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**A Thousand Hills for 9 Million People
Land Reform in Rwanda: Restoration of
Feudal Order or Genuine Transformation?**
FAST Country Risk Profile Rwanda

Kathrin Wyss

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Abstract/Zusammenfassung/Résumé

More than eleven years after the 1994 genocide, Rwanda might be an internally pacified, but by far not unified nation. There are different factors, which threaten the fragile social equilibrium. The issue of land is one of them. Land has long been a scarce and disputed resource in Rwanda. Ongoing shortages due to decreasing soil quality, growing population pressure and unequal distribution, as well as a lack of income generating alternatives beyond agriculture create an extremely precarious future to the national economy of the small, landlocked country. An all-embracing land reform based on a new land law and land policy is intended to remedy this situation. The main focus is on privatization and commercialization of land property. Yet, ongoing discrimination in the distribution of land, the growing concentration of large plots in the hands of political cronies as well as a tendency towards historical revisionism, raise doubts about the government's true intentions. This impression becomes even more pertinent in relation to the *de facto* exclusion of civil society from the drafting process of the new land law and policy. Moreover – or as a result – neither the policy nor the law adequately guarantees the protection of the interests of large parts of the rural population. Local non-governmental stakeholders thus fear a further marginalization of discriminated groups and/or the establishment of a system following pre-colonial feudal rule. Today's increasing disagreements over land property should be a warning sign that such a development would be anything but favorable to Rwanda's reconciliation and the establishment of long-term peace in the country.

Mehr als elf Jahre nach dem Genozid ist Ruanda wohl eine nach innen befriedete, doch bei weitem nicht geeinte Nation. Es gibt verschiedene Faktoren, die das fragile soziale Gleichgewicht aus dem Lot bringen könnten. Die Landfrage ist einer davon. Lange schon ist Land ein ebenso rares wie begehrtes Gut in Ruanda – seine ständig zunehmende Verknappung infolge Verschlechterung der Bodenqualität, Bevölkerungswachstums und ungerechter Verteilung, sowie fehlende Alternativen zur Einkommensgenerierung außerhalb der Landwirtschaft verheissen der nationalen Wirtschaft des kleinen Binnenstaates eine äusserst prekäre Zukunft. Eine umfassende Landreform auf der Basis eines neuen Landgesetzes und einer neuen Landpolitik soll dem Einhalt gebieten. Der Fokus richtet sich vornehmlich auf die Privatisierung und Kommerzialisierung von Grund und Boden. Anhaltende Diskriminierungen bei der Landverteilung, die wachsende Konzentration grosser Ländereien in der Hand politischer Günstlinge sowie ein Hang zum historischen Revisionismus lassen indes an der Redlichkeit der Regierungsabsichten zweifeln. Der *de facto* Ausschluss der Zivilgesellschaft während der Entwicklung von Landgesetz und -politik verleihen diesen Zweifeln zusätzlichen Nachdruck. Darüber hinaus fehlen in beiden Dokumenten hinreichende Bestimmungen zum Schutz der Bedürfnisse und Interessen eines Grossteils der ländlichen Bewohner. Infolgedessen befürchten Vertreter lokaler Nichtregierungsorganisationen eine Marginalisierung weiterer Bevölkerungsteile und/oder die Etablierung eines Systems in Anlehnung an die alten, präkolonialen Feudalstrukturen. Angesichts der heute schon zunehmenden Bedeutung von Landstreitigkeiten dürfte eine solche Entwicklung der ruandischen Wiederversöhnung alles andere als zuträglich sein.

Plus de onze ans après le génocide, le Rwanda est, certes, un pays en paix, mais il est loin d'être uni, et plusieurs facteurs menacent le fragile équilibre social. La question de la terre est l'un d'entre eux. Depuis longtemps la terre est un bien aussi rare que recherché. La pénurie croissante de terrains, due à la détérioration des sols, à la pression démographique, à une distribution inégale des terres, ainsi qu'au manque d'alternatives à l'agriculture comme source de revenus, promet un avenir sombre à l'économie nationale de ce petit état enclavé du continent Africain. Une réforme agraire générale une nouvelle politique foncières est envisagée afin de remédier à cette situation préoccupante. L'accent principal de cette réforme porte sur la privatisation et la commercialisation de la propriété foncière. Toutefois, la discrimination persistante dans la distribution des terres, la concentration croissante de grandes propriétés entre les mains de dirigeants politiques, ainsi qu'une tendance au révisionnisme historique soulèvent des doutes quant aux intentions réelles du gouvernement. La manière dont la société civile a été *de facto* exclue du développement de la loi et de la politique foncières renforce encore cette impression. En plus – ou par voie de conséquence –, les deux

documents n'offrent pas de garanties suffisantes à l'égard des besoins et des intérêts de larges couches de la population rurale. C'est pourquoi des représentants d'organisations non-gouvernementales locales craignent une marginalisation encore plus marquée de groupes déjà discriminés et/ou l'établissement d'un système proche des structures féodales de la période précoloniale. Un tel développement, eu égard aux disputes actuelles sur la question de la propriété foncière, serait très préjudiciable à la réconciliation entre les Rwandais et à l'établissement d'une paix durable dans leur pays.

1 Preface

The present report is part of a series of working papers published by FAST International, the Early Warning Program of swisspeace.

FAST's core task consists in the early warning of violent conflicts with the aim of initiating early action or response in order to prevent crisis situations from aggravating. Moreover, FAST also attempts to identify "windows of opportunity" to ensure peacebuilding. The combined methodology used by FAST applies several tools in order to analyze developments in the countries of concern. The core issues that influence the development of a given country are analyzed by looking at root and proximate causes as well as intervening factors. This risk profile therefore aims at providing an in-depth study of the situation in Rwanda and closely investigating selected core issues that shape the degree of conflict.

The underlying tool for this analysis is the analytical framework¹ pointing out the individual factors that cause the outbreak of a conflict and/or influence a conflictive situation. By applying this tool, FAST analysts continuously update the status of developments in the countries monitored. The analytical framework, hence, provides up-to-date information on the key issues that are critical for the further development of the country.

The author and the FAST team hope that this paper will provide readers with food for thought on the further developments and the necessary steps to be taken in order to resolve current problems and crises in Rwanda by peaceful means.

¹ For further information on the analytical framework and the definition of root causes, proximate causes and intervening factors, please refer to <http://www.swisspeace.org/fast/2analytical.htm>. For information on the analytical framework, please refer to the document "FAST Analytical Framework", <http://www.swisspeace.org/uploads/FAST/AF/AnalyticalFramework.pdf>.

2 Introduction

In February 2004 Rwanda officially adopted a national land policy and in September 2005 a national land law came into effect. The development of this new statutory framework on land tenure and management required more than seven years of internal debates between policy-makers, which is indicative of the importance of the issue and the sensitivities involved. Agriculture has always played a pivotal role in Rwanda. Today at least 90 percent of households rely on subsistence farming. However, their livelihood is threatened. Increasing land scarcity due to population pressure, environmental degradation, and land-grabbing by a new elite create an extremely precarious future to the national economy of the small, very poor and landlocked country. Specialists have been warning of the probability that the domestic agriculture will soon reach its natural limits, which indeed makes a land reform urgently needed. But beyond that impending necessity there looms the possibility that the Rwandan authorities may take advantage of restructuring the agrarian sector in order to pursue their own particular interests. Although the land law stipulates "to establish a land system that is secure for all Rwandans"², its strong focus on privatization and capitalization, along with ongoing inequalities in land access, and the regime's tendency toward historical revisionism, raise doubts about the government's true intentions. These doubts become even more pertinent with regard to the development of the land policy and law. A closer look at the so-called consultations of civil society in this context reveals a pseudo-process based on pre-set decisions. Subsequently, neither the policy nor the law offer adequate guarantees and safeguards to protect the interests of large parts of the population. Representatives of the local civil society fear that the government may seek to tighten the elite's grip on land or to restore the old, pre-colonial feudal system. This would inevitably lead to a further marginalization of discriminated groups, which in turn could provoke them to seek self-determination, and thus be the source of renewed social tensions. Already now, an estimated 80 percent or more of cases coming before a prefect court are concerned with land. Although officially there no longer exists any ethnicity in Rwanda, many of these cases are related to ethnic discriminations in the distribution of plots to returning refugees and their resettlement. As a result, the majority of the Rwandan population considers the land issue as a main obstacle in building lasting peace in the country, according to a survey of the National Unity and Reconciliation Commission (NURC), held in 2001.

With the implementation of land reform in view, it is worth attempting to make some sense of the critical significance the political economy of land may have on Rwanda's ongoing socio-economic reconstruction and development.³ Three major aspects form the basis of the analysis proposed here: the regulation of land rights and resource distribution before, during, and after the genocide and its impact on conflict and reconciliation; the development process of the new land policy and law in terms of civic participation; and the potential of the upcoming land reform to negatively affect peace consolidation and long-term stability in Rwanda. Given the limited space to discuss these issues of high complexity, the present paper does not pretend to be exhaustive. Rather, it aims at offering a synthetic background for understanding. For this reason, too, the controversy surrounding the environmental conflict research, which is directly or indirectly linked to the following reasoning, cannot receive as much attention as it deserves. The same holds true for the past and present involvement of the international community in

² Republic of Rwanda 2004: National Land Policy (draft). Kigali (January). 17.

³ The concept of 'political economy of land', as considered in the following pages, is based on Daudelin's analytical model on land and violence, which refers to four basic problems: governance of the tenure regime, access to land, security of tenure, and distribution of land holdings. These include an infinite number of specific challenges related to land and agriculture, such as land degradation, land reforms, quality of land registry, administrative capacity of the state, trade liberalization, land registries, dispute resolution, etc. Their presence in the face of a weak regime governance creates political opportunities for violent mobilization, poor implementation and rule enforcement, as well as limited ability to resolve local conflict, all of which are likely to create significant tensions. At the same time the potential for real conflict increases if the impact of these problems varies among the various groups within a given society, and if exogenous factors intervene for a political mobilization. See Jean Daudelin 2003: Land and Violence in Post-Conflict Situations. Ottawa: North-South Institute and World Bank (26 May).

solving Rwanda's agrarian crisis, since the main focus will be on local actors including the Rwandan governments and civil society⁴.

⁴ The term 'civil society' in the present paper is restricted to national/local actors, thus excluding all external non-governmental actors designated as 'international' or 'foreign' NGOs, which form a part of the 'international community'. Apart from this restriction, 'civil society' is rather broadly defined as an entity occupying the space between family and the state, and being composed of "a spectrum of organisations including NGOs, CBOs, faith based organisations; trade unions, cooperatives; youth groups, cultural organisations, sports clubs, burial associations, the media, and professional associations, [... who] work either in their individual capacity or come together under umbrella organisations or collectives." (Kituo Cha Katiba 2004: Searching for Sense and Humanity: Civil Society and the Struggle for a Better Rwanda. Kampala. 42, 48).

