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Briefing Document

**Overview of Rwanda's Land Policy and Land Law
and Key Challenges for Implementation**

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1. Introduction.

The following document provides an overview of the land issues in Rwanda and the new Land Policy and Land Law and identifies some of the key challenges for implementation, from the perspective of the DFID appointed Land Policy Specialist to MINITERE.

2. Overview.

- Rwanda is the most densely populated country in Africa comprising just over 2.6 million hectares of land, of which approximately 52% is arable.
- The country is very hilly. It can be divided into three distinct geographic zones stretching from east to west. To the west is the Congo-Nile ridge that rises over Lake Kivu and stretches to the north in a chain of volcanoes. To the east are the lowlands. The central part of the country has an altitude of between 1,500m and 2,000m, and consists of extended hills and rounded hilltops separated by large valleys. This relief covers almost half of the country, and has earned Rwanda the nickname of the Land of a Thousand Hills.
- Population growth is high at 3.1% per annum.
- Population density on arable land has risen from 121 people per square kilometer 40 years ago to over 303 people per square kilometer and a physiological density of 410 people per square kilometre in 2001, with certain districts containing up to 820 people per square kilometre.
- The rapid increase in population density has resulted in smaller and fragmented farm holdings, an increase in the number of households who rent land, increasing pressure on marginal land, shorter fallow periods and longer cultivation periods and growing soil erosion.
- There has also been an increase in the uneven distribution of land. In the 1950s 50% of households had more than 2 ha of land whilst in 2001 almost 60% of households had less than 0.5 ha of land whilst only 6% had more than 2 hectares of land.
- Approximately 91% of the economically active population are involved in agriculture, which is the source of 43.5% of the GDP and 80% of exports, mainly from coffee and tea.
- Tourism is a significant source of foreign income, with the mountain gorillas in the north-west being the main draw card.
- Most land is owned by the state.
- Kigali is the capital city with a population of approximately 700,000.
- Less than 10% of the population is urbanized.
- The country is divided into 11 provinces (excluding Kigali) and 106 districts.

3. History

3.1 Pre-colonial history

Human settlement in Rwanda and Burundi began with the Twa hunter-gatherers, who have inhabited the countries' rainforests for thousands of years. By 1000 BC Bantu clans had settled in the region, and there is archaeological evidence of pastoralism from 500 BC onwards. Tutsis of Nilotic origin began migrating into the Kivu rift valley around 500AD. Increased task specialisation due in part to population growth gave rise to the emergence of a cattle-owning class around 1000 AD.

The pre-colonial land system was characterised by communal ownership of land, and was based on the complementary links between agriculture and livestock. Families were grouped together under lineages, and these were in turn grouped under clans. A chief ruled each clan. A clan was normally spread throughout the national territory: in different proportions according to regions.

There were four main aspects to the land tenure system:

- *Ubukonde* land law was enacted by the head of the clan and concerned the rights to land following initial forest clearance. He would permit several families termed *Abagererwa* to settle on the area, and they would be subject to a land tax in kind.
- *Igikingi*, the right to grazing land, was given by the King or his Chief to pastoral families in the country. The *igikingi* was the most common form of land right the pre-colonial period.
- *Inkungu*, the disposal of abandoned or confiscated land, was given as an authorisation to the local political authority. Such lands were then classed as reserved land, available for allocation by the authorities to those in need.
- *Gukeba*, the process of settling families onto grazing or fallow land, was also the responsibility of the local authorities.

A "triumvirate" of social political and administrative structures emerged over time:

The *Umutware w'Ubutaka* was the chief in charge of land and the *Umatware w'Umukenke* the chief in charge of livestock, with both at a similar level in the social hierarchy to the *Umutware w'Ingabo*, the chief in charge of the army.

During the 15th century, the Tutsi monarchy began expanding its authority and the mwami (king), Kigeri Rwabugiri, had brought the last independent Tutsi chieftaincies under royal control by 1895.

