

**REPORT AND REFLECTIONS ON THE RWANDAN
DRAFT NATIONAL LAND POLICY WORKSHOP
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1. Background to the workshop

I was invited to Rwanda by Patricia Hajabakiga, Secretary-General, Ministry of Lands, Human Resettlement and Environmental Protection (MINITERE) to be a resource person at a 'National Consultation Workshop' on 2-3 November 2000 to discuss Rwanda's draft National Land Policy (*Politique Nationale Foncière du Rwanda*).

Before the workshop I had meetings with Annie Kairaba of RISD (Rwanda Initiative for Sustainable Development) and Stefanie Sobol, Oxfam GB's Chef de Mission, and with a team of consultants (Paul Driver, Peter Brinn and Kate Meadows) working for DFID on environmental aspects of the National Poverty Reduction Programme.

After the workshop I met with MINITERE's Land Policy Working Group (Director of Lands Eugene Rurangwa Burabyo and his colleagues Innocent Bizimana and Francis Twagirayezu) and the Minister (Professor Laurent Nkusi), with Giles Bolton (DFID - 1st Secretary, Development), Gerrit Noordam (Dutch Embassy - 1st Secretary, Development) and members of the newly formed pressure group, LandNet Rwanda.

Oxfam GB has been involved in land issues in Rwanda for some time. We commissioned Christy Lorgen's January 1999 report on *The Experience of Villagisation: Lessons from Ethiopia, Mozambique, and Tanzania*, we funded subsequent research by RISD on the implementation of villagisation, and were involved with RISD in planning a workshop on *Land Use and Villagisation in Rwanda* on 20-21 September 1999, which I also attended.

It was notable that a number of the recommendations made at the September 1999 workshop, including the important one that 'any new land law should be preceded by a national land policy' had been endorsed by the Government in the intervening period. It was also recommended last September that 'the policy process should be inclusive'; the next year will determine whether this proves to be the case - and LandNet Rwanda will have a key role to play here..

2. The Policy emerges

Fixing final dates for the National Land Policy workshop proved difficult largely because people were still working on the Policy. The dates were eventually fixed for 2-3 November. Prior to this, a preliminary draft of the Policy (in French) was given a limited circulation in Kigali, but I had not seen it and most workshop participants' first sighting of the Policy was when they registered on the day. English speakers were given just a 7-page document, *The Main Outstanding Points of the National Land Policy to be Discussed during the Seminar*. French speakers received the French version of this, together with the 61-page *Politique Nationale Foncière du Rwanda* (1er draft, Novembre 2000). Its chapter headings were:

1. General context
2. History of the land question in Rwanda
3. The land problem
4. Scope of the Land Policy
5. Main lines and strategic options of the Land Policy (land tenure, land administration, utilisation and management of land)
6. Conclusion.

I have included the Conclusion as an Appendix to this report (Section 11).

Whereas at a comparable workshop two weeks earlier in Malawi, participants were divided into groups and went through sections of the draft *National Land Policy* clause by clause, in Rwanda they discussed only the brief *Outstanding Points/Principaux Points Saillants*. These were useful and helpful, but not a real substitute for the full Policy (which few had read). In Malawi, by contrast, a first draft of the Policy was available to civil society beforehand, I also had time to write a detailed critique and to send the Policy around to various ‘experts’ for their reactions, which the Ministry of Lands said it greatly appreciated.

3. The workshop itself

Leaving aside the important issues of the slipping date and failure to distribute the full Policy in advance, overall the workshop was extremely well planned and organised by MINITERE, which provided an efficient secretariat for all the groups. About 150 people attended, representing a good range of national and local government (including all préfets or sous-préfets), MPs, academics, NGOs, churches and the media - but only one donor. There were suggestions that representation could have been stronger from some ministries. As in Malawi, women were very poorly represented and there appeared to be no active women’s lobby group. Participants were at least rather younger than those in Malawi. Timekeeping was not quite as assiduous as in Malawi, but people were clearly highly interested and motivated and stayed through to the very late concluding session.

As with all such events in Rwanda, there was simultaneous French/English translation though none from or into Kinyarwanda. (I was told this would have added greatly to the cost). The vast majority of participants appeared comfortable in French; this was the dominant language of the small groups, and all 5 rapporteurs spoke in French.

