still the primary source of GDP, and any programme of economic recovery must build upon it.

The task is central, but not easy. This paper considers the case of Rwanda, a hard case. It focuses primarily on the accommodation of returning refugees and displaced persons, but places this in the context of land policy and law-making in Rwanda.

## 2.1 Competition for land as a cause of conflict

In the case of Rwanda, there is fundamental agreement among scholars that land scarcity and consequent poverty and desperation have played a role in persistent social and civil conflict. There are differences in the way in which chains of causality of conflict are constructed, but land invariably appears in that chain.

It is worth reviewing some basic statistics at the outset, both for what they tell us about the role of land in Rwanda's recent conflicts, and also because of what they suggest about its role in future. Rwanda is the most densely populated country in Africa, with the lowest ratio between people and arable land. It has a population growth rate of 3.1%, and population density has increased from 101 people

per square kilometre in the early 1960s to 303 people per square kilometre today.<sup>1</sup> In the last 50 years, the population of Rwanda has almost quadrupled.

As the population has grown, land has been subdivided among heirs, and in some cases sold. The average size of a family farm holding fell from two hectares in 1960 to 1.2 ha in 1984, and to just 0.7 ha in the early 1990s. In 2001, almost 60% of households had less than 0.5 ha to cultivate. The Food and Agriculture Organisation (FAO)'s recommended minimum size of an economically viable cultivation plot in Rwanda is 0.9 ha. Land has historically been distributed unequally, and growing land markets are likely to be increasing land accumulation. In 1984, it was estimated that 16% of the population owned 43% of the land, whilst the poorest 43% of the population owned just 15% of the land. Estimates of landlessness range from 10% to 22%. While 47.5% of the population was categorised as 'poor' in 1990, this had risen to 64.1% by 2000.<sup>2</sup>

As suggested above, different authors have seen the connection between land and conflict in different ways.<sup>3</sup> Some have stressed absolute land scarcity, while recognising that other forces are in play (Andre and Platteau, 1995). Others, such as Percival and Homer-Dixon (1995), use the term 'environmental scarcity', making the distinction between simple resource conflicts caused by social processes working on the base of land scarcity, and environmental conflicts, situated at the interface between the natural and social spheres. Others, such as Gasana (2002), argue that it is unequal distribution of land that has been the cause of conflict in Rwanda, rather than simple scarcity. Inequality, however, does not cause conflict if land is plentiful, and erosion or other environmental forces are explanations for scarcity which supplement the Malthusian explanation, rather than being alternative explanations.

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<sup>1</sup> Many estimates are higher, often up to 320 people per square kilometre.

<sup>2</sup> Musahara and Huggins (2005) summarise the relevant data very effectively at pp. 298–307.

<sup>3</sup> Wyss (2006) provides a good short summary of the literature on land as a cause of conflict in Rwanda at pp. 10–11.

It is possible to emphasise roles played by population growth, social construction of ethnicity, elite capture of land and power, poor land governance and emerging class tensions due to inequality and poverty. Past conflict and the potential for conflict over land in Rwanda in fact involve a convergence of these factors, and it is not the purpose of this paper to try to assign relative weights to them. The government recognises the role of competition for land both in its policy documents and in the priority it has given land as a policy issue, and few would dispute that effective management of competition for land will be critical to the maintenance of peace.<sup>4</sup>

## 2.2 Competition becomes violence and genocide

The politicisation of land along ethnic lines is critical to the events that have unfolded in Rwanda. The distinction between Hutu and Tutsi existed prior to the arrival of the colonists, the Tutsi being pastoralists and the Hutu cultivators. The minority Tutsi were politically dominant and had control over substantial pastures, including valuable marshlands. The group shared a common language and a largely common culture. Ethnic distinctions were fuzzy, and there is evidence that households could shift identities as they shifted livelihoods. The Germans and later the Belgians supported the social construction of separate Hutu and Tutsi ethnicities.

The Hutu constitute a significant majority, with the Tutsi accounting for only about 14% of the population. The Germans and then the Belgians had given preference to the Tutsi in matters of governance, and in so doing had contributed substantially to the strengthening of opposed Tutsi and Hutu ethnicities. The issuance by the Belgians of identity cards specifying ethnicity strengthened this identification and solidified the boundaries between the groups. In the run-up to independence the Belgians embraced majority rule. Even before independence, political attacks on Tutsi administrators occurred. Clashes in 1959 had led to

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<sup>4</sup> Much of the recent literature has pointed out that the conflict was neither a simple conflict between Tutsi and Hutu, nor was it exclusively over land. Musahara and Huggins (2005) provide a nuanced discussion. These are good points, but they should not obscure the importance of land to past conflict, and its potential as a cause of future conflict. This stands out quite clearly in the propaganda leading up to the genocide.

the displacement of many Tutsi. Rwanda became independent under a Hutu-dominated government in 1962. Further pogroms against the Tutsi followed in 1963 and 1983. By the end of the 1980s, an estimated 700,000 Tutsis, perhaps a third of the Tutsi population, were in neighbouring countries, primarily Burundi, Zaire, Tanzania and Uganda. Those who remained, both Hutu and Tutsi, moved into the land the refugees had left behind. Extensive royal pastures were converted to farming and occupied by predominantly Hutu cultivators.

The Hutu-dominated government from time to time invited exiled Tutsi populations to return. In 1966 the government issued legislation on the reintegration of refugees,<sup>5</sup> but this severely limited freedom of choice of residence and freedom of movement. It provided that in no circumstances could returnees reclaim the lands they had been using where these had been occupied by others or designated for some other purpose by the authorities. The government was determined to protect ethnic land gains; one president of the period compared Rwanda to a full glass, which would only overflow again if refugees returned (Prunier, 1997; Semujanga, 2002).

In 1990, the Rwandan Patriotic Army (RPA), recruited from the Tutsi diaspora, launched an armed struggle against the government. More killings and displacements followed. The insurrection was waged primarily in the northern part of the country, and the government found it increasingly difficult to contend with the RPA. Peace negotiations began in Tanzania, and in August 1993 the Arusha Accords were signed. The Accords provided for the return of Tutsi refugees to Rwanda, and guaranteed them access to land.

The provisions of the Accords have had a decisive influence on land access for returnees. The Accords consist of a general agreement and six protocols. The Protocol on the Repatriation of Refugees and the Resettlement of Internally Displaced Persons in Article 1 affirms the right of return, with each person free to 'settle down in any place of their choice'. They only enjoy this freedom, however, to the extent that they do not 'encroach on the rights of other people' (Article 2). Article 3 states: 'For purposes of settling returnees, the Rwanda Government shall

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<sup>5</sup> Presidential Decree on the Reintegration of Refugees, No. 25/10, 26 February 1966.

make lands available, upon their identification by the “Commission for Repatriation” so long as they are not currently occupied by individuals. The Commission shall be at liberty to explore and choose, without any restriction, resettlement sites throughout the national territory’. The Protocol further specifies, in Article 28, that housing schemes in settlement sites should be ‘modelled on the “village” grouped type of settlement to encourage the establishment of development centres in the rural areas and break with traditional scattered housing’. This was a harbinger of things to come in national land policy under the RPF. But the Protocol did not specifically provide for how land would be given to the returnees for agriculture or cattle (Jones, 2006). Given the large cattle holdings of many of the Tutsi refugees, this is remarkable. A joint RPF/government team in fact travelled throughout the country in the months following the signing of the Protocols, identifying potential sites.

Most striking, however, is Article 4 of the Protocol, which states that each person has a right to reclaim his or her property upon his or her return, but then goes on to ‘recommend’ that, in order to promote social harmony and national reconciliation, all refugees who left the country more than ten years ago ‘should not reclaim their properties, which might have been occupied by other people’.<sup>6</sup> They were instead to be provided with land elsewhere. This was a major concession from the RPF. An RPF stalwart from that period explained: ‘We had been told that “the glass was full”. How could we come back? Rwanda is small, but it can accommodate us all if the land is better managed. We made this decision because we did not want to create new refugees. It would not have been intelligent’.

Jones (2006: 203) concludes: ‘The “ten-year rule” was painfully negotiated primarily as a pragmatic (and political) solution for achieving peaceful return. Given the ethnic tensions that existed and the history of past and recent conflict, it seems highly likely that if complete restitution of properties had been allowed immediately, there would have been considerable social upheaval and further outbreaks of violence – particularly as there had been a concerted redistribution of properties’. The ten-year rule was and is often presented as ‘a reconciliation

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<sup>6</sup> It was suggested to the author that it had some legal basis in a prescription rule, but most dismissed this as a post-rationalisation.

measure’, and is so described in a recent NURC survey on land, property and reconciliation (NURC, 2005). This provision did not, however, affect refugees who had left the country more recently (the new caseload), nor those displaced internally; these people retained the right to reclaim their land.<sup>7</sup>

Despite the concessions on land made by the RPF in the negotiations, Hutu extremists in government and the armed forces were outraged by what they saw as a betrayal by their government. Hutu access to land of the Tutsis who had fled had been a major programme of that government. Hutu anger was fanned by the downing of the presidential plane and the death of the Hutu president in circumstances that have still not been entirely clarified today, but which extremists blamed upon the Tutsi. In April 1994, they responded to the Peace Accords and the prospect of Tutsi return by launching a rampage of killing by Hutu militia (*interahamwe*). Over 800,000 Tutsi and moderate Hutus throughout the country died in the ensuing communal violence. Peasants killed neighbours with farm implements. The genocide was brought to an end by the disintegration of the national army and the occupation of Kigali in July 1994 by the RPA.

It has been suggested that the habit of obedience to authority lay behind the genocide. That may have been a factor, but to this author at least the tragedy makes little sense except in the context of decades of competition and conflict over land. Its prominence as an issue in the Arusha negotiations tends to confirm this, and when the author asked Rwandans about the roots of the conflict, their answers invariably included reference to land.

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<sup>7</sup> A commentator on a draft of this paper raised an interesting question with regard to the ten-year rule, to the effect that, after 35 years outside Rwanda, in countries of relative land plenty, the RPF negotiators may have underestimated the extent of land scarcity in Rwanda, which had grown dramatically during that period.

## Chapter 3: Returnee land access

### 3.1 The 'old caseload'

The first wave of returnees, around 700,000, were primarily Tutsi returning from Uganda, Burundi, Zaire and Tanzania.<sup>8</sup> The genocide and the collapse of the government army had led to a more rapid advance by the RPF than anticipated, and the RPF suddenly found itself the government. A minister in the first post-genocide government remembers:

*The government was set up after the genocide. The NGOs and international organizations had a more powerful presence than our government. We just had guns to provide security. I belonged to the first government. We negotiated with the International Red Cross. We had no salaries, nothing. We needed beans and maize for six months to survive. We got major assistance, and it was really appreciated. But there were so many NGOs operating. We didn't know how many, we didn't know where they were or what they were doing, but we met and met and finally reached understandings.*

Asked about the handling of land issues, he continued:

*The international community did not seem to understand the land issue. The claims were social and political. The international community was preoccupied with the size of the return and how many would have to be accommodated. After the genocide, there was a total loss of focus on land. There had been plans for land to be identified beforehand, for the refugees and cattle to wait at the border, to be provided with goods and funds, their animals vaccinated. None of this happened.*

Another remembered: 'RPF when gaining territory said that it would gather returnees into camps, but after 1994 many people just went home'.

The return was for all practical purposes uncontrolled. Refugees flowed into the country in the wake of the RPF as it occupied territory in its advance towards Kigali. International agencies had fled the country during the genocide and in its immediate aftermath. They returned within months, but there was a hiatus. And the government took time to get organised. A veteran RPF politician recounts the difficulty of the early days in government, and of getting a handle on the resettlement: 'We had just arrived. There were only a few of us who were politicians. We were running here and there. The returnees cut down much of Gishwati Forest before we even knew about it'.

