

# **Summary of and Comments on Draft Policy for National Land Reform**

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The Government of Rwanda is in the process of developing a policy that entails far-reaching land reforms. If implemented, these reforms will have a dramatic impact on Rwandan society as they will fundamentally change the way that land is held, used and managed. They will also dictate who has access to what land and on what conditions. Because the consequences of the Policy are so significant, the Government has declared its intention to consult with the population as widely as possible on the terms of the Policy and to modify the Policy on the basis of the views of civil society. Once the Policy has been finalised, the Government will then pass new legislation in order to regulate the implementation of the Policy. The purpose of this note is to provide an overview of the draft Policy and to highlight the key areas of proposed change and their possible impact. To the extent possible, this summary follows the format of the Policy and attempts to reflect the tone and wording of the Policy. However, certain themes and ideas are repeated in different ways in different sections of the Policy. The summary attempts to draw some of those elements together. This note also comments on and raises questions regarding the Policy and its proposed implementation. These comments are noted in square brackets throughout the text.

The Policy is set out in several chapters. It explains the context and historical background of the land issue in Rwanda, outlines the key land-related problems, states the objectives and principles on which the Policy is based and offers various guidelines and options for dealing with these problems and land reform. This latter section is not always very clear. There is much overlap between some of the strategies and options proposed and there are a few contradictions. When the draft Policy was first presented to the national and international community at a conference organised by MINITER in November 2000, the Government representative noted that the proposed options were simply suggestions which could be modified and alternative suggestions could be proposed. That said, there are some key elements on which the Policy is fundamentally based and which are heavily emphasised throughout the Policy. They do not have the characteristic of being simple suggestions but represent the overall thrust of the Policy: there must significant land reform to improve the social and economic development of the country. Each of these elements raises a number of important questions and concerns which are outlined in more detail below.

In summary, the Policy states that land and land reform be governed by a single written law (and not the two systems that exist today). It insists that land be properly managed and developed, ultimately for the overall benefit of the country. It introduces the idea of professional farmers and pastoralists. It supports the concept of reorganising and redistributing land for optimal production. It prohibits traditional practices that diminish effective land use. It highlights protection of the environment and careful use of sensitive areas. It advocates for a transparent and secure system for holding land that will be accessible to all Rwandans, men and women alike. It encourages transparency in land transactions and land being accorded its real economic value. It demands massive human, financial, material and technological resources to map, describe and record all land holdings in Rwanda and all future dealings in these holdings. It seeks solutions to Rwanda's particular problem of the landless.

Key elements of the Policy that will raise important issues for society in general are that all landholders will have an obligation to use and develop their land in the most productive manner. In certain circumstances, how land should actually be used may be strictly regulated. In other circumstances, who will have access to the land will be regulated. What land they will have access to will change – land will be regrouped and redistributed. How land is owned and held and on what conditions will change. Some people may lose their land. Some of the landless may gain land. Who will be deciding all this is yet to be elaborated. With such vital issues at stake, it is essential that civil society be active in formulating the Policy that will so fundamentally affect their future.

## **The Draft Policy**

### **The Context**

The context of the draft Policy for national land reform is outlined in detail in the Policy itself. In brief, it is obvious that there is incredible pressure on land in Rwanda. This pressure has already resulted in massive social tension and upheaval, including in the extreme, the 1994 genocide, and continues to be a source of numerous problems. Rwanda is a tiny country. The population is growing rapidly. More than 90% of the current population rely on subsistence farming. There is very little unused land available and the land that is being used is divided into such small plots that a single family can barely survive on it, let alone make enough money from it to rise out of poverty. Land is the principal national resource. For a number of years, the Government has been searching for ways to improve the use of land and to reduce the reliance of such a large percentage of the population on the land for its survival.

[Note that the villagisation policy was and is a part of this process. Among other things, the villagisation policy states its aim as to ensure that good agricultural land is not used for housing and to encourage the development of off-farm sources of income, e.g. activities that support markets and provide services to the community but are not directly based on agriculture. However, the villagisation policy did not benefit from broad community consultation prior to its implementation. It is not founded on carefully thought out legislation. It has not always been implemented according to its stated objectives. In fact, there have been numerous flaws in its implementation ranging from poor site selection and lack of promised services to more serious human rights abuses. This summary will not review the process to date but instead will focus only on the contents of the new draft Policy related to land reform.]