3.2 The colonial period.

Germany began its colonisation of Rwanda from Tanganyika in the east in 1903. Belgium assumed control over the territory, named Ruanda-Urundi, following Germany's defeat in the first world war. In the 1920s and 1930s the colonial authorities imposed cash taxation and extensive coffee planting. In 1926 local government reforms merged the separate land, cattle, and army chieftaincies into one post, which greatly increased Tutsi political control. The country was divided into different chiefdoms and did away with clans having territory spread throughout the country

There has been some debate as to whether the terms Hutu and Tutsi refer to ethnicity or class or both. While there is an historical origin of different ethnicities, it appears there was a level of integration between Hutu and Tutsis in pre-colonial societies. The colonialists attempted to exploit ethnic differences as a means of social control, although the use of the terms Hutu and Tutsi did not always refer to ethnic origin and sometimes Tutsi came to imply bosses and Hutu workers.

The colonial authorities also introduced written laws of land registration and ownership for the colonizers, giving rise to a dual system of private property and communal ownership. The formal private property system applied mostly to land ownership in towns and the church land in rural areas. During the 1940s the colonial administration introduced the system of “paysannats” which was a form of villagisation. Each family was given residential sites on either side of an access road backed by 2 hectares of family fields.

3.3 Independence

In the early 1950s the Belgians experimented with limited democratic reforms and backed Gregoire Kayibanda who advocated a social revolution to empower Hutus. In response the then Tutsi King Mutara demanded immediate independence in an attempt to keep some control over the process of democratisation. The king died in 1959 under what is considered mysterious circumstances. He was succeeded by Kigeri V. In 1959 monarchists founded the Union Nationale Rwandaise (UNAR), and Mr Kayibanda the Mouvement Democratique Republicain-Parmehutu (MDR-P). Politically orchestrated violence, resulted in thousands of mostly Tutsi casualties. Around 300,000 Tutsis fled Rwanda for Burundi and Uganda, while the MDR-P won communal (local) elections in 1960, which led to more ethnic killings and a further exodus of refugees. In 1961 the MDR-P toppled the monarchy in a coup supported by Belgium, broke with Burundi, and in 1962 established the Republic of Rwanda.

Initially land tenure did not alter significantly after independence. Ninety percent of land was still managed under customary law and statutory land tenure was only applicable to a few land owners, more particularly those in urban areas, trading centres and religious communities. However, the igikingi system of rights to grazing land were restricted and land abandoned by refugees was made available for crop farming.

3.4 General Habyarimana's coup

Invasions by refugee groups in the early 1970s provoked increased internal repression of Tutsis by the government. In 1973 the army chief-of-staff, Major-General Juvenal Habyarimana, staged a successful coup d'etat. Further politically organised violence followed, during which around 100,000 people were killed. Some victims were from the MDR-P, including Mr Kayibanda, but most were ordinary Tutsis. Tens of thousands more Tutsis fled to Burundi and Uganda. Mr Habyarimana dissolved parliament, banned the MDR-P and established the Mouvement Revolutionnaire National pour le Developpement (MRND). Civilian rule under one-party government was introduced in 1978, and a legislature called the Conseil National du Developpement (CND) was established in 1981, although power remained with Mr Habyarimana and the MRND's central committee.

From the 1970s onwards increasing emphasis was given to the expansion and formalization of the payasannat system. Decree 9/76 allowed for the sale of customary land rights, provided that the land parcel had to have a minimum size of 2 hectares. However, it would appear this restriction had little impact as land continued to become increasingly fragmented during the 1980s and by the beginning of the 1990s Rwanda was experiencing severe land shortages.

3.5 The RPF invasion.

In September 1990 Uganda-based refugees under the banner of the Rwandan Patriotic Front (RPF), invaded Rwanda and seized control of large swathes of territory in Ruhengeri and Byumba prefectures in the north of the country. In 1991 the Rwandan government bowed to donor pressure, particularly from France, and sanctioned multiparty politics. The most significant of the new parties was a revived MDR, whose leader, Dismas Nsengiyaremye, became prime minister in 1992. In 1993 the RPF's advance on the capital, Kigali, was blocked by French armed forces.

