A REVIEW FOR LANDNET RWANDA OF THE DRAFT NATIONAL LAND POLICY - AND BEYOND

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1. Introduction

I have been asked by LandNet Rwanda to write a review of the draft Rwanda National Land Policy (July 2001 version) to support LandNet in its submissions to the PRSP process, and in feeding in its grassroots consultations to a forthcoming workshop on the Land Policy (November 22-23).

This introduction is followed by sections on (2) the immediate background; (3) Lisa Jones' summary of the National Land Policy; (4) my thoughts now on the Policy; (5) the future - the key question of resources; (6) NGO experiences elsewhere of implementing land policy and law; and, finally, annexes containing extracts from the PRSP and from previous comments on the Rwanda National Land Policy.

As LandNet Rwanda well knows, many countries in Africa are introducing new land policies and laws, and I have tried to help keep both LandNet and MINITERE abreast of these developments. I have been impressed by MINITERE's willingness to look at what has been happening elsewhere and to reflect on some of the lessons to be learned. At the same time, each country obviously has its own particular history and needs to create policies and laws which are appropriate to it. Context is all important.

The essentials in Rwanda are well-known to all - a very long history of conflict, including the 1994 genocide; a poor, very densely populated, land-locked country located in a conflict-ridden region; very few off-farm opportunities; a centuries old tradition of highly centralised, top-down governance.

2. Immediate background

LandNet Rwanda will have been tracking developments since the National Land Policy workshop in November 2000, on which I wrote a full report. I have been following some of this, and the concurrent PRSP process, but from a distance and intermittently.

From what I gather, we are coming towards the end of both processes. The National Land Policy is in a final draft, should have gone to Cabinet by now, and may well have been approved. A new land law, based on the Policy and available only in Kinyarwanda, is also before Cabinet and may be open to revision. **The Secretary-General of MINITERE says that she is committed to a gradual process of implementing the new land law, and of learning by piloting.** Subsidiary bye-laws would be needed, she stressed, which will take time to draft and pass, and so provide opportunities for further local consultation. **DFID has already responded positively in principle to a request from MINITERE to support this process of implementation.**

In these circumstances, a detailed review of the Policy would seem superfluous. It is doubly so because - as I have only recently learned - **this has already been done** in April for LandNet by Lisa Jones of UNHCR in her very thorough *Summary and Comments on Draft Policy for National Land Reform* (extracts from which follow below).

Given all this, it would seem more useful for me to view the Policy through a forward-looking focus and to look a little at implementation.

A question needs to be asked and answered by LandNet Rwanda: **is engaging with the Policy at all a waste of its time and energy?** There is a cynical view that the whole process in Rwanda is simply aimed at helping the powerful to accumulate and to legalise land grabbing by the rich.

My own perception, albeit that of an outsider, is that while there clearly are elements in Rwandan (as in any other) society which would favour this, **on balance the policy makers, deeply conscious of the role that land has played in past conflicts, are very much aware of the dangers of devising solutions which are manifestly unfair and which would bequeath dangerous grievances to posterity.**

It may be helpful to LandNet at this point to reproduce Lisa Jones' excellent summary of the National Land Policy.

3. Lisa Jones' summary of the National Land Policy

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

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

4. My thoughts now on the Policy

It is of course easy to be critical of the Policy, which, like all others, has its weaknesses. One could stress for example:

- that it remains very much a planner's top down policy
- that everything is to be centrally driven, yet decentralisation is official policy
- that there is little awareness of the limitations of central planning
- the hugely ambitious nature of much of what is proposed
- the unrealistic belief in the benefits that titling and registration will bring
- the inconsistencies and repetition
- that the Policy has not changed significantly since the original version
- there is little mention of consultation, merely information and awareness raising
- that there is more than an element of blaming the farmer ('the land is badly managed')

But if you believe in 'the art of the possible', then Rwanda's draft National Land Policy is probably about as good as one could expect in the very particular circumstances. **But** a policy is after all only a framework - albeit something civil society needs to lobby on to make as pro-poor as possible - and **it is the new law and its implementation which will be critical, and it is here I think where it will be most fruitful for LandNet Rwanda to direct its attentions and energies** (see section 6).

I have not seen a draft of **the new land law**, but in the latest draft (November 2001) of the PRSP, whose section on *Land and settlement* is included as an annex below, it is stated that:

The draft Land Law specifies that:
- people with customary holdings under 2 hectares, and those with customary holdings between 2 and 30 hectares where the owner has a project and a development plan, will be recognised as owners.
- transfer of title deeds requires prior consent of all family members.
- a land tax will be imposed.
- undeveloped land reverts to the state's private domain after three years.
- holders of *ubukonde* land (originally distributed by the clan head), known as *abagererwa*, will have the same rights as other customary owners.