As some 700,000 Tutsi began to return from Uganda and Kenya, between two and three million Hutu fled Rwanda for Zaire and Tanzania, some fearing retribution for the genocide, others forced to flee with retreating militia and remnants of the former army. One result was that many returning Tutsi found that their lands, even if they had been occupied by Hutu for many years, were now available for reoccupation. Jones (2002: 207) notes that there were some cases in which some Tutsi returnees simply took houses and land from Hutus, but that the majority of the returnees did not resort to violence and did not seek to occupy their old homes.<sup>9</sup> It should be remembered that it was only the refugees who had been out of the country for over ten years who were not to reclaim land under the Arusha Accords, and they were only prohibited from doing so if they found their land occupied by others. Tutsi refugees who had left the country at a later date could reclaim their lands, as could those who had been internally displaced or had simply lost land.<sup>10</sup>

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<sup>8</sup> They are referred to in Rwanda as the 'old caseload', the 'old case returnees' or the '1959 refugees', referring to the year when many of them fled the country. They are not called 'Tutsi returnees' because there were moderate Hutus among them, and the current government, seeking to play down ethnic identities, prefers euphemisms for what was in fact a heavily Tutsi wave of returnees.

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<sup>9</sup> Jones (2002: 206, note 32) notes that there were some violent property takeovers by Tutsi returnees, and that a few did challenge the ten-year rule, but rarely successfully.

<sup>10</sup> SORCHA O'CALLAGHAN in comments on a draft of this paper notes that there were many new households among the returnees, created by marriages in exile, which

For those who were not able to be accommodated because of the ten-year rule, the government was, under the Protocol on Repatriation, to 'compensate by putting land at their disposal and helping them to resettle'. The new RPF government was responsible for providing unoccupied lands as resettlement sites. In fact, there was little in the way of unoccupied land. Another veteran RPF official remembers: 'Akagera Park was one-seventh of the country, too much compared to other nations. So we reduced it. In other areas, we assumed that if land was free, people could recover it. If the land was taken by government or the church, it would need to be returned or compensation provided'.

The current Minister State for Lands has described the process as follows (Hajabakiga, 2004):

*As they returned, some of the former 1959 refugees briefly occupied land and property that had been abandoned by the refugees in 1994. Other former refugees were granted public state land, and vacant land on which they could resettle and produce. They received to this effect: the Mutara Game Reserve, two thirds of the Akagera National Park, and the Gishwati Mountain Forest; as well as land belonging to certain state-owned projects were partitioned and distributed to the 1959 refugees. Communal land, woody areas on fertile land, pastures, and areas near the shallow sections of marshlands were allocated to the 1959 refugees.*

Some of these areas of spontaneous resettlement have required continuing government attention. For example, an estimated 8,000 displaced families who settled within Gishwati Forest in north-west Rwanda had to be expelled later for environmental reasons and, after substantial delays, were resettled in Gitarama (UNHCR, 2000).

A 2000 UNHCR retrospective on the process describes these refugees of 1994–96: 'These returnees had no land and property to go back to and installed themselves in houses deserted in towns, commercial centres, and in rural areas. Mostly, they did not believe that Rwandans who had

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had never had landholdings in Rwanda, though they may have had claims to patrilineal land.

fled in 1994 would return and made little effort to take up the often marginal land allocated to them by the government'. But in other areas returnees, with the help of international humanitarian agencies, settled in villages, *imidugudu*, as envisaged in the Arusha Accords. They formed the nuclei of new resettlement villages (pl. *imidugudu*, sing. *umudugudu*). Sites were identified in a hasty process by government teams, and based in part on visits made by teams during the period between the Arusha Accords and the genocide.

UNHCR and other humanitarian organisations launched a major shelter programme, involving the building or renovation of over 100,000 houses, most of them in the *imidugudu*.<sup>11</sup> The owners of land acquired for the *imidugudu* were never compensated. Because land was considered to be state-owned, even in theory they had claims only to compensation for houses and crops. An NGO worker involved in providing food and shelter to the new *imidugudu* remembers: 'At that time, no one even asked, whose land is this being allocated?'. Another NGO worker involved recalls: 'We were assisting them. Many things had been destroyed, we were starting from zero. At first it was pure relief, providing pots, jerry cans, blankets, cups. Then the shelter programme, and houses built to government specs. The 94 returnees first had to stay with family, but wanted housing in the *imidugudu*. Some 94s also occupied houses and others had to stay outside. You still see these lines of houses with no services. The NGOs backed off because of lack of services. Government was very unhappy, it was very contentious'.

It is remarkable that, during this period, the RPF government remained fully committed to the provisions of the Arusha Accords, including the ten-year rule and provisions on resettlement villages. After all, the government with which the RPF had negotiated the Accords was gone, a victim of the military collapse. Assumptions that the parties had shared at Arusha were no longer valid; no one had anticipated the genocide and the dramatic outflow of Hutu refugees. The commitment of the new government included a commitment to the ten-year rule, a rule only recommended in the Accords. Jones

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<sup>11</sup> UNHCR (2000) indicates that a little over a quarter of these units are in the *imidugudu*, but other sources suggest that most, and possibly a large majority, were in the *imidugudu* (Human Rights Watch, 2001).

(2002) observes that ‘Despite the conditional wording, the provision has largely been treated as mandatory in its implementation’. A former minister from this period explained: ‘Arusha was well negotiated. It offered the promise of political stability. It was our Bible’. When the new Fundamental Law, the Constitution, was drafted, many of the provisions of the Accords were incorporated verbatim.<sup>12</sup>

The continuing commitment of the government to the principles of the Accords may in part reflect promptings by the international community, but the author has found nothing that explicitly suggests this. That commitment may have instead stemmed from the RPF’s consciousness of a need to build trust among the Hutu population and a broader political constituency, given the narrowness of its core ethnic Tutsi constituency.

### 3.2 The ‘new caseload’

The ‘new caseload’ is composed of the Hutu who fled the country in 1994 and then returned, largely in 1994–97. A senior official summarised: ‘In 1994 three million people left the country, out of a total population of 7.4 million, and while two million have returned, a further million are dead from disease and war, or still remain in the Congo’.

The Hutu return came in a number of stages, the first a sudden and unanticipated mass return from Goma in Zaire in July and August 1994 following attacks by the army on the refugee camps and the insurgents, and a cholera outbreak in the camps in North Kivu. Returnees received whatever assistance agencies could provide on the return route. In many places, they returned to find their homes looted and damaged, but faced few problems recovering land and property and their farm crops were still intact. (In others, such as Gitarama, relatively few homes were destroyed.) These people were re-established in their home communities within a short time. There were further huge returns in November–December 1996, following an illegal refoulement by the Tanzanian government, continuing through

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<sup>12</sup> It is not clear whether the government continues to consider the Accords operational, or whether they have effectively been replaced by the new Constitutional Provisions, which vary them in some respects. A number of officials consulted were of the latter opinion.

1997, and their relocation was sometimes more problematic (UNHCR, 2000: 24).

Most of the Hutu who had fled to Zaire came from central and northern Rwanda, and few Tutsi returnees had resettled in that part of the country. The Hutu returning to those areas were able to reintegrate fairly satisfactorily. But in other areas of the country, Hutu returned to find that land they had occupied was already occupied by recent Tutsi returnees. Especially in late 1996 and 1997, the two waves of returnees to some extent overlapped. In September 1996, the Ministry of Agriculture issued an instruction which established communal commissions to find abandoned land for returning refugees, giving priority to Tutsi returnees, and allocating it to them on a temporary basis until the return of the owners. When Hutu began to return, however, fears of retribution for the genocide meant that, at first, few Hutu returnees were brave enough to press their claims. By the end of 1997, however, a presidential address threatening action by the army against Tutsi who refused to vacate properties upon the return of the rightful owners resulted in more claims and evictions of temporary allottees. Characterising this period, Hajabakiga (2004) writes: ‘As they returned, some of the former 1959 refugees *briefly occupied* [author’s emphasis] land and property that had been abandoned by the refugees in 1994’.<sup>13</sup>

Faced with the return of Hutu holders, some Tutsi who had occupied their land shifted into the early *imidugudu*, as did some Hutu who had failed to find accommodation elsewhere. But in some areas, an expedient called ‘land sharing’ was initiated. This was done initially on local initiative, notably in Kibungo Province in the east, and spread to some other areas. A veteran politician reported: ‘We tried to implement the accords, but in some areas like Kibungo we needed to do land sharing. We had to adapt. Even now we have to adapt’.

Kibungo Prefecture in eastern Rwanda had received large numbers of Tutsi returnees in 1994, and in 1996 there began a major influx of Hutu refugees, who found their former lands occupied. The local Prefet (Governor of the Province) launched a series of community meetings to encourage the earlier Tutsi returnees to share their land with the returning

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<sup>13</sup> The emphasis added in the text is to suggest that the occupations may have lasted longer than suggested.

Hutu. One former official remarked: ‘Those 94 returnees who had occupied land and houses in Kibungo knew that it was temporary. They knew the houses and crops did not belong to them. We managed to convince them to share. It was very satisfactory’. Hajabakiga (2002) wrote: ‘The government policy of plots sharing has been encouraged to allow old case refugees of 1959 to get a piece of land in order to earn a living’. This approach has been adopted sporadically elsewhere in the country, including Kigali Rural and Umutara, and was still ongoing in December 2006 in some locations in the north, where infiltration by insurgents from the Democratic Republic of Congo (DRC) had prevented an orderly land-sharing process.<sup>14</sup>

Compliance with land sharing was in theory voluntary, but pressure from officials is said to have been intense. A UNHCR staffer familiar with the process explained: ‘Regarding land access, local officials tried to negotiate access to land for returnees. But some parties were threatened by occupants or neighbours. Authorities got involved, and these situations were resolved not legally but by negotiations. People had no choice. It’s all about access to services. If you didn’t do it, you would have a problem. You go along to get along’.

It is not possible to determine the extent of land sharing. It was certainly localised, done on local initiative, and this makes it difficult to quantify the process. What is clear is that those who lost land in the land-sharing process did not receive compensation for it. Land-sharing was not implemented even-handedly, and some officials continued to hold large plots. As Jones (2003) indicates, this was a violation not only of Rwanda’s obligations under international agreements but also of the new Constitution’s property guarantees. Nonetheless, the government clearly considers land sharing an acceptable expedient, and still resorts to in special cases, without compensation. Some such cases are noted later in this paper.

### 3.3 *Imidugudu* and the habitat policy

Article 28 of the Arusha Accord’s Protocol on Reintegration states that settlement sites should be ‘modelled on the “village” grouped type of

settlement to encourage the establishment of development centres in the rural area and break with traditional scattered housing’. This reflected a policy dating back to the colonial period, when the Belgians had sought to group peasants in *paysannat*.<sup>15</sup> In 1996, the new government adopted a National Habitat Policy which stated that dispersed patterns of homesteads in the countryside were an inefficient use of land, and called for the regrouping of all inhabitants into villages. This converted a programme of resettlement in villages envisaged in the Arusha Accords as a means of accommodating Tutsi returnees who could not get land elsewhere into a major national social engineering initiative. The Policy was adopted by the Cabinet in 1996, but was never debated or endorsed in parliament or in public, and implementation proceeded without a solid legal basis.

From the beginning, there were problems with sites and services. An NGO worker who provided services to the programme remembers: ‘Mistakes were made. Houses were put in with no services. You need water, you need a market, and a health centre nearby. People were promised electricity but never got it’. And while it was said that compulsion would not be used, the Ministry of Interior and Communal Development issued an instruction prohibiting people from constructing homes on their own land, if these were outside *imidugudu*. Refugees who returned after January 1997 to find their homes destroyed could not simply rebuild on their former land, but were required to construct new homes in *imidugudu*. Some households moved voluntarily, but in other cases forced removals to *imidugudu* occurred. While the villagisation programme was supposed to allow for more efficient land use in rural areas, those who were forced into villages usually never gave up their old land, and just had to go further to farm it. And while the Habitat Policy recognised that expropriations of land were involved in villagisation, and stated that compensation would be paid, this happened only in a minority of cases. If

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<sup>14</sup> The author was informed of the land-sharing going on in the north when he visited the area in December 2006.