According to the Policy itself, as long as land remains the basis for the social and economic development of the country, it is the formulation and application of a national land Policy that will lay the foundation for land reform that favours the general and sustainable development of the country.

### **The Problems Addressed**

The Policy states that revealing the problems linked to poor management of land and their recognition by all players is an important step forward in the search for a national solution. It also has a key role in reducing poverty.

The Policy states that it seeks to analyse land-related problems in order to find solutions adapted to the scale of the problem. It touches only briefly on the housing question and focuses more on the concept of the best management and use of the national land resource that will foster productivity and development. It does not pretend to exhaust all

the issues nor to offer miraculous solutions but states its aim as to be as comprehensive and realistic as possible. The main problems listed are:

- a) the extremely high density of the population and the resulting pressure on land;
- b) excessive partitioning of family agricultural plots, resulting in plots that are no longer viable, a problem of food security and a growing number of persons without land;
- c) soil erosion and degradation to the point of loss of fertility through overuse;
- d) pressure on forests and natural reserves;
- e) the predominance of customary law and the inadequacies of the written law governing land issues;
- f) a land regime which discriminated against women, namely by preventing them from inheriting land [Note: this has already been significantly addressed with the 1999 law amending matrimonial and inheritance rights in favour of women but there are still further measures to be taken]; and
- g) insufficient human, material and financial resources resulting in poor management and use of land;

### **The Framework of the Land Policy**

#### ***Objectives:***

The Policy states its overall objective is to establish a secure land system for all Rwandans. It will also guide the reforms necessary for good management and rational use of the national land resource, “particularly with a view to lasting and harmonious development and protection of the environment”. [Note that the notion of “rational use” has a very specific meaning in the context of the land Policy. It refers to an organised and planned way of using land for ultimate economic benefit.]

The Policy lists its specific objectives as being to:

- a) promote the equitable access to and distribution of land to persons who will use the land;
- b) promote the rational allocation of land to favour the appropriate use of land resources, according to their natural characteristics;
- c) avoid the fragmentation of plots and promote their redistribution to result in optimal production;
- d) establish mechanisms to deal with land resources according to their productive value, in order to promote their socio-economic possibilities and the development of the country;
- e) orient the management of land towards the goal of the most profitable and sustainable production by choosing reliably proved land management methods;
- f) develop methods to protect the land resource against soil erosion and various other forms of degradation, for sustainable development;
- g) establish institutional arrangements for land administration which result in land resources having real value in the economic market;
- h) promote research and ongoing public education on all aspects concerning the obligations of holding land, its management and related transactions;
- i) introduce order and discipline in the allocation of land and in land transactions to control and prevent pressure on land, inappropriate development and land speculation;
- j) promote the participation and sensibilisation of civil society at all levels to ensure the adoption of land use practices which result in good land management and protect the environment; and
- k) promote the conservation and sustainable use of the humid zones.

[It is abundantly clear that there is a heavy emphasis on how land will be managed and used. Indeed this is one of the government’s main preoccupations and it is determined to put in place measures that will ensure that land is not only used, but used properly and productively. This means that there will be implications for people who do not

exploit their land and may ultimately mean them losing access to that land. There will also be similar implications for people who are not considered to be correctly managing and using their land in a productive way. There are unanswered questions around who will make such assessments and decisions. Who will decide on the consequences if land is not appropriately used? Who will enforce those consequences? Will people lose access to land as a result of a failure to correctly implement the new Policy?

The objectives also introduce an element which is fundamental to the Policy: the fact that good land management must include the reorganisation or redistribution of land. In fact, this idea is frequently mentioned in the Policy and is inherently and explicitly incorporated in the concept of optimal productivity. Nonetheless, it is never really explained how the policy of redistribution will be implemented. Strictly speaking, the Policy refers to “reorganisation” of land or “regrouping of plots” but effectively, this can only mean a redistribution of land. Furthermore, it will almost necessarily involve a certain amount of State-sponsored expropriation in particular cases.]