It was extremely interesting for me to be able to compare this workshop with the one last September on *Land Use and Villagisation in Rwanda*. In fact, there was no comparison. The September 1999 workshop had been characterised by a good deal of mistrust and suspicion, especially on the government side, and a reluctance to confront issues openly. But part of its function had been precisely to try to create some space in which land issues, always highly sensitive but especially so in the Rwandan case, could be discussed. As my Oxfam colleague Eugene Gatari observed, the much greater openness of the *National Land Policy* workshop represented in itself a very positive evaluation of the earlier one. MINITERE was clearly serious about the whole land question and very open about consulting and listening to what people had to say. In response, participants opened up to a remarkable degree and a number of highly sensitive issues, such as land grabbing by the rich and the land rights of the 1959 refugees, were discussed. Some things were of course not said, but for Rwanda this workshop marked, I felt, an important turning point.

4. Structure, content and opening of the workshop

The workshop lasted two full days. Much of the first day was in plenary; much of the second in 5 working groups:

1. Management and use of urban land
2. Security of land tenure
3. Management and use of land in sensitive areas
4. Management and use of rural land
5. How to give land its real value.

The groups reported back and some recommendations from them were very rapidly put together in the final plenary. Summaries of the circulated *Outstanding Points* (6), the working group feedbacks (8), and the *Recommendations* (9) follow later.

The workshop was formally opened by a triumvirate of the Secretary-General of MINITERE, the Minister of Lands, and the Prime Minister. The Prime Minister said that land was being used in a haphazard manner and not given its true value. Land laws were unclear and often unknown. 94% of the population lived from agriculture and non-agricultural jobs were very scarce. Every Rwandan has a right to land. The problems were very difficult, but we were gathered to find remedies and needed clear policies. Landowners should have full rights to land so they can develop it fully and increase production. They need to know the future of land policy and law so they can plan accordingly. Other Departments dealing with land would be given all support to implement the *National Land Policy* when it was agreed.

5. My paper

I learned the day before the workshop that I was expected to write a paper on *Expérience d'ailleurs*. So I wrote a short paper called *Some Land Policy Experiences from Elsewhere* in which I drew heavily from the overall National Land Policy process in Malawi and specifically from the workshop to discuss its draft Land Policy which I had attended just two weeks earlier. In it I included as an appendix the chapter headings from the National Land Policies of Malawi, Swaziland, Zimbabwe, Zambia, South Africa, Tanzania and Ghana. I read out this paper from the 'high table'. In it, I introduced myself and the kind of work I do. I said I had only read the earlier draft of the Policy quickly the day before, so it would be presumptuous of me to comment, though I agreed with a statement in the Policy about it being a serious attempt to grapple with complex realities. I said I found myself asking precisely the same questions I had asked of the draft Malawi Policy:

- is this really feasible?
- will there be sufficient resources and capacity to do it?
- how will the various proposed record systems (titling and registration) be kept, and be kept up to date, given administrative and financial constraints?
- what about all those conflicts of interests - gender, generational, ethnic, class?

I mentioned that many other African countries had recently drafted land policies and laws, so there was much experience from elsewhere for Rwanda to draw on; indeed it had already started to do so at an East African regional meeting of LandNet in Nairobi in August. There, James Kimonyo, Rwanda's Director of Resettlement, announced that Rwanda had decided to formulate a Policy first to guide the process of land bill formulation, reversing their previous intention. I wrote that 'Encouraging genuine dialogue between governments and civil society and urging both to look beyond their borders (while recognising that each country's history is unique) is something I lay great emphasis on in my work.'

I talked about the need for governments to seek to build as broad a consensus as possible through serious consultation. I was aware of the additional layers of complexity in Rwanda, having recently read the striking sentence: ‘We can safely say that, in Rwanda, there is no single historical event on which there is agreement as to its interpretation.’ In a country where history itself is so contested it would not be easy to produce a land policy and a law which is inclusive but to attempt to do so, I argued, is an essential part of the process of reconciliation. I concluded that it would be very important during and especially after this workshop for MINITERE to listen to what civil society has to say about ‘what next’ and specifically around issues of further consultation and public awareness campaigns.

6. Summary of *The Main Outstanding Points of the National Land Policy to be discussed during the Seminar*

The 7-page *Outstanding Points/Principaux Points Saillants* was the document to which participants were urged to respond, both in plenary and working groups. Here is a summary:

Summary of *Outstanding Points*.

1. Problems

- a) Very high density of population and pressure on land
- b) Excessive partitioning of family agricultural plots
- c) Soil degradation and loss
- d) Scarcity of land and a large number of landless
- e) Negative consequences of war and genocide
- f) Bad agricultural practices and overgrazing
- g) The predominance of customary law and inadequacy of written land law
- h) Lack of a viable and efficient cadastral system
- i) The inadequacy of human, material and financial resources.