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<sup>15</sup> One of the objectives of the *paysannat* was to establish minimum holding sizes, creating farms deemed large enough to be commercially viable by colonial authorities. The programme has been criticised, and in the event has proven impossible to sustain (Blarel et al., 1992). The holdings in the former *paysannats* observed by this author have now been subdivided and are indistinguishable from other holdings.

compensation was received, it was in the form of compensatory plots in the *imidugudu*.

One of the first signs of unease with *imidugudu* in the international humanitarian community came in 1998. In April ACORD, one of the international NGOs working in the country, published a study which raised serious questions about the wisdom of the villagisation programme (ACORD, 1998). The study was initiated in response to early drafts of a land law which contained articles that would have legitimised some of the abuses associated with the creation of *imidugudu*. Those articles called for the establishment of *imidugudu* nationwide and prohibited the construction of new houses elsewhere than in resettlement villages. (The construction prohibition was eventually deleted from the draft.) The report raised numerous objections to the implementation of the idea of *imidugudu*, including poor choice of sites, sites lacking economic opportunities or raising environmental issues; failure to involve the concerned populations in the choice of sites; negative effect of distance from homes in the villages to productive resources; failure to systematically address issues of landholding; weak policy development resulting in inconsistencies and disorder in implementation; the creation of some settlements consisting entirely of widows; and failure to address more fundamental land reform issues, such as the holdings of the Church and political and economic elites. The report found that some of the villages it studied were not viable communities, but had a high percentage of female-headed households, and a population largely composed of repatriated elderly people and genocide survivors.

Forced relocation became a much more serious issue when, in the north-west, villagisation became an anti-insurgency strategy in the context of the 1997/98 insurgent incursions from Zaire. Jones (2005) probably reflects the opinion of most of the international community when she describes the *imidugudu* process as a reasonable expedient, but says that this changed with the relocations in the north-west. The government proposed to implement the Habitat Policy by relocating 700,000 displaced people to *imidugudu*, a move viewed by most as a control measure. The army began large-scale forcible relocations, burning down former houses. Donor criticism grew. A recent NGO report (Norwegian Refugee Council, 2005) reviews the

situation in heavily Hutu Ruhengeri and Gisenyi prefectures. The report estimates that 180,000 households are living in inadequate shelter, of which more than 100,000 are in those two prefectures. It cites reduced access to land and deteriorating housing conditions, and refers to 'appalling conditions' in settlement sites (p. 12).

In May 2001 Human Rights Watch issued a report claiming that tens of thousands of people had been resettled against their will, and that many of them had to destroy their homes as part of the government's efforts to stabilise the insurgency situation during the counter-insurgency operations in 1997 and 1998. It urged the international community to press for a re-examination of whether this programme really works. RISD and Oxfam also raised concerns about resettlement.

In the end, donor assistance for the programme dried up. The international community never formally repudiated the programme, but it has gradually withered. While the Habitat Policy is not dead, the government is not pressing forward with the programme, but is concentrating instead on rehabilitation and services for some of the existing villages.





## Chapter 4: The role of international humanitarian organisations

What influence has the international humanitarian community had over these events? International agencies have been involved from the outset and played a major support role. UNHCR as the lead agency has been consistently supportive of government policies and programmes, though it has at times played a moderating influence. It clearly did not see land *policy* as part of its responsibility. The large number of relief and rehabilitation NGOs who worked to implement the UNHCR-coordinated shelter programme and other programmes for returnees<sup>16</sup> also seem not to have focused on land issues in the first two years after the 1995 return. If they did, it did not leave much of a paper trail. A decade later, it was difficult to get details. Some development and human rights NGOs with more significant experience with land policy issues have been more discriminating in their support for government programmes, and have provided useful critical input. Finally, the international NGO community has played a key role in support of the emergence of the civil society organisations working in the land policy area.

In 1992, UNHCR was mandated in the Arusha Protocol on Refugee Return as the lead agency for organising the repatriation of refugees over a six-month period and to provide shelter and related social infrastructure in new villages for this caseload. UNHCR in collaboration with the UN Research Institute for Social Development (UNRISD) was mandated to prepare a socio-economic profile of the refugees and a study of the country's absorption capacity in order to facilitate reintegration and plan international development assistance.

A UNHCR retrospective (2000) on its role in Rwanda stresses the size of the task: an old caseload consisting of 608,000 returnees in 1994, 146,476 in 1995 and another 40,000 in 1996–99, for a total of over 800,000; and a new case load of 600,000 returnees in 1994, 79,302 in 1995, 1,271,936 in 1996, and over 200,000, for a total of over two million. The total number of returnees was over three million. Over six years, UNHCR spent \$183 million on projects to help basically reinstall the

three million and reconstruct the country (UNHCR, 2000: 27).

The work began under difficult circumstances. In October 1993, UN Security Council Resolution 872 established the United Nations Assistance Mission for Rwanda (UNAMIR) to assist with the implementation of the Peace Accords. Withdrawn six months later at the commencement of the genocide in early 1994, UNAMIR returned in July 1994, with a focus on the repatriation of Hutu refugees. In September 1994, the United Nations Human Rights Field Office in Rwanda (HRFOR) was established, and was in place through July 1998.<sup>17</sup> By the end of the year, UNHCR had begun organising repatriations and, at the end of December, through Operation Retour, UNHCR, with the International Organisation for Migration (IOM) and British Direct Aid (BDA), began to coordinate transport for internally displaced persons back to their communes of origin.

In November 1995, UNHCR embarked on a rural shelter programme with an initial target of 25,000 families, or 125,000 individuals. The target number was later increased to 100,000 houses to provide shelter for half a million people. In 1996, UNHCR through its shelter programme built and rehabilitated 17,276 houses for returnees. UNHCR helped with site identification and planning as well as technical and supervisory support during construction. UNHCR supported the construction or rehabilitation of around 100,000 houses over a five-year period between 1995 and 1999, providing shelter for half a million Rwandans. Of those, the 2000 report indicates, 27% were in resettlement sites, while 73% were in scattered or clustered locations throughout the country.<sup>18</sup>

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<sup>17</sup> UNFOR focused on gross violations of human rights, political killings in particular. A 1995 OECD retrospective (Barre et al., 1999: 25) suggests that UNHFOR was ineffective and suggests 'Its failure was partly due to the rapid turnover of HRFOR leadership (five heads of mission in two years and six months without a head) and to its practice of hiring unqualified and untrained people. The extremely slow disbursement of funds by the donors, and the weak personal and institutional relations created with the GOR, also contribute to the problem'.

<sup>18</sup> Human Rights Watch (2001) raises questions about these figures. It suggests that the 27% figure may refer to houses actually constructed by UNHCR, the remainder

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<sup>16</sup> UNHCR (2000) lists 58 international NGOs, and 54 Rwandan NGOs.

The 2000 UNHCR report (p. 26) touches on land sharing. It remarks that, following the mass return of the refugees in 1996, there were conflicting claims and the government adopted different policies in different localities. While in some cases people were moved onto recently opened public land, in others 'land had to be shared by mutual consent'. It concludes: 'The latter worked fairly well in Kibungo Prefecture, for instance. After verifying that land was being shared by consent of the rightful owners, UNHCR quickly proceeded to distribute shelter materials and helped returnees to build houses'.

The same report (p. 42) deals with the role of UNHCR in support of the *imidugudu* programme. It notes that 'the perceived involuntary nature' of some resettlement activities had caused several governments to withhold support. By 1999, it argues, the Rwandan government was taking pains to delineate the policy, to make its application more transparent, and pay more attention to respect for individual rights. UNHCR, the report suggests, made an effort to distinguish between cases of voluntary and coerced villagisation schemes, and in effect supported *imidugudu* when it appeared to be voluntary and with the consent and knowledge of the beneficiaries. The report (p. 46) stresses another part of UNHCR's strategy. Local authorities were encouraged to ensure that farm plots were allocated for each family near the villages. 'UNHCR facilitated the provision of farm plots to residents, but it was and continues to be the government responsibility to carry out the distribution process.' The report acknowledged that some beneficiaries had to walk up to several kilometres to their farm plots, and that this was 'indeed an inconvenience and an issue to be addressed'.

UNHCR in the end remained a firm supporter of *imidugudu*. A draft report by a UNHCR-funded shelter evaluation team in December 1999 concluded (UNHCR, 2000: 42): 'It is the opinion of the mission, that given the constraints faced by Rwanda (land availability, birth rate, influx of returnees, population density) there have been no viable alternatives proposed to the creation of *imidugudu*, although the policy remains

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being houses constructed by local people with building materials distributed by UNHCR through local authorities. HRW suggests that some – perhaps the majority – of those building materials were also provided in connection with *imidugudu*.

controversial to a number of donors. Rather than discussing the policy, the international community should ensure provision of the technical backstopping and training to allow the policy not to become a failure. More efforts should be placed constructively into how it is implemented rather than on discussion of what is being done'.

Until 2000, the report suggests, UNHCR and other actors involved in the shelter programme had not considered a policy for or against villagisation in Rwanda. In 2000 a Thematic Consultation on Resettlement was launched as a means of continuing the dialogue and reaching a consensus among the development partners. The Framework adopted in February 2000 contained a number of cautionary points but reaffirmed the UN commitment to support the programme. In 2000, the United Nations Community adopted a Framework for Assistance in the Context of the *imidugudu* Policy, which encourages the government to continue a dialogue on the issue, to adopt a more participatory rights-based approach and to resolve legal issues related to land ownership and use. The retrospective concludes (pp. 47–49) that the *imidugudu* contributed to the peaceful resolution of a number of land disputes between old caseload refugees, new caseload refugees and survivors of the genocide. It asks: 'Was the shelter program in Rwanda a success? So far, property-related conflict has been avoided, unlike in the former Yugoslavia'. This seems spurious. The absence of overt conflict in response to the *umudugudu* programme probably has less to do with the virtues of that programme, involving as it did substantial human rights abuses, than with the general atmosphere of fear and exhaustion.

The extent of implementation of the Habitat Policy varied widely from province to province, but has been substantial in some provinces. A recent ISS report (Alusala, 2005) notes that 90% of the population in Kibungo and Umutara prefectures lives in grouped villages, reflecting the large number of Tutsi who fled to Uganda and who, when they returned, were accommodated in the villages. Ruhengeri is third, with more than 50%, and Gisenyi fourth, with 13%. Only a very limited number of people live under this programme in other prefectures. Implementation of the Habitat Policy is in fact stalled. A recent NGO report (Norwegian Refugee Council, 2005) has called for renewed international attention to the consequences of the

programme, and the redress of the inequities created in the north-west, where *imidugudu* became part of an anti-insurgency strategy and compulsion in the creation of *imidugudu* was most pronounced.

Despite UNHCR's consistent endorsement of the programme, UNHCR is no longer a major player in land policy in Rwanda. Other donors, such as USAID, DFID and the EC, who have stepped into its shoes as relief and reconstruction gave way to development programming, have been far more wary of *imidugudu*. In 2006, a Law on Habitat was proposed by the Ministry of Infrastructure (MININFRA) that might have revitalised the effort, but it contained substantial provisions that weakened property rights and was strongly opposed by MINITERE. It was withdrawn from parliamentary consideration in December 2006. Efforts now are concentrating on delivering long-overdue infrastructure and services to the *imidugudu*.

A thorough examination of the *imidugudu* experience by Human Rights Watch (2001) concluded: 'In an ironic twist, the program which donors supported in the hopes of ending homelessness covered another which caused tens of thousands of Rwandans to lose their homes. Praise for the generosity and promptness with which donors responded to the housing program must be tempered by criticism of their readiness to ignore the human rights abuses occasioned by the rural reorganization program that operated under its cover'. The facts seem clear enough and it is important to understand better why the mistakes were made, not in the interest of assigning blame but in the interest of avoiding them in the future.