3 Conflict, Reconciliation, and the Meaning of Land in Rwanda

3.1 Natural Handicaps and Disadvantages

Rwanda is well known as a small and very densely populated country that has been struggling for a long time with one of the most acute land problems on the African continent. Baechler shows that the precarious balance between population size and food supply has frequently caused periods of famine through climatic irregularities, epidemics, locust plagues or 'punitive actions' by colonial rulers.⁵ These kinds of emergencies are traceable back to the end of the 19th century. During recent decades, food security again deteriorated significantly – a phenomenon that must certainly, but not exclusively, be attributed to growing demographic pressure. The population of Rwanda has risen from 1.5 million in 1934 to 8.4 million in 2003 and thus increased the concentration of people per square kilometer to an average of 271 (with up to approximately 700 to 820 in some areas of Save District and Ruhengeri, respectively).⁶ Given the decline of the population growth rate from 2.5 (1997-2003) to approximately 1.9 (2001-2015), the total number of inhabitants is projected to reach 10.6 million in 2015.⁷ Unlike the dramatic demographic change, Rwandans' almost exclusive dependence on renewable resources, such as agricultural land, has persisted to this day, along with general conventionalism towards traditional methods of cultivation. These asymmetric movements have resulted in a number of trends. First, farm holdings have decreased in size and became more fragmented. Secondly, cultivation slowly expanded on marginal zones like valley-bottoms, steep hillsides and woodlands while the livestock density on remaining grazing lands increased. Thirdly, many households owning small plots or representing large families found themselves compelled to rent land, and lastly, the rhythm of seed and harvest has been accelerated by shortening the periods of fallow and lengthening those of cultivation.⁸

These tendencies were further intensified by their coincidence with the high vulnerability of Rwanda's environmental conditions. The country's resemblance to a "gigantic garden"⁹ is deceptive – there is evidence that its topographic shaping is extremely inappropriate for high population densities. Soil erosion, resulting from progressive land occupation in the sharply demarcated slopes that characterize the typically hilly terrain has long become a serious problem. However, to what extent has yet to be established. Some experts mention that today 50 percent of Rwanda's surface is subject to moderate or severe erosion hazards.¹⁰ The Rwandan policy makers estimate that the resulting reduction of feed capacity affects 40,000 persons per year.¹¹ On the other hand, Percival and Homer-Dixon noted that "rather than soil erosion, over-cultivation appears to have been the principal factor behind falling fertility"¹². Depending on the region as well as on varying land use patterns, other problems such as deforestation, water scarcity or overgrazing must be considered. With the expansion of acreage and the

⁵ See Günther Baechler 1999: *Violence Through Environmental Discrimination. Causes, Rwanda Arena and Conflict Model*. Dordrecht: Kluwer Academic Publishers. 137.

⁶ See International Monetary Fund 2004: *Rwanda. Country Report No. 04/382*. Washington (December): 6; Chris Huggins and Herman Musahara 2005: *Land reform, land scarcity and post-conflict reconstruction: A case study of Rwanda*, in: Chris Huggins and Jenny Clover (eds.) 2005: *From the Ground Up. Land Rights, Conflict and Peace in Sub-Saharan Africa*. Nairobi and Pretoria: African Centre for Technology Studies and Institute for Security Studies (June). 269-346. 299.

⁷ See Institute for Security Studies 2005: *Country Fact File Rwanda*. Pretoria: http://www.iss.org.za/AF/profiles/rwanda/Table_Population.html.

⁸ See Chris Huggins and Herman Musahara 2004: *Land Reform, Governance and the Environment: The Case of Rwanda (Draft)*. Paper prepared for the 4th regional Session of the Global Biodiversity Forum for Africa. Dar es Salaam (June). 6.

⁹ Gérard Prunier 1995: *The Rwandan Crisis. History of a Genocide*. New York: Columbia University Press. 2.

¹⁰ See Huggins and Musahara 2005: *Land reform, land scarcity and post-conflict reconstruction*. 300.

¹¹ See Huggins and Musahara 2004 (a): *Land Reform, Governance and the Environment*. 6-7.

¹² Valerie Percival and Thomas Homer-Dixon 1995: *Environmental Scarcity and Violent Conflict: The Case of Rwanda*. Toronto: University of Toronto (June). 6.

growing wood consumption for domestic use, the primary forest, once covering 80 percent of the country, has been depleted by more than 90 percent.¹³ Unfortunately, reforestation campaigns by the Rwandan government had a rather counterproductive impact. The eucalyptus tree, despite consuming large amounts of water and nutrients, was preferred for its fast growing quality, and thus added to a further depletion of overstressed soil and absorption of dwindling water resources. Regarding cattle-breeding, Gasana estimated that the demographic change has reduced the grazing land from 34 percent in 1965 to 16 percent in 1987. The subsequent increase in livestock density contributed to a rapid degradation of the remaining grazing area and also negatively affected the value of farmland.¹⁴ However, according to a government study cited by Huggins and Musahara, the number of goats and livestock has decreased since 1990. Yet, trapped within a vicious circle, this development has caused a serious lack of organic fertilizer with – again – immediate consequences for both the agricultural production as well as the environment.

As a result of these developments, by the late 1980s the potential of natural capital, in terms of the steadily growing demand for cropland and agricultural output, showed inevitable signs of exhaustion. As soon as the food production could not keep pace with the population growth of 3 percent per annum, Rwanda was transformed from one of the sub-Saharan three top performers at the beginning of the 1980s to one of its worst by the end of the decade.¹⁵ The drop in labor productivity and per capita food availability has caused severe social effects. It has led to a spread of rural poverty and unemployment, to landlessness and disinheritance, to a decline in investments for health and education, to migration movements out of areas of intense environmental stress and finally to food crises, most notably in the southern and western parts of the country. The sudden crash in coffee and tea prices between 1989 and 1991, as well as the imposition of the structural adjustment program by the IMF in September 1990, contributed to the critical state of affairs and in their own way to the further debilitation of the already exhausted economy and to the deepening of rural calamity.

In response to these environmentally induced challenges, throughout the past 40 years the Rwandan authorities have pursued a range of different strategies focusing on diversified income generation, family planning, resettlement and urbanization, agricultural intensification and the dissemination of more sustainable farming methods. The very limited success of these measures has different reasons, including poverty-related lack of access to technology, inputs and credit, or insufficient capacities of the Ministry of Agriculture (MINAGRI), among others. An additional disadvantage derives from the fact that many of the official development interventions have been suffering from an authoritarian and top-down style of planning and implementation, which often exacerbated existing grievances rather than to settle them.¹⁶ So the search for sustainable solutions to modernize Rwanda's agriculture continues, and it remains to be seen whether the implementation of the planned land reform is likely to bring a viable change. Any sustainable solution, however, over and above the ecological and economical concerns as drafted above, will have to address the social inequities that so far have been inextricably linked to Rwanda's political economy of land. In terms of socio-political stability it is, in fact, not environmental scarcity as such that poses a risk, but the way in which the authorities are dealing with the matter as regards to issues such as legitimacy, accountability, or non-discrimination.

¹³ See Baechler 1995: *Violence Through Environmental Discrimination*. 133.

¹⁴ See James K. Gasana 2002: *Natural Resource Scarcity and Violence in Rwanda*, in: Richard Matthew, Mark Halle and Jason Switzer (eds.): *Conserving the Peace: Resources, Livelihoods and Scarcity*. Winnipeg: International Institute of Sustainable Development. 199-246. 214.

¹⁵ See Percival and Homer-Dixon 1995: *Environmental Scarcity and Violent Conflict*. 6.

¹⁶ See among other *The Economist* 2004: *Silence in the court of King Paul*. London (30 October). 51.

3.2 Environmentally Induced Conflict – A Controversy

Since the beginning of the 1990s an impressive number of studies have focused their attention on the environmental causes of violent inter-group conflict in developing countries. In the case of Rwanda, their findings illuminate a highly complex chain of causation that leads from demographic change, decreasing resource availability, and contested rights of land access through the economic collapse prior to 1994, the subsequent loss of state legitimacy, and finally to civil war and genocide. However, there is no consensus on the significance of this correlation between the biophysical environment and national security. While some authors assume “a significant role played by environmental factors”¹⁷, others supply evidence that land scarcity, given its severity and compared to elite or regime insecurity in the context of the civil war and the Arusha Accords, “was surprisingly limited”¹⁸, or “at best [...] was an intervening variable that aggravated grievances”¹⁹. Meanwhile, numerous controversies have occurred between proponents of the environmental conflict approach and those opposed to their findings. Critics have argued that the “concept of environmental conflict is fundamentally flawed”²⁰. They refer to methodological weaknesses and theoretical shortcomings, such as limited empirical evidence, preconceived causalities, or the reproduction of neo-Malthusian narratives.²¹ Accordingly, a deterministic causality between the social and economic effects of environmental scarcity and degradation and conflicts cannot be assumed. An important argument is that a focus on scarcity does not lead to a useful understanding of the relations between resources and conflicts – in fact, it disguises the real sources of such conflicts, as the environment is portrayed as being responsible for the behavior of people. Resource scarcity per definition represents a product of social processes rather than of nature, whereas environmental conflicts are phenomena situated at the interface between the natural and social spheres.²² Thus, central to any approach seeking to understand the complex dynamics of environment, land and security must be an analysis of the sociological rationality of the actors involved, of how people gain access to and control over resources for their livelihoods, of who is doing what to whom and why.

Following these considerations, it was the political economy of land that has contributed to socio-political tensions, conflict and genocide in Rwanda. This includes the role of resource capture 1980s, as well as the historical significance of land in patron-client relations which became increasingly rigidified in the late 19th century, and has been an important element of differentiation between Hutu and Tutsi. All of these factors must be seen in the context, and not as a reason for ‘natural’ land scarcity and its impact on the national economy. Likewise, it is also the socio-economic fault line rather than population pressure or soil degradation, which is supposed to be the driving factor behind the shrinking natural capital and the decrease in agricultural per capita production. This puts in doubt the arguments of authors such as Percival and Homer-Dixon, who find that previous to the genocide “land was quite evenly distributed throughout the population”²³. In contrast, Baechler points out that “of a total number

¹⁷ James K. Gasana 2002: *Natural Resource Scarcity and Violence in Rwanda*. 206.

¹⁸ Percival and Homer-Dixon 1995: *Environmental Scarcity and Violent Conflict*. 13.

¹⁹ Alana Tiemessen 2005: *Post-Genocide Rwanda and Villagisation. The Human Insecurity of Dwindling Land Entitlements*. Paper Prepared for the Annual International Studies Association (ISA). Honolulu (1-5 March). 1.

²⁰ Tobias Hagmann 2005: *Confronting the Concept of Environmentally Induced Conflict*, in: *Peace, Conflict and Development* 6 (January). 1-22. 1.

²¹ See Nils Petter Gleditsch 1998: *Armed Conflict and the Environment: A Critique of the Literature*, in: *Journal of Peace Research* 35 (3). 381-400; Betsy Hartmann 2001: *Will the Circle be Unbroken? A Critique of the Project on Environment, Population and Security*, in: L. Peluso and M. Watts (eds.): *Violent Environments*. New York. 39-62.

²² Hagmann 2005: *Confronting the Concept of Environmentally Induced Conflict*. 14, 15.

²³ Percival and Homer-Dixon 1995: *Environmental Scarcity and Violent Conflict*. 6.

of 1,112,000 farms in 1984, 182,000 farms owned about half of the agriculturally productive land²⁴. In 1994, increased by the tradition of dividing real-estate inheritance, this inequality resulted in 57 percent of rural households owning less than 1ha and 25 percent with parcels smaller than 0.5ha.²⁵ The beneficiaries of this trend were the members of the notorious *akazu*, a kind of owners who rarely fully exploit their landholdings. Thus, as Bigagaza et al. stated with regard to the situation at present, “the unequal distribution of land is presumably a larger problem than population pressure”²⁶.