3.6 The Arusha Peace Accords.

Negotiations with the RPF in Arusha, Tanzania, resulted in a settlement in August 1993 under which the RPF would join the government. The UN deployed 2,500 troops to help implement the agreement, and France withdrew its soldiers in December 1993.

Regarding land and the return of exiles, the Arusha Accords stated that each person who returned would be free to settle in any area within the country, as long as they did not infringe on somebody else's rights. Furthermore the Accords stipulated that while the right to property is a fundamental right for all Rwandans, in the interests of promoting social harmony and national reconciliation, refugees who fled the country over 10 years before should not claim their property if it had been occupied by other individuals. Instead, to compensate these refugees, the Government would identify and make available unoccupied land at their disposal and would assist refugees to resettle.

The Arusha agreement was unacceptable to many in the MRND, who formed the Hutu supremacist Coalition pour la Defense de la Republique (CDR). The CDR, some army officers and others who had remained in the MRND began to arm and train Hutu "interahamwe" militias, recruiting in particular those displaced from Byumba and Ruhengeri by the RPF. During 1993-94 Mr Habyarimana orchestrated splits in the opposition, thus delaying implementation of the Arusha agreement.

3.7 The genocide and the RPF takeover.

On April 6th 1994 unknown assassins shot down Mr Habyarimana's plane over Kigali. An elite faction, apparently led by a Rwandan army colonel, Theoneste Bagasora, and operating according to a pre-determined plan, installed a new government and immediately launched the elimination of political opponents-including moderate Hutus-and the genocide of all Tutsis. The main participants in the systematic massacres were the interahamwe militias and the army, although thousands of civilians took part either voluntarily or through coercion. An estimated 800,000 to 1 million people were killed in a 3 month genocide, and this event has had profound and lasting implications for the country.

The RPF renewed its offensive and took Kigali on July 19th 1994, stopping the genocide. The RPF advance precipitated a mass Hutu exodus, orchestrated by members of the former regime, during which more than 2 million people fled to Zaire, Tanzania and Burundi. The refugees gathered in huge camps in which the militiamen regrouped, established political control over the refugee camps and used intimidation to prevent refugees from returning home. Militiamen among the refugees used the camps in Zaire and Tanzania as a base from which to launch raids into Rwanda.

3.8 The transitional government

A transitional government of national unity was established in 1995. Rwanda's 1995 interim constitution draws on the 1991 constitution, which introduced multipartyism, the Arusha Accords of 1993 and agreements made between political parties-apart from the MRND and CDR-in late 1994. A constitutional commission has been working on a new constitution which went before the cabinet in November 2002 and will be submitted to a referendum in April 2003. It is expected that the constitution will become law in July 2003 and a general election is scheduled for mid-2003.

From early 1995 to 1997 many "old case" refugees (from the late 50s and early 70s) returned to the country. In late 1996 the refugee camps in the Congo were forcibly broken up by Laurent Kabila's forces and 1.2 million refugees returned home between November 1996 and January 1997. The Tanzanian government also expelled 500,000 Rwandan refugees in January 1997.

Hutu militias joined the mass return, leading to a temporary upsurge of fighting, concentrated in the north-west of the country. The return of vast numbers of refugees in a short period of time exacerbated land problems. Some of the first wave of “old case” refugees settled on land recently abandoned by “new case” (post 94) refugees, often in areas where they had originally come from.

To deal with the massive influx of refugees, amidst security threats and abiding to the agreements concerning refugees stemming from the Arusha Accords, the transitional government embarked on a massive villagisation programme (imidugudu).

The Mutara Game Reserve and two thirds of the Akagera National Park in the east of the country, the Gishwati Mountain Forest Reserve and certain state-owned projects were partitioned and distributed to returning refugees. Communal land, woody areas, pastures and shallow sections of marshlands were also allocated. In certain prefectures, namely Kibungo, Umutara and Kigali Rural, many family plots were divided up and re-distributed between the owners and returning refugees. Most refugees were settled in villages and given 1 hectare family fields.