UNHCR's concern with the immediate needs of returnees for shelter appears to have overridden any qualms it may have had regarding the potential land problems of a resettlement programme. Recall the comment by a minister in the first government quoted earlier: 'The international community did not seem to understand the land issue. The claims were social and political. The international community was preoccupied with the size of the return and how many would have to be accommodated'. This preoccupation is understandable, given the chaotic conditions in which it was initiated. Faced with the huge challenge of delivering shelter – which UNHCR documents repeatedly emphasise as its priority – the delivery of that housing is obviously far easier if it can be done in concentrations rather than in

scattered hamlets. The simple logistical advantages of the approach the government proposed must have been very seductive to UNHCR.

Why, when it became a major social engineering exercise – and in one part of the country became central to an anti-insurgency strategy – did the international humanitarian community not more critically examine its role? The Human Rights Watch report mentions a variety of early expressions of concern about both the technical soundness of the *imidugudu* concept and problems in its implementation, and even opposition to the policy on the part of individuals in the donor community. But it concludes that, ultimately, human rights seem not to have been a priority of the donors, and donors failed to mount a serious critique of the policy. A number of factors may account for this failure. One is guilt over the international community's failure to mount an effective response to the events leading to the genocide. The new government had moral authority as the representative of those who had been brutalised, and a clear sense of what it wanted to do. That combination would not have been easy to resist, and with early information from the field patchy and inconsistent, it would have been easy to set aside misgivings.

It might have been hoped that UNDP, which had theoretical authority for the coordination of UN activities, would have taken a broader view. The Human Rights Watch report notes early concern on the part of an UNDP representative, and points out that UNHCR and UNDP had different approaches to resettlement: UNHCR focused on building houses as fast as possible, while UNDP favoured more integrated programmes involving infrastructure, services and income-producing plans. Even though a Joint Reintegration Programming Unit was established by the two agencies to coordinate efforts, the report concludes that coordination remained poor, 'perhaps because they were similarly intent on using housing programs to maximize the amount of resources that come to their agencies. Concern for human rights apparently drops from view in this competition'.

On the one hand, lack of attention to land issues and human rights is not surprising given that UNHCR had not systematically built a core expertise in land policy and law. On the other hand, one might have expected it to have done better, given the level of institutional experience with refugee resettlement.

The land issues that arose in resettlement in Rwanda were not qualitatively different from those that arise elsewhere. In fairness, UNHCR had in 1996 seen the *imidugudu* programme endorsed, though with qualifications, by a consultant provided to the government by FAO's Land Tenure Service.<sup>19</sup> In the end, UNHCR seems to have provided little by way of a moderating influence. It was the NGOs working in rural development and human rights, and academic researchers, who raised concerns about its implementation, and provided critical intelligence.

By 1997 some systematic information was available in the form of an anonymous report funded by 'donors' (Human Rights Watch, 2001). It appears to have raised both technical concerns and concerns about compulsion, though it is not clear how widely this report was circulated. The Lutheran World Federation had already issued instructions to staff that it could only assist in resettlement where movement into the new villages was voluntary, where those who moved into the villages were not required to destroy their existing housing, and where there was a reasonable level of service provision (Human Rights Watch, 2001). In April 1998 ACORD published its critique of the viability and technical soundness of the programme. A 1999 study from the Rural Development Sociology Group at Wageningen University (Hillhorst and van Leeuwen, 1999) also raised concerns. The first full documentation of the human rights abuses associated with the programme emerged in 2001, in the Human Rights Watch report. It is difficult at this remove in time to tell how aware most donors were of the issue, but a 1999 retrospective study by OECD (Barre et al., 1999), examining the ability of donors to influence policy in the pre- and post-conflict contexts, makes virtually no mention of the land issue.

There is a further contribution by the NGO community in this area that deserves attention, and that is the facilitation of the creation of the first and most significant 'Land NGO', LandNet Rwanda. LandNet Rwanda was created in 1999 in connection with DFID-initiated work to establish an Africa-wide network of national chapters of LandNet Africa. It is itself a network of local and international NGOs

dealing with land policy issues in Rwanda, and has strong DFID and Oxfam connections. In Rwanda, CARE International provided early support, detailing a staff member to work on setting up the organisation, providing initial office space and services and modest initial funding.

Most of LandNet Rwanda's constituent organisations are based in Kigali, but organisations in the field provide it with a strong understanding of land issues and rural issues generally.<sup>20</sup> Its specialisation in land has made it a valuable player in policy discussions. Much of its input has been informal, through its membership and through occasional workshops. LandNet has an official of the Ministry of Lands as a member, which facilitates dialogue. Musahara and Huggins (2004: 289) note that 'LandNet has had to walk a fine line between procedural, formal dialogue with the government, and more direct "lobbying" tactics, such as writing directly to the President to seek an audience. A mix of tactics has been used ... While the relationship between LandNet and the government has generally been positive, tensions have been evident when the network has taken the initiative to lobby senior politicians'. The correct balance between independence and effectiveness is never easy to strike, but it is clear that the support from CARE International and other international NGOs have made a significant contribution in this regard.

While selected NGOs have provided alerts and important information on land issues, they have not programmed significantly in this area. CARE has supported LandNet/Rwanda, and in the context of its other programmes is to a limited extent addressing land disputes resolution. IRC cosponsored with DFID and SIDA a 2005 opinion survey on 'Land, Property and Reconciliation'. Oxfam has engaged primarily through support of LandNet/Rwanda. The Norwegian Relief Association is providing funding to support studies by Africa Rights at several sites in Rwanda on the land access issues facing women, widows in particular, as well as monitoring by CAURWA of Batwa land access.<sup>21</sup>

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<sup>19</sup> Barriere (1997) *Cadre Juridique de la Reforme Fonciere au Rwanda; Analyses et propositions preliminaires* (Rome: FAO).

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<sup>20</sup> Another knowledgeable and influential NGO making input on land issues is the national farmers' organisation, IMBARAGA.

<sup>21</sup> Rwanda's indigenous forest dwellers, the Batwa, have suffered land loss as a consequence of refugee return. Disadvantaged for many decades with respect to land access, they found their forest habitats seriously reduced

The Norwegian Refugee Council (2005) and Swisspeace (2006) have published studies seeking to draw attention to land-related human rights violations. This limited engagement with land issues is not surprising, given the sensitivity of the issue and the uncertain land policy environment of the past decade.

There are local CSOs through whom such NGOs could work, but they are weak and reluctant to assert themselves. Musahara and Huggins (2004: 283–85) note that, even when CSOs have had opportunities to put forward their views on land in contexts such as the PRSP process leading to the 2002 Poverty Reduction Strategy, they have hung back. The authors attribute this to damaged social structures from the genocide, links between government and most CSOs, and the centuries-old tradition of centralised, exclusivist governance.



## Chapter 5: Policy and law reforms

The situation on the ground in Rwanda during the critical years of refugee return (1994–1997) was radically different from the position the negotiators at Arusha had assumed in framing plans for the post-conflict period. The new government saw compliance with the Arusha Accords as important to its legitimacy, and their provisions on land continued to exercise an influence over events that might not have been expected, given the collapse of the government with which the RPA had negotiated at Arusha. While the government ultimately affirmed the ten-year rule, it wavered on the issue, and the rule was honoured unevenly. The development of resettlement villages anticipated in the Accords became a much more ambitious and ultimately less satisfactory villagisation programme. Land-sharing emerged as an improvisation in areas where other land was not available. It involved subtle compulsion, effective nonetheless in an atmosphere of fear and uncertainty, and has been criticised as a violation of Rwanda's international agreements and the Constitution's guarantee of property rights.

While the new government launched the Habitat Policy without a clear legal basis, it soon sought to use the law as a tool of social change and control, as part of a process of establishing its legitimacy. The first major legal reform affecting land was the Inheritance Law of 1999. This reflected a recognition that the war and genocide had resulted in a major increase in the number of households headed by women whose husbands had died or been imprisoned. The Law provides that women can inherit from husbands, and that all children recognised by civil law, male and female, will inherit property without discrimination.<sup>22</sup>

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<sup>22</sup> Commentators have pointed out that, despite the positive implications of the new law, it does not legitimise the many children of illegal and informal unions, nor can it be applied retrospectively to the many legitimate children of men who died in the genocide. Finally, it leaves substantial discretion over allocation of the estate in the hands of the family council, which seems likely to work against wives and daughters. The incidence of HIV/AIDS has raised another set of family issues concerning land, the land rights of orphans. For a thorough discussion of these issues see Rose (2005) and Rose (2004).

From 1997, the government sought to address land issues on a broader scale by starting work on a new Land Law. A new land law had to do at least two things. First, it had to handle the three main thrusts of efforts to provide land access to returnees: allocation of parklands, land sharing and villagisation. Parklands issues had faded; refugees had been evacuated from Gishwati Mountain Forest, and the government had indicated that key environmental resources would be preserved in the future. But land sharing, villagisation and land consolidation were still live issues. Second, the Law had to address social reconstruction and economic development, and the role of land in these processes. That included working out the roles to be played by property right and incentives on the one hand, and land use planning and sanctions on the other. A 1999 workshop sponsored by LandNet Rwanda provided a forum for an open discussion of the issues raised in the Land Law, including that of compensation for land.

Musahara and Huggins (2005) note that, while a first draft of the Law existed by 1999, its finalisation was delayed by a decision to prepare a Land Policy document to explain its contents. This reflected the urgings of major international donors including the World Bank, to the effect that solid articulation of policy should come before law-making.<sup>23</sup> This provided both donor agencies and civil society with fuller opportunities for input into the policy decisions reflected in the draft law. The Policy was drafted in 2000–2001, and received some public discussion. Many of the policy directions were presaged in the 2001 Poverty Reduction Strategy Paper, and the development of the PRSP provided new opportunities for NGOs and donors to contribute to the land law process. There are indications that participant inputs influenced policy on a number of points. On land consolidation, strong language legitimising compulsion was eliminated at the urging of NGOs and donor agencies.

After 2001, land policy entered a period of debate within government, largely behind closed doors. The National Land Policy was adopted by ministers in February 2004. The final document was greeted with caution by NGOs and donors. They had been

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<sup>23</sup> See Bruce (2006: Chapter 2).



generally supportive but had reservations about particular provisions. Musahara and Huggins (2005) discuss the major themes:

- Land consolidation. The policy calls for a clause in the new land law prohibiting subdivision upon inheritance. With regard to consolidation of existing parcels, the degree of consolidation anticipated is not clear. The authors note that researchers have questioned whether consolidation would in fact increase productivity, and question whether the programme will in fact progress very rapidly in the absence of compulsion.
- Land for distribution. Here the Policy emphasises redistribution of state land, including if necessary reserves. The authors raise questions about the adequacy of such land, given the number of landless people, which they estimate at over 1 million.
- Land registration. While there is a consensus around providing security of tenure after such a long period of uncertainty, the authors note that it is harder to say who needs security, from what and against whom. Communities that have gone through land sharing need official affirmations of rights, but the authors note concerns in some quarters about whether the land registration process presages a market in land rights which will leave more Rwandans landless.
- Abolition of customary systems. The new Policy emphasises individual rather than communal rights. Customary tenure is condemned, without much substantiation, as exhibiting ‘a tendency to cause insecurity, instability, and precariousness of tenure in general’. The Policy seems to identify customs with an ethnically-divisive past best left behind, and the authors note that the Policy fails to explore to any extent the contemporary significance of those systems.
- The need to address inequality of land ownership, which is recognised. The Policy notes the ‘increasing hold of the urban elite over rural land’, but does not propose a remedy. Early drafts proposed a 50-hectare ceiling on landholdings, but this does not appear in the final draft. The authors relate this to the acquisition of holdings in excess

of this limit by persons of influence in the regime and military. The Policy is more forthright in addressing the need for equality in gender and land relations, so that widows and former wives do not join the ranks of the landless.