3.3 Politically Induced Land Conflict

Pre-Genocide Period

The unequal distribution of land by social discrimination reflects a recurrent pattern throughout much of the country’s past centuries, and goes back to pre-colonial days. Before the country’s administrative unification at the beginning of the 20th century, different systems regulated access to land. Scholars distinguish among the central, eastern and southern areas that came to be ruled by the *mwami*, the ‘Tutsi’ king, prior to the colonial period, and the northwest and the ‘Hutu’ kingdoms of Bukunzi and Busozo which remained autonomous until the intervention of the Belgians in the 1920s. In those regions under Tutsi control, the *mwami* was the ultimate owner of land to which he granted *usufruct* rights through his local representatives in return for obligations and fees, payments, and labor.²⁷ These rights could be withdrawn at any time and allegedly were also instrumentalized for political means. Thus, the vast majority of the agrarian population had virtually no control over their land nor their labor power. Unlike this centralized system known as *igikingi* or *isambu*, respectively, the land outside the central courts’ influence was held by corporate lineages and organized along the principles of clientship, *ubukonde*. As first occupier, the lineage head, *umukonde*, allocated shares of his plot to non-lineage members in exchange for presents such as sorghum or banana beer, and only occasionally for work.²⁸ At the same time, however, the *umukonde* also had the right to reclaim land from his clients without lessening the amount of their annual fees. Although similar arrangements also seem to have been practiced by some officials of the central court, the different application of labor requirements clearly separates the two systems of pre-colonial land access. Under King Rwabugiri (1860-95) the extractive power of the central court still became more exploitative and was increasingly imposed on formerly independent lineages, whose land was confiscated and political power broken within the scope of the territorial expansion. More importantly yet, Rwabugiri entrenched ‘ethnic’ inequalities, especially through the spread of *uburetwa*, a feudal labor service which applied to Hutus only.²⁹ This fact has assiduously been ignored by today’s official version of Rwanda’s history.

The institutions of *uburetwa*, as well as the ‘ethnic’ distinction were later adopted by the Belgian colonizers, and reinforced for the sake of their own political purposes and extractive needs. Furthermore, with the unification of Rwanda’s administrative map, the northwest of the country witnessed an end to the traditional *ubukonde* since the original lineage heads were replaced by Tutsi

²⁴ Baechler 1999: Violence Through Environmental Discrimination. 139-140.

²⁵ See Jean Bigagaza, Carolyne Abong and Cecile Mukaburuga 2002: Land Scarcity, Distribution and Conflict in Rwanda, in: Jeremy Lind and Kathryn Sturman (eds.): Scarcity and Surfeit – The ecology of Africa’s conflicts. Nairobi and Pretoria: African Centre for Technology Studies and Institute for Security Studies. 50-85. 69.

²⁶ Ibid.

²⁷ See C. Huggins and Herman Musahara 2004: Land Reform, Land Scarcity and Post Conflict Reconstruction. A Case Study of Rwanda, in: Eco-Conflicts Vol. 3. Nairobi: African Centre for Technology Studies (October). 1.

²⁸ See Johan Pottier 2002: Re-Imagining Rwanda. Conflict, Survival and Disinformation in the Late Twentieth Century. Cambridge: Cambridge University Press. 182.

²⁹ See Pottier 2002: Re-Imagining Rwanda. 110.

notables from the central court. Some of these new authorities took advantage of Belgian laws and appropriated large amounts of former Hutu land, which was considered 'vacant'.³⁰ The spread of individual land rights over the whole country did indeed correspond with the European's attempt to transform Rwanda's agriculture towards more western ideas of rationality. As a result, violent conflicts erupted between land users, i.e. clients, on the one hand, and land 'owners' involving political authorities under the *mwami*, the lineage heads, and the church, on the other.³¹ Meanwhile, Belgium's alliance with the Tutsi central court was not devoid of tensions either. Although the ethnic minority's position within the Rwandan society has significantly been strengthened by the strategy of indirect rule and the establishment of a 'double colonialism', the colonists, imbued with the strivings of Enlightenment, imposed a set of 'civilizing measures' that gradually undermined the king's divine legitimacy.³²

With the 1959 'Social Revolution', the feudal structures were replaced by a more equitable system of land access. However, the commitment of the post-independence state to ensure the well-being and livelihood of all citizens did not last. The accumulation of land by government officials started immediately after the Tutsi exodus and was continued by Habyarimana's elite, who preferred to profit from the distress sales of the struggling poor and the subsequent increase in cheap agricultural labor rather than to face the challenges of the growing environmental constraints. By the end of the 1980s the government again had consolidated control and more or less exclusive ownership over large parts of the agricultural capital. Yet at the same time, they did not accept responsibility for growing food insecurity, which was declared "a personal affair grounded in face-to-face patronage"³³ and thus conferred to the social 'safety nets' of the customary systems.

Genocide

In view of the economic crisis by the end of the 1980s, the regime of Habyarimana gradually lost legitimacy by proving unable and unwilling to provide for the needs of the population. The increasing unpopularity of the state accompanied an ever-growing policy of ethnic segregation and the concentration of power in the hands of the *akazu*. Following Bigagaza et al. the political economy of land played a supportive role in this process: The government, unable to address the land issue, attempted to use land to maintain control of the state and thereby dominate the institutions and other decision-making structures to allocate scarce land and resources.³⁴ Accordingly, in the face of the 1989 food crisis the largest part of international assistance was channeled into the northwestern Province of Gisenyi, the president's home region. This inevitably led to a deepening of the already existing regional cleavages and encouraged the formation of political opposition parties, predominately in those areas in the southern and central parts of the country that were most affected by environmental insecurity.³⁵ However, the regime, immune to internal pressure for democratization, appeared largely able to maintain control of the state apparatus.

According to Percival and Homer-Dixon, the situation only began to waver with the 1990 incursion of the Rwandan Patriotic Front (RPF) from Uganda, whose leaders are said to have exploited the critical situation in their home country. Until that time the return of Tutsi emigrants had been refused by the Rwandan government due to apparent overpopulation problems among others. In addition, Hutu

³⁰ See Chris Huggins 2003: The Challenges of Land Scarcity and Protracted Social Conflict in Rwanda. A Discussion Paper. Nairobi: African Centre for Technology Studies. 7.

³¹ See Huggins and Musahara 2004 (October): Land Reform, Land Scarcity and Post Conflict Reconstruction. 2.

³² See Pottier 2002: Re-Imagining Rwanda. 184.

³³ Ibid. 185.

³⁴ Bigagaza, Abong and Mukaburuga 2002: Land Scarcity, Distribution and Conflict in Rwanda. 70.

³⁵ See Percival and Homer-Dixon 1995: Environmental Scarcity and Violent Conflict. 7.

peasants feared the reclaiming of former Tutsi land property. With the forceful intervention in favor of their right to return, the RPF plunged the country into a civil war that by 1992 had displaced one-tenth of the population and widely disrupted agricultural activities. Due to the pressure of growing internal demands for democratization, the ongoing threat of an imminent invasion of the RPF and in response to significant international pressure, the Rwandan Government finally introduced a multiparty system and a coalition government in April 1992, and began a dialogue with the RPF that was brought to a conclusion with the Arusha Accords in August 1993. However, these concessions were insofar only halfhearted as they constituted an immediate menace to the power and privileges of the elite and army. As a result, the transition from authoritarian rule was accompanied by a conspiracy with radical Hutu parties and undermined by the attempt of the rattled elite to make capital out of ethnicity. Social cleavages were used to create animosity towards the RPF and to shift responsibility for the existing grievances onto the Tutsi. One of the myths from these days blamed the ethnic minority for poverty, famine and general economic hardship.³⁶

Nevertheless, during the genocide, the official concealment of facts did not immediately translate into violence against the Tutsi. According to Prunier, socio-cultural patterns such as obedience were the main motivation for the ordinary peasants to kill.³⁷ Thus, although the southwest of the country experienced the greatest scarcities,³⁸ the province of Butare remained relatively quiet for the first two weeks after the launch of the massacres during the night of 6 April 1994. Violence only started after the replacement of the reluctant Prefect Jean-Baptiste Habyarimana, who did not comply with the killing orders, by the extremist Sylvain Ndikumana.³⁹ At the same time, land greed instantly fuelled the killings. "At least part of the reason", as Prunier affirms, "was [a] feeling that there were too many people on too little land, and that with a reduction in their numbers, there would be more for the survivors"⁴⁰. Likewise, the promise to get more land was a powerful incentive offered by local administrators to those hesitating to get engaged in the killings.⁴¹ Moreover, the desire for land claimed its victims from the Hutu population as well. Musahara and Huggins cite an example from a commune in Gisenyi, where violence was directed almost exclusively against those involved in land disputes. Of the 32 victims, only one was a Tutsi.⁴² This, as they concluded, "represents a tendency for some local people to use the cover of confusion in order to 'settle old scores', many of which originate in social struggles for access to land, and reminds us that the Hutu-Tutsi dynamic is not the only issue of significance"⁴³.

It is this critical evidence of land concerns before and notably during those years between the end of the 1980s and the disaster of 1994 that seems to follow the logic of the controversial concept of environmental conflict, as mentioned before. While trying to determine a correlation between the environmental variable and the genocide, most authors have considered the political economy of land as an integral part of the overall notion of land or environmental scarcity, aside from the issues of demographic pressure and environmental degradation. As a result, the specific role of the political economy of land has not yet been determined. However, Percival and Homer-Dixon rightly stated that, although the recent violence in Rwanda occurred in conditions of severe environmental scarcity, the Hutu elite's behavior was primarily motivated by their perception of insecurity related to the civil war

³⁶ Bigagaza, Abong and Mukaburuga 2002: Land Scarcity, Distribution and Conflict in Rwanda. 56.

³⁷ See Prunier 1995: The Rwandan Crisis. 248.

³⁸ See Percival and Homer-Dixon: Environmental Scarcity and Violent Conflict. 9.

³⁹ See Prunier 1995: The Rwandan Crisis. 244.

⁴⁰ Ibid. 4.

⁴¹ See Alison Des Forges 1999: Leave None to tell the Story. Genocide in Rwanda. New York, Washington, London and Brussels: Human Rights Watch (March). 236-239.

⁴² See Huggins and Musahara 2005: Land reform, land scarcity and post-conflict reconstruction. 274-275.

⁴³ Ibid. 275.

and the Arusha Accords.⁴⁴ Baechler, in contrast, considered the RPF invasion and the power-sharing negotiations in Arusha as catalysts to and not as reasons for the 1994 war. He set the recent conflict against the background of a power struggle between two elites in a hierarchical interethnic order that culminated in the revolution of 1959/60 and the counter-revolution of 1994. "The growing social and ethnic tensions between these two dates", Baechler argued, are only explainable with reference to "scarce and unequally distributed economic resources and the increasing overuse of the various eco-regions due to the demographically conditioned shrinking of subsistence economy".⁴⁵ In a similar way, but instead focusing on the political economy of land, Gasana pointed out that "the ethnically-based winner-take-all land access model implemented following the 1959 revolution [...] led to explosive interactions between ecological exclusion affecting the poor peasantry and political exclusion affecting the elites of central and southern regions and the Tutsi"⁴⁶. This finally "provided an opportunity for the rebellion and to extremist politicians who turned ethnic rivalries into political tools"⁴⁷.

The political economy of land was certainly a factor in the Rwandan conflict, though not on its own a 'sufficient' cause. There is no doubt that the control over land and resources had been used to strengthen the elite's power or to convince people to kill. However, the significance of such issues tends to be overestimated as long as other competing indicators are not adequately examined. Percival and Homer-Dixon found that "if we had focused our analysis only on environmental scarcity and the social effects it produced then its contribution to the conflict would have appeared powerful."⁴⁸ While structural inequities do not in themselves imply that conflict is inevitable, cleavages in the social system can lead to violence if certain events provoke, accelerate or create instability. In such situations, any meaningful empowerment of one group of people is likely to be perceived by some other group as threatening. Thus, any assessment of the role of land politics within the Rwandan arena of killing and political unrest requires a consideration of the conglomeration of different factors that have been operating and mediating its impact, including the broader regional and international dimension to which the country's fate is intimately linked.