2. General principles

- 1) Land as a common heritage of past, present and future generations
- 2) Rights of access to land for all Rwandese without discrimination
- 3) Need to guarantee security of tenure and stimulate maximum development of land
- 4) Guarantee of the right to land as a precondition for sustainable management and rational land use
- 5) Different land uses in urban and rural land, hillsides, marshes and nature reserves
- 6) Good land use planning
- 7) Land transactions
- 8) The need for plans and maps
- 9) The need for an appropriate cadastral system
- 10) The need for a legal and institutional framework.

3. Important points to discuss (and proposed solutions)

- 1) Land tenure and ownership
- 2) How to find and distribute land to those without it
- 3) How to give land its real value.

4. Management and use of land, urban and rural

- a) How to avoid unplanned structures in our towns
- b) How to make our towns attractive
- c) How to manage and use village land
- d) How to manage and use the marshes.

7. Key points raised in the plenary sessions

My choice of the main issues raised (or avoided) during the plenary sessions will inevitably be selective.

- There *were* references to the fact that solutions would have to lie off the land and away from agriculture but, given Rwanda's situation, perhaps not as many as there might have been.
- Given that women now comprise some 62% of Rwanda's population, there seemed to be amazingly little recognition of this, or reflection on it, nor was there any pressure from women's groups.
- MINITERE's Secretary-General, Patricia Hajabakiga, told participants that she needed guidance on whether it was necessary for every Rwandan to own land. She asked all the small groups to look at this, and most reported back that every Rwandese (without discrimination) has the right to land. There is clearly a very deep cultural attachment to land, which some ascribed to people spending long years in exile without anything.
- There was great emphasis on (and perhaps uncritical belief in) the power of planning to resolve all problems, whether in rural, urban, or ecologically fragile areas.
- There were many calls for people to use the land better and more productively. There was some tendency to blame the poor. It took a member of the National Poverty Reduction Programme - which has recognised land as a key poverty issue - to point out that the poor were using land rationally in their own context, but were unable to respond in the manner required because they lacked the resources to do so.
- There was not much reflection on possible connections between government policies which might have created uncertainty about future land rights and the chronic under-production so frequently complained of.
- In urban areas (as in the Malawi workshop) there were calls for people to construct high rise buildings because of the lack of space - but with little apparent awareness of the difficulties associated with this.
- There was occasional mention of land grabbing by the rich, of 'telephone farmers' (a phrase also used in Kenya), of absentee owners - and of the need for redistribution.
- There was a lack of basic data about land ownership and use, though it was said that more useful, up to date information had recently become available.
- Someone asked how inclusive the process would be and whether the grassroots would participate, but received no answer.

8. Feedback from the working groups

What follows are relatively brief summaries of the reports back from the 5 working groups. Issues which were recorded as recommendations will appear under *Recommendations* (9) and so not be repeated here.

Group 1: Management and use of urban land

Everybody has the right to own a plot of land on condition that s/he fulfils the conditions laid down in development plans. Need to respect different functions and uses, industrial etc. Need to have master plans, though previous plans have not been adhered to. Found proposals on sizes in Policy excessive in view of smallness of the country. Residential centres should be developed for the landless because they have no money to pay to build. Need to be realistic and develop hire purchase schemes to house people decently. MINITERE should make a national inventory of land in order to resettle people. Towns need to be welcoming. Need for transparency in urban planning.

Group 2: Security of land tenure

Unanimously felt every Rwandese has the right to own and use land. Different ways of acquiring and using land; each should be regulated. Need limits to avoid acute parcelling. Customary law has positive factors, but over 80% cases coming before a préfet are concerned with land, so it is clearly not coping. Need for land taxes. Landless who only know agriculture should be given unoccupied land. Plenty of abandoned lands, so a need for redistribution, but this has proved difficult. Churches took lots of land, as did big politicians. Need for understanding with the church. Need for equitable distribution after a census. Should even give land out before law passed, as people are now living in schools and clinics in Gisenyi. For war orphans and widows of genocide, their land should be leased because they can't develop it properly at present. How to manage land grabbing? How are we to take land from one person to give to others e.g. landless? Legalise the status quo - we don't want lots of changes which would create political chaos. Title for about 30 years. People should be able to sell customary land.