- Villagisation. This is presented as a precondition for the consolidation of farmed land and a basis for more effective service delivery. The authors note the need to avoid the serious problems experienced in the *imidugudu*, but say that scepticism about the government’s ability to do so is widespread.
- Master planning of land use. As in the case of consolidation and villagisation, the extent of compulsion envisaged is not clear. The authors worry that the government, seeking to achieve rapid and major shifts in production patterns, may rely on contracts with firms for large-scale production, especially in wetland areas.

The policy was finalised in 2004, and the Land Law was enacted in July 2005. As Pottier (2006) points out, the fact that the law took seven years to develop and enact says a good deal about the sensitivity of the issues involved. The emphases in the policy and the law diverge somewhat, and it is important to see how far the Land Law follows through on the emphases in the Policy Paper. For example, villagisation is hardly mentioned in the law; language on compulsion in land consolidation is softened further, and the 50-hectare maximum called for in the Policy Paper does not appear in the Law. International donor agencies had argued that such a ceiling was unlikely to be effective, based on experience elsewhere.

The fundamental provisions of the Land Law are:

- All land belongs to the Rwandan people, is managed by the state, and is classified as either a) public domain (land strictly for public purposes, specifically defined in the Law to include wetlands), or b) private domain (land which the state can alienate or lease out to private users). The government makes land available to private users under

leases<sup>24</sup> of between three and 99 years, the state allocating its private domain to private users through its local land commissions.

- Customary holdings are recognised, but they are to be converted to leaseholds held from the state. Customary tenure is abolished, and certain customary feudal incidents are specifically cancelled.
- Gender discrimination is prohibited, with husband and wife characterised as ‘having equal rights over land’.
- Registration of these rights is mandatory, with a scheme of registration to be provided by regulations.
- Privately-held land is inheritable, but parcels cannot be sub-divided below a one-hectare minimum, and subdivision of parcels up to five hectares in size requires permission of a local land commission.
- Such leaseholds may be transferred or mortgaged, but only with consent of spouses and children. Transfers do not affect third parties unless they are registered.
- While the law in general terms guarantees proprietors the right to use and enjoy their land, it requires compliance with a master plan and contains quite specific requirements regarding conservation and productivity.<sup>25</sup>
- Where private users have failed to exploit or degraded the land they hold, they should be given six months’ notice, and then the land may be requisitioned and given to another to use, though they can apply for its return. In the case of land degradation or persistent failure to produce, the land may be forcibly confiscated by the government without resort to the courts.

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<sup>24</sup> The English translation is inconsistent in the use of property rights terminology. It often uses the terms ‘ownership’ and ‘landlord’, where a correct translation from the French would have been ‘proprietor’ or ‘occupant’, which says little about the nature of the right held. The only tenure provided for in the Law is a right which at civil law would be characterized as a right of emphyteusis, essentially a leasehold right.

<sup>25</sup> It must be protected from soil erosion; if it is intended for agriculture, at least half of its area must be planted; if for grazing, at least half must have pasture; if meant for building, buildings must be built in the time prescribed.

- The state is responsible for giving land to ‘persons who were denied their property rights’. Land sharing since 1994 is explicitly validated, and those who received land are recognised as having the same rights as other customary holders.
- The law recognises that 30 years’ occupation of land by a private user or the state gives rise to rights to a leasehold, but excludes occupations initiated by violence or fraud and makes it clear that what is acquired is not ownership but a leasehold right on state land.

The Land Law reflects a desire to provide secure land tenure to enhance incentives for investment, seen in both the detailed provisions of property rights and transactions and their registration. It also confers a sense, however, that the state cannot rely on incentive-driven investment and development, but must plan crop choices and intensification of production, if necessary penalising failures to produce and neglect of the land. The Law reflects a continuing sense of state responsibility to find land for returnees and others who lost their land in the genocide and the chaos that followed, but it fails to echo the language of the Arusha Accords or the Constitution concerning a *right* of returnees to land. It ratifies extraordinary measures already taken in this respect, but there is nothing to suggest that land sharing, which is essentially an uncompensated taking, can continue without proper compensation. There is also a lack of provisions that would have eased land takings for villagisation or consolidation of landholdings. It seems that tenure security trumped access.

The major dichotomy reflected in the law is that between provisions that rely upon farmers’ response to markets and those that empower state-directed development. Most land laws struggle similarly to find the right balance between incentives and sanctions, and this law resembles recent statutes in Tanzania and Mozambique that retain ownership of land in the state, allow a degree of security of tenure through leasehold, but also retain for the state the power to retake land if it is not developed. Landholding is conditional, and since a great deal of bureaucratic discretion is involved in applying the criteria involved, tenure is insecure and vulnerable to bureaucratic abuse. A former minister and others indicated that, during workshops and public

consultations, there had been expressions of a preference for private ownership but (as the former minister related): 'We convinced them that leases would do what they needed. They would provide a basis for compensation for a property right if the land were taken by government'. Land-sharing and the *imidugudu* seem to have been on the minds of many participants.

Pottier (2005) provides a thorough critique of the new Land Law in terms of the practical problems that could arise in its implementation in the Rwandan context. These concerns reflect many of those this author heard expressed among NGOs. Pottier notes the potential for tenure insecurity inherent in the grant to local authorities of the power to approve the consolidation of small plots of land in order to improve land management and productivity, in the fees to be imposed for registration of leaseholds and in the provisions on the confiscation of land for failure to exploit it efficiently and diligently. He questions why the minimum plot size has been set at one hectare, while in the Land Policy, three-fourths of a hectare is cited as the viable minimum for a family. He points out that one-third of the population own dispersed plots totalling one hectare, and that most of these plots are below the minimum. He worries that enforcement of the provision could force one-quarter of farming households off the land.

These concerns, like many voiced by NGOs and donors about the new law, are based partly on issues of security of tenure and equity. But they also stem from the potential for abuses of the substantial administrative discretion conferred by the Law. Pottier warns (p. 526) that 'Knowing how fear of an uncertain future can be manipulated most cruelly, as it was in 1994, one can only conclude that the Rwandan authorities must address popular fears to do with land registration and expropriation as a matter of great urgency'. He goes on to note that, after independence, royal pasturelands were converted to arable land. He worries that the master-planning provided for in the Law could create fears in the farming community. He concludes: 'it is fair to say that the 2005 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 another they risk being labelled unworthy farmers'.

MINITERE, the ministry responsible for land, has launched an ambitious but carefully paced programme to implement the Law, in response to appeals for caution from civil society, donors and NGOs. Progress to date is reviewed in the next section. What has been done so far, and what can be anticipated? How far do the measures so far taken substantiate the concerns noted above?

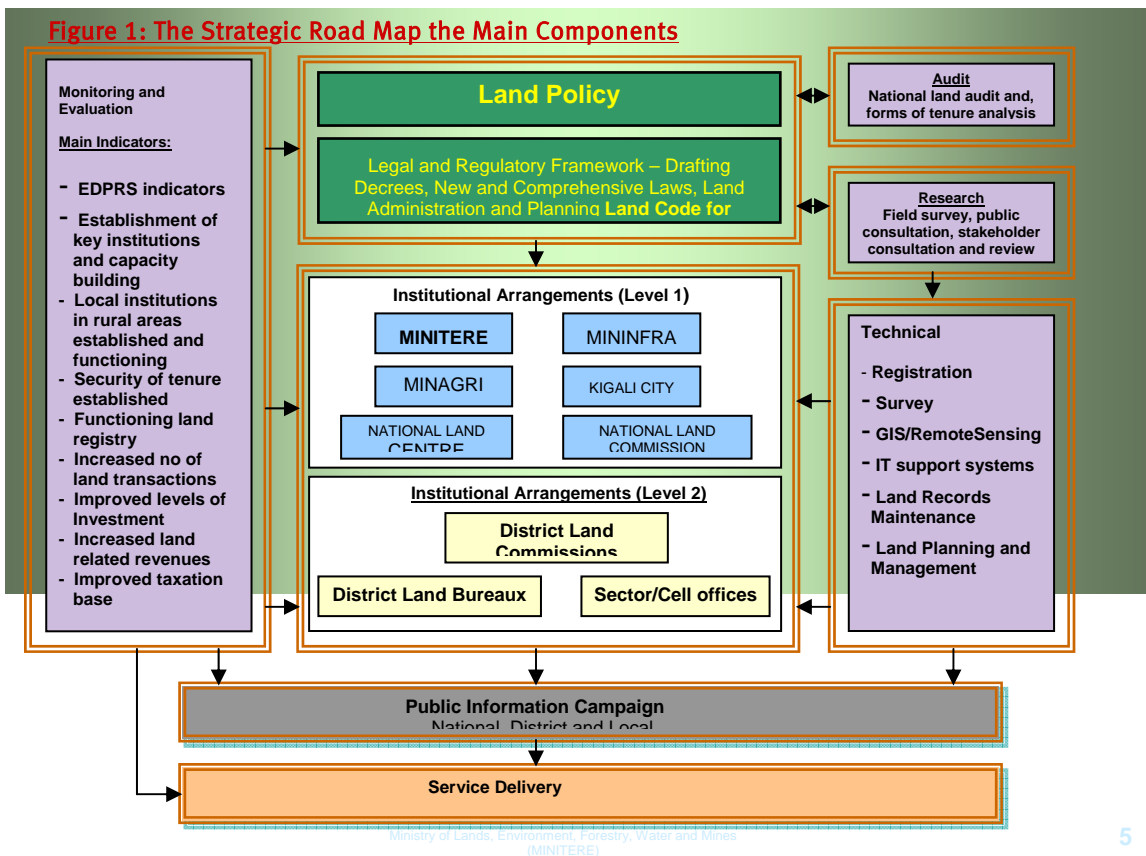
## 5.1 Land registration: providing security of tenure

Rwanda has a Torrens-style land registration system,<sup>26</sup> introduced during the colonial period for Belgian users. While the Torrens model is sound, and preferred by many land experts, this version is antiquated, unduly complex and expensive. It has for some time been in theory accessible to all Rwandans. In fact, informants acknowledged that its complexity and the high costs involved have largely excluded all but the wealthiest Rwandans from its use. In its early stages, the draft Land Law sought to deal with this situation by providing that all those occupying land should be deemed to hold it on lease from the state. This provision was ultimately rejected, and it was provided instead that each such lease must be awarded individually, and must be registered in order to be valid. Provision is made for a programme of systematic ('mass') tenure regularisation. In the interim, landholders retain their customary rights. The state's recognition of those customary rights leaves much to be desired.

A general, systematic registration of all land holdings in the country is necessary. Disputes over land are endemic. Musahara and Higgins (2004: 274–78) break land disputes down into politically-sensitive disputes between old and new case refugees; disputes from *imidugudu*; and finally the appropriation of large plots by powerful people, in some cases for speculative purposes. Good court statistics are hard to find, but informants estimate that perhaps half the disputes in the courts have

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<sup>26</sup> The traditional deeds registry is simply a voluntary depository of deeds, and the act of deposit does not remedy any defects in the deed or chain of title. The buyer must beware. In the 1870s, however, Sir Robert Torrens introduced in the Australian state of New South Wales a system commonly referred to by his name, or alternatively as 'title registration'. In this system the state guarantees the validity of the title shown on the register, substantially reducing risks to the purchaser. The system was adopted by the UK, France and Belgium in many of their African colonies.



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something to do with land. This is in line with other post-conflict societies which have suffered major dislocations of population, such as Cambodia. In an ACORD programme of legal assistance for women and children, 70% of the disputes are over land. Disputes between neighbours over encroachment and inheritance disputes are also said to abound. ACORD staff indicated that, when there was a dispute, the first recourse would be to the community elders, for resolution under customary practice. Only if that failed might the dispute be taken to a court. A dispute might be resolved in court, but the court decision might not be enforced. ACORD staff estimated that 90% of disputes are still decided according to custom.