Post-Genocide Period

Soon after the establishment of a new government by the RPF, the political economy of land again became an issue. The vast influx of refugees of the 'old caseload' in late 1994, who had left the country from 1959 onwards, and the 'new caseload', who had fled in the immediate aftermath of the genocide and returned in late 1996 or early 1997, resulted in housing crises and, more importantly, in competing claims over property rights including farmland, buildings, and agricultural or forest products.⁴⁹ This situation was further exacerbated by the existence of thousands of internally displaced people who had been uprooted by war and the 1997-1998 insurgency in the northwest of the country, in Ruhengeri and Gisenyi. Guided by the Arusha Accord's Protocol on Repatriation of Refugees and the Reinstallation of Internally Displaced Persons, the government in response opened up communal domains for resettlement, mostly in Akagera National Park and an adjacent hunting preserve. Additionally, landholders were required to share their parcels with those returnees, who after more than ten years of

⁴⁴ This finding was rather unexpected for the two authors, who have strongly been criticized for their neo-Malthusian writings and simplistic arguments about causal linkages between resource scarcity and violent conflict. See: Environmental Change and Security Report 9 2003: Exchange. Thomas Homer-Dixon, Nancy Peluso, and Michael Watts on Violent Environments. 89-96.

⁴⁵ Baechler 1999: Violence Through Environmental Discrimination. 164.

⁴⁶ Gasana 2002: Natural Resource Scarcity and Violence in Rwanda. 229.

⁴⁷ Ibid.

⁴⁸ Percival and Homer-Dixon 1995: Environmental Scarcity and Violent Conflict. 15.

⁴⁹ See Huggins and Musahara 2004 (October): Land Reform, Land Scarcity and Post Conflict Reconstruction. 1.

absence were recommended to reclaim their former possession. This practice was never publicly debated or regulated by law and demonstrated a strong propensity to be misused.⁵⁰

Also, in December 1996, the Cabinet adopted a National Habitat Policy that focused on the construction of villages, the so-called *imidugudu*. What had initially been perceived as an attempt to resolve the immediate housing crisis turned out to be a rigorous, and in means of long-term economic development, highly controversial plan to relocate all Rwandans into grouped settlements. Although many people did move willingly into their new habitats, hundreds of thousands of others were forcefully expelled from their homes, often expropriated of land and/or even forced to destroy their own houses, in general without any of the promised compensation.⁵¹ In view of such human rights violations, international donors almost completely halted their funding for the habitat policy by the end of 1999. At the same time the Rwandan government faced growing criticism within its own ranks⁵² and, despite the fact that similar attempts have failed in other countries of Sub-Saharan Africa, it still included *imidugudu* as an integral part into the new land law and policy.

It is crucial to note that each of these strategies to cope with the refugee problem had disclosed traces of ethnic discrimination against the Hutu. 'Social harmony and reconciliation' have seriously been undermined by substantial preferences given to the Tutsi, most notably in relation to land distribution. Pottier refers to a disturbing discourse on morality that surrounded the villagization process, as land was often allocated to those deemed "willing to work", in other words to the old case load refugees. The latter claimed to be more deserving of land after long years in exile, whereas the new case load refugees were argued to be "lazy" because of their "pampered time in the camps" in Zaire.⁵³ As a result, many Hutu increasingly belonged to the 'landless' – even though this category was officially assigned to refugees of the old case load only – and were now living under extremely precarious conditions in their new official habitats. Tiemessen argues that "the government's unity and reconciliation agenda, including *Imidugudu*, aggressively seeks to ensure the secure and socio-economic well being of 'survivors'", and therefore "has presented villagisation in terms of simple policy narratives that the international community responds well to: reconciliation, rational land distribution, encouraging repatriation"⁵⁴. Thus, the simplistic decree that ethnicity is no longer relevant in post-genocide Rwanda has been traded for an equally divisive identity discourse that privileges "survivors" of the genocide.⁵⁵ Nevertheless, one cannot ignore that there are many cases of Tutsi who have also been suffering under extreme hardship. This includes genocide survivors as well as certain groups of returnees who arrived too late to benefit from the originally generous support of the repatriates. In order to ensure sustainable solutions for the displaced people, the Global IDP Project in a recent report urges the Rwandan government and international donor community "to address the current misery in settlement sites as a humanitarian issue"⁵⁶.

The political economy of land and resources in the post-genocide period again reveals a regional dimension. Global IDP pointed out that the provinces of Gisenyi and Ruhengeri – once strongholds of the Habyarimana regime – have received considerably less assistance for village construction from the

⁵⁰ See Human Rights Watch 2001: Uprooting the Rural Poor in Rwanda. New York, Washington, London and Brussels (May). 38.

⁵¹ Ibid. 30-31.

⁵² See James Munyaneza 2005: Senators attack Govt on Imidugudu. Kigali: The New Times (3 April).

⁵³ See Pottier 2002: Re-Imagining Rwanda. 195.

⁵⁴ Tiemessen 2005: Post-Genocide Rwanda and Villagisation. 10.

⁵⁵ Ibid. 11.

⁵⁶ Global IDP Project 2005: Ensuring durable solutions for Rwanda's displaced people: a chapter closed to early. Geneva (8 July). 4.

government and the international community than the rest of the country.⁵⁷ Moreover, there are reportedly high-ranking military officers illegally occupying the former land of local *imidugudu* residents. These issues are likely to further exacerbate the historical animosity between the people of these two Hutu-dominated provinces and the central authorities.⁵⁸ However, the hold on land appears not to be limited to the northwest of the country. A survey of the Agency for Cooperation and Research in Development (ACORD), published in 1998, emphasizes that most land was owned by elite groups with connections to powerful government officials.⁵⁹ Likewise, the Rwandan Government admits to an “increasing hold of the urban elite over rural land”⁶⁰.

In the meantime, and as a consequence of these critical developments, local land disputes have become increasingly common. In 2001 the Ministry for Lands, Human Settlement and Environmental Protection stated that an estimated 80 percent or more of the cases coming before a prefect court were concerned with land.⁶¹ The same has been reported by the National Ombudsman who established his office in early 2004.⁶² Huggins and Musahara identify three broad types into which they categorize the corresponding disputes in regard to their triggers: (1) “competing claims due to the return of multiple waves of refugees”; (2) “disputes in connection with *imidugudu* in terms of absence of or insufficient compensation for confiscated land”; and (3) “appropriation of large plots by powerful people [...] often for purposes of land speculation, rather than agricultural production.”⁶³ Apart from that, there are inheritance-related cases and intra-family disputes, which, fatally, have been on the rise since the adoption of a new inheritance law in 2000 that allows a woman to succeed to an estate at the death of her parents or husband. Over and above these economic or political motives, however, people often go to court for the simple reason that they emotionally adhere to their land as a part of the family heritage – in fact an attachment that has been expected to lessen by distancing the farmers from their plots through relocation to an *imidugudu*.⁶⁴

The conflicting capacity of land politics with regard to its ethnic distortion is barely openly reflected in today’s Rwanda of unity and reconciliation. Only a few voices from civil society express concern over “land and ethnicity [as] major conflict problems”⁶⁵ or the “tradition of discrimination”⁶⁶ that survived the bloody lessons of the past. Tiemessen cites a report of the Rwandan Initiative for Sustainable Development (RISD) which “acknowledges but drastically underestimates this trend”⁶⁷. Nevertheless, in a wider and politically rather uncompromising sense, a broad based consultation by the Institute of Research and Dialogue for Peace (IRDP) has revealed that economic reconstruction and the fight against poverty are perceived by the population as one of five major challenges facing the country in order to construct lasting peace.⁶⁸ This also includes the issue of land as “an almost permanent source of conflict among the population”⁶⁹. The same was found by the National Unity and Reconciliation Commission.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Cited in Bigagaza, Abong and Mukaburuga 2002: Land Scarcity, Distribution and Conflict in Rwanda. 69.

⁶⁰ Republic of Rwanda 2004: National Land Policy. 4.

⁶¹ See Republic of Rwanda 2001: Ministry of Lands, Human Settlement and Environmental Protection. Brookings Initiative in Rwanda: Land and Human Settlements. Kigali (November). 26.

⁶² See Moses Kazora 2004: Ombudsman Meets District Officials. Kigali: The New Times (16-18 February).

⁶³ Huggins and Musahara 2005: Land reform, land scarcity and post-conflict reconstruction. 276.

⁶⁴ See Human Rights Watch 2001: Uprooting the Rural Poor in Rwanda. 34.

⁶⁵ Interview 2004. Rwanda (1 November).

⁶⁶ Interview 2004. Rwanda (4 November).

⁶⁷ Tiemessen 2005: Post-Genocide Rwanda and Villagisation. 11.

⁶⁸ See Institut de Recherche et de Dialogue pour la Paix 2003: Building Lasting Peace in Rwanda: Voices of the People. Kigali.

⁶⁹ Ibid. 96.

The results of its survey of 2001 state that land-related problems are considered to be the most serious and greatest negative factors hindering sustainable peace.⁷⁰ Hence, even though the political economy of land was not a decisive factor in the context of the genocide, its significance in terms of reconciliation and the consolidation of lasting peace cannot be over-emphasized and therefore should be a matter of serious concern to the Rwandan Government as well as the international donor community and development organizations.

⁷⁰ See Huggins and Musahara 2005: Land reform, land scarcity and post-conflict reconstruction. 275.

4 Civil Society Participation and Land Law Development in Rwanda

4.1 The Ambiguous Status of Civil Society

Several non-governmental stakeholders in Rwanda critically observe the disturbing repetition by the current government of certain discriminatory patterns in the distribution of land and resources. The upcoming land reform, they fear, is likely to further strengthen these tendencies since it is said to predominantly safeguard the interests of the elite, and not the security needs of the rural poor. This feeling of mistrust has also been fostered by the development of the new land policy and law, which largely took place behind close doors. However, before discussing the details of this process one needs to take a look at the role and status of Rwanda's civil society within the context of recent history as well as today's growing authoritarianism under Kagame's regime. In this regard, most specialists and observers are struggling with an entity whose critical modus operandi in a situation of increasing racism, hatred, and violence has deeply compromised "the long-standing tradition in Western political thought, dating from Tocqueville, in which the presence of voluntary associations [...] is considered to promote pluralism, democracy, rapid economic growth, effective public service, and resilience against external shocks"⁷¹.

In fact, Rwanda's recent past reveals the contradiction of a widespread presence of cooperative, associative and risk-sharing groups,⁷² while at the same time the country witnessed a complete collapse of society, state and economy, culminating in the extermination of almost one million people in a matter of 100 days. In the search of an explanation for this unexpected picture, Uvin expresses doubts whether Rwanda really had a 'civil society' deserving that appellation.⁷³ Essentially, there was neither a 'tradition of associationalism' nor the necessary social and political space for non-partisanship or the development of ethical and democratic principles in order to promote pluralism and tolerance.⁷⁴ In addition, further disadvantages such as extreme poverty and social inequality, accompanied by an overall lack of access to information and 'a tradition of infantilization of the rural population', seriously hampered the formation of effective civic engagement.⁷⁵ Subsequently, Rwanda's associative sector became at the same time strongly controlled by an authoritarian, omnipresent state as it was externally driven and inspired by the apolitical intervention priorities of the international aid community. Far from being an autonomous and responsible representative of the population as a whole, at the end civil society perfectly reflected the deep divisions and devastating ideologies of the society at large. In contrast, the highly positive assessment of Rwanda's social landscape prior to the genocide appears to suggest that the existence of civil society was only considered to be a matter of quantity rather than of quality. Therefore, especially the case of Rwanda, Uvin recommends, "cautions against excessive, mechanistic optimism about the democratizing and stabilizing impact of NGOs".⁷⁶

This recommendation has not lost any actuality. The self-assessment of civil society, still consisting of a "plethora of NGOs and CBOs [community based organizations]"⁷⁷, falls out sobering, often merciless. "La société civile au Rwanda ne vaut rien, elle est très fragile"⁷⁸, according to a local human rights

⁷¹ Peter Uvin 1998: *Aiding Violence. The Development Enterprise in Rwanda*. Connecticut: Kumarin Press. 167.