I agree very strongly with the PRSP's conclusion that it will be important 'to devise cost-effective methods of resolving disputes at a community level', and that 'the process of allocating title will need to involve the communities.' (p.62)

Hopefully, as in Uganda, the PRSP and the land reform processes in Rwanda will run in concert.

5. The future - the key question of resources

On the key question of resources needed to implement some of its proposals, the Policy is very frank. It states:

> **3.3.5. Insufficiency of human, material, and financial resources**
> Bad management and poor utilisation of land resources are also products of **the lack of human, material, and financial resources.** The cadastral system, which is at the heart of land administration **requires skilled and motivated staff, as well as a enormous amount of material and financial resources, which the country lacks.** A reform of the financial situation would require the participation of several players from various sectors. Economists, sociologists, agronomists, environmentalists, real estate engineers, and lawyers need to analyse the economic, social, political, and legal impact that such a reform would exert. One should also allow for **eventual expropriation expenses,** servicing of sites, measurement and demarcation of plots, production of different kinds of maps, etc. **Without these resources, the situation would go from bad to worse.**

Among the key lessons to be learned from other experiences - Uganda and South Africa spring to mind - is **that governments should not pass laws which they lack the resources (financial or otherwise) to implement.** This is a lesson which both governments and donors appear to be learning, and it now seems to be recognised in both Rwanda and Malawi that it will take time and resources for ambitious plans to be implemented and for capacities to be built, and hence implementation needs to be piloted and tested, with the clear intention of leaning lessons as you go.

It will be important for LandNet to seek confirmation that this is indeed the approach being adopted by MINITERE and in the future to devote capacity to monitoring that this remains the case.

Donor support will clearly be needed, and donors will need to continue to be convinced that governments are carrying out pro-poor land reforms.

It will also be important for governments, civil societies and DFID to consciously monitor progress (and obstacles) in Rwanda and Malawi, with a view to sharing experiences and learning lessons from what look as though they may be broadly similar and contemporaneous processes in comparable country contexts.

It will be important also - as this is a lesson learned from Uganda experiences - that MINITERE, in implementing the new land law, **recognises and tolerates regional diversity,** because although Rwanda is a very small country, it is also a highly diversified one. This is clearly something which LandNet Rwanda can lobby on.

One key hurdle has already apparently been jumped, with DFID's commitment in principle to continued support to MINITERE for the pilot implementation phase.

Another may come shortly, when the PRSP is presented to donors on November 14-15 in what may prove to be a very important meeting.

6. NGO experiences elsewhere of implementing land policy and law

If it is true that the initial phase of making land policy and law in Rwanda is almost at an end, what useful advice can I offer LandNet Rwanda about the future?

One idea would be to seek to **become directly involved in research on implementation,** rather in the way that RISD did on land use and villagisation in 1999. There might be scope, for example, either for individual members of LandNet Rwanda or for LandNet Rwanda itself to **undertake projects on urban or peri-urban tenure issues** in order to influence policy**.** This is a suggestion which is being currently put to the Kenya Land Alliance by Martin Adams, who is conducting a review of DFID's support to the KLA.

What relevant NGO experience elsewhere is there of NGO involvement in implementation of land policy and law elsewhere in Africa? Some LandNet members will have gleaned some of this in the process of regional exchanges in East Africa. On the whole, experiences are somewhat limited, not least because implementation has very often scarcely taken place at all because of financial and other constraints - here one thinks on both **Uganda** and **Tanzania**, where Land Acts passed in 1998 and 1999 have yet to be implemented. **Kenya** is still at a stage where a Presidential Land Commission is taking evidence and a policy, let alone a new law, is still to be formulated. The Uganda Land Alliance was involved in awareness campaigns and lobbying as the land bill was being drafted and debated.

In Zimbabwe, when a new land reform and resettlement programme, allowing NGO participation, was briefly on the table in 1999, it soon became clear that very few NGOs had any experience which would be relevant in terms of developing new resettlement models.

Elsewhere in Southern Africa, there is some, rather limited experience of NGO involvement in implementation, principally in Mozambique and in South Africa. In both cases, the comment element was in **raising awareness of new rights contained in new land laws and of helping specific communities avail themselves of those rights.**

More detail can be found in these two articles posted on the Oxfam GB *Land Rights in Africa* website which I manage.