The villagisation programme was regarded as an emergency measure to deal with the refugee crisis. The programme came under widespread criticism, especially from international NGOs and then the donor community. Key criticisms have been: forced villagisation, not only of refugees, inadequate compensation for those who lost land to resettlement, long distances from residential sites to fields, poorly sited villages and inadequate provision of the infrastructure, facilities, services and economic opportunities.

The government has acknowledged much of the criticism, some of which needs to be qualified:

- In certain parts of the country villagisation included people who were not refugees. This was done in part as a security measure, in part as a means of freeing up land.
- Initial villages were larger, resulting in long distances from fields. Subsequent villages have been smaller.
- The location and planning of new villages is now subject to a decentralized planning process.
- The inadequate provision of infrastructure, facilities and services was partly a consequence of a sudden drying up of donor support as a result of negative criticism.
- The government has stated that in the future villagisation is to be voluntary. There is to be an adequate provision of infrastructure, facilities and services and more emphasis is being placed on the creation of employment opportunities.
- Compensation will be paid for land expropriated for the establishment of villages, however the payment of compensation still a sensitive and unresolved issue for many communities.

Since the late 1990s the transitional government has been involved in preparing a new constitution and formulating a Poverty Reduction Strategy and a range of new policies and legislation. Among the more important of the new policies have been a policy of decentralisation and a land policy. In 2001 local government elections were held and it is expected that national elections will be held in mid 2003. The Ministry of Lands, Resettlement and Environment (established in 1999) hopes that the land policy and land law will be finalised before the elections but given the large challenges being faced in the transformation and democratization of society, this may not be possible.

4. Rwanda's Land Policy and Law.

The land policy and law are currently being reviewed and debated by the Cabinet, after which they will be tabled in parliament and also scrutinized for consistency with the new constitution.

4.1 Main land problems identified.

The following major land problems which the new land policy hopes to address have been identified:

- The extremely high density of the population and the resulting pressure on land;
- The excessive partitioning of family agricultural plots, resulting in: plots that are no longer viable, a problem of food security and a growing number of people without land.
- Soil erosion and degradation to the point of loss of fertility through overuse.
- Pressure on forests and natural reserves.
- The inadequacies of the written law governing land issues and the predominance of customary law, which is not formally recognized by the state.
- A land regime which discriminates against women.
- Insufficient human, material and financial resources (of both land users and the state) resulting in poor management and use of land.

4.2 Policy objectives.

The land policy sets as its overall objective the establishment of a secure land system for all Rwandans and ensures proper and sustainable land use.

It aims to:

- Unify the existing two legal systems of land tenure into one.
- Promote equitable access and distribution of land to people who will use it.
- Promote rational land allocation according to appropriate use.
- Avoid fragmentation of plots and promote land consolidation.
- Establish mechanism to deal with land resources according to their productive value.
- Promote profitable and sustainable production.
- Introduce methods for protecting land resources.
- Establish institutional arrangements for land administration which result in land resources having real value in the economic market.
- Introduce control over land allocation and land transactions which reduce land speculation.
- Promote research and public education on land rights and duties.
- Encourage participation by civil society on land use practices.

There is also a recognition that a land policy needs to be linked to other policy initiatives, namely for administrative decentralization, infrastructural development, population control, agriculture, urbanization, the promotion of off farm activities, industrial policy and other policies for economic development.