**Principles:**

The Policy then outlines several principles on which it is based, namely:

- a) land is the common heritage of past, present and future generations. [This means two things in particular. First, everyone has rights and obligations regarding the land. Second, the State must act to guarantee this heritage for the benefit of present and future generations. Thus, there is both an individual and a State responsibility for ensuring that land is properly managed and used.];
- b) according to the constitutional principle that all citizens are equal, all Rwandans must benefit from the same right to access land without discrimination;
- c) land tenure and administration must guarantee land security;
- d) the guarantee of land rights is essential to the sustainable management and rational use of land which is fundamental to development;
- e) the method of managing and using land will differ according to whether it is urban or rural, whether hilly terrain, marshland or a natural reserve;
- f) fragile zones that are of national interest must be protected;
- g) good land management must involve planning land use, including organising residential areas and redistributing plots for a more economic and productive use of the land resource;
- h) the ability to transact in land will improve the value of land, encourage a more productive use of land and attract investors in land;
- i) diagrams and maps are the best means for obtaining, registering and analysing comprehensive and precise information on land resources;
- j) an appropriate cadastral system is an essential basis for fully understanding the land situation in the country and thus for planning land reforms; and
- k) a legal and institutional framework is necessary in order to have a solid foundation for the new land Policy and establish the administrative measures to implement land reform.

[Again, the principles insist heavily on rational management and use of land in favour of the country's development. But they also introduce the question of access to land and how land will be held, i.e. the question of tenure. This question is of great significance as currently the State owns all the land and citizens only have the right to use and occupy it. The principle states that every Rwandan should have the right to access land. At the MINITER conference in November 2000, every participant was asked to consider whether every Rwandan should have the right to own land. There was unanimous support for this principle and the Policy has since been revised to state categorically that “the right to own land is inalienable” and that customary rights should be converted into ownership rights. However, the right to access land and the right to own land are very

different from actually having access to and/or ownership of land. The right was unanimously supported but then most stated that not every Rwandan could expect actually to own land.]

### **Strategic Guidelines and Options for the Land Policy**

Whilst acknowledging the important cultural heritage and practices linked to the land, the Policy warns that these should not be all guiding. It also states that there should not be a sole focus on the agricultural use of land, noting the diversity of how land is used and how it is held/owned. Thus, the Policy states it must take into account economic factors, legal aspects regarding use, institutional measures for administering land and resolving land disputes and technical factors including the allocation and rational use of land. It also states that economists, sociologists, agronomists, environmentalists, real estate engineers and lawyers need to analyse the economic, social, political and legal impact that the proposed reforms will exert.

The Policy then outlines several broad issues related to land tenure, administration and management and considers various options for dealing with these issues. [Because of the overlap of issues and proposed options and strategies, the following does not necessarily reflect the order and combination in which they appear in the Policy itself. Nor does this note cover every issue and option raised in the Policy but only those that will have the most significant impact on society in general or that are likely to be the most controversial.]

#### **1. Land Tenure**

There are various ways of holding, accessing or using land. In Rwanda, there are currently two systems for acquiring land: by custom or according to the written laws introduced prior to independence and successively developed. Under both systems today, the State is the actual owner of the land. The Policy notes that normalising the land system is necessary to boost the economy and ensure “sustainable and harmonious development”. The Policy states that legislation will be passed specifying the different methods of land tenure and the resulting obligations. It advocates for a transparent system for holding land and for resolving land disputes, which should be known to all Rwandans. It highlights that modes of acquiring, managing and using land will differ depending on whether it is rural or urban. The Policy also makes reference to public domain areas (e.g. roads, waterways, national reserves) and the State’s private domain areas (e.g. communal land, vacant land, land used by State institutions) which presumably will be separately governed.

