

# THE PROBLEMS OF DISPLACED AND RETURNEE WOMEN FACED WITH CURRENT LAND TENURE POLICIES IN BURUNDI

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## **Introduction**

Since the French Revolution of 1789, there exists an assertion of will which can be found in Article 1 of the 1948 Universal Declaration of Human Rights: 'All human beings are born free and equal in dignity and rights.' This moral assertion, moving in its lyricism, posits two big principles straightaway: that human rights are natural, and that they are universal.

It is this principle of the universality of human rights that has inspired the various fundamental laws which Burundi has known. These have always asserted that 'all Burundians are equal in rights and obligations, without distinction of sex, origin, colour, religion or opinion.' However, it is sad to relate that the human rights thus proclaimed by the UN Human Rights Charter and the various fundamental laws are neither natural nor universal in relation to women. As far as this category of human beings is concerned, the texts are merely declarations of intent, for women will always have to fight and sweat to achieve even their most basic rights.

We cannot cite here all the human rights violations that Burundian women have suffered; so, for now, let us stick to the violation of the right to land ownership. In Burundi, this right belongs to the man only. As a matter of fact, the natural way to have access to land ownership is by inheritance. This right is governed by the notion of collective property belonging to a clan and not by that of private property as in the western world.

With the patriarchal Burundian family, the daughter, destined to start a home and family outside her parents' family, is considered not to belong to it in the same way as her brother. The inheritance system is thus patrilinear and sanctions masculinity as a privilege. The rights of girls and women to acquire land the most natural way, that is through inheritance, are almost non-existent. After all, the daughter will inherit her father's property only in the absence of any other male descendant. And the crisis into which Burundi has been plunged for many years now has only aggravated a situation that was already precarious for the Burundian woman.

## **A Situation of Ongoing Crisis**

Burundi is a country that for many years has been shaken by socio-economic crises, the most severe of which has persisted since 1993. Thousands of people have perished during this time. The rights to life, personal security and physical integrity have all been violated. Men have

perished to a greater degree than women, which has increased the number of widows (26%) and unmarried women. These women have been forced to abandon their farmlands and to wander with orphans to support, thus becoming heads of households, a role for which they were never prepared. Nor is it easy to fulfil, if one takes into account the traditional custom whereby the woman does not appear in the public arena as she is always represented by her husband. The table below shows the age and sex of household heads in camps for displaced people:

**Table 1: Distribution of 100 household heads of either sex by age group in percentages**

Age groups	Males	Females
Less than 15 years	3.9	1.4
15-19	3.0	3.3
20-24	8.4	7.3
25-29	11.8	9.3
30-34	16.3	13.7
35-39	14.3	12.8
40-44	11.8	12.2
45-49	8.3	8.4
50-54	8.2	10.9
55-59	4.5	4.3
60-64	4.6	6.8
65-69	1.9	2.3
70 and +	4.8	7.2
Total	55.9	44.1

The Burundian tradition requires household heads to be adult men rather than women. During the 1990 census, it was observed that the minimum age of a household head was 15 years and that 75.3% of households were headed by men, while 24.7% were by women. By way of contrast, in camps today, 44.1% of households are under the responsibility of a female head.

The table above shows that the highest numbers of household heads are aged between 20 and 55. The most striking phenomenon is that nowadays there are household heads who are below 15 years of age, that is 3.9% male and 1.4 % female. This happens in households made up of orphans. One might ask how such a young child can take on such a heavy responsibility. This is a worrying social situation, requiring urgent attention.

The high percentage of women household heads suggests how far they should be involved in the management of the consequences of the crisis. This new responsibility which the displaced-refugee woman must assume owing to the crisis should be a concern for the government and should be taken into account in planning the reconstruction if they want to give the population every possible opportunity for rehabilitation.

Burundian tradition requires the search for land to be the responsibility of men. Yet, because of insecurity, the general tendency is for the survivors living in camps to look for lands elsewhere, far from their home districts. That is why one wonders whether women directly in charge of households will be able to look for new lands as the men do. We think not. Government should be focusing its attention on this category of the population - who have been so abruptly weaned from their former roles.