5. Key elements of the policy and law.

5.1 *The nature of land rights.*

- 5.1.1 Land is part of the common heritage. Notwithstanding private individual rights the state has, in the public interest, the overall authority of all land. It may practice this right in order to ensure proper economic and social development and is authorized to carry out expropriations, establish land development guidelines and consolidate land.
- 5.1.2 All land rights, be they customary, leasehold or private are protected by the law.
- 5.1.3 Individuals or associations with legal personality may not own mineral rights. Mineral rights remain with the state.
- 5.1.4 Individuals or associations with legal personality have rights to land and to exploit it freely within the limits of the law. All forms of discrimination in land rights are prohibited.
- 5.1.5 Individuals or associations with legal personality may lease land from the state. The current system allows for people to obtain 3 to 5 year land concessions from the state for residential purposes and 15 to 99 year concessions for agricultural, commercial or industrial purposes.
- 5.1.6 Individuals or associations with legal personality can only own land which is to be used for industrial, commercial, social welfare, cultural, scientific and residential purposes.
- 5.1.7 If concession land which is to be used for industrial, commercial, social welfare, cultural, scientific or residential purposes is developed according to approved development plans during the concession period, concessionaires are entitled to apply for title deeds.
- 5.1.8 Transfer of land concession or land ownership through sale, donation or exchange by a family representative requires prior consent of all family members who are co-proprietors of the title deed. Family members are the spouse, children of age, minors through their legal representatives or incapacitated family members through their guardians.

5.2 *Land registration, land tax and land cadastre.*

- 5.2.1 Land registration will be compulsory.
- 5.2.2 The costs of land registration will be borne by the applicants.
- 5.2.3 A land tax will be introduced.
- 5.2.4 An inventory of all land, including vacant land, will be compiled and a computerised national cadastre will be developed. The cadastre will also be decentralized to the district level.
- 5.2.5 A national land information management centre will be established.

5.3 *Development of land.*

- 5.3.1 Land owners and land renters will develop the land in accordance with government authorized development plans. Emphasis will be on the formulation of development plans at the local (district) level.
- 5.3.2 Land may be confiscated if it is not properly developed or exploited according to development plans. The following are considered as proper development or exploitation: cultivation, construction, land that has been dug in preparation of cultivations, land where crops have been harvested, pastures (either individually or communally used). The following are not considered as proper development or exploitation: agricultural land that is not covered by at least 50% by plantations or crops or pastoral land that is not grazed or planted with fodder by at least 50%. The act of demarcating, walling or fencing off of land is not considered as development or sufficient exploitation.

5.4 *Land consolidation.*

- 5.4.1 Land consolidation will be encouraged.
- 5.4.2 The state has the right to enforce land consolidation.
- 5.4.3 A minimum limit of 1 hectare and a maximum limit of 50 hectares of rural land is considered desirable and will be encouraged.

5.5 *Establishment of land commissions and district land registrars.*

- 5.5.1 Land commissions will be established at national, provincial and district level. They will be responsible for making recommendations for land allocation, formulation of land use and development plans, ensuring that land is being properly utilized through annual investigation of land exploitation and development, confiscating undeveloped or under exploited land and resolving land conflicts. The scope, composition and functioning of the national commission will be determined by a presidential decree and of provincial and district commissions by a ministerial decree.
- 5.5.2 District level registrar offices will be established and each staffed by a registrar who will be responsible for issuing of title deeds and leasehold contract and for maintaining a district level register of land ownership.

5.6 *Establishment of a national land reserve.*

- 5.6.1 A national land reserve, aimed at meeting the needs of the landless and managed by state, will be created on parts of the state's private domain.
- 5.6.2 The state's private domain will include:
 - a. Vacant land, including intestate ("escheated") and confiscated land.
 - b. Land bought by or bequeathed to the state.
 - c. Exploitable wetlands.
 - d. Land that contains forests planted by the state.

5.7 Categories of land in the state's private domain and mechanisms for disposal.

5.7.1 Land in the state's private domain will be categorized and disposed of as follows:

Category 1:

- a. Rural land more than 100ha
- b. Urban land more than 10ha

The granting of a land concession and transfer of land ownership will be approved through a presidential decree at the request of the Minister in charge of Lands, upon the advice of the national land commission.

Category 2:

- a. Rural land more than 50 ha, less than or equal to 100ha
- b. Urban land more than 5ha, less than or equal to 10ha

The granting of a land concession and transfer of land ownership will be approved through a ministerial decree from the Ministry of Lands, upon the advice of the national land commission.

Category 3:

- a. Rural land more than 20 ha, less than or equal to 50ha
- b. Urban land more than 2ha, less than or equal to 5ha

The granting of a land concession and transfer of land ownership will be approved through a contract between the Ministry of Lands and the applicant, upon the advice of the relevant land commission.