The Policy details the various methods for acquiring access to land such as through the sale, transfer or donation of rights over land, inheritance, lease and by prescription. [Note that “prescription” has a particular meaning in the Rwandan context. In general, someone acquires land by prescription if they are the uncontested occupant for a certain period specified by law, e.g. ten years, and genuinely believe during that period that no one else has any rights to the land, e.g. they believe it is vacant or voluntarily abandoned. In Rwanda, the notion of acquiring land by “prescription” refers to the rights acquired by those who took over the properties of the Rwandans who fled into exile in 1959 and during the sixties and seventies. One article in the 1993 Arusha Accords states that anyone who has been absent from Rwanda for more than ten years should not reclaim their property if it has been occupied by someone else. This was agreed to by the warring parties at that time because they knew that there would be massive social tension if people who had fled the country decades earlier suddenly returned and tried to reclaim their properties. However, the article is quite controversial in law because it cannot be said that the refugees left their homes voluntarily and relinquished their rights to their property.] It is highly significant that the Policy specifically states that the

Government must issue an unequivocal interpretation of this article with respect to the right to property and the “ten year” rule. Elsewhere, the Policy states that, as for ownership acquired through prescription, the new land law will support the concept but will clearly regulate it including with respect to “time limits, causes of interruption or suspension of these time limits, cases in which prescription does not apply etc.”

[Following discussion at the conference on whether every Rwandan should have the right to own land, the debate also touched briefly on the most appropriate model of access/ownership in general. The Policy is virtually silent on this point. Many argued that individual citizens should be able to own their land outright. This has the advantage of providing a sense of security, thereby encouraging investment in the land. It also increases the value of the land because it becomes a much more highly marketable commodity. It can be sold, let, exchanged for other land or mortgaged to secure funds – for further investment in the land or other purposes. But with this flexibility comes the danger that people will speculate in land in a way disadvantageous to productive land use and the development of the country. There is also the risk that people in desperate need of money will sell their land for less than its value and become part of the problem of the landless (see below). Worse still, some may be coerced or manipulated into doing so. In addition, complete ownership by the individual reduces to some extent the control that the State can have over the land. Although, even if this model were adopted, the State would always retain the right to expropriate land (with compensation) for reasons related to the national interest. An alternative model to outright ownership is that of long-term leases. Under this system, the State retains its ownership of the land but leases it to an individual for an extensive period, e.g. fifty years. This gives the individual the necessary sense of security to encourage investment in the land but allows the government more easily to dictate how the land should be used and managed. Nonetheless, even with long-term leases come rights which can be sold, exchanged or mortgaged in much the same way as ownership rights.

However, as noted above, there is a difference between the right and what happens in fact. The Policy itself states that not every Rwandan can possess a plot of land. It specifies that agro-pastoral land will only be allocated to those who are professional farmers or pastoralists. The Policy does not specify how the government will determine who are the professionals and how it will be proved that they have the necessary competence. This will raise issues for a large number of people who may be quite expert in productively managing their land but have never been able to prove this because of lack of resources and land on which to demonstrate their capabilities.

This drive, allegedly based on economic reasons, to limit access to land to professional farmers and pastoralists (which is worrying in itself) conflicts on occasions with the insistence, for political and social reasons, on providing land to the landless. The Arusha Accords provided that people who could not reclaim their properties because of the “ten year” rule should be given another plot of land and building materials in compensation. However, this has not always happened in practice leaving a significant number of people without access to any land at all. The problem of the landless is a highly charged political and social issue. Finding a means to resolve it is a particular preoccupation of the Government and every participant at the November conference was asked to consider possible solutions. During this debate, the concept of land sharing was also heavily discussed, notably the case of Kibungo. Some argued that the idea of sharing was a model response to this problem, ensuring that the community collectively participated in and bore the burden of resolving the problem and collectively agreed to avoid further conflict. Others argued that it represented a massive violation of the right to property, was unfounded in law and squashed the individual’s right to manage his/her own affairs.]

The Policy proposes the establishment of a “land reserve” from which land will be allocated to the landless and “persons applying for it based on a development proposal”. In one section, the Policy specifically states that the Government must provide the landless with land at all costs. However, this does not quite match with the later statement that “not every Rwandan can possess a plot of land” and the known Government stance that not every Rwandan can expect to make a living from the land and that other sources of income need to be developed. Elsewhere again, the Policy states that the government must use no matter what land to provide land to any larger, landless community. Those whose land is expropriated for this purpose will be compensated. In a different section, it specifically proposes that the landless be given land which is still vacant or obtained from private individuals/associations who are not exploiting their land. It notes that landless who were not formerly engaged in pastoral professions should be given land in urban areas and those who do not have the capacity to exploit the land to be given to them (e.g. orphans, widows) could rent it out. It is clear that the Policy is determined to address the problem of the landless but how it will do so is far from certain.