Group 3: Management and use of land in sensitive areas

Need to define sensitive zones - humid, protected parks, semi-arid zones, hilltops, some forests. Different sizes of marsh lands need to be defined in Policy. Need to apply existing laws with vigour. Marsh lands need to be protected and only developed after environmental surveys. Need to employ measures which avoid division of land; this needs a legal framework. Need to create poles of development, with priority given to the landless. Marsh lands could have other activities, not just agriculture. Need to ensure ecological balance. Need for 30-50 year legal agreements and environmental impact assessments. Need to involve riparian population in the management of their areas. Need to carry out an inventory of all protected areas, including forests, and develop eco-tourism. Strengthen regional cooperation in the protection of vulnerable areas. Need rational management of irrigated schemes in semi-arid areas. Anti-erosion measures. Zero grazing if possible. Need to protect very high slopes. If every Rwandan has to have land, it should not be in fragile zones!

Group 4: Management and use of rural land

Scattered settlement, lack of land law and policy, need a framework for the use and management of land. Land should be managed by written law and appropriate mechanisms. Villagisation should be integrated into a master plan of allocation and use of plots. Not necessary for every Rwandese to have land - people have other professions. Landless to present themselves to government for solutions! Similar evaluation to that in the Policy.

In a vigorous discussion, some divergence in the group emerged. The sous-Préfet said that land in Kibungo was already divided out by the peasants themselves; others that this was highly political. The Secretary-General said there is very little government land available for redistribution. Only one commune said they had land when MINITERE asked, and that for only 200 families. Government has no money to buy land or compensate the old case load. Could have redistributions as in Kibungo, depending on the local situation. There will always be more and more landless people in the future. Historical factors have produced landlessness in some areas. Need to think across borders and in the long term. Rwanda is too small! Phenomenon of landlessness has been there for at least 40 years; has grown because of population growth. Won't find solution in agriculture or rural areas; the land can't provide. Look at other people's experiences e.g. Mauritius. Villages could be the answer, offering diversification. Need for way out of impasse. Kibuye Préfet says don't need to wait for a conference, policy or law, the peasants can sort it out - only they can find true solutions.

Group 5: How to give land its real value

Market value should take account of available facilities. Recognise cultural, social and community values. Need various maps and a master plan. Not necessary for everyone to own land. The state has the option of giving land to landless agriculturalists. Land could be bought and sold and given a monetary value. Registry of land to give title deeds to provide security. Need to avoid abuses and the rich taking all the land. Set taxes recognising minimum and maximum values of land. Prepare a development plan to include housing plans. Join COMESA and then everyone can cross borders!

9. Recommendations

Following the reports back from the groups, MINITERE's Innocent Bizimana produced 15 recommendations which appear in his subsequent *Rapport général du Séminaire sur la Politique Nationale Foncière*. Here is my (somewhat free) translation:

RECOMMENDATIONS

1. To ensure security of land tenure, the rights of ownership, use and development of land should be legalised.
2. To ensure security of tenure, an equitable distribution of land is needed.
3. Urgency is needed in granting land to the landless.
4. Everyone who meets the conditions defined in the development plans has the right to security of tenure in urban areas.
5. Secondary urban centres should be enhanced to reduce the strong pressures on the capital.
6. In urban areas, both vertical and horizontal intensity of land use should be strongly encouraged.
7. In urban areas, in addition to the normal renting systems, welcoming networks for new arrivals should be developed.

8. Develop a legal body of management, allocation and use of land:
 - Implement a master plan for the allocation and use of land
 - Develop land management plans at the local level
 - Land must be governed by written law.
9. Workshop delegates support the policy of regrouped settlements, but this policy needs to be improved and integrated into the draft plan for the allocation and use of land. In addition, the regrouped settlements will need the assurance of accompanying socio-economic structures.
10. Ecologically fragile zones must be governed by specific regulation and remain part of the land belonging to the state.
11. Ecologically fragile zones must be identified so that they can be protected.
12. The development of ecologically fragile zones must be accompanied by conservation measures.
13. All of the above must take account of the decentralisation process.
14. Draw up a management plan relating to the policy of regrouped settlements.
15. Translate all these mechanisms and recommendations into a legal text as quickly as possible.

10. Reflections

It is premature for me and was premature for the workshop (because participants had no time to read it) to offer a detailed critique of the Policy. At this stage I would offer just a few brief comments and reflections.

The Policy is a very thorough, serious and sensitive piece of work which has a great deal to commend it. Much hard work has clearly gone into it. MINITERE does appear genuinely committed to listening and learning and it is extremely important to encourage this.

The Policy is, however, very much a dedicated top-down planner's policy and I would raise questions about the limitations of such planning, about the feasibility of some of what is proposed, about the availability of resources to match the plans, and about how the proposed titling and registration records would be kept and maintained.