In addition to insecurity - a factor common to both men and women - which drives people to search for new lands, the woman lives a situation that is particular only to her. It is not uncommon to find that a woman who is the only survivor of her own family cannot return to her former property even when security has returned there, because her surviving brothers-in-law took over the land that she used to farm, obliging her to remain in the camps for displaced people and returnees.

As she cannot inherit land from her own father, her brothers and sisters-in-law will not want to take her back, for fear that this would lead to a diminution of their already insufficient land. The very survival of the displaced or returnee woman is therefore at stake, when she has no other source of wealth than her physical force to work the land.

## **Socio-Economic Characteristics of Displaced and Refugee Women**

### *Their Professional Activity*

In Burundi, farming is the predominant activity: it occupied 98% of the active population before the crisis, according to the figures of the 1990 census. It is thus normal that farming is still the main activity of people in camps for the displaced. However, with living conditions being very difficult and people not living in their customary setting, it is not surprising that there is a great difference between their current activity and that which prevailed among the same population before the crisis. It is normal in these circumstances that displaced and refugee women, active farmers in the majority, have adapted by taking to farming in spite of the difficult environment around them. There are farms around the camps, in fact. One way or another, displaced and refugee women have managed to have access to plots for farming.

**Table 2: Distribution of 100 displaced women aged 15 and above according to their current professional activity in camps and before the crisis:**

<b>Activity</b>	<b>In camps</b>	<b>Before the crisis</b>
Farming	61.4	87.3
Handicrafts	0.6	1.0
Public Employee	0.9	0.9
Private Employee	0.5	0.5
No Occupation	30.5	1.6

The table above indicates that in the camps farming activity has deteriorated. Naturally, the rate of 'no occupation' has become extremely high (30.5%), whereas it was 1.6% before the crisis. This is due to the fact that displaced women cannot have access to a plot of land for farming as easily as in the past, and do not have other professional skills. Thus they have few possibilities to take on alternative economic activities. This inactivity on the part of displaced women is considerable and very worrying. It should be taken into account, as it can lead to deep disturbances of both economic and social structures in Burundi.

Even if it can be observed that 61.4 % of displaced women work in agriculture, it is not the agriculture we know. It is just small plots of land around the camps, which do not even belong to them. The problem of arable land is extremely acute for the displaced woman, who was used to

working and all of a sudden found herself forced to live in inactivity, as she is not capable of returning home or finding herself new land.

**Table 3: Levels of education of displaced people by sex**

Level of education	Males	Females
No Education	26.9	38.5
Literate	13.5	19.9
Primary	54.0	38.8
Secondary	5.1	2.5
Higher	0.5	0.3
<i>Total:</i>	100.0	100.0

This table tends to confirm the fact that farming is the most important occupation among displaced people. With a low level of education, there are indeed great chances that the level of vocational training is weak. As a consequence, the farming sector is the only one accessible to them.

Nevertheless, it appears from the data above that women, in spite of their weak involvement in the conventional schooling process, are still literate enough. It is a sign they are definitely disposed to acquire appropriate new techniques so that they can participate in activities promoting their status in this particularly difficult context. This information could serve as the basis for a policy for the rehabilitation of displaced women.

## **Numbers of Displaced and Returnee Women**

### *Displaced Women*

In 1998, Burundi had more than two hundred sites for displaced people. The 1990 census records that there were 95 men for every 100 women, but in camps for displaced people there were 92 men per 100 women. Generally speaking, there were more women than men in these camps, especially women of active age and in the period of active reproductive life. This is a striking gender imbalance in the camps, which is likely to remain a source of multiple problems in the structuring of the traditional division of work, and which will cause imbalances in other domains as well. After all, we know that in Burundi, social and economic life is organised essentially around the family nucleus. And yet this has been broken apart by the war. We may then ask what will become of this surplus of women subsisting in the remaining camps without land.