The specific problem of the landless aside, on a more practical level, the Policy proposes restrictions on partitioning land through inheritance or transfer. It further notes that the regulation of sale and purchase of land among inheritors will be established so as to render the regrouping of plots effective. [Note that the 1999 Law amending matrimonial and succession regimes already provides that a plot which does not exceed an area of 1 ha cannot be partitioned. The heirs have rather to agree on the modalities of its sale or exploitation and share the fruits therefrom (Art. 91).] The Policy also proposes minimum and maximum limits be set for appropriating land in general, in order to ensure a fair distribution in line with development objectives and to meet the needs of the landless. (These range from 1-2ha to 30-50ha for rural properties and from 200 - 600 sq. metres for urban properties excluding those for commercial and industrial purposes.) The Policy emphasises that the Government will retain the right to impose restrictive measures concerning land and property transactions.

The Policy also promotes the introduction of land commissions that will have “a large role to play” in the process of the acquisition of land. The role of the land commissions is not further specified but the implication is that in addition to dealing with other modes of acquisition, these local level commissions will also deal with the very political and sensitive issue of land acquired through prescription. [This could have enormous impact on existing tensions between old and new caseload returnees (i.e. between the Tutsis who fled into exile in 1959 and during the sixties and seventies and returned after the change of government in 1994 and the Hutus who fled after the genocide and began returning in 1996/1997 and continue to do so today). How the proposed new law will regulate this issue and how it is implemented could go some way to improving social harmony between these two groups or could seriously destabilise it.]

## **2. Land Administration**

According to the Policy, land administration includes the determination of rights and other attributes characterising land ownership and the mode of acquisition, the surveying and demarcation of plots and their description. Land administration is principally supported by the registration of land (see below). For those that do have tenure, the government wants to ensure that it is regulated according to a secure and properly managed system as this will encourage investment in land which leads to productivity which then leads to the overall development of the country. The proposed

single written system for governing land will offer security for all landholders and stability in the administration of land. Most importantly, it will ensure equal rights for women in relation to land because the proposed legislation will refer to land rights belong to all Rwandans, without discrimination. Customary rights, many of which limit the rights of women in relation to land, will no longer exist. [Note, the new law may contain a legislated version of some customary rights where these are in keeping with the overall objectives of the Policy.]

The Policy suggests that a central Land Information Centre be established, along with national, prefectural and communal commissions and land titles offices which will follow common regulated systems. The Policy states that taxation limits will be set but the local authorities will be empowered to grant some flexibility within these limits in order to encourage development. The population will be encouraged to participate actively in land management.

### **3. *The Land Registry***

The Policy very strongly insists that all land issues in Rwanda be based on a system of registration. Registration of land will be compulsory. The foundation will be a cadastral system based on a surveyed inventory of all land. Mapping is heavily emphasised as vital to this process.

The current land registry only covers urban areas and is virtually non-existent for rural areas. What does exist lacks vital data and accurate maps and descriptions of property, including their value. Redressing this, with the aid of proper surveying methods and computer technology will be one of the huge undertakings foreseen in the context of the proposed land reform and, in fact, must occur before substantial reform can take place. Land registration is not just the basis for land management but allows for individual transactions that are non-risky, rapid and inexpensive. It also reduces the number of disputes surrounding land. Those that do arise can be more readily resolved on the basis of accurate property descriptions and a record of the rights attaching to them and who holds those rights. It cannot be ignored that establishing the foreseen cadastral system will require substantial resources including trained personnel, equipment for surveying and mapping properties and computer based technology for recording all the information. A significant part of the Policy is devoted to explaining why this is fundamental and detailing what will be required to establish such a system.

Of interest is that the Policy states (though not very explicitly) that there will be different requirements before land can be registered and title obtained, depending on whether it is urban or rural. More significantly, there is a glossed over distinction between registering land and obtaining title to land. For both urban and rural land, taxes must be paid before the land will be registered. However, for the former, a certificate of registration can be acquired even before the land is developed. But for rural land, registration and obtaining a certificate of registration will follow strict rules to be established by the land law regarding how the land is actually to be used and developed. Furthermore, with respect to rural land, the Policy states that priority will be given to tenants with a "proven intention" to develop and rationally exploit that land so as to promote "professional agriculture". However, even when land is registered, it seems that actual title to land can only be obtained, once the land has actually been developed. The circumstances when actual title can be obtained are not further defined.

