

WOMEN'S PROPERTY RIGHTS AND THE LAND QUESTION IN RWANDA

by
**UN High Commission for Refugees
Kigali Office
February 1998**

Paper presented at the Inter-Regional Consultation in Kigali, Rwanda, February 1998 and now part of a Reader published by the United Nations Development Fund for Women (UNIFEM), entitled *Women's Land and Property Rights in Situations of Conflict and Reconstruction* available on the Internet at <http://www.undp.org/unifem/public/landrights>
Oxfam GB is grateful for permission from UNIFEM to reproduce the 6 articles on Africa from this Consultation on its landrights website.

Introduction

Access to land is one of the more worrying questions in societies where the majority of the population are farmers with insufficient land. The land problem is acute in Rwanda insofar as the area of available land is not enough to satisfy the needs of the rural population. Land has been divided to the extreme, and all that could be cultivated has been. The land problem is further complicated by the lack of appropriate legislation.

Access to land is a determinant factor with regard to the mode of agriculture in the country and has repercussions on the way of life of the population. The rural farming population depends for its survival on access to land. Protecting access to land thus constitutes a guarantee of their right to subsistence. The right to property is also linked to the problems of reconstructing a country devastated by armed conflict and to the further problem of its sustainable development.

In most African societies, including Rwanda, land is acquired through occupation: according to Rwandan custom, land belongs to its first occupant. However, even if the occupant is not clear about customary law regarding landed property in Rwanda, the relevant legislation is clear: all land belongs to the state, the rights of the occupant being simply confined to his use of the land and to the wealth it produces. He can, at any time, be displaced from this land by reason of its public utilisation, in return for a just compensation.

Property Rights and Returnees

The aftermath of the genocide and massacres of 1994 have aggravated a land problem which was already complicated owing to a lack of adequate land legislation and overpopulation. Following those events, the country saw a massive outflow of population to other countries. Then the return of refugees, took place in two waves: first, in July 1994, following the seizure of power by the Rwandese Patriotic Front (RPF), Tutsi refugees who had fled the country in 1950's and 1960's returned to occupy land abandoned by the fleeing Hutus. Hutu refugees returned to Rwanda in the second wave, starting in mid-1996 with the repatriation of Hutus who had fled to Burundi, followed by those who fled Eastern former Zaïre following the conflict that erupted there in September 1996, and later the return of those living in Tanzania.

The right of returnees to property is protected not only by national legal texts but also by regional ones. The Arusha Peace Accord recognises that the right to property is fundamental. In its section related to the Protocol on Repatriation of Refugees and the Reinstallation of Displaced People, especially in article 4, it recommends the restitution of land and houses to these two categories of people. This article states that:

The right to property is a fundamental right for all Rwandans. Therefore, refugees have the right to get back their property upon return. The two parties (the RPF and the then Government -- editor's note) recommend, however, that in order to promote social harmony and national reconciliation, the refugees that have left the country for more than 10 years should not claim back their properties already occupied by other people. In compensation, the Government will put land at their disposal and will help them to get reinstalled. Regarding properties that have been occupied by the State, the returnee has a right to just compensation from the Government.

The interpretation of this article is equivocal, at least as concerns the meaning of 'should not'. A literal interpretation of this phrase would suggest that reclaiming property is not an obligation, so much as a suggestion. However, the formal recommendation contained in the same instrument rules out any idea of suggestion and makes it instead an obligation. For the intention behind this clause was to pre-empt land disputes and find a solution to the problems of land claims that were likely to arise with the return of refugees - this being a solution tending to promote social harmony and national reconciliation. This solution finds expression in the time limit imposed on its legal validity, as land claims are allowed only for those refugees who have not spent more than ten years in exile. The place of the Arusha Peace Accord in the hierarchy of the legal texts obtaining in Rwanda reinforces the obligatory nature of the provision. This Accord, together with the Rwandan Constitution, constitutes the Fundamental Law of the Republic of Rwanda.¹ The obligatory nature of the provision appears also in practice: it has been observed that

¹ Article 1 of the Fundamental Law states that:

'The Fundamental Law of the Republic of Rwanda is irrevocably composed of the Constitution of 10 June 1991, the Arusha Peace Accord, the RPF Declaration of 17 July 1994 relative to the setting-up of institutions and the Protocol of Agreement between the RPF, MDR, PDC, PDI, PL, PSD, PSR and UPDR political forces on the setting-up of the National Institutions, signed on 24 November 1994.'

those returnees who have spent more than ten years away are aware that they should not reclaim their former properties when these have been occupied by other people.