⁷² According to conservative calculations there was „approximately one farmers' organization per 35 households, one cooperative per 350 households and one NGO per 3,500 households". See Uvin 1998: *Aiding Violence*. 166.

⁷³ *Ibid.* 168.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.* 178.

⁷⁶ *Ibid.* 168.

⁷⁷ Huggins and Musahara 2005: *Land reform, land scarcity and post-conflict reconstruction*. 283.

⁷⁸ Interview 2004. Rwanda (12 November).

activist. At the same time, however, be it out of conviction, loyalty, embarrassment or fear, some interviewees also assert a reinforcement of their position compared to the situation before 1994.⁷⁹ Their own weakness is perceived to be related to different factors, many of which indeed correspond with the aforementioned: lack of experience and professionalism, publicity and progressivism. There is a general reluctance of the government to critical dialogue with NGOs and to provide the necessary legal and political space for their existence and effective functioning. Moreover, there is a complete dependence on funding from the international community and/or the state. The latter leads to rivalries and undermines solidarity among the members of civil society who anyhow are “full of suspicion for each other”⁸⁰, since they are often fragmented along social, ethnic and/or linguistic lines, as stated in a 2004 survey of Kituo Cha Katiba. The report of the Kampala based institution carefully points out the fact that “some organisations are branded pro- or anti government on the basis of whether their founders or CEOs are Tutsi or Hutu”⁸¹.

To be labeled as anti-governmental may be fatal in a country where loyalty to the political line of the regime is the only sure guarantee for survival.⁸² Neither the establishment of close contacts with senior government officials nor the creation of regional or international synergies have proved to be a sure measure in order to progress in the domain of true civic engagement. This became evident at the latest by the end of 2004, when Trocaire’s deputy to Rwanda was expelled from the country. Yet at the same time, it is important to note that Rwandan NGOs have been practicing self-imposed limitations, too. Although well aware of their lack of ‘pro-activity’, “NGOs have by and large followed, if not reproduced, the behavior and ideology of the dominant section of society under the RPF rule in the same way as they did before under the MRND authoritarianism”⁸³. This ambiguous development again has been sustainably supported by the efforts of the international development community, whose sense of guilt over its inaction during the genocide, as well as the re-conceptualization of poverty as the global source of insecurity, has reinforced the “myth of a-political development by proposing technocratic solutions to technical problems”, whereas “development interventions are still reported to be top-down in style, not allowing room for local, creative problem-solving”.⁸⁴

The Rwandan government, on the other hand, has promised to “support the strengthening of democratic governance, including support for... media and civil society participation... [and] allow legitimate political expression”⁸⁵. This happened in 1999 and again in January 2004, in a Memorandum of Understanding with the UK regarding the mutual development obligations of both signing parties. However, the Rwandan government’s concept of collaboration with civil society tends to exclude political independence. According to Protais Musoni, Minister of State for Good Governance, “there are two debates on the role of the civil society organisations in development countries by international scholars. On one side civil society is seen as a counter power to government, and on the other civil society is seen as an effective partner in the service delivery and development process. Rwanda favours the latter approach”⁸⁶. Translated within the practice of 2003, the year of presidential elections, this effectively meant “the closing off of all political space, the maintenance of a climate of fear, [...] intimidations and disappearances of potentially critical voices, the banning of the sole opposition party

⁷⁹ Interviews 2004. Rwanda (1-13 November).

⁸⁰ Kituo Cha Katiba 2004: Searching for Sense and Humanity. 61.

⁸¹ Ibid.

⁸² See Gabriel Gabiro 2005: Atmosphere of Fear in Rwanda Civil Society. Lausanne: Agence Hirondelle (28 February).

⁸³ Jean-Paul Kimonyo, Noël Twagiramungu and Christopher Kayumba 2004: Supporting the Post-Genocide Transition in Rwanda. The Role of the International Community. Netherlands Institute of International Relations ‘Clingendael’: Working Paper 32 (December). 52.

⁸⁴ Eugenia Zorbas 2004: Reconciliation in post-genocide Rwanda. African Journal of Legal Studies: Vol. 1. 29-52. 50.

⁸⁵ Christian Aid 2004: ‘It’s time to open up’. Ten years after the genocide in Rwanda. London (March). 12.

⁸⁶ Cited in Kituo Cha Katiba 2004: Searching for Sense and Humanity. 42.

with some possible popular grounding, the attacks on key civil society organisations and the further muzzling of the press⁸⁷. Then, two months after the tenth commemoration of the genocide in April 2004, a parliamentary commission charged with the investigation on the killings of about half a dozen genocide survivors, has, according to the Irish human rights advocacy group Front Line, made the equation of “human rights monitoring, civic education, rights-based development, and any criticism of Government policy with genocidal ideology”⁸⁸. Subsequently, as stated by the human rights report of the US State Department, “independent human rights organisations were effectively dismantled, and all independent sources on the human rights conditions in the country disappeared in the second half of the year.”⁸⁹ Since, there has been an atmosphere of fear reigning within Rwanda’s civil society. Once very vocal organizations, such as Liprodhor, reportedly can only speak through their president – not even the Executive Secretary faces the press any more.⁹⁰

4.2 The Limits of Participation

Against this background, it may be surprising that several international observers expressed their confidence in the genesis of the new land policy and law with regard to civic participation.⁹¹ Their optimism seemed to be justified insofar as the representatives of the post-genocide framework on land tenure and management bore the signatures of the Rwandan Patriotic Front, of the World Bank and UNDP/FAO.⁹²

The idea to overcome the grievances and legal inconsistencies in the agrarian sector with the help of a new land law was born in 1996 within the Ministry of Agriculture and Livestock. It was prompted by the elaboration of the “Agriculture Development Strategy” and a national conference on land issues, where the necessity of normalizing land use and ownership has been ratified in order to achieve sustainable development. In 1997, following the recommendations of that conference, the same Ministry launched a study on land reform in Rwanda that is said to have wielded considerable influence. The study endorsed the *imidugudu* approach and recommended the indivisibility of landholdings, so as to avoid any further fragmentation of plots. In addition, the document, which was funded by UNDP/FAO and written by Olivier Barrière, came under fire for upholding the official narrative ‘of a harmoniously balanced pre-colonial past’ and thus implicitly affirming a return to the ‘traditional’ concept of patrimony.⁹³

Based on Barrière’s position and the World Bank’s approach towards rationality and privatization, the main suggestions of the future law were defined between 1997 and 1998, and the first draft was completed in early January 1999. In 1998, preliminary consultative meetings involving members of the local administration and civil society took place throughout the country.⁹⁴ Still, the purpose of these discussions did not offer any guarantee to the participants to really influence the issue at stake; in the

⁸⁷ Peter Uvin 2003: Wake Up! Some Policy Proposals for the International Community in Rwanda. Unpublished paper. 1.

⁸⁸ Front Line 2005: Rwanda. Disappearances, Arrests, Threats, Intimidations and Co-option of Human Rights Defenders 2001-2004. Dublin (March). 1.

⁸⁹ Cited in *ibid.* 2.

⁹⁰ See Gabiro 2005: Atmosphere of Fear in Rwanda Civil Society.

⁹¹ See Pottier 2002: Re-Imagining Rwanda. 200-202.

⁹² *Ibid.* 199.

⁹³ *Ibid.* 198-200.

⁹⁴ See Huggins and Musahara 2004 (October): Land Reform, Land Scarcity and Post Conflict Reconstruction. 2.

words of a local farmer's representative, their aim was "de légitimer la prise d'une décision a posteriori"⁹⁵.

A more serious step towards involving non-state actors was taken in September 1999, when a workshop on *Land Use and Villagisation* was convened by the Rwandan Initiative for Sustainable Development (RISD), a new local NGO committed to promoting participative procedures.⁹⁶ It appears likely that the workshop resulted from RISDs direct contact with the Ministry of Lands, Human Resettlement and Environmental Protection (MINITERE) and the support of Oxfam GB. However, it also shows that in terms of political participation the impetus to be more vocal has to come from neither the state nor the international donor community, but from within the ranks of civil society itself. In this sense, according to Robin Palmer, land policy adviser at Oxfam GB, the intervention of RISD "was a cautious first step"⁹⁷. Although characterized by "a good deal of mistrust and suspicion, especially on the government side, and a reluctance to confront issues openly", the workshop resulted in a number of recommendations, some of which allegedly were endorsed by the government over the following year.⁹⁸ This held true namely for the regime in Rwanda were trained in the handling of weapons, not of agricultural implements and thus would have at least partly depended on the knowledge and experience of the rural population. From the beginning, however, the new statutory suggestion that "any new land law should be preceded by a national land policy" – a practice, which has indeed set a successful precedent in several countries of eastern and southern Africa.⁹⁹

At this stage of the development process, LandNet Rwanda Chapter actively entered the discussions. Technically assisted by CARE International, Oxfam GB and the Dfid-appointed land policy advisor at MINITERE, Harold Liversage, the multi-stakeholder network under the coordination of RISD is composed of 43 members including local and international NGOs, individuals as well as government agencies such as MINITERE and the Ministry of Finance and Economic Planning (MINECOFIN). Despite the involvement of state actors the network is often perceived to have "spearheaded the response of Rwandan civil society to the proposed land law and policy"¹⁰⁰. In fact, the mission of LandNet Rwanda has been "to contribute to equitable and sustainable land reform through inclusive actions and processes" and therefore "to build and strengthen the capacity of Rwandan civil society to be able to engage in dialogue with government, local leaders and donors on land policy". Rather than acting as a pressure group, the overall strategy consists of supporting the government in policy development by means of advocacy.

At the official launch of LandNet in September 2000, in Kigali, MINITERE confirmed its commitment to developing a National Land Policy through a consultative process that would involve all stakeholders. Subsequently, in November 2000 the ministry and the young advocacy coalition had organized a *National Consultation Workshop* in which the first draft of the Land Policy was discussed. During this encounter, attended by representatives of the national and local government, by academics, NGOs, churches and the media, a shift towards "much greater openness" was observed and participants

⁹⁵ Interview 2004. Rwanda (11 November).

⁹⁶ Robin Palmer 2004: Oxfam and Land in Post-Conflict Situations in Africa: Examples from Zimbabwe, Mozambique, South Africa, Rwanda and Angola. Paper for ACTS Conference on Land Tenure and Conflict in Africa. Oxfam GB (November). 5.

⁹⁷ Ibid. 6.

⁹⁸ Robin Palmer 2000: Report and Reflections on the Rwandan Draft National Land Policy Workshop. London: Oxfam GB (November). 1.

⁹⁹ Ibid.

¹⁰⁰ Front Line 2005: Rwanda. 59.

reportedly did not hesitate to address even such highly sensitive issues as land grabbing by the rich or the land rights of the first case load refugees.¹⁰¹ They also identified the need for additional consultations in order to finalize the land policy and to mainstream land into the Poverty Reduction Strategy Paper (PRSP) that was being drafted by MINECOFIN since September 2000.

The arranged consultations were carried out by some LandNet members between August and October 2001. RISD refers to approximately 900 people who were consulted during a total of 14 meetings held in the Provinces of Umutara, Kibungo, Gitarama, Butare, Cyangugu and Ruhengeri. Simultaneously, MINITERE organized related events all over the country. The latter have been criticized for involving district administrators rather than representatives of the general public, thus reflecting “a tendency within some governments [...] to see peasant populations primarily as beneficiaries, incapable of fully and actively participating in such processes”¹⁰².