MINITERE’s Land Reform programme, carried out with technical assistance provided by DFID through a contract with Bearing Point, has proceeded in phases: Phase I, from 2005–2007, focused on development of a strategic road map, trial interventions and phasing of reforms, and Phase II (full implementation), beginning in 2008. Figure 1 is

MINITERE’s strategic road map, as presented at a recent workshop.<sup>27</sup>

Clive English, the manager of the Bearing Point technical assistance contract, notes that 18 articles of the framework Land Law require sub-decrees.<sup>28</sup> There is also a need for a law on a national land centre. For most other needs a sub-decree or a ministerial order will suffice. A decree on leasehold tenure is in draft, and provides for two broad categories of state leases, one a basic lease appropriate for most customary and other landholders, for 99 years, and another lease appropriate for investors and others who wish to lease private state land for commercial purposes. The draft is now being edited after government comments. This is a critical piece of legislation. Leasehold is an extraordinarily flexible form of tenure, and depending upon the terms set out in the

<sup>27</sup> MINITERE 2007. ‘The Road Map to Land Reform, A Simple Model’. (Kigali, MINITERE)

<sup>28</sup> The Land Law is in the hierarchy of legislation in Rwanda an Organic Law, at the top of the heirachy. Below this are ordinary laws, then sub-decrees and then ministerial orders.

lease itself, can provide considerable security or no security at all.

There has been intensive work on other subsidiary legislation to flesh out the Land Law, and over 20 such enactments are anticipated.<sup>29</sup> A number focus on institutional structures for land administration; they anticipate a relatively elaborate organisational structure, with MINITERE at the top, then a National Land Commission, and below that a National Land Centre. Other subsidiary legislation focuses on the process of land registration, and makes provision for private ownership of land, a legal possibility provided for in the Constitution but not in the Organic Law.<sup>30</sup> None of the subsidiary laws has so far been promulgated, but MINITERE anticipates that there will eventually be a Land Code, including the Organic Law and all the various levels of subsidiary legislation.

USAID is also providing technical assistance to MINITERE. USAID contractor ARD Inc. is working on land dispute studies, and is developing plans for dispute resolution, while the Rural Development Institute (RDI) is working on a variety of policy and legal issues. An American team has worked with MINITERE to develop a new decree on expropriation. That experience indicates a preference on the part of the government for brief legislation and impatience with elaborate procedural provisions. This is unfortunate, as such provisions are critical for

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<sup>29</sup> Those drafted so far include: a) a draft Presidential Order Determining the Structure, Responsibilities, Functioning and the Composition of Land Commissions, b) a draft Ministerial Order Determining the Structure of Land Registers, the Responsibilities and the functioning of Land Bureaux in Districts; d) a draft Ministerial Order Determining the Structure, Powers and Functions of Land Documents Registries; e) a draft Presidential Order Determining the Structure, the Powers and the Functioning of the Office of the Registrar of Land Authentic Deeds; f) a draft Ministerial Order Determining the Content and Procedures for the Demarcation and Adjudication of the Long Lease; f) a Draft Ministerial Order Determining the Content and Procedures for the Extension of Full Ownership Rights; and g) a draft Law Determining the Establishment, Powers and Functions of the National Land Centre. These are described in MINITERE 2006. 'The Organic Land Law: Bringing the Law into Effect'. (Kigali, MINITERE).

<sup>30</sup> Article 30 of the Constitution provides: 'Private ownership of land and other rights related to land are granted by the State. The law specifies the modalities of acquisition, transfer and use of land'.

ensuring procedural fairness and a sense on the part of those affected that they have been listened to.

In addition, MINITERE has conducted field consultations in Musanze, Kirehe, Karongi and Gasabo Districts.<sup>31</sup> These have included 102 detailed interviews with Sector Executive Secretaries and Sector *Agronomes* in all parts of the four trial districts; 229 focus group discussions in at least four sectors in each trial district; 33 contextual interviews conducted across all four trial districts and at national level, and field reconnaissance in all four trial districts. Among the consultations' findings are the following:

- Custom is never static but is flexible, adaptable and always changing. Practices have been affected by successive waves of violence from 1959, and by the 1994 genocide and subsequent events.
- Vulnerable groups in particular now see the state as the best guarantor of tenure security.
- People are increasingly reliant on (and demanding) written proof of land ownership.
- There is a thriving land market in Rwanda, involving sales and rentals of very small pieces of land, and this is reducing the amount of land parents give their children, so that most land disputes are now within families.
- Informal documentation of land transactions has become common, and there is substantial demand for official documentation through a system of land registration, coupled with concerns over possible corruption within the process.

The study concludes that 'Systematic "people-led" land registration will work in Rwanda'. The question is whether the government will be able to deliver registration of that nature. All concerned stressed the need to act before local officials took things into their own hands', and technical assistance staff cautioned that a clear legal basis and stronger capacity were necessary for effective implementation. One of the more challenging tasks will be to provide clear rules for the translation of customary rights, which tend to be complex and multi-layered, into simple leases. This will in fact be

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<sup>31</sup> MINITERE 2006. 'Ministere Field Consultations: March–October 2006' (Kigali, MINITERE).

a dramatic simplification of customary rights, and it is likely that not just 'communal' rights, but also the secondary rights of individuals will be lost.

MINITERE had committed itself to initiate trials of 'tenure regularisation' in 2007 in selected cells in the same four districts covered in the survey. These will involve systematic demarcation, adjudication and registration of titles, in a process designed to be participatory. Existing parcels will be demarcated but not surveyed, and rights will be adjudicated by a locally elected committee through a transparent and open process. Cell plans and records of ownership will be published locally, and publicly announced. Disputed ownership and boundaries will be identified separately and objections noted, with disputes referred to the *abunzi* (customary courts as reconstituted by government), subject to the agreement of the disputants. For each parcel where there is an uncontested claim, a long-term lease will be granted automatically, based upon the adjudication record, and the title registered. Based on these pilots, there will be assessments of the district and cell's capacity to cope, a public opinion survey and a determination of levels of participation, a clarification of rights in land; use of measurable indicators such as number of parcels registered, uptake of titles, and public confidence; examination of impact on revenues collected in towns and municipalities; and further field consultations in the trial districts.<sup>32</sup>

In discussions with officials of MINITERE and the DFID contractors involved in supporting implementation of the law, it seems clear that MINITERE's interest is focused primarily on land regularisation, and has shifted away from villagisation and land consolidation. MINITERE officials insisted that coercion would not be used to consolidate holdings, and that systematic registration will not exclude from registration parcels smaller than the legal minimum. 'Rights will be recorded as they are,' it was stressed. (If that minimum were honoured, no systematic registration programme could proceed without a prior consolidation programme.) The minister stressed that fees for holdings of less than five hectares would be minimal and affordable, even by poor families. The change wrought by such a programme would be fundamental. 'We do not have a culture of

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<sup>32</sup> MINITERE. 2007. 'Summary of Proposed Trials Work 2007: From Strategy to 10 Year Plan.' (Kigali, MINITERE).

rights,' said one informant, 'and people will need to learn what rights mean.'

The obvious attraction of the land regularisation programme is that it ends the long period of uncertainty and insecurity of land rights ushered in by the violence and the genocide. However, has the landholding situation sufficiently stabilised to permit this? One threat comes from the continuing return of refugees, and a continued resort to land sharing. This is dealt with in the next section.

## 5.2 The continuing return: the 'new new caseload'

Most of the publications on refugee return and land tenure in Rwanda seem to assume that the returns are substantially over. While most refugees have returned, very substantial numbers are still doing so, and this has important implications for land tenure security and the programming of land registration. In June 2006, Tanzania expelled 500 Rwandaphones by force. In July 2006, a convention was signed between Tanzania and Rwanda, and in September 2006 6,000 Rwandaphones were expelled from Tanzania. They came from the Karagwe District of Tanzania, bordering Rwanda, and were part of a predominant Tutsi pastoralist community with origins in the colonial period, a community that had quietly absorbed significant numbers of other Rwandans leaving the country more recently. Those who returned included a large number of women, children and the elderly, and a component of 1959 refugees. About one-third did not speak Kinyarwanda, as many had been in Tanzania for a long time; some indeed been born there, and had Tanzanian identity documents and even citizenship. About 20% were old migrants from the period 1880–1950; 80% were recent migrants (1995 and 2005) who had joined the Rwandan community in Karagwe. UNHCR estimated that some 40,000 Rwandaphones could in the end be returned to Rwanda. Tanzania says that it considers them illegal immigrants.<sup>33</sup>

UNHCR staff note that a transit camp in Kirehe, which has a capacity of only 1,500 people, will be

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<sup>33</sup> The term 'Rwandaphone' signifies someone who speaks kiyarwanda, and is used by UNHCR to describe de facto refugees without assuming anything about whether they officially have the status of refugees or asylum-seekers.

expanded to accommodate 3,500 people. It also indicated that there was an urgent need to identify parcels to cultivate and to provide incomers with cultivation kits. UNHCR was told by the Rwandan government that over 24 billion Frw had been budgeted for the resettlement of more than 60,000 Rwandans and 80,000 head of cattle that may be repatriated from Tanzania.<sup>34</sup> Staff at UNHCR's Kigali office in December 2006 wondered: 'Shall we call these the "new, new caseload"?'.

This expulsion from Tanzania is significant but hardly unique. UNHCR's 'Rwanda at a Glance' summary for November 2006 is informative. It notes that some 48,435 refugees and 4,721 asylum-seekers from Rwanda were in other African countries. Of these, the largest numbers and those most likely to return home live in the DRC, Uganda and Burundi. (These include recent and continuing flows from Rwanda to those countries of those concerned that they would be implicated by the 1,545 *gacaca* courts discussing and now bringing indictments of those involved in the genocide.) The author heard higher estimates from others, including one that more than 60,000 Hutu refugees remain in the Congo alone.

UNHCR is tracking current returns. The same summary document indicates that, during 2005, 9,600 refugees returned, and 5,620 have returned home since January 2006. In October 2006 alone, over 3,000 refugees and asylum-seekers returned, and late 2006 saw the voluntary return of 13,200 asylum-seekers from Burundi. The Tanzanian case mentioned above is instructive in that very few of those expelled from Tanzania appear in the UNHCR statistics, as they are not officially refugees and did not request asylum. UNHCR thus understates the scale of the problem significantly, albeit the actual extent is not clear.

The Minister of State for MINITERE indicated that an inter-ministerial commission including MINITERE and MINAGRI (the ministry of agriculture) is trying to identify land for these returnees, and is looking into land held by the army, research farms and possibly land sharing of allocations received by earlier returnees in portions of Akagera National Park. Some of those expelled from Tanzania are being settled in Akagera under the 'land sharing' principle.

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<sup>34</sup> UNHCR (2006) Situation Report on Expelled Rwandaphones of Tanzania (Kigali, UNHCR).

Informants reported many small huts in the park, and many cattle going into the park. The refugees have brought substantial numbers of cattle with them, though theirs are certainly not the only cattle going into the park; there are regular rumours of large herds in the area belonging to military commanders. Bugesera, near the border with Burundi, is another area to which these returnees are said to be going in significant numbers. While land is available there, the area is drought-prone and poor.

Land sharing is also still being carried out in the densely populated Musanze District in Northern Province, where old case refugees are bringing land claims. A farmers' union worker explained: 'When an old case refugee comes and claims land, and the occupants refuse, and say "I don't know you", then you go to the authorities for mediation. They rely on local elders'. Local officials explained that old-case refugees, who had left the country in 1959, had been pressing claims for land. They had been back in the country since 1994 in most cases, but came to this area in 2001. Due to the armed incursions into the area by insurgents from DRC, and the substantial forced villagisation in this area, they had not been able to obtain land. Now that things were calmer, they had asked for land and needed to be accommodated. One official noted that local residents had complained that 'these are people whose families came to this area as feudal officials; how can we be asked to share land with them?'. But, he said, they must share and the sharing has begun. The process had begun in two sectors, and there are four where it will be carried out.<sup>35</sup> An official explained: 'No one likes giving up land, but people have a good will and it is going smoothly. It will be finished in a year. Of course the land plots are very small, no one can get as much as a hectare'.