It is scarcely surprising that it should be thus. Most governments work in precisely this way, but Rwanda is specially burdened by a centuries-old highly top-down tradition of governance, regardless of who is in power. Talk of empowerment or participation, or of trusting the capabilities of the people or even of local officials, goes right against this very long historical grain.

It is also worth remembering that most planners in MINITERE are Kigali-based 'outsiders' who do not know Rwandan rural realities well, and who have to operate within a typical government culture in which central planning is king. A real challenge facing them is to

integrate their policy-making processes with the decentralisation process and the opportunities it affords.

It will be very important for them to listen and respond to the words of the Kibuye Préfet - that local people *do* have far more local knowledge than they, *do* have a great understanding of local practicalities, *do* know the laws and appreciate different land uses and best policies for sustainable development, and *do* have the capacity to offer local solutions to land and other problems more effectively than anyone else, as has been shown since the formation in May 1999 of Community Development Committees (CDCs).

As the Kibuye Préfet told the workshop, only the people themselves can find true solutions. It was therefore very encouraging, in discussions with MINITERE after the workshop, to hear that they are hoping, if funding permits, to run similar consultative workshops in all the préfectures in the country (failing this, in just the more difficult ones), and also that they recognised that they needed to learn more from the préfectures, which better reflect people's views. There is a possibility that MINITERE might make use of the consultation processes already planned within the PRSP over the next year. It would also be appropriate to make full use of the resources of the newly formed LandNet Rwanda.

MINITERE hopes to have the Policy finished by June 2001 and a new land law in place by December 2001. I was told that there was now no undue pressure for the International Finance Institutions in this regard.

11: Appendix

Politique Nationale Foncière du Rwanda (1er draft, Novembre 2000)

Chapitre 6: CONCLUSION

La mise en œuvre de la politique foncière sera guidée par des principes clairs et concertés qui ont été développés. Ils se résument en ces lignes.

- Le droit à la propriété foncière doit être corrélé à un certain nombre de devoirs pour garantir la valorisation de la terre en tant que patrimoine commun des générations passées, présentes et futures.
- Selon les principes constitutionnels de l'égalité des citoyens, tous les rwandais jouissent des mêmes droits d'accès à la terre sans discrimination aucune.
- La tenure et l'administration foncière doivent garantir la sécurité foncière au titulaire des droits fonciers et impulser la valorisation optimale de la ressource « terre »
- L'utilisation et la gestion des terres doivent tenir compte des catégories des terres telles que représentées par les divers schémas directeurs et cartes de classification et d'aménagement.
- Le mode de gestion et d'utilisation différeront selon qu'il s'agit des terres urbaines et des terres rurales qui comprennent les terres des collines, les terres des marais et les terres des réserves naturelles.

- La bonne gestion des terres doit inclure une planification de l'utilisation des terres incluant l'organisation de l'habitat et le remembrement parcellaire pour un usage plus économique et plus productif de la ressource foncière.
- Le processus de la transaction foncière améliore la valeur de la terre et permet son utilisation d'une manière plus productive. Elle permet d'attirer les investisseurs dans le domaine d'exploitation foncière et permet aux divers utilisateurs de la terre d'évoluer vers des lendemains meilleurs.
- Les plans et les cartes sont le meilleur moyen d'obtenir, d'enregistrer et d'analyser des informations complètes et précises sur la ressource terre.
- Un système cadastral approprié est une base essentielle pour comprendre réellement la situation foncière d'un pays et ainsi pour planifier n'importe quelle mesure de réforme foncière.

Tant que la ressource foncière constituera le noyau de développement socio-économique du pays, l'élaboration et la mise en œuvre d'une politique foncière nationale permettra de jeter les bases d'une réforme foncière favorables au développement global et durable du Pays.

La mise en relief des problèmes liés à la bonne gestion des terres et leur reconnaissance par tous les intervenants constitue une première étape importante de la sortie du tunnel.

Une politique foncière concertée jouera un grand rôle dans la promotion de la paix, de l'équité, de l'unité et la réconciliation du peuple rwandais meurtrie par le génocide et les massacres de 1994. Elle jouera un rôle certain dans le processus entamé par le Gouvernement d'Union Nationale pour réduire la pauvreté dans notre pays.

En assurant une distribution équitable de la terre à tous les rwandais sans discrimination aucune et en accompagnant la politique foncière d'une législation foncière rigoureuse, le Rwanda aura bâti une société prête à affronter les défis du monde présent et futur.