NRI, IIED, DFID and AFRA, *Securing Customary Land Tenure in Africa: Alternative Approaches to the Local Recording and Registration of Land Rights: Report of a workshop held at IIED* (November 2000)
http://www.oxfam.org.uk/landrights/Custten.rtf

Robin Palmer, *The Struggles Continue: Evolving Land Policy and Tenure Reforms in Africa - Recent Policy and Implementation Processes* (March 2000)
http://www.oxfam.org.uk/landrights/RPpolimp.rtf

South Africa is a strange case. It boasted a plethora of 'land struggle' NGOs in the apartheid years, and there were expectations that some of these might become

implementers of the new and highly complex land reform programme. In practice, few did, for a variety of reasons - but it might prove possible later to try to tap some of the experiences of those which did actually implement land reform projects at the grassroots level.

A more typical reaction was that of the Nkuzi Development Association which began working in the Northern Province in 1997. Its creation was heavily influenced by the absence of NGOs in the Province and by the 1994 Land Rights Act and the need to meet restitution claims before a deadline. Edward Lahiff, Nkuzi's Research and Policy Co-ordinator, told me that:

> The lodgement of restitution claims was relatively straightforward. Nkuzi assisted in the lodgement of over 400 claims, many of them very large, and many of which would not have been lodged without their efforts. When that wound down, it wanted to see claims being dealt with, which let to complex and lengthy negotiations with the Department of Land Affairs (DLA), the Regional Land Claims Commission and other government departments. It also became more involved with redistribution cases and with farm evictions, and to a lesser extent with farm labour issues. There was a growing awareness that DLA were not being responsive to urgent cases in the Northern Province and many people were frustrated at the lack of progress of the land reform programme generally.
>
> It was on evictions from white farms that the law came in. Nkuzi on an ad-hoc basis started negotiating with farmers. **It brought matters to the attention of local government**, who they found very sympathetic and totally unaware of the law with regard to evictions from farms. Local councillors slowly became convinced of relevance of intervening in urgent cases. You could see this was new ground. Farmworkers were people on the other side of the fence whom the ANC councillors hadn't seen as within their area of jurisdiction. Nkuzi played an important role here in raising awareness among local councillors, and they have now emerged as an important 'early-warning' system.

Subsequently, Nkuzi got funding to hire its own lawyer to defend existing rights.

I cite these examples just to offer LandNet Rwanda some flavour of what has been attempted by NGOs in other contexts.

ANNEX 1: Extract from the PRSP (November 2001 draft)

Note: all the highlighting in the annexes which follow is my own - RP.

4.1.2. Land and settlement (pp.61-3)
Land is the most important productive asset owned by most Rwandese households. It has also historically been a source of dispute and conflict. Rwanda have [sic] a legacy of disputed land rights, arising partly from the lack of legal status for land title and partly from the return of people whose land has been occupied by others. Hence the provision of security and the resolution of land disputes are important objectives of the Government.

The Land Policy and Land Law are now in draft. They include the following proposals:

According to the Land Policy:
- all Rwandese enjoy the same rights of access to land, implying no discrimination against women
- all land should be registered for security. The title will be tradable, but not in a way that fragments plots below 1 hectare.
- land use should be optimal.
- households will be encouraged to consolidate plots to ensure that each holding is not less than 1 hectare; there will also be a ceiling of 50ha. This will be achieved by **the family cultivating in common rather than fragmenting the plot through inheritance.**
- land administration will be based on a reformed cadastral system.
- the system of land administration is under consideration.
- the rights of occupants of urban land will be recognised, on condition that they conform to established rules.
- urban master plans will be developed to encourage more economical use of space.
- marshlands are in the state's private domain, and will be allocated to individuals on a concession by the MINITERE on condition of good management.

The draft Land Law specifies that:
- people with customary holdings under 2 hectares, and those with customary holdings between 2 and 30 hectares where the owner has a project and a development plan, will be recognised as owners.
- transfer of title deeds requires prior consent of all family members.
- a land tax will be imposed.
- undeveloped land reverts to the state's private domain after three years.
- holders of *ubukonde* land (originally distributed by the clan head), known as *abagererwa*, will have the same rights as other customary owners.

The objective of the law and the policy is to ensure better land management while conferring security on the existing occupants of the land. **It will be important to devise cost-effective methods of resolving disputes at a community level, and to ensure that the 1 hectare minimum is not misunderstood to imply the expropriation of any current occupants**. Traditionally, local dispute-resolution about land was conducted by the local *gacaca*.

Many households hold several plots at different altitudes both as an insurance mechanism and to spread their labour over the year. As non-agricultural incomes rise, it should be possible for households to diversify their income sources and therefore reduce their need for this kind of insurance. It will be important to recognise that such practices indicate**, not that farmers are ignorant or irrational, but that their behaviour is a response to the constraints they face.**

The process of allocating title will need to involve the communities. It may be both cheaper, and more transparent, to conduct a survey which settles titles in each community on a particular occasion, rather than to allow individuals to apply opportunistically to register particular pieces of land.