### *Returning Refugee Women*

In Burundi, repatriation of cross-border refugees has taken place through the border posts of Kobero, Gisuru, Cankuzo and Gatumba. Of these, only Gatumba has a transit centre. On arrival, returnees are directly taken to their families and given a return package for three months. Their life after this does not seem to be of concern to the authorities. Since these women are taken to their families, it has been difficult to obtain statistics of household heads by sex or by professional activity.

Nonetheless, if we consider those we found in the transit centre of Gatumba, their level of education was very low and their professional activity mainly farming. Our investigations revealed that returnee women have the same problems as the displaced ones. While fleeing to seek refuge, they had to abandon everything. Currently, their problems have to do with insecurity after returning to their home villages and with finding cultivable land. This situation is confirmed by the fact that a lot of returnee women seek to change their addresses and to emigrate to other districts.

At the transit centre in Gatumba we found 689 women, 733 children and 635 men, who are considered as people without land for resettlement. All these women, representing 33.49% of the total, are heads of households. From November 1996 to 20 January 1998, the following numbers were repatriated, registered and returned to their original families:

- through the border post of Kobero: 23,525 persons, of whom 8,061 were women and 8,618 children dependant on these women (who represent 36.63% of the repatriated population);
- through the border post of Cankuzo: 2,648 persons, among them 908 women (34.29%) and 969 children (36.59%);
- through the border post of Gisuru: 37,970 persons of whom 13,115 women (34.54%) and 13,813 children (36.37%);
- through the border post of Gatumba: 38,385 persons of whom 12,865 women (33.51%) and 13,675 children (35.62%).

#### *Some Observations*

From the situation described above, we realized that the problems facing women from conflict areas, whether displaced or repatriated, are the same. All these women have a common denominator: the problem of cultivable land that would allow them to satisfy the needs of their families for which they are in sole charge. Admittedly, even before the crisis they did not own land, but they could at least use it peacefully.

Before the crisis many women indeed did not own private land, but they were not aware of this because they did not encounter any problem in the use of the land they farmed. The married woman farmed property shared with the husband, the family land. She behaved like a land-owner and, as long as she was on good terms with the husband, did not have anything to worry about. The widow, for her part, farmed, through usufruct, the land left to her by her husband. She behaved like a land-owner and society acknowledged that she had all rights except that of alienation. But even here she did not encounter any problem because she knew that the land belonged to the family.

Today, the displaced or refugee woman has neither usufruct nor co-ownership of her land; she is deprived of everything, and, most often without hope of recovering her rights. And yet, as we have seen in Table 1, Burundian women have, since 1993, constituted 44.1 % of household heads. This is a new responsibility for them. We know that they do not have the means to fulfil this responsibility. Table 2 shows us that farming is and remains the predominant economic activity. We would expect women to assume these new responsibilities of household head through farming income. However, the farming done around camps is not enough to provide this. The data mentioned above indicate the basis for the concerns of women regarding access to land while this is in full ownership. Non-access to land jeopardises the woman's future and that

of her offspring.

The displaced or returnee woman will certainly have access to land within the context of resettlement. It has, however, been observed that the Government appears more concerned about the problem of housing. Besides, in view of the problem of finding free land, will the Government be able to find enough arable space for all these displaced people? We think not.

There may, however, be another, more natural, means of access to land, but one which does not seem to interest governments: it is that of inheritance. This is still governed by customary law, though, which excludes the woman. Can we, at the dawn of the 21st century, still continue along this path? Continuing to exclude the woman or young girl from inheritance is likely to create frustrations among this numerically important category of the population. It is our conviction that reconstruction would be better accomplished if the authorities got down to further promoting a society founded on equity, and not by contributing to the marginalisation of this one group.

For many years symposia and seminars have been held to reflect on this issue and it has continually appeared on the agenda of some government departments, but without arriving at any result. That is what has led us to believe that the question of inheritance in Burundi is indeed problematical.

Realising that the issue is particularly difficult for women in camps for displaced people and returnees, the Burundi Association of Women Lawyers decided to bring the question back into the public arena. That is why since November 1997, members of the Association have been going around the various districts of the capital, Bujumbura, in order to sensitise the population on this issue. Public authorities have also been sensitised and they have pledged their support.