Category 4:

- a. Rural land more than 5 ha, less than or equal to 20ha
- b. Urban land less than or equal to 2ha

The granting of a land concession and transfer of land ownership will be approved by the Prefect of the Province after consultation with the provincial land commission.

Category 5:

- a. Rural land less than or equal to 5ha.

The granting of a land concession and transfer of land ownership will be awarded by the District Administrator, after consultation with the district land commission.

5.8 Villagisation and urbanisation.

5.8.1 Villagisation and urbanisation will be encouraged.

5.8.2 Not all people will have access to agricultural land and will instead live in towns or villages and have access only to residential land.

5.8.3 With urban areas, vertical expansion will be encouraged and urban limits will be restricted (mentioned in the land policy but actually should probably be part of an urbanisation policy).

6. Key challenges for the implementation of the land policy and law.

6.1 *Registration of all land rights and introduction of a land tax.*

It is estimated that between 1.5 to 2 million land holdings would need to be registered over the next few decades if all land is to be registered in the country. The cost of this is unknown but could be substantial. However land registration could be affordable and sustainable if it started by prioritizing land registration in towns. Here people are more likely to afford registration fees, land concession rents and land taxes and are probably more likely to want to register their land as a means of accessing loans from the bank. Already, there are approximately 20,000 land applications registered with MINITERE. Most of these are town residential applications outside of Kigali and it would appear that many applicants have also applied for bank loans.

It is expected that land registration will take several decades and a concern would be that land registration of smaller land holders in rural areas and villages may be neglected because of their inability to pay. Appropriate procedures for extending land registration to villagers and small land owners in rural areas need to be piloted and developed in the short to medium term. Appropriate procedures should include appropriate standards for documentation and surveying. Much of the responsibility for land registration in villages and small land owners will lie with local authorities. NGOs could play a critical role in supporting land registration for villages and small rural land owners.

State and donor support may be required for the registration of land rights for the rural poor, whereas registration of land rights for those with the financial means should be demand driven. With regard to agricultural land, there may need to be two levels of registration: a lower level of documentary and mapping requirements for the registration of smaller land owners and a higher standard of documentary and mapping requirements for the registration of larger, commercial land holdings, based on an assessment and approval of investment plans and paid for by the applicant.

The existing system of granting land concessions prior to the granting of land titles is likely to remain in place for several years. Through this system the state will be able to collect fees and land rentals, which will help to make the development of a national cadastre sustainable. However, international experience suggests that it may be preferable to delay the introduction of a land tax for several years as this tends to discourage people from applying for land ownership.

6.2 *Development of a computerised national cadastre.*

The registration of all land, the collection of fees, rentals and taxes and the development of a national land centre will require the computerization of the national cadastre.

The development of a computerized cadastre should be phased and should start with the development of a database of the existing 20,000, mainly town land applications and from there should continue with the registration all applications in towns whilst appropriate procedures for land registration in villages and rural areas are being developed.

Appropriate modern surveying and mapping techniques, in particular, the use of GPS and GIS should be introduced. The development of appropriate mapping and land information management systems will have to balance affordability, time constraints and capacity

requirements (at national, provincial and district level) against adequate standards of documentation and precision.

A computerised national cadastre will probably have to support the development of manual cadastres which will be maintained at district level.

6.3 Recognition of individual versus communal rights.

The land policy places emphasis on the recognition of individual (family) land rights whereas in many parts of Africa increasing emphasis is being placed on the recognition of communal land tenure systems and the registration of group rights (although provision is usually made for the recognition of individual rights within this). It would appear from consultations done by both government and NGOs, there is a strong aspiration for individual land registration. This may in part reflect the virtual collapse of communal tenure systems since independence and more recently as a result of the genocide. Nonetheless, vestiges of communal tenure do appear to still exist in certain parts of the country, if only informally. For example, there appears to be shared use of certain valley wetlands between villages. It is important that these remnants of communal tenure are recognized and, given the emphasis on land consolidation, possibly encouraged.