The information gathered by LandNet was compiled into a study that was presented in November 2001 at the workshop on *Mainstreaming Grassroot Consultations into the National Land Policy and the PRSP*. In terms of willingness for dialogue, the meeting confirmed a trend towards greater openness and trust between the government and civil society, which was established by the workshop of September 2000 and characterized by the discussions on *Inclusion of Rwandese Women’s Concerns in National Land Policy and Law Formulation Process in Rwanda*, held in July 2001. LandNet was officially commended for its efforts, notably by the representative of MINECOFIN, who said that “the work undertaken [...] would help ensure that land will be fully integrated within the PRSP processes”¹⁰³. With regard to the draft land policy and law, however, the government seemed to be very clear on the direction it wished to take, notwithstanding the declared intention to consult with the population as widely as possible.¹⁰⁴ In fact, the two documents had already been given to the Cabinet at the time of the workshop. Therefore the LandNet consultant Robin Palmer supposed that “it might be too late for further serious civil society engagement”. He advised the network to “focus on implementation of the new law, and perhaps become involved in the gradual piloting of it, which now seemed to be MINITERE’s intention”¹⁰⁵. It was expected that both the policy and law would be approved in 2002, but they continued to be debated – largely behind closed doors – within the government until 2004.

Nevertheless, in an effort to continue the dialogue with the responsible policymakers, in March 2003 LandNet selected four key issues for advocacy, including women’s land rights, civic participation in the land reform process, land consolidation and urbanization, and the habitat rights of the Batwa community. These issues were perceived to potentially have a detrimental social impact and create more conflict as long as they would not receive specific attention and/or be consistently dealt with in the land law and policy as well as in the inheritance law of 1999 and the Poverty Reduction Strategy Paper, which was finalized in June 2002. LandNet has pleaded for a harmonization of the legal framework and formulated several recommendations for each of the selected advocacy subjects. Accordingly, the land policy and law should make ‘specific provisions on inheritance and succession of land by women’; expand civic participation beyond the ‘formulation’ of land management plans to also include ‘monitoring of implementation’; ensure a voluntary approach to land consolidation, urbanization and villagization and avoid forcible dispossession; and finally offer special protections for the land rights of the indigenous Batwa. It is not clear to what extent the network effectively reached the government at the time and whether this was because of its own intervention or the one of Harold Liversage, who

¹⁰¹ See Palmer 2000: Report and Reflections. 2.

¹⁰² Huggins and Musahara 2005: Land reform, land scarcity and post-conflict reconstruction. 287.

¹⁰³ LandNet Rwanda Chapter 2001: Report of a Workshop on Mainstreaming Grassroots Consultations into the National Land Policy and PRSP. Kigali (22-23 November).

¹⁰⁴ See Huggins and Musahara 2005: Land reform, land scarcity and post-conflict reconstruction. 288.

¹⁰⁵ LandNet Rwanda Chapter 2001: Report.

probably acted as a kind of intermediary between LandNet and the responsible ministry. According to a senior official of an international NGO, MINITERE was not open and/or able to concessions anymore, and if by the end MINITERE's draft was comparable to the main arguments put forward by LandNet, this was not because of the latter's, but Liversage's intervention.¹⁰⁶

With the end of the Interim Government after the September/October 2003 elections, LandNet expected that the land policy would be ratified very soon. Therefore, at the beginning of December 2003, it addressed its objections in a letter to the newly appointed Rwandan President, with a copy to the Cabinet, and requested an audience. In addition to the four key issues mentioned above, the letter drew attention to potential difficulties in the implementation of the reforms. The letter repeated the recommendation to implement the policy before the law is ratified, so that the latter could be harmonized with lessons learned from the policy. Furthermore, it suggested to "implement the land policy on a pilot basis" and to "conduct research on the pilot phase to determine which aspects of the Land Policy may need to be amended before the Land Law is ratified".¹⁰⁷

Subsequently, LandNet was criticized for having taken this initiative without prior consultation with MINITERE. Nevertheless, a delegation of the network was received by the presidential economic adviser, who confirmed the importance of the risen objections, according to a senior official of CARE International.¹⁰⁸ From informal sources LandNet knew about the discussion of the letter in 'the high circle',¹⁰⁹ and finally realized that it "positively influenced changes in the Land Policy without any conflict or tensions created between the government and civil society"¹¹⁰. Frontline International found out that, partly as a result of LandNet's initiative, "the draft land bill circulat[ing] in May 2004 made an important revision: the Minister of Lands could now 'encourage' – rather than 'order' – land consolidation".¹¹¹ In the meantime the same sentence again came to be reformulated; the final version of the law stipulates that "the Minister of Agriculture, in consultation with the local authorities and the concerned community, may approve the consolidation of plots of land in order to maximize production."¹¹²

After the adoption of the land policy by the government in February 2004, LandNet concentrated on the improvement of articles in the draft land law. By August 2004 the bill, in the version from May 2004, was openly discussed by a Parliamentary Standing Committee with input from interested civil society organizations including members of LandNet. Despite some positive revisions, the draft law still gave rise to serious concerns including the removal of the 50-hectar maximum size of land parcels, which could have provided a check to large-scale land speculation; the reluctance to guarantee specific provisions to the Batwa minority; inconsistencies with regard to the composition and functioning of the land commissions to be in charge of the land administration; or the still missing harmonization of the legal framework. Nevertheless, the lower house of Parliament approved the May 2004 bill in November of the same year, considering some modest, reportedly only grammatical changes.¹¹³ After being adopted by the Senate in January 2005, the law was undergoing final corrections by the end of February, prior to submission to the President, who finally signed it in September 2005.

¹⁰⁶ Interview 2004: Rwanda (12 November).

¹⁰⁷ LandNet Rwanda Chapter 2003: Letter to the President: Contributions on the formulations of the Land Policy and Law. Kigali (11 December).

¹⁰⁸ Interview 2004: Rwanda (12 November).

¹⁰⁹ Email 2005: LandNet Rwanda Chapter (2 October).

¹¹⁰ RISD 2005: LandNet Initiatives. <http://risdnet.org/LandNet%20Initiatives.htm>.

¹¹¹ See Front Line 2005: Rwanda. 60.

¹¹² Republic of Rwanda 2005: Organic Law Establishing the Land Tenure System in Rwanda. Kigali (April). 9.

¹¹³ See Agence France Presse 2004: L'Assemblée Nationale Rwandaise Adopte une Réforme du Régime Foncier. Paris (November).

Theoretically, the next two years were going to involve the development of a 'roadmap' for implementation with the assistance of donors, for example Dfid, which had delegated a team of land policy/law administration experts exclusively for this process. However, according to an international observer, in practice some aspects of the policy are likely to be implemented soon, "since the government frequently moves quickly, without a lot of consultation"¹¹⁴. It remains to be seen whether LandNet and other rural defender organizations such as the Forum des Organisations Rurales (FOR) or the Syndicat des Agriculteurs Eleveurs du Rwanda (IMBARAGA) will be in any position to systematically monitor the implementation of the reforms and, if necessary, convince the government to effectively intervene in case of grievances including the reconsideration of corresponding weaknesses in the land policy and law.

Both the consultations by the government and the participative initiatives from the side of civil society under the lead of LandNet substantially lacked a genuine incorporation of the views of all stakeholders. This included inconsistencies on a horizontal as well as on a vertical level, i.e. within and between the two entities involved. On a horizontal level, Musahara and Huggins have observed that several key actors in the government were not fully consulted during the process, which resulted in widespread confusion at the progress of the land policy and bill as well as uncertainties on what processes the drafts had to go through before being finalized and adopted.¹¹⁵ LandNet, on the other hand, may be reproached for unbalanced and superficial representation of the rural civil society in Rwanda. Notwithstanding its unprecedented and important efforts, the advocacy coalition is in fact a good example for the missing tradition of associationalism in Rwanda and the immediate consequences arising from it. The roots of the organization go back to the 1999 launch of LandNet Africa, a Dfid-supported initiative aimed at creating a regional framework in order to facilitate the exchange of experience and expertise in the area of land policy development among African countries. Because of its 'foreign' origin and since the majority of its member organizations are based in Kigali, LandNet Rwanda had been confronted with an absence of identification among several important representatives of the local land community. The collaborator of a farmers union claimed that "LandNet n'est pas une invention de ses membres mais a été développée indépendamment de ces derniers. Cela pose un problème de représentation"¹¹⁶. In a similar sense the director of a peasants collective stated, "cette organisation est né dans la capitale et a partir de là elle agit. Elle n'a pas de base paysanne"¹¹⁷. In order to overcome this lack of civic support, the same respondent blamed LandNet for misusing the name of certain organizations, including the one of his own, by mentioning them on its members lists: "On n'est pas membre de LandNet – il n'existe pas d'affiliation formelle. [...] LandNet essaye d'augmenter sa crédibilité en disant que telle ou telle organisation sont ses membres". A further reason for doubting LandNet's reliability finally stems from its enmeshment with the government – "il faut questionner l'indépendance de LandNet"¹¹⁸, according to a local human rights activist, while another interviewee even refers to the network as "association de fonctionnaires dans la capitale"¹¹⁹. As a matter of fact, however, it was the very same openness towards the government that had helped the advocacy coalition to gain access to some policy-makers in a regular, structured way and to create at least some small space for civil society to participate in the important process of land reform development.

On a vertical level, the capacity of civil society to influence the outcome of the policy and law formulation process was severely limited for several reasons. Firstly, consultations were in general held *a posteriori* and thus the initial promise of the government to involve all stakeholders looks more like a

¹¹⁴ Email 2005: African Centre for Technology Studies (29 September).

¹¹⁵ See Huggins and Musahara 2005: Land reform, land scarcity and post-conflict reconstruction. 288-289.

¹¹⁶ Interview 2004: Rwanda (13 November).

¹¹⁷ Interview 2004: Rwanda (11 November).

¹¹⁸ Interview 2004: Rwanda (5 November).

¹¹⁹ Interview 2004: Rwanda (11 November).

lip service. “Les soi-disants consultations de la population c’était seulement une formalité [...], c’était une farce”¹²⁰, in the words of a farmer’s NGO representative. However, as mentioned before, a country with a centuries-old history of centralized, exclusivist governance bears an equally long tradition of passiveness among civil society. Thus it is possible, as has been noted in the context of the PRSP development process, that many local non state actors did not adequately participate simply because of their limited expectation to be given the opportunity to do so.¹²¹ Secondly, as well as some stakeholders within the government, civil society was also insufficiently informed by the responsible officials, not least because of technical constraints. At the *National Draft Land Policy Workshop* in November 2000, for instance, most participants’ first opportunity to read the preliminary draft of the Policy was when they registered on that day – and while English speakers were given just a 7-page paper, French speakers additionally received the 61-page *Politique Nationale Foncière du Rwanda*.¹²² Moreover, for the majority of the population, even for those able to read, a vulgarized version of the documents under discussion would have been elementary and necessary in order to actively participate in the public hearings. Thirdly, several rural associations engaged in civic education and rights-based developments have suffered intimidation and co-optation by the government. This became evident not only when FOR, the Services au Développement des Associations (SDA-IRIBA) and IMBARAGA as well as their international donors, particularly CARE International, were attacked by the contentious Parliamentary report on genocide ideology of July 2004 for practicing discrimination and divisionism. Even before, FOR reportedly faced official harassment, such as accusations against its president for being an infiltrating agent and an *interahamwe*, or the incarceration of its secretary for having with him a document on human rights.¹²³ In another attempt to silence those CSOs not following the official line of the Rwandan government, the Community of Indigenous People of Rwanda (Caurwa) was denied the grant of legal personality in June 2004. In November 2004 Caurwa received a letter from the Minister of Justice demanding the suspension of its activities. Caurwa was accused of divisionism for defending the rights of the Batwa – this obviously could not be tolerated in a state where ethnic diversity officially no longer exists.