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<sup>35</sup> The land sharing is not being carried out in the sectors selected by MINITERE for its consultations and pilot activities.

## Chapter 6: Drawing a line under crisis

The Rwandan government is moving towards the provision of a national programme of systematic titling and registration of land to provide the security of tenure that is critical both for political stability and socio-economic development. Systematic land titling has been used in post-conflict situations including the Anglo-Egyptian Sudan after the suppression of the Mahdist revolt early in the last century, Kenya in the 1960s following the Mau Mau rebellion and in contemporary Cambodia, after the chaos unleashed by the Khmer Rouge. A case could be made that land titling has been more successful in meeting the objective of political stability than in achieving the more widely advertised economic impacts.

In Rwanda, MINITERE understands the urgent need to re-establish stability in landholding, to affirm property rights and to create security of tenure. The Land Law provides for the systematic demarcation of holdings, the issuance of long-term leaseholds and their registration. MINITERE is moving to implement these objectives. But at the same time, proposals for villagisation and land consolidation threaten new dislocations. There have been inconsistent statements about the degree of compulsion that would be involved. In addition, refugee returns continue, and in some localities officials are resorting to land sharing to accommodate them. In addition, the government has created community-level adjudication committees to hear indictments for participation in the genocide (*gacaca*), and these are bringing in indictments in their thousands; judgments may order some to hand over land. Uncompensated takings are occurring.

The continuing flow of returnees is probably the most significant threat to stable landholdings. Returnees will demand land, and the law requires that the government seeks to accommodate them. In the most recent cases, the government has again resorted to land sharing, in preference to further encroachment on forest and wildlife reserves. It is not clear where land will be found for future returnees. Land sharing is consistent neither with the Constitution nor the new Land Law. Other options include:

- using remaining state lands (not an attractive proposition but arguably less damaging than future land sharing);
- grouping returnees into small associations which, with some mix of grant and loan funds from the government, could purchase land on the market and subdivide it among themselves;<sup>36</sup>
- providing urban land and housing, including a unit for residence and an apartment for leasing out; and
- providing jobs, including national service or conservation corps positions.

These are not mutually exclusive approaches, but would need to be pursued in tandem.

Second, there are the government's own initiatives to implement villagisation, consolidate holdings and apply an agriculture master plan. MINITERE is responsible for land policy in all these cases. Yet villagisation remains under the auspices of MININFRA (the ministry of infrastructure) and consolidation of landholdings and land use planning under MINAGRI. Despite the withdrawal of the Habitat Law in 2006, there are still supporters of these initiatives. An FAO expert asserted that consolidation and villagisation still have promise if properly done, citing the unwillingness of the young to farm. There seems to be some support for the consolidation idea in rural areas. A 2005 NURC survey on 'Land Property and Reconciliation' found that a majority of respondents favoured administrative consolidation of holdings and consolidation through transactions.<sup>37</sup> The survey did not, however, raise some of the hard issues noted in discussions of the government's Land Policy, such as the fact that many Rwandans could be left landless if such a policy were implemented. The

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<sup>36</sup> This approach has in recent years been favoured as a poverty alleviation strategy by the World Bank, and is being implemented in programs in Brazil, South Africa, Malawi and several other countries. It may be a promising mechanism from returnee land access where restitution is not applicable or infeasible for some reason.

<sup>37</sup> There is some question as to whether an official survey will receive candid responses; there may be a tendency in present circumstances for people to give answers that fall in line with known government policy.



state minister of MINITERE in charge of land matters notes that FAO's Land Tenure Service endorsed the consolidation and villagisation strategies, and sees the problem as one of coordination of these planning and property rights initiatives. She adds: 'We are now clear on the message: No one's land will be taken. We need to use NGOs to get that new word out on consolidation'.

Consolidation programmes have in fact rarely been implemented effectively in developing countries. The basic idea behind them, from an agricultural production standpoint, is that there is a scale below which farming is inefficient. There is little empirical evidence of this. To the contrary, the empirical evidence going back to the 1979 Berry and Cline classic study suggests that farmers are capable of remarkable intensification of production as their holdings grow smaller. If there are economies of scale, they are in primary processing, not production itself, and increasing the scale of primary processing does not require consolidation of holdings.

Empirical studies of farm fragmentation do not support consolidation. These studies, including one in Rwanda, reveal that fragmentation appears to impose few real costs, and on the positive side, it gives farmers access to diverse land. Farmers commonly swap land, increasing the fragmentation of their farms, in order to obtain access to land with different soils or in a different agro-climatic niche.<sup>38</sup> Against this very questionable case for consolidation must be balanced the political risks involved. A USAID Conflict Vulnerability Assessment (Weeks et al., 2002) warns: 'Should there be a great deal of land "consolidation", the perception that large numbers of people have been left poor and landless while a small minority prospers could have explosive implications in the post-genocide context'. Given this, it is worth thinking about alternatives. RDI has produced a paper for USAID and MINITERE reviewing alternative strategies to consolidation for scaling up production.<sup>39</sup>

Villagisation can of course facilitate service delivery, but international experience with villagisation, including in Tanzania (so close by that it would be hard to ignore it), is that the provision of services such as electricity, schools and health care will

attract rural people to larger villages, while compulsion fails and leads to resentment when promises of services are not honoured. In the Rwandan context, experience to date with the *imidugudu* tends to conform to this picture. Given donors' lack of appetite for compulsion, any international funders seem likely to approach it very gingerly. It seems that some of the aims of villagisation could be accomplished more satisfactorily through community-based, participatory land use planning. The main production potential argued for villagisation lay in its link with the consolidation of holdings, the effectiveness of which is questionable.

The Land Use Master Plan is out for tender, and the Belgian government is completing work on new national mapping on which the plan will be based. Again, the government asserts that compulsion will not be involved, and there is little harm in urging farmers to adopt more remunerative production patterns. The patterns urged, while optimum from the point of a government concerned with exports, may however not be optimal from the viewpoint of the farmers themselves, and they should be free to ignore them. The problem is that habits of compelling obedience to central government directives die hard, and some local officials have already moved ahead in advance of instructions from the centre. In Gitarama, local officials are said to have required farmers to cut down bananas and plant pineapples, cassava and sorghum. Such measures threaten land tenure security because the Land Law provides for the taking of holdings from those whom the state does not consider are using their land efficiently.

Does the *gacaca* process pose a threat to security of tenure? A *gacaca* is a bench of several judges who hold public hearings in the presence of at least 100 members of the community. There are over 110,000 individuals in preventive detention, on charges related to genocide and crimes against humanity. The National Service of Gacaca Jurisdictions estimates that some 761,000 people will be indicted during this process. The *gacaca* are expected to both dispense justice and restore harmony. People are invited to come forward, and community participation and transparency are encouraged. That said, this is not a South African

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<sup>38</sup> See Blarel, Hazell and Quiggin (1992); and Blarel and Benoit (2001).

<sup>39</sup> USAID/Rwanda (2006).

truth and reconciliation exercise: the purpose is to judge and to punish.<sup>40</sup>

Justice is of course an indispensable part of any peace-building process, but in the short term appropriate penalties can have negative impacts on the maintenance of social peace. One possible negative effect has been mentioned already: the generation of new out-migration by those who fear indictment or who doubt whether the *gacaca* will be impartial. A second involves the release of large numbers of prisoners whose involvement with the genocide was not major, and whose cases may be dealt with relatively quickly. These individuals may seek access to land once freed. Third, tensions over land will certainly rise as those who lost family understand better the role that some of their neighbours played in the murder of loved ones, or as false claims of participation in the genocide are made in order to 'settle' land disputes. Land disputes are the business of the *abunzi*, not the *gacaca*, but it is possible that the *gacaca* may order remedies which transfer land. Where a *gacaca* disposes of a case in which a guilty party has been found to be occupying property which he or she obtained through murder, a *gacaca* may well consider that the land should be restored to the deceased person's heirs.

The National Unity and Reconciliation Commission in 2002 conducted an opinion survey on Participation in Gacaca and National Reconciliation (NURC, 2003). The survey found a majority of respondents considered that those who claim reparations in the form of monetary compensation will not be satisfied with what is offered (p. 21), and two-thirds replied that family goods belonging to the guilty would be seized (p. 23). Remarkably, the survey did not ask specifically about land, but it may well be that the respondents were thinking of land when answering the question about the family properties of those adjudged guilty. The potential for the destabilisation of landholdings is clear, notwithstanding that the result may be entirely fair in the specific circumstances. One way of limiting these destabilising effects would be to issue guidelines for *gacaca*, for instance specifying and limiting the circumstances in which the *gacaca* could issue orders with regard to land, or holding at least one parcel of land secure against such an order, or requiring that the family getting the land

compensate the loser for lost crops and improvements to the land.

These programmes (land consolidation, villagisation, crop master plans, and possibly the *gacaca* process) pose threats to the land tenure security being promised through the land registration programme. These contradictions must be confusing to ordinary Rwandans. They hear about them in an atmosphere of uncertainty and mistrust. One informant spoke of Rwanda as 'a culture of rumours'. Programmes that interfere with landholdings seem likely to be viewed with suspicion, and planners will find ethnic motivations attributed to them. The government has sought to play down ethnicity in its statements on land in an attempt to minimise this. This is understandable given the role that the interaction between ethnicity and land played in the genocide, but it is possible that failure to address the issue forthrightly will only encourage rumours.

Although conflict over land is no longer taking place, there is still some competition for land and many disputes over land. And one hears widely differing assessments of the potential for a return to conflict. One informant spoke of continuing tensions over land, tensions being passed down generations: 'A father walks his son past a house he had owned, or land the family had owned. He points them out to his son, and says, "This was ours, then they took it". The boy will remember'. Another informant, an NGO worker with long experience in rural communities, says: 'The mentality has changed. Post-genocide work has helped so much, because victims were supported. When you go to the hills, you feel no identity differences'. Another informant acknowledges continuing tensions over land: 'Land registration is our last chance'.

A number of local situations contain seeds of conflict. One of these is in the north, in former Rukungeri. This has been discussed earlier. The Norwegian Refugee Council warns that 'the complicated relationship between ethnicity and land issues' is 'disregarded and even suppressed by the government. From the Hutu perspective, the Tutsi are responsible for moving the displaced into miserable houses, illegally occupying their land and preventing them from returning to their original homes. From the authorities' perspective, ethnic categories contributed significantly to the genocide and should therefore be excluded from an official

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<sup>40</sup> On the *gacaca*, see Wolters (2005).

discourse'. The NRC suggests a danger that the Land Law and the registration programme will 'make it possible to legally purchase land which the villagisation policy has made available', and calls for a renewed effort by the government and the international community to address the problems of the area.

Land issues have continued to arise in the east as well. This had been a traditional expansion area, with substantial pastures and a large influx of settlers from the more densely populated west during the 1970s. The east has seen politically sensitive competition for land among Tutsis and attempts to appropriate large pasture areas. In south-eastern Umutara, there are said to have been land grabs by the military and elites, beginning shortly after 1994. There are rumoured to have been large land allocations by the government in the area. The truth of these assertions is not clear, but it seems that powerful people have been occupying land. While the government is urging people not to move with their cattle but to rely on cattle crops and to bring in European breeds for interbreeding, there are reports of more and more cattle, some from Tanzania, moving into Akagera Park.