One concern generally raised regarding individual land registration is cost. As mentioned in 5.1 and 5.2 above, land registration should be "demand driven" starting with those with the greatest need and ability to pay, but land registration for the poor and smaller land holders should not be neglected and may require state and donor support. Furthermore, the introduction of a computerised database and new surveying and mapping techniques should reduce the cost of land registration over the long term. A problem often with the high cost of individual registration argument is that the reasons for these high costs are not adequately analysed. One challenge for MINITERE would be the monitoring and reduction of the cost of land registration.

6.4 Land consolidation.

A good deal of emphasis is placed on land consolidation. Based on an FAO study, it is argued in the policy that a family cultivation plot should be at least .9 of a hectare to be economically viable and that minimum of 1 hectare would be desirable. Yet approximately 77% of land holdings are less than 1 hectare.

A concern has been raised that land consolidation could result in the widespread loss of access to land amongst small land holders. Concerns have been expressed regarding conditions under which the state may compel land consolidation and the procedures for doing this. Also questions have been raised regarding the assumption that 1 hectare is an economically viable unit. Here the counter argument would first beg the question as to how then are the majority of Rwandans in fact surviving on the land. It would appear that many Rwandans do not solely depend on agriculture as their source of income and subsistence. Furthermore, there is evidence that some land holders have access to more than one land parcel as well as to common land (such as wetlands), thereby spreading their risks and in fact have access to more land than the figures on land fragmentation suggest.

The land policy acknowledges that certain people could lose access to land. It is argued that not all people can productively farm land, however, it is argued that many people would be absorbed into off-farm activities, mainly agro-processing and others would be employed as farm

workers, as commercial agriculture is able to develop with increasing land consolidation. It has also been argued that land consolidation does not necessarily mean consolidation by individual land owners. It could mean land consolidation by groups of small farmers, forming associations and rationalizing their land use.

A central challenge in the implementation of the land policy would be to combine the merits of the various arguments outlined above and to minimize the associated risks so as to develop a strategy for land consolidation that produces maximum benefits. It is likely that a combination of the development of an emerging group of larger (yet still relatively small), commercial land owners and the development of associations of smaller land owners will be more desirable than either the emergence of an elite group of larger land owners or the continued fragmentation of land holdings. However, more research and information into the diversity of land access and land use is required as well as research and significant resource allocation into group formation for commercial agriculture is required to develop the right balance between larger and smaller land holders.

6.5 *The establishment of land commissions, land needs identification, land re-allocation and conflict resolution.*

Land consolidation and the establishment of a unitary system will require the recognition of a range of often competing land needs, in particular the needs of commercial pastoralists and agriculturalists versus the needs of subsistence farmers and the landless. The re-allocation of land will require the loss of rights by some and the gaining of rights by others. This in turn will require transparent and effective mechanisms for: identifying under-utilised land, prioritizing land needs, deciding on land re-allocation and for implementing decisions. The government has proposed the identification of a land reserve and the establishment of Land Commissions as mechanisms for land re-allocation. Representation on these Commissions, their powers and responsibilities and capacity requirements would require particular attention to ensure their legitimacy, both with the state and the broader society.

Similarly transparent and effective conflict resolution mechanisms will also have to be developed. Conflict resolution mechanisms could include elements of the judicial system but would probably also require mediation services and representation of other state institutions and possibly from civil society. It is likely that the Land Commissions will also be responsible for conflict resolution. However, there may be a need to separate out responsibilities for land identification and land allocation from conflict resolution.

Key issues for the establishment of Land Commissions could be:

- Accessibility for the general population.
- The level of transparency in decision making.
- The responsiveness and accountability of representatives.
- The level of authority and legitimacy of the Land Commissions, both in relation to government structures and civil society.

A further concern could be the cost of establishing commissions. Experience in other countries, most notably Uganda, have indicated that the cost of establishing decentralized structures such as land commissions can be prohibitive.

6.6 Land use planning and decentralisation.

There is a strong emphasis on proper and productive land use which is to be regulated. This will require improved land use planning, the assessment of investment plans and the monitoring of the implementation of investment plans. As with land re-allocation, transparent, participatory and effective mechanisms for land use planning will have to be established.