### **4. *Land Transactions***

Because the State owns the land, all current land transactions actually relate to the value of buildings erected upon the land and not to the land itself. This greatly diminishes the value of any transaction and the amount of compensation received for



State-approved expropriation. The registration of land through the above systems means that each plot of land will be clearly defined and its value can be assessed according to a common system. Thus each piece of land will have a real value in its own right, irrespective of what improvements have been made to it. This will clearly increase the potential benefits of land transactions. It will also facilitate obtaining bank loans, at an interest rate that is accessible for all, because the land against which the loan is secured will have a more clearly defined value.

### **Use and Management of Land**

According to the Policy, the use and management of land will again vary depending on whether land is urban or rural. Careful urban planning will result in urban areas being clearly delineated and will prevent towns from spreading. Construction and development within them will be strictly controlled, with taller buildings favoured for better use of space. Particular attention will be paid to reorganising and reforming slum areas that have spontaneously sprung up around urban centres. Attention will also be given to providing green spaces and public areas. Development of secondary towns will also be encouraged to remove the pressure on Kigali. The Policy notes that master plans exist for certain urban centres but that these have not been implemented. It cites the main obstacles to urbanisation as being the inadequacy of planning tools, limited financial means and the population's ignorance of the existence of development schemes and plans. To redress this, the Policy advocates informing the population of the existence of master plans which show the allotment of various spaces and the various proposed development plans for the territory. New plans to implement the terms of the Policy will be developed (although the Policy notes that those doing the planning will need to be trained to do so). It also states that villages constructed under the villagisation programme should benefit from improved services, emphasising their urban nature. The Policy proposes establishing commissions at the prefectural and communal level specifically to ensure an effective application of the villagisation policy, notably that sites are selected by the community, as much arable land as possible is freed and protected sites are avoided.

For rural areas, the rational utilisation and proper management of the national land resource will also be based on master schemes which differentiate amongst the different categories of land. These schemes will be firmly based on the villagisation Policy (for housing) and the regrouping of partitioned and dispersed plots to ensure the permanence of larger and more regular plots as well as the possibility of more independent exploitation. The Policy proposes piloting its concept of regrouping plots before it is implemented countrywide. It indicates that the process of regrouping will be accompanied by a sensibilisation campaign, explaining the advantages of this system. These advantages are not explained in detail in the Policy. Nor is the method of regrouping. However, the Policy does explicitly note that the process should facilitate the regrouping of agro-pastoralists into co-operatives or associations. Where redistribution of land is necessary, the Policy states that the government will pay financial compensation or compensation in kind to the original inhabitants who will lose their land as a result of the distribution. At the same time, the government also offers technical and financial support for land users, in order to encourage optimum land use.

The Policy makes specific reference to the particular nature of marshlands and advocates that they be the subject of a separate law governing their use and appropriation by experts, given their high productive potential. Similarly, protected areas will be the subject of separate legislation and management. The Policy also looks to special arrangements for semi-arid zones and marginal mountainous areas to reduce further damage to these areas and enhance their particular attributes. Soil and water

preservation are also key factors. The Policy assures that housing and environmental laws will support the land law by managing land as a national resource.

The Policy constantly reinforces a clear obligation to use the land and notes the power of the State to confiscate land if it is not being used in conformity with the law. The Policy promotes the idea of specialisation according to the nature of the land as a means to “unlock” the agricultural sector and encourage technological improvements. As for pastoralists, the Policy states that the proposed master plan for the allocation and use of land will help professional pastoralists to choose the right grazing system “to facilitate the integration of livestock into the agro-sylvo-pastoral system.” [Implicit in all this is the recurring idea that the State will decide exactly how land is to be used. There is no reference to how the existing competing demands on land by agriculturists and pastoralists will be resolved. It is assumed that it will all be managed.]

### **Conclusion**

In concluding the Policy restates its main objectives and principles, noting that it must be armed with a rigorous land law. This will play an important role in the promotion of peace, justice, unity and reconciliation and in the reduction of poverty.