A seminar to review inheritance, marriage settlements and civil liberties was planned for January 1998 for the province of Urban Bujumbura. In this sensitisation task we insisted on the participation of all women's associations, human rights organisations, the ministry in charge of women's affairs, the ministry for human rights, women parliamentarians, university lecturers and magistrates. The Association hopes to organise the same kind of work in the remaining fourteen provinces of the country.

Within the context of reconstruction, even if no particular attention is being paid to women, we note with full satisfaction that houses and arable areas given to women are given for full ownership. Women are accorded the same rights as men. Nonetheless, there is still a long way to go.

### **The State of Inheritance in Burundi**

The rules of customary inheritance law have been applied since the existence of Burundi as a political entity. They have remained the same in essence. Thus, for the traditional Burundian, the transfer of property by inheritance from the family of the deceased to the family-household of his daughters is simply not conceivable: the full ownership of inheritance passes to his sons; the inability of the woman to inherit property is the rule. The allocation of property after the husband's death is thus not governed by the notion of private property, but by that of a collective property belonging to a clan. Thus inheritance rules are based on patriarchy.

Consequently, inheritance is patrilinear and sanctions masculinity as a privileged state. When daughters of the deceased are given to enjoy some inherited rights to land, these are valid only for as long as the daughters live, even when they have been obtained through legal inheritance. The key rule remains the fact that it is close relatives of the deceased on the father's side who are called to inherit property, to the exclusion of the women descended from this branch and their descendants, as shown by the line of succession below.

### *Succession Line*

In the customary succession law of Burundi, the ab-intestate succession is the most frequent. This comprises two categories of heirs: legitimate and irregular heirs. The legitimate heirs are those related to the deceased through legitimate kinship. The inherit property in the following order:

- 1st: the male children of the deceased and their male descendants;
- 2nd: the father and mother of the deceased;
- 3rd: the brothers of the deceased and their male descendants;
- 4th: the paternal uncles of the deceased and their male descendants;
- 5th: a daughter, sister, paternal aunt, female cousin, paternal niece or other relative in the paternal lineage.

After the legitimate heirs come the irregular heirs, who are ab-intestate successors not linked to the deceased through kinship. They inherit property in the following order:

- 1st: the surviving spouse, that is the surviving husband, inherits property from the other;
- 2nd: the daughters of the deceased: unmarried, divorced, widowed, married domiciled at their father's or their husbands';
- 3rd: natural or adopted children;
- 4th: aunts, paternal sisters of the deceased: unmarried, divorced, widowed, domiciled at the home of the deceased or living in the home of their husband;
- 5th: legitimate children whose parental rights are guaranteed by the maternal family (this is the case of the children called '*Nkurinkobwa*' in Kirundi);
- 6th: the State and abnormal successors.

It can be observed from the above that daughters are not considered as legitimate children on a par with their brothers. It is as if they were not directly blood-related to their father; that is, as if they did not belong to their paternal family. In fact, in the category of legitimate heirs they come in fifth position, whereas their brothers come first. And in the category of irregular successors they come in second position. Can we say that daughters are irregular children in their family? I think not.

### *The Inheritance Calling of the Daughter*

Under this heading we shall talk about the situation of the young girl and the unmarried woman, the married woman, the widow and the divorced woman.

Talking about the young girl and the unmarried woman, the daughter who lives in the paternal

home enjoys the same rights as her brother whatever her age is. She is loved, maintained, and provided with education. When she is of marriageable age her parents can even give her a small plot of land (called '*icibare*') to allow her earn some income to maintain herself. That is, as long as the daughter still lives in the paternal home, she has nothing to worry about. The problem arises when she gets married. On her wedding she is 'offered' to her in-laws' family with some household effects. Note that even this results from a recent evolution, for some years ago she would carry only her clothes, which she would surrender afterwards. Upon her marriage, the daughter receives mostly advice and blessings from her parents. Then the problem of settling begins. Following Article 123 of the Family Code, parents have the obligation to settle their children. Even though this article is not very explicit, we think that settling a child consists of providing the means of existence to the young man and young woman who are about to start a family.