Thus, in the end the new land policy and law remained an achievement of the Rwandan government, not of the Rwandan population, whose needs are much too often said to have been neglected to a large extent. As the leader of a group of farming associations argues, “on n’a pas pensé aux petits paysans quand on a développé cette loi”¹²⁴. The director of a local peace research institute, on the other hand, rather pragmatically stated, “il n’y aura pas de solution acceptable pour tout le monde – il y a toujours des gens qui perdent”¹²⁵. However, there looms the threat that the land reform is going to produce more losers than winners, as will be discussed in the next and final section of this paper.

¹²⁰ Interview 2004: Rwanda (11 November).

¹²¹ See Emmanuel Bugingo 2002: *Missing the Mark? Participation in the PRSP Process in Rwanda*. London: Christian Aid (December).

¹²² See Palmer 2000: *Report and Reflections*. 1.

¹²³ See Front Line 2005: Rwanda. 61.

¹²⁴ Interview 2004: Rwanda (13 November).

¹²⁵ Interview 2004: Rwanda (2 November).

5 Outlook: A Thousand Hills for 9 Million People?

Based on an unbroken tradition of discriminative land distribution and a development process that undermined effective civic participation, the new land policy and law are far from inspiring confidence. At the same time, however, the need for action to reform Rwanda's primary sector becomes increasingly pressing. Representatives of local civil society organizations are highly concerned about the situation in rural areas.¹²⁶ They refer to 'enormous problems' related to desperate poverty that reigns all over the country among the large majority of small-scale peasants. Moreover, there is a growing sense of resignation and defeat among the rural poor, who largely feel alienated from the authorities in the Capital: "Les paysans sont devenus les esclaves de leurs problèmes, c'est-à-dire, ils ont perdu l'espoir à ce que les choses vont s'améliorer un jour".¹²⁷ Some accuse the government of being completely indifferent towards the fate of these people, by arguing that the state's investments in agriculture are limited to the promotion of cash-crops, whereas the lion's share of its budget is dedicated to the defense sector. While this may be a harsh reproach, it certainly corresponds to those allegations providing evidence that for the current regime the sources of wealth are not hidden on Rwanda's hills but beyond them, in the inexhaustible mines of eastern Congo. This implies that large-scale imports of weaponry were made to support local allies, namely the RCD-Goma, which controls deposits and trade of coltan and other minerals, including cassiterite, diamonds and gold in some areas of the Kivu region.¹²⁸ Although vehemently refuted by Kigali, these accusations may also contain an explanation for the fact that, while the GNP per capita in Rwanda has risen since 1994, the country faces higher levels of poverty today than in the pre-Genocide period.¹²⁹

With the implementation of the new land policy and law the Rwandan government announced its goodwill to establish "a land system that is secure for all Rwandans, land reforms that are necessary for good management, and proper use of national land resources for a harmonious and sustainable development that ensures protection of the environment"¹³⁰. The main focus lies on 'high population density and heavy pressure on the land', on 'excessive partitioning of domestic cultivation plots, and on 'loss and degradation of soils' including their natural and anthropic causes such as 'inappropriate soil conservation methods and farming systems' or the 'pressure on forests and natural reserves'. Added to this, the policy aims at overcoming the 'predominancy of customary law and inadequacy of the written law', 'a land system that is unfavourable to women', as well as 'the lack of human, material and financial resources' which affect many governmental sectors and result in poor management and use of land.¹³¹ In order to respond to these challenges, the government's principal strategies consist of the following elements: The provision of security of land tenure in order to encourage investment in land; the promotion of proper land allocation and land use; the avoidance of further land fragmentation and propagation of land consolidation; the establishment of 'mechanisms which facilitate an optimum exploitation of land'; the development of appropriate methods of land protection and conservation; the spread of research as well as education of the public on all aspects of land tenure, management, and transactions; or the involvement and sensitization 'of the public at all levels in order to ensure protection of the environment and good management of the land'.¹³²

¹²⁶ Interviews 2004: Rwanda (1-13 November).

¹²⁷ Interview 2004: Rwanda (13 November).

¹²⁸ See, among others, the recent report of Amnesty International 2005: Democratic Republic of Congo: arming the east. London (July).

¹²⁹ See Huggins and Musahara 2005: Land reform, land scarcity and post-conflict reconstruction. 274.

¹³⁰ Republic of Rwanda 2004: National Land Policy (draft). Kigali (January). 17.

¹³¹ Ibid. 11-16.

¹³² Ibid. 17.

Apart from that, and in view of the latest conflict, a Rwandan official posits that “as long as land remains the basis for the sustainable development, the land reform will be the engine of the development and will play an important role in enhancing peace, equity, unity and reconciliation of all Rwandans who have been covered in bruises by the genocide and massacre of 1994”¹³³. However, even though experts generally agree on the importance of effective land reform and land management as a key to long-term peace in the country, they raise concerns that policy implementation does not only depend on written directives but all the more on their interpretation.¹³⁴ Pottier has drawn attention to the fact, that “policy arguments may contain subtexts to strengthen the legitimacy of the post genocide regime in power”¹³⁵. One of these subtexts is likely to be linked with the discarded and idealized representation of Rwanda’s pre-colonial past that resurfaced in the aftermath of the 1994 genocide and RPF victory, and conjured up an idyllic, integrative society devoid of ethnic divisions and tensions in order to intellectually justify a system of leadership by Tutsi minority rule.¹³⁶ Thus, the question of policy interpretation creates further unpredictability as to the upcoming reorganization of the agrarian sector.

In fact, the implementation of the new land law and policy will not be the first attempt to formalize and modernize Rwanda’s land tenure and management system to overcome the traditional frameworks that have persisted up to the present day. In order to move customary systems further towards Western notions of more monetarized and individualized property rights, a primary legislation was passed in 1960/61. By contrast, the statutory order No. 09/76 of March 1976 that was in force until September 2005, tried to avoid the development of a land market.¹³⁷ Nevertheless, at no time was there a firm implementation of either this or the subsequent regulation attempts in 1978 and 1991. Huggins and Musahara refer to a general confusion over the laws’ binding character due to “a combination of lack of stakeholder involvement; the sheer technical difficulty of the task, as most people simply did not register sales; and the self-interest of the bureaucrats, themselves part of the class that was most active in acquiring land”¹³⁸. A survey of Rwanda’s Ministry of Environmental Rehabilitation and Protection, carried out in 2001, disclosed the different mechanisms used in order to get a hold of land entitlements, including inheritance, government distribution, the market and donations.¹³⁹ Notwithstanding the state’s status as sovereign proprietor of all land that would have excluded alternative ownership,¹⁴⁰ purchase has been the primary modus of land acquisition as reported by a 1988 World Bank study. Apparently this trend became further accelerated by increasing environmental shortages and subsequently contributed to erosion of both customary and written laws.¹⁴¹ In 2002, Bigagaza et al. therefore warned of the the risk “that land distribution will become more disparate as the rural poor are forced to sell their land due to poverty, and other rural poor are financially unable to acquire new land”¹⁴².

In view of the new land policy and law, Musahara and Huggins have identified seven aspects of critical importance as to long-term stability and the prevention of conflict, which will be discussed in the following. These are 1) Consolidation of land, 2) Access to land for the landless, 3) Land registration and

¹³³ Eugene Rurangwa 2002: Perspective of Land Reform in Rwanda. FIG XXII International Congress. Washington D.C. (19-26 April). 8.

¹³⁴ Pottier 2002: Re-Imagining Rwanda. 179.

¹³⁵ Ibid. 200.

¹³⁶ Ibid. 110-111.

¹³⁷ See Huggins and Musahara 2004 (October): Land Reform, Land Scarcity and Post Conflict Reconstruction. 2.

¹³⁸ Ibid.

¹³⁹ See Bigagaza, Abong and Mukarubuga 2002: Land Scarcity, Distribution and Conflict in Rwanda. 65-66.

¹⁴⁰ See Tiemessen 2005: Post-Genocide Rwanda and Villagisation. 3.

¹⁴¹ Ibid. 4.

¹⁴² Bigagaza, Abong and Mukarubuga 2002: Land Scarcity, Distribution and Conflict in Rwanda. 66.

the different meanings of tenure security, 4) Abolition of customary systems, 5) Addressing inequalities in land ownership, 6) Villagization, and 7) Land use and environmental protection.¹⁴³

1) Consolidation of land: With the intention to promote consolidation of land holdings and to bring about maximum production, the new land policy states that "the minimum surface of a concession should be fixed at 1 hectare", whereas "in case of expropriation of individuals, the system of compensation will be applied"¹⁴⁴. While policy makers affirm that "nobody will lose their plot"¹⁴⁵ some representatives of Rwanda's civil society fear the creation of vast 'latifundios' or the evolution of a system of 'purest capitalism'.¹⁴⁶ Also Musahara and Huggins expressed their concern with regard to the fate of the 73 to 77 percent of households owning less than 1 hectare of land. Likewise they questioned the governments' financial potency to adequately compensate those affected by expropriation. Since there are no alternative forms of subsistence so far, and any further international support for large-scale villagization is highly doubtful, the policy, if strictly implemented, is likely to result in a massive increase of the landless, an influx of these people to towns, and thus in substantial unemployment and/or underemployment as well as increasing urban poverty levels. This scenario, in which the local elite would gain the bulk of benefits, becomes all the more pertinent when considering the unbroken tradition of social discrimination in terms of unequal access to land and natural resources. Apart from that, it is unsure whether consolidation will effectively bring a significant increase in land productivity, or if fragmentation is necessarily a negative phenomenon. Rather, there is an imminent danger that the renunciation from small scale farming together with the planned specialization on cash crops will have a negative impact on food security, and thus may further aggravate Rwanda's inherently high susceptibility to famines.

2) Access to land for the landless: Regarding the landless, the policy states that "these are mostly the refugees of 1959 who were forced into exile for political reasons, and abandoned their land"¹⁴⁷. Accordingly, they shall be provided with escheated and unexploited reserves from public and private state land or benefit from the practice of sharing out land based on community consultations, as already practiced in Kibungo, Ruhengeri or Umutara among others.¹⁴⁸ Although the old case load refugees are genuinely acknowledged to be the major victims of the land problem in Rwanda, Musahara and Huggins caution against the policy's biased definition of 'landless'. The approximately 1,224,000 affected persons are not only members of this one group, which almost exclusively consists of Tutsi. There are many others, who in fact will become the more numerous as relative land scarcity is on the increase. In such cases the policy has envisaged the possibility to apply for land from the state's private domain when presenting a 'consistent plan of development'.¹⁴⁹ If this really represents any tangible opportunity for those most in need of land, remains highly uncertain as long as there is no accurate definition of what exactly it means to have 'a consistent plan of development'. The policy also makes clear that "not every Rwandan can possess a plot of land for agriculture or livestock" and that "agropastoral land will only be allocated to those who are professional farmers or pastoralists"¹⁵⁰. Taking into account these confusing and inconsistent guidelines, and given the overall scarcity of arable land available for distribution, which is estimated at only around 330,000 hectares, the issue of the landless will inevitably be a source of future social tensions in the country.

¹⁴³ See Huggins and Musahara 2005: Land reform, land scarcity and post-conflict reconstruction. 310-329.

¹⁴⁴ See Republic of Rwanda 2004: National Land Policy. 36.

¹⁴⁵ Cited in Huggins and Musahara 2005: Land reform, land scarcity and post-conflict reconstruction. 312.

¹⁴⁶ Interviews 2004: Rwanda (11 and 12 November).

¹⁴⁷ Republic of Rwanda 2004: National Land Policy. 21.

¹⁴⁸ *Ibid.* 22.