Musahara and Huggins (2004: 283) place this in the context of declining pasture resources. Pasture is down from 487,000 hectares in 1970 to only 200,000 hectares in 1986. Over 700,000 head of cattle have been brought back into Rwanda by old case refugees. Some returnees to Umutara got 25ha for each 50 cows, up to 100ha. Now some 70,000 cattle have been brought back into the country by recent returnees from Tanzania, and some subdivision of the earlier allocations is going on. A recent survey in the east revealed that large swathes of land were being allocated to grazing associations. An NGO with a strong interest in land issues indicated that 'While MINITERE has not handed out land in this area, people are buying land. They negotiate with several families to get a large piece of land. They then fence it and put on cattle. Some also access marshland through the government. There are real estate agents, people who you can go through to find land, but they deal mostly with informal holdings in urban and peri-urban areas'. The east has been politically sensitive, with little space for development agencies and non-government actors. It was the one area of the country where local officials questioned the appropriateness of a visit by this researcher.

Some NGOs, acting out of genuine concern, fan suspicions by exaggeration. The 2005 NRC report on resettlement (p. 12) refers to 'the blatant protection of the interests of returning Tutsi refugees to the detriment of the Hutu – their preferential treatment in allocation and distribution of assistance, in land sharing and resettlement'. The RPF government has certainly been most concerned with finding land for the 1959 refugees, but has in general behaved with a restraint remarkable in the wake of the genocide. Similarly, the title of a recent Swiss Peace report (2005) asks, in an accusatory tone, whether the government's land reform programme represents 'the restoration of feudal order or genuine transformation'.

One is told that the government knows of these problems, and is moving to address them because they involve tensions within the RPF itself. For instance, while the government did not in the end include the 50-hectare ceiling on land holdings in the Land Law, it is said to be unofficially asking large landholders in Kirogo near Kagera National Park to return the land. Recently, the president has publicly pressed land grabbers to return the land appropriated. Still, the lack of transparency in the handling of such cases means that many will not credit that these issues are being addressed in any significant way.

The Land Policy recognises the increasing accumulation of rural land by urban elites, but does not suggest how this problem should be addressed. The increasing inequality of holdings, and in particular the increasing landlessness, suggests that those concerns need to be taken more seriously. This applies to both government land allocations and to the potential of a land market. It is not that holdings in Rwanda are very large. One commercial operator in the east, asked about large holdings in his locale, exclaimed that 'A large holding here is only ten hectares'. It is more that land markets can significantly shift the distribution of land between ethnic groups. In Kenya, the market moved substantial land out of the hands of pastoralist ethnic groups and into the hands of the more urban and sophisticated Kikuyu; the response was communal violence driving the new land buyers from these areas.<sup>41</sup> It is suggested that security of

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<sup>41</sup> See M. Rutten (1992).

tenure must be the key objective, and that limits on marketability may be helpful.

### **6.1 Pace Pinheiro: rules, promises and improvisation**

International humanitarian agencies involved in conflict and post-conflict situations can draw several lessons from the Rwanda case.

First, there is no clear-cut distinction between conflict and the post-conflict period: these states do not exist on a spectrum, but overlap. Countries which have been in serious conflict over land may suddenly find peace, but peace is not the absence of competition and even limited conflict, just the absence of war. Competition over land, expressed through disputes, continues after peace and may threaten to regress into conflict. Even where the conflict ends with a clear-cut military victory for one side, as in the case of Rwanda, land issues must be addressed with restraint and balance.

Second, inputs from the international community on land tenure best practices and lessons for post-conflict situations should begin – at least in countries where land has played a significant role in conflict – during the peace-making process. In the case of Rwanda it is clear that the international community did not provide the expertise that would have helped the parties at Arusha arrive at more adequate land formulations and solutions. Good land policy begins at the peace negotiations. Insurgency movements like the RPF often cannot keep up with developments in thinking on land policy and law. As a result, the negotiators fell back on strategies from the colonial period, such as villagisation. The RPF brought a model back from Uganda, that of state leaseholds, but it was a model that Ugandans rejected in their 1995 Constitution, shortly after the 1994 return, restoring both private ownership in land and secure customary rights.<sup>42</sup>

Third, the focus on the shelter needs of returnees must be supplemented by a well thought-through strategy for access to productive land resources for returnees. In Rwanda, it seems that UNHCR and other humanitarian organisations lacked a broad frame of reference for land tenure issues, and that the narrow focus on shelter led agencies in an unfortunate direction. Shelter was most easily

provided in the village context, and this may have blinded UNHCR and others to some of the shortcomings of the villagisation programme. UNHCR's 2000 retrospective assessment of its role in Rwanda has a distinctly defensive tone in explaining its role in both the resettlement programme and land-sharing. In fairness, it should be noted that UNHCR did not confine its shelter activities to the *imidugudu*; most of the houses constructed or upgraded were located outside the *imidugudu*.

Fourth, the best-laid plans can be disrupted by events and require rethinking. This suggests a need for continuing inputs of expertise of land issues. In Rwanda the unexpected timing and circumstances of much of the refugee return disrupted most prior planning. Events necessarily involved both the government and UNHCR in a process of improvisation. UNHCR reviews and the writings of UN staff involved at the time stress that no one was putting forward credible alternatives to the policies being pursued. The expertise of FAO's well-regarded Land Tenure Service was accessed in 1996, and its report essentially endorsed the fundamental directions being pursued by the government and UNHCR.

Fifth, where land issues are likely to surface, it would be prudent to involve some NGOs with substantial experience in land tenure issues. In Rwanda, the input of such NGOs was critical in identifying the shortcomings of well-intentioned programmes. In the case of resettlement, the alert provided by such players was effective in causing a withdrawal of donor funding. Subsequently, human rights organisations have taken a lead role in critically assessing policy and legal proposals.

Sixth, the NGO community with an interest in these land tenure issues should seek to provide a sustainable specialised input from civil society on these issues. In the case of Rwanda, international NGOs contributed to the creation of a national Land CSO, LandNet Rwanda. LandNet Rwanda is more constrained by political pressures than its international counterparts, but has maintained a stance that the government regards as constructive, and is well positioned to make effective inputs into monitoring and correcting the land law implementation process.

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<sup>42</sup> McAuslan (2003).

Donors and international humanitarian organisations can do several things to be more effective, both during the run-up to peace and after the conflict comes to an end.

- Raise awareness of international standards during peace negotiations. Parties should work with them in mind.
- Inform participants of current trends in land policy and land law reform, and provide them with opportunities to discuss these with knowledgeable individuals in relation to their country.
- Involve NGOs and others with strong competence in development and land policy, in particular in the planning for return and its implementation.
- Remind negotiators of the needs of those who may not be at the bargaining table, such as female-headed households and forest-dwellers.
- Approach proposals to fund resettlement programmes cautiously, watching out for compulsion and the appropriation of land from existing users, which can create a new generation of land disputes. Restitution of prior landholdings is the preferable solution, and is required by international standards.
- Support, in the post-conflict period, programmes that re-establish security of land tenure, and discourage programmes that undermine security.
- Support the development of local civil society organisations with expertise in land, and constituencies who rely on the land for their livelihoods, and encourage public consultation on changes in land policy and law.
- To the extent possible, ease pressure on land by supporting non-land-based solutions for returnees.

There is a final issue that deserves highlighting here, a cautionary tale relating to international standards and political reality. It is striking that, even after the government with which the RPF negotiated the Arusha Accords had collapsed, the RPF and subsequent governments it has led have tried to adhere to the provisions of the Accords, even where these provisions, such as the ten-year rule, arguably contravene international conventions which require the return of property to owners who have fled, and which place no such time limit on

their claims. When officials in the first RPF government were asked why they had persisted in attempts to see that the provisions of the Accords on land are honoured, when conditions had changed so completely, they emphasised that the new government (which had a relatively narrow ethnic political base initially) felt that its political legitimacy in the eyes of many Rwandans hinged upon its compliance with the Accords.

Critical analyses of post-conflict programming in Rwanda tend to note non-compliance with international standards. These principles tend to be stated unconditionally. Most recently, the Pinheiro Principles (the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons)<sup>43</sup> provide that:

10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, land or places of habitual residence, in safety and dignity ...

10.2 State shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of state succession, nor can it be subject to arbitrary and unlawful time limitations.

18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as those agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of

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<sup>43</sup> The Principles are named after Paulo Sergio Pinheiro of Brazil, an expert of the United Nations Sub-Commission on the Promotion and Protection of Human Rights (a sub-committee of the Committee on the Elimination of Racial Discrimination) and later the Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons. After studies and consultations, he presented a text to the Sub-Commission which it endorsed in August 2005. The text referred to here is that of the Centre on Housing Rights and Evictions (2006).

the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

Note the tension between the terms of the Arusha Accords and international standards such as those enunciated in the Pinheiro Principles. Section 10 makes unconditional statements about the right to return to residences and lands, and 18.3 suggests that peace agreements must be honoured in national legislation only where they do not contravene international standards reflecting those rights. But in 21.1 the possibility of compensation in case of failure of restitution is admitted, and one of the narrow cases in which it is said to be allowable is 'when the terms of a negotiated peace provide for a combination of restitution and compensation'.

In this context, it is important to recognise that, in situations such as Rwanda, people who occupy the land of those who have fled do not necessarily do so without legal sanction. Their occupation may be entirely legal under the law at the time it occurs. One is thus often faced with the need to balance two valid but inconsistent rights. In some cases, occupation may not have had legal sanction initially, but may be viewed under national law as having acquired legitimacy by the passage of time. This is not an idea unknown to the law of property: the principle of prescription is based upon it.

Instruments such as the Pinheiro Principles are commendable, and it is quite appropriate to insist upon restitution. But those principles must be understood as principles rather than strict rules requiring compliance. How should one look at a provision such as the ten-year rule in relation to these provisions? It is certainly a fairly arbitrary limitation on the right of restitution. It was politically necessary at the time, and the government has sought to honour it, suggesting that it retains some (if declining) political importance. As the case of Rwanda suggests, political bargains in peace negotiations may contravene international

standards, and yet may be needed to find and maintain peace. As Jones (2003: 220) notes, some of the solutions brought forth by the Rwandan government have raised valid concerns, but critics have not always been able to propose convincing alternative solutions to the country's land and economic crisis.

There is a discrepancy between the international standards relating to the right to property of returnees and displaced persons on the one hand, and the citizens who have remained in place on the other. Standards applying to the former group, the returnees, are more highly developed, presumably because the returnees are more vulnerable and have more often been abused. In contrast, international law provides little to the ordinary citizen in terms of protection of their property rights in land.

In human rights declarations after the First World War, land rights were guaranteed together with rights to other property. But more recently, as a result of the long stalemate between the West and the Soviet Union over property rights, human rights law has failed to provide clear international standards protecting property in land. Seidl-Hohenveldern (1999: 128) chronicles the decline in the United Nations, after 1946, of an internationally protected right to compensation for the taking of property. The Universal Declaration of Human Rights states in Article 17 that 'Everyone has the right to own property alone as well as in association with others', and that such right 'shall not be arbitrarily deprived', but international law does not dictate the content of property rights and the objects to which they apply. Specifically, it does not specify that the guarantee of Article 17 applies to land. There is as a result no universally accepted requirement of or standard for appropriate compensation for the compulsory taking of land by the state. More recently, due in part to the role played by the European Convention on Human Rights and Fundamental Freedoms, some ground is being regained.

Refugees and displaced persons enjoy a legal advantage here, and while protecting their rights is entirely appropriate, international humanitarian organisations must be careful to balance this with respect for the land rights of those who have remained behind. The rights of both groups must be balanced, and as a result it may not be feasible to fully honour the rights of any one group.

In conclusion, the experience of balancing these interests in the interests of stability is good experience for any government, because land policy-making and land law reform never achieve perfect fairness. Governments at best balance numerous demands, some of them in conflict, many of them legitimate but none of which can be fully accommodated. Policy-makers do well if they find balances of interests which all stakeholders can accept.

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