The Tripartite Agreement between UNHCR, the refugees' country of origin and the host countries (Tanzania, ex-Zaire, and Burundi) on the repatriation of Rwandan refugees, signed on 12 April 1995 in the case of Tanzania and on 24 October 1994 in the case of the then Zaire, requires that the government of the country of origin take all possible measures to allow repatriated people to settle in their regions of origin and to protect their movable and immovable property. The Rwandan Government has undertaken to put in place mechanisms for settling property-related disputes, and to guarantee returnees their right to enjoy equal social and economic rights as recognised under national and international law. This legislation has helped alleviate the problems incurred in claiming property and has thereby helped institute social harmony.

Concerning the land rights of the refugees who returned to Rwanda between March 1996 and January 1997, out of 4,444 families monitored by UNHCR, 3998 (90%) had no problem in recovering their land. Of the 446 (10%) families that had found their land occupied, 260 (6%) had got it back. With the 10% of cases of property occupied for a period of eleven months, the percentage of families that could not get their property back is relatively low.²

Within the context of finding solutions to land disputes arising from the massive return of refugees, the Government published a Provisional Directive on Settlement, in January 1997. This recommended living in villages in the rural areas as a way of solving the problem of land shortage and to ensure better land use. In the spirit of the Arusha Accord, this type of settlement was destined for the refugees of the 1950-1960's. However, faced with the problem of these refugees occupying other people's land and houses during the mass outflow of population and upon its return, the Government instituted the system of grouped settlement for all the rural population.³ This should make land available and should allow a more equitable distribution of land among all the populations present. It is the view of the Government that scattered settlement in the rural areas is an obstacle to good land use, and therefore that a settlement system must be put in place that allows them to solve the problem of land hunger.

The Situation of Women in Relation to Property Rights

Rwandan women's right to property is linked to the cultural situation of the country. Women have always been sidelined on matters of family or conjugal inheritance. Custom does not allow them to inherit parents' or husband's property,

² UNHCR Protection Report for December 1996-January 1997, p.7.

³ Article 11 of the directive stipulates that 'the [type of] settlement accepted in the rural area is that of villages; all Rwandans are given plots to build their houses in villages'.

and to date there is no law on inheritance and marriage settlements to rectify this situation. According to custom, land rights are passed on from father to son in accordance with the principle of patrilineal succession. Daughters may inherit land, as a gift or where there is no son, but there is no automatic right of inheritance. Daughters thus cannot benefit by inheriting their father's land. Custom allows a surviving widow only usufruct rights on the property of her deceased husband, and she is allowed this only if she remains in the matrimonial home; otherwise she will be denied it by her in-laws. This custom is manifestly discriminatory and contrary to the provisions of the Rwandan Constitution and the International Covenant on Economic, Social and Cultural Rights, which was ratified by Rwanda in 1975. Both of these instruments recognise the equality of rights between men and women. Effective protection of the right of access to land for women is made difficult insofar as no legislation on inheritance and marriage settlements exists as yet.

Consequences of Women's Lack of Access to Land

Land ownership being an indispensable condition for the achievement of the rights to subsistence and to family welfare, a woman without the right to land faces a violation of her most fundamental rights. Lack of access to resources on the part of women leads to extreme poverty, and this has negative repercussions on all those people who depend on her. Such a situation increases the socio-economic dependence of the woman, who is an active force of the country, and consequently reduces her participation in the process of human development.

The situation of Rwandan women worsened considerably after the tragic events of 1994: many women became widows and now have to take care of both their own children and orphans of other family members while at the same time being deprived of resources and social and economic protection. The genocide and massacres of 1994 have in fact affected not only human lives, but family property as well: houses were destroyed and property looted. The recovery of some of the husband's, or the family of origin's, remaining real estate property was a daunting task for the widow who at times had to face stiff resistance from her in-laws or the male members of her own family. Faced with this situation, widows needed active efforts to ensure their social and economic integration in order to regain hope. Various initiatives were undertaken, by the national authorities and by international organisations such as UNHCR.

Initiatives Taken by National Authorities to Improve the Woman's Property Rights

Sensitisation campaigns are carried out throughout the country, through meetings, conferences and seminars, by the ministry in charge of women's promotion and by NGOs promoting women's rights. These campaigns are essentially focused on the equality between men and women in the enjoyment of their rights, in the present case the right to property.