The government's policy on good governance and decentralization is likely to have a significant impact on the implementation of the land policy. Local government, especially at district level has a critical role to play in the formulation of development and land use plans, the identification of new imidugudu, the development and maintenance of district cadastre and in land allocation and conflict resolution.

The implementation of the land policy will require significant support for the development of local government capacity which will probably require the development of a comprehensive training programme for both MINITERE and local government staff.

6.7 Impact on land rights of women and child headed households.

The strengthening of women's rights to land will require particular attention. Research in other part of Africa indicate that often the formalisation of land rights has led to the weakening of women's rights and access to land. While the legal recognition of women's inheritance rights and the legal requirement in the draft Land Law that the transfer of title deeds will require the consent of all family members may strengthen women's rights, there is the risk that there may be unforeseen negative consequences. Related to the strengthening of women's land rights is the issue of strengthening the land rights of child headed households. The successful implementation of the land policy will require research and monitoring of the impact on women and children's land rights and the development of proactive mechanisms for strengthening their rights.

6.8 Impact of AIDS.

AIDS is likely to have a significant negative impact on Rwandan society and on land tenure rights, particularly of women and children. The successful implementation of the land policy will require research and monitoring of the impact of Aids on land tenure security and the development of mechanisms for minimizing this impact.

6.9 Role of political representatives, civil society and NGOs.

The actual implementation of the land policy will require significant support from the NGO sector and participation by the broader civil society. Political representatives and NGOs could also play a vital role in monitoring the implementation of the land policy. Relationships between government and NGOs are relatively weak, although relations between MINITERE and LandNet, a grouping of NGOs with interests in land tenure, have been fairly good. In general, the organization of civil society is weak and the role of parliamentary representatives in monitoring the implementation of policy appears to have been relatively weak.

The successful implementation of the land policy would require:

- Strengthening relationships between government and NGOs. The recognition of the advocacy role of NGOs by government should be strengthened. Conversely NGOs need to strengthen their role in supporting government with actual implementation.
- Strengthening the role of political representatives (in particular parliamentary representatives).

6.10 Sensitisation and consultation on the implementation of the policy and the law.

A series of consultations on the policy and the law were done by government at provincial and district level during 2001 and 2002. Consultations were also undertaken by LandNet during 2001. The policy and law were presented to cabinet in November. MINITERE hope the policy law will be passed by April, however there are many other priorities for Cabinet and parliament, for example, the finalisation of the constitution, the referendum, the decentralisation process and the election so it is not certain when the policy and the law will be approved.

MINITERE believes that sufficient consultation has been done on the policy and law. However, concerns have been raised in the donor and NGO sectors that ongoing consultation and sensitization is required. Some feel that few have had access to the draft law, they (donors and NGOs at least) are not clear on what the process is for finalizing the law and many NGOs feel they have not been part of the consultation process. However, it is unlikely that further consultation will be done on the formulation of the policy or the law. Hence the challenge would now be to ensure ongoing consultation and sensitization on the implementation of the policy and law and the strengthening of mechanisms for reviewing and amending the policy and law during implementation. Parliamentary representatives, NGOs and other organizations of civil society ought to participate in these consultations and sensitization programmes.

7. Conclusion.

Rwanda faces large challenges regarding land tenure and the government has been forced to make difficult policy choices. Certain policy proposals appear to be at odds with lessons learnt and recent shifts in land tenure policy in other parts of Africa. In particular, the emphasis on individual land registration and villagisation has generally been regarded as problematic in other parts of Africa. Also there are some concerns regarding policy proposals for land consolidation.

However, the recognition and registration of individual land rights appears to be a widespread aspiration in the country and communal land tenure appears to have been seriously eroded in the past few decades. Furthermore, it would seem that villagisation, urbanisation and land consolidation need to be part of the solution to the serious shortage of land and high level of land fragmentation.

The key challenge in the implementation of the land policy and land law will be to ensure that the benefits to small land holders and the poor, being the majority of the population, are maximized.