In the rural areas, the settling share for the son often corresponds to that of his inheritance. This is a portion of paternal land with its banana, coffee plantation and other goods. Settling the young woman consists in offering her to the in-law family with a big package of blessings and advice - as indicated above. Marriage thus ipso facto excludes her from parental inheritance. In fact, her parents have already often told her that from now on she belongs to her in-laws' family.

On her wedding, the young woman does not ask herself many questions about her future; she just knows she is now engaged, for better or worse, to her bridegroom. She is not preoccupied by the marriage settlement of their property, and rightly so, as she owns no property except her ability to work.

Customary law accepts, however, that a father can reward his daughter for a meritorious act by making her his 'son' and hence co-heir to his property on his death. But this is a rare case of willed inheritance. We may wonder what types of acts count as worthy of such merit, so that daughters might know how to perform them as often as possible.

The daughter who has remained single in the paternal home will inherit the portion of land left for the parents after settling her brothers. Even if she does not start a family outside the paternal home, she does not qualify for an ab-intestate inheritance. For her subsistence she will use, in usufruct, that portion of land for as long as she is alive. And if in the meantime she has had children, her offspring will inherit property only in the line of irregular successors or will simply inherit nothing at all!

By excluding daughters from inheriting property from their fathers, the custodians of Burundian tradition were inspired by fear of inherited property going to a different clan, the one where the married woman finds the heritage of her husband whom she would succeed. But it is wrong for the custodians of custom to assume that the wife would succeed her husband.

When a couple live a calm life together, the wife is not concerned with inheritance problems. With her husband she has at her disposal land that she farms with all her strength and good will. The couple till the land together, decide on the use of the harvest and other income, and that is that. One may then ask: Does the woman own the land she farms, the cattle she looks after, the house that shelters her? The answer is No. She simply uses such goods. She only has a usufruct right, with all the conditions that are attached to it. Let us look at this right, in order to be aware of the reality.



Usufruct is a real temporary right that allows its holder (the usufructuary), as a good family member, to use and enjoy property belonging to somebody else (the owner without usufruct) while being in charge of maintaining its substance. It follows from this definition that the usufructuary has rights and obligations. A widow usufructuary enjoys two prerogatives of property rights, namely: the '*usus*' and the '*fructus*'. She uses and enjoys mortgaged property in the same way as the owner. Thus she can rent it and sell its fruits. She has the right to natural, industrial or civil fruits. She may consume them or dispose of them free of charge or in return for payment. She can use the thing for her personal use, for example to maintain her under-age children. We should be careful here, though: this right of use never entails the power of disposal.

In contrast to French and Belgian law, Burundian customary law does not allow the widow to transfer her right to a third party. Her right is thus a right of sole use. Heirs have the obligation to respect her user rights, but this is not always the case. Those heirs cannot dispose of the property without her approval. In principle, property owned by a widow by way of usufruct must be left as her own for as long as she wishes, until her death.

The obligations of the spouse-usufructuary in our customary law are the following:

- use of the property, the preservation of its substance, and participation in paying inheritance debts;
- use of property, as a good household head, consists in maintaining and preserving the property;
- the obligation to preserve it implies that the usufructuary has at his or her disposal only the powers deriving from the administration and management of the property -- the powers of disposal are beyond him.

The usufruct of the widow is founded on the one hand on the post-mortem extension of the obligation, between spouses, to assist each other, and, on the other hand, on the presumed affection that the spouses must have had for each other. It would be unbecoming if, on the death of the husband, the widow, who had always taken care of him, was condemned to misery. This usufruct right is thus granted to the surviving spouse with the aim of allowing her a standard of living equivalent to what she had during marriage.

From what we have just seen, it is clear that a usufruct right is, by its nature, just a right to earn one's living. It is in fact a post-mortem extension of the duty, between spouses, to assist each other. It is a life annuity that dies with re-marriage. The usufruct given to the widow is not an inheritance right, but rather a survival allowance. Her full enjoyment of this will depend on the goodwill of her grown-up children or her brothers-in-law.