¹⁴⁹ *Ibid.* 23.

¹⁵⁰ *Ibid.* 24.

3) Land registration and the different meanings of tenure security: Landholders shall be provided with security of land tenure by means of land titles, and thus enabled to access credit or to perform land transactions. Moreover, registration of land and the establishment of a national cadastre are major features of the new land policy, in order to allow for effective land administration and the support of economic development – or, as some specialists claim, to better control the rural masses.¹⁵¹ The main challenges in this context concern the current incapacity of the policy to address certain realities on the ground, more precisely to effectively respond to the security needs of most farmers. This would require guarantees for land rights and protection from land disputes. According to the policy, the state theoretically continues to be the exclusive owner of all land, granting long-term leases of 99 years, while being entitled to cancel these contracts if farmers do not meet their legal obligation of maintaining land productivity. Due to the lacking specification of the productivity criterion, and since experience has demonstrated that local administrators are all too often identified as the source of land disputes, this policy concept runs the risk of being abused by certain authorities in order to dispossess some people in favor of others. Besides, the existence of *ad hoc* contracts without formal legal basis for those involved in landsharing, the so-called *Actes de Notoriataire*, further complicates the situation and tends to undermine the improvement of land tenure security. Finally, there remains the delicate question of overall land registration. The law and policy clearly state that “all land owners shall be obliged to register their lands”¹⁵², and that “cadastral costs and costs of land registration will be supported by the tenants”¹⁵³. Despite the plan to realize this by means of a dual system, i.e. a ‘formal’ or ‘national’ approach based on full cost-recovery and an ‘informal’ or ‘local’ approach using less expensive mapping methods, some stakeholders fear that the duty of payment for registration along with the consolidation process might have serious consequences for the poor.

4) Abolition of customary systems: Another strategy in ensuring proper land management and land administration consists of overcoming the previous dominance of the customary law and the inadequacy of written law by introducing a unified and standardized national land tenure system. However, customary systems shall also be abolished because of their critical cultural and/or ethnic significance in the past. With regard to this latter argument, the influence of the official, partial reading of Rwanda’s history becomes evident: it completely ignores the power relations and elements of exploitation based on the provision of forced labor in return for access to land, *uburetwa*. The policy refers to ‘a’ pre-colonial land tenure system that “facilitated economic production, stability and harmony in production”¹⁵⁴. In terms of ‘abolition’, the law explicitly names “the customary institution of ‘ubukonde’”, i.e. the Hutu custom “as governed by the edict No. 530/1 of 26 May 1961 relating to the ‘ubukonde’ land tenure in the territories of Gisenyi and Ruhengeri”¹⁵⁵. Although the reform will not be implemented over night, and it is unclear how changes will be felt at the local level, the ethnic connotations of the law and policy as well as the virtually unbroken significance of cultural and/or ethnic aspects of land tenure are likely to make the introduction of the new statutory system a critical process. This also applies to the land access rights of the Batwa, who run the risk of becoming even more marginalized because neither the policy nor the law makes any reference to their existence and specific needs.

¹⁵¹ Email 2006: René Lemarchand (17 March).

¹⁵² Republic of Rwanda 2005: Organic Law Establishing the Land Tenure System in Rwanda. Article 30.

¹⁵³ Republic of Rwanda 2004: National Land Policy. 24.

¹⁵⁴ *Ibid.* 6.

¹⁵⁵ Republic of Rwanda 2005: Organic Law Establishing the Land Tenure System in Rwanda. Article 86.

5) Addressing inequalities in land ownership: In line with the constitutional principle of equality for all citizens, the land reform provides for addressing inequalities in land ownership, i.e. structural scarcity, most notably with regard to historical imbalances in gender relations. The policy stipulates that “women, married or not, could not be excluded [from] the process of land access and land acquisition and land control, and the female child could not be excluded [from] the process of land property inheritance”¹⁵⁶. The latter, according to the law, “shall be accepted and carried out according to the procedures of succession stipulated by the law of succession”¹⁵⁷. This regulation, however, cannot find any counterpart in the corresponding document valid since 1999. On the contrary, the law of succession, which actually applies to married women only, refers to the land law as responsible for questions of inheritance in land ownership. These contradictions in the legal framework will render the effective implementation of the gender specific provisions extremely difficult, if not impossible. Besides, the prevalence of certain customary attitudes and prejudices towards women in general and unmarried women in particular, along with the often very individual approaches of local administrators are likely to further undermine the issue. Thus, especially in view of the 1 hectare limit clause and the struggle against fragmentation of plots, there is a high risk that women will lose rights to land in favor of men. Another important and extremely delicate aspect of inequality in land ownership relates to the size of plots allocated to different individuals. Although the policy acknowledges “the increasing hold of the urban elite over rural land”¹⁵⁸, it does not provide any guideline for counteracting this tendency. This has not always been the case: in a draft version of the policy of February 2003, for instance, the maximum land ceiling was set at 30 hectares. The fact that this limit has been removed in its entirety becomes all the more significant in the context of the recent establishment of large coffee and tea estates by politically well connected individuals, and the allocation of up to 100 hectares of land for pastoralism to returning old case refugees. This trend, which presumably will become even more pronounced with the promotion of land consolidation and rational land-use, is all the more alarming, since people are very well aware of the identity of these new, privileged land owners.

6) Villagization: Grouped settlements, or *imidugudu*, were initially decreed as an emergency response to the housing and security needs of the thousands of returnees and internally displaced people in the aftermath of the genocide. At a later responsible for framing the upcoming land reform took up the very same approach in order to cope with land scarcity and to support land consolidation. The land policy says that “the scattered habitat is an obstacle to the profitable use of rural territorial space”, whereas “villagisation is the one and only method that allows one to plan for the utilisation and proper management of land, considering the scarcity of land in Rwanda” and furthermore “ensuring the permanence of larger and more regular plots, as well as the possibility of a more independent exploitation”.¹⁵⁹ These are contentious expectations, not only because experience has shown that productivity in *imidugudu* has actually declined. Moreover, similar attempts in other African countries, such as Tanzania, Ethiopia and Mozambique, have proven anything but successful. Nevertheless, the government asserts that it’s “ultimate objective [...] is to enable the entire rural population to live in grouped settlements”¹⁶⁰. Whether this ambitious goal will be achieved or not largely depends on donor funding – this, however, has been on the decline since the late 1990s revealing of serious human rights violations in regard to *imidugudu*. Overall, the impact of the villagization process will be determined to a great extent by the capacity to cope with challenges such as the provision of economic and social infrastructure, the unbiased treatment of all groups affected – including old case refugees, the avoidance of coercion, adequate compensation for those who have to be expropriated, the

¹⁵⁶ Republic of Rwanda 2004: National Land Policy. 18.

¹⁵⁷ Republic of Rwanda 2005: Organic Law Establishing the Land Tenure System in Rwanda. Article 33.

¹⁵⁸ Republic of Rwanda 2004: National Land Policy. 4.

¹⁵⁹ Ibid. 37.

¹⁶⁰ Cited in Huggins and Musahara 2005: Land reform, land scarcity and post-conflict reconstruction. 326.

consideration of traditional norms of privacy, or the inclusion of all sections of society within the planned land commissions in charge of overseeing the grouped settlement policy.

7) Land use and environmental protection: The trade-off between ecological sustainability, the small peasants' livelihood strategies and agricultural productivity will be a final, major obstacle to a successful implementation of the planned land reform. The policy notes a spread of farming land throughout the hills in "scattered portions without any organisation whatsoever" which "makes their exploitation difficult and non-profitable"¹⁶¹. Subsequently, "the rational utilisation and proper management of national land resources should be based on master plans, as well as plans for allocation and utilisation of land which distinguish among the different categories of land, and their allocations"¹⁶². Related to the formulation of such master plans, Musahara and Huggins emphasize the necessity of participation of all relevant government ministries and departments as well as the rural population, whose coping strategies are in fact far from irrational. The same holds true for the management of the marshlands, the fragile ecosystems that currently provide about a fifth of the national food production and simultaneously secure the livelihood of the poorest segments of Rwanda's population. The planned propagation of large-scale commercial activities are likely to fall on the shoulders of these socially disadvantaged, and are likely to threaten the natural equilibrium of the wetlands. Although the land policy touches upon the sensitivity of humid zones and their need to be protected, the risk of prioritizing 'development' over 'conservation' is there, in particular since MINAGRI, and not MINITERE, is responsible for the inventory of classified wetlands.

¹⁶¹ Republic of Rwanda 2004: National Land Policy. 35.

¹⁶² Ibid. 37.

6 Conclusions

The upcoming land reform should prompt one to recapitulate Rwanda's traditional framework of land distribution, and to reflect on the responses of the government to land-based challenges in the aftermath of the genocide. It becomes evident that the country has slid backwards rather than progressed on many issues regarding access rights to land and resources. These include most notably 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. Furthermore, and in analogy with pre-genocidal rule, the government and its elite did not hesitate to most generously fill their want for agricultural land. Although there is no evidence that these practices have played a determining role in the context of the genocide, their ongoing prevalence challenges social co-existence as well as the legitimacy and credibility of the current regime. As a consequence, there seems to be little reason to trust the new land policy and law, which, by their contents, raise suspicion that the upcoming land reform is more likely to benefit the rich and powerful than the rural poor. With the de facto exclusion of civil society from the formulation of the two key documents on future land tenure and management, the government followed Rwanda's strong patriarchal tradition and also made clear its intention to fully control the reform process from the very beginning. Certainly – and quite obviously so – there are good reasons to distrust local NGOs, mostly because of their compliance in the developments of 1994, and to question their opinion. At the same time, however, this very lack of space for civil society to grow and act as a counter-balance to the government represents one of the main factors responsible for its past failure to resist the spread of hatred and racism.

It is beyond question that there is an urgent need for land reform in Rwanda. Yet the mitigation of 'technical' constraints such as land degradation, inappropriate methods of cultivation, or the ongoing parceling of plots will not be enough. The intention to establish a "land system that is secure for all Rwandans" obliges the government not to grant, recognize or authorize any expression of discrimination in land rights, neither ethnic nor political or regional. Furthermore, it is required to give more emphasis to local non-governmental stakeholder organizations, encouraging their efforts to be able to effectively safeguard the livelihoods of the rural poor by incorporating their views and interests. This will be anything but an easy task in the light of the legacy of genocide, the overall high level of suspicion and mistrust, the nature of the Rwandan leadership and generally of the political culture. However, whether or not the upcoming land reform is likely to result in a genuine transformation of Rwanda's desolate agricultural sector and be dedicated to strengthening both economic development and social reconstruction, is primarily a question of political accountability, will, and commitment.

The international community, with appropriate sensitivity and caution, could exert significant influence on the success of this highly delicate process. In the first instance, this would necessitate the rigorous monitoring of direct budgetary support, and extending assistance, in a careful and considerate manner, to local NGOs in strengthening their work and enabling them to act as a watchdog over reform interventions. At the same time, mechanisms and strategies are needed to promote dialogue, collaboration and trust between state and non-state actors, to raise the government's awareness of the potential for contributions by civil society to the development process in general and the land reform in particular. Subsequently, both government and non-government stakeholders should regularly engage in a comprehensive, free and open political dialogue strengthening commitment on both sides. All this cannot be achieved in the short term, but would require a tremendous amount of effort, time and patience. Furthermore, it is well Rwanda is an extremely difficult place for the international community to intervene, and many mistakes have been made. However, with appropriate watchfulness, caution and skepticism, and despite the government's repeated offences against the 'moral authority' of western actors, they should bring their influence and concerns to bear, especially on such a sensitive and delicate issue as the upcoming land reform.

Appendix

FAST Analytical Framework Rwanda



Map of Rwanda



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