In 1996, the Ministry for Women introduced a draft bill on inheritance and marriage settlements, the main innovations of which would be to allow the daughter to inherit landed property from her parents and the wife to manage conjugal property and to inherit her deceased husband's property. A commission from the Ministry that initiated the project and another from the Ministry of Justice produced a single definitive draft document.⁴ This Bill passed into law in April 2000.

With the aim of resolving the problem of access to land by returnee women, a directive on provisional land management was issued in September 1996. This mainly regulates abandoned land (that is, land whose owners are absent), and acknowledges that wives and children are entitled to manage such family land until the return of the titular owner. While children are still minors, it accepts that their parents' property can be managed by their guardians. This has helped to improve the socio-economic situation of women and their child dependants and that of daughters. However, this gain remains precarious for the woman, if her husband should return and resume ownership of his property. She may also find herself repudiated, especially if she has no children, should her in-laws manage to produce proof of her husband's death.

With the current practice of land distribution, the woman is considered to be at the same level as the man. In Kibungo Prefecture, which is the most progressive in land distribution, the plot of land given to a man is equal to that given to a woman. This system was adopted after reconciliation seminars that took place throughout the Prefecture in March 1997, funded by UNHCR.

Sharing has been considered as a sign of reconciliation. It was made easier by the principle that the State has the right of property on all land except that land whose owners hold title deeds.⁵ During those seminars, the recurrent question was whether the property belonging to the land to be shared was compensated for. For, in principle, when a person is removed from the land that he or she occupies, he or she must receive compensation for all the property that is on it. But for the case in point of Kibungo, there was an understanding amongst the population that someone who possessed a plot bigger than the share reserved for each individual had to share it with others without compensation. It remains to be seen whether the same practice will be possible in other prefectures. It is important to underline, though, that this practice is not foreseen by any statutory or legal text, land-tenure legislation being still in preparation.

Initiatives Taken by UNHCR

⁴ see *Journal Officiel de la République Rwandaise*, 15 November 1999.

⁵ Article 1 of Statutory Order No.09/76 relating to purchase and sale of customary land rights or soil occupation rights stipulates that: 'All land that was not obtained through written law legislation, whether mortgaged by customary or soil occupation rights or not, belongs to the State'.

Within its policy framework designed to promote the rights and condition of repatriated women and women survivors of genocide, UNHCR gives active support to the Government's initiatives aimed in particular at devising legislation on inheritance and marriage settlements, on gender equality and women's rights to land, and civil society initiatives (NGOs) and the work of parliamentarians.

In this respect, since 1995, UNHCR has supported a local association called Haguruka in its efforts to promote and defend the rights of women and children, notably by sensitisation and training on women's rights, especially the rights to property and inheritance. Such activities are directed at local authorities, women's associations and so on, using the production and dissemination of posters, legal aid with a view to securing these rights, production of legal education booklets, and training of para-legals to give basic advice on how to settle women's legal problems.

Since December 1996, UNHCR has provided technical support to the Ministry for the promotion of women in drafting the Bill on inheritance and marriage settlements. It also supports a local media women's association called ARFEM in its work to popularise women's rights. In 1998, UNHCR supported the Women Parliamentarians' Forum to strengthen its networking with other parliamentarians in Africa and Europe.

These are some of the initiatives supported by UNHCR within the context of the Rwandan Women's Initiative aimed at increasing the participation of women in the process of economic, social and cultural development; promoting women's rights and their position in the political, legislative, judicial and media arena; and combating violence against women.

Conclusion

The right of women to land is a fundamental right without which they cannot aspire to a decent life, inasmuch as land constitutes almost the only means of production for the rural population.

The situation of women with regard to the right to property has evolved slowly as a result of an inadequate protective legal framework. This is the ultimate requirement needed to empower women economically and socially. Therefore, speeding up the process of adoption of the law on inheritance and marriage settlements would allow women to know their rights and obligations, and to discard discriminatory customs. It is not enough to put legislation in place: women must be trained and sensitised about their rights and the laws protecting these, in order to allow them to claim and champion their rights.

Legislation that would regulate the use of land (but which is not yet in place), could, within the context of determining the legal succession of land, play a considerable role in the resolution of the women's problems of access to land.

The respect and protection of the right to land for returnees, a right recognised by many legal texts including the Arusha Peace Accord and the Tripartite Accords are an indispensable pre-condition for instituting social harmony and fostering reconciliation among the population. Effective implementation of these legal texts has to be ensured in order to respect commitments made.