The divorced wife, for her part, does not even get that usufruct from her spouse. Nonetheless, in our customary law, a wife who has got '*decujus*' children may be called on by members of the family to continue their education. But this is a very rare case that will happen only when these family members realise they have nothing much to inherit and that those children constitute a burden they cannot cope with. But even in this case, she is not an heir to her ex-husband, but only receives a credit to allow her to earn a living, because of her children.

Some jurisprudence accepts that the widow cannot be deprived of her usufruct when death has occurred in the process of divorcing. In fact, heirs are not qualified to institute divorce proceedings, as these are strictly a personal matter between spouses, which is closed when one of the two dies. Nevertheless, it is not rare to see heirs pursue the matter in lieu of the '*decujus*'

children, and often with more determination than the deceased himself would have done.

We have seen that the ab-intestate inheritance mode is the most frequent one in Burundi. It is based on a custom that gives greater importance to masculinity. It was observed that the daughter inherits from her father only in the absence of other male descendants, or if the father has wanted it that way in his will. But the daughter can also inherit property following a judicial decision.

The change in custom is dependent on a change of mentalities. It is thus fortunate to see that the judge can change in his positions. He no longer sticks to the old custom that does not grant any favour to the daughter or the wife. Already, in 1945, the chief's court of Barusasiyeko decided to grant daughters the right to inherit property from their father if he decided it should be so while he was still alive. In 1960, the court of the *Mwami* (the King) decided to grant daughters the right to inherit property from their father in the absence of sons, without resorting to paternal uncles. In 1964, Burundi's Court of Cassation recognised the right of single or divorced daughters to inherit property in the same way as male heirs. The right of inheritance was also recognised for childless widows returning to live with their father.

According to judicial practice, the daughter who is an only child inherits property from her father by substitution. We are certainly aware that courts and tribunals are changing their way of returning verdicts regarding customary inheritance law. However, this is not enough. The daughter and the wife should not always have to resort to courts and tribunals in order to obtain their basic rights. We therefore must evolve towards written law, recognised by the entire society.

## **Conclusion**

It will have been noted above that the daughter inherits from her parents only advice and blessings; and that the usufruct right that the wife receives from her late husband is nothing more than an allowance to earn her living. Can we, in such conditions, continue to proclaim the equality of sexes?

It is known that the custodians of Burundian tradition refuse to allow the daughter to inherit property from her father because of fear inspired by the fact that she would go to another clan where she finds the heritage of her husband. And yet, in this other clan, the daughter who has now become wife is nothing more than a labourer, who gets food to eat by the sweat of her brow and who, later, will have the obligation to take good care of the property and children of this clan.

In view of this situation, can the exclusion of the daughter from paternal inheritance continue? To refuse her the right to inherit is to refuse her one of the fundamental rights to her survival. It is in fact denying her very right to existence!

Furthermore, for a good number of Burundians, inheritance tends no longer to mean a farm that cannot be evaluated in terms of money, but to be money itself. More and more it becomes a capital good, much more easy to share, such as a business, real estate and personal property. Cattle, which are so precious for the traditional Burundian, are now viewed as capital goods.

Nowadays, customs have evolved in many domains and are already pegged to legislative texts. The legislative power in fact functions following strict rules of written law. The field of

inheritance, which was up to now governed by custom, should likewise be the subject of legislation that is adapted to the national realities of the day.

In this difficult task of codification, the 1980 Family Code paved the way for a change of custom vis-à-vis the woman. It is this Code that recognised her right to exercise parental authority and to legal management of her children's property, in conjunction with the father, and, in his absence, with the help of the family council. Decree-Law No 1/024 of 28 April 1993 reforming the Family Code was introduced to make good the imperfections of 1980.

Our wish is that customary inheritance law follow the same evolution as civil law. The codification of inheritance law must not be an inventory of existing customs, but must be based on the fundamental principles of human rights, which recognise gender equality. This codification should therefore recognise the right of the daughter to inherit property from her father in the same way as her brother.