One important gender issue is that many marriages are informal. The rights of women and children in informal relationships need protection. This can perhaps best be provided at community level, with central guidance.

Actions:
- Cabinet and Parliament will review the draft land policy and land law over the next few months.
- Once the law and policy are adopted, information will be disseminated about the policy, encouraging people to feel secure and making family members aware of their rights.
- A cost-effective, participatory and locally accessible system of allocating formal ownership rights will be developed. The option of systematic titling will be considered.
- Cost-effective mechanisms for resolving disputes will be established at the local level.

ANNEX 2: Extracts from previous comments on the draft Rwanda National Land Policy

I. Lisa Jones (UNHCR), *Summary of and Comments on Draft Policy for National Land Reform*, 7 April 2001

This note comments on and raises questions regarding the Policy and its proposed implementation. These comments are noted in square brackets.

The Context

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

The Problems Addressed
[Note: this (gender discrimination) has already been significantly addressed with the 1999 law amending matrimonial and inheritance rights in favour of women but there are still further measures to be taken].

The Framework of the Land Policy
Objectives:
[It is abundantly clear that there is a heavy emphasis on how land will be managed and used. Indeed this is one of the government's main preoccupations and it is determined to put in place measures that will ensure that land is not only used, but used properly and productively. This means that there will be implications for people who do not exploit their land and may ultimately mean them losing access to that land. There will also be similar implications for people who are not considered to be correctly managing and using their land in a productive way**. There are unanswered questions around who will make such assessments and decisions.** Who will decide on the consequences if land is not appropriately used? Who will enforce those consequences? Will people lose access to land as a result of a failure to correctly implement the new Policy?

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

Principles:
a) land is the common heritage of past, present and future generations. [This means two things in particular. First, everyone has rights <u>and obligations</u> regarding the land. Second, the State must act to guarantee this heritage for the benefit of present and future generations. Thus, there is both an individual and a State responsibility for ensuring that land is properly managed and used.]

[Again, the principles insist heavily on rational management and use of land in favour of the country's development. But they also introduce the question of access to land and how land will be held, i.e. **the question of tenure**. This question **is of great significance** as currently the State owns all the land and citizens only have the right to use and occupy it. The principle states that every Rwandan should have the right to access land. At the MINITER conference in November 2000, every participant was asked to consider whether every Rwandan should have the right to own land. There was unanimous support for this principle and the Policy has since been revised to state categorically that "the right to own land is inalienable" and that customary rights should be converted into ownership rights. However, the <u>right</u> to access land and the <u>right</u> to own land are very different from actually having access to and/or ownership of land. The right was unanimously supported but then most stated that not every Rwandan could expect actually to own land.]

Strategic Guidelines and Options for the Land Policy

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

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

However, as noted above, there is a difference between the right and what happens in fact. The Policy itself states that not every Rwandan can possess a plot of land. It specifies that agro-pastoral land will only be allocated to those who are professional farmers or pastoralists. **The Policy does not specify how the government will determine who are the professionals and how it will be proved that they have the necessary competence. This will raise issues for a large number of people who may be**

quite expert in productively managing their land but have never been able to prove this because of lack of resources and land on which to demonstrate their capabilities.

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

[Note that the 1999 Law amending matrimonial and succession regimes already provides that a plot which does not exceed an area of 1 ha cannot be partitioned. The heirs have rather to agree on the modalities of its sale or exploitation and share the fruits therefrom (Art. 91).]

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

[Note, the new law may contain a legislated version of some customary rights where these are in keeping with the overall objectives of the Policy.]

Use and Management of Land

[Implicit in all this is the recurring idea that the State will decide exactly how land is to be used. There is no reference to how the existing competing demands on land by agriculturists and pastoralists will be resolved. It is assumed that it will all be managed.]

II. Robin Palmer (Oxfam GB), *Some Land Policy Experiences from Elsewhere*, (Presentation to the National Land Policy Workshop) 2-3 November 2000.

The only other comment I would offer at this stage [the day after reading it quickly for the first time] is that I found myself asking precisely the same questions I asked of the Malawi draft National Land Policy:

- **Is this really feasible?**
- **Will there be sufficient resources and capacity to do this?**
- **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?**

5: The need to build a consensus
Governments need to feel reasonably self-confident and secure before embarking on new land policies and laws. Wise governments, in my view, also seek to build as broad a consensus as possible through serious consultation on an issue which is invariably highly sensitive and politicised. I am of course

extremely well aware that in Rwanda you have yet additional layers of complexity. One of the articles I read in preparation for coming here contained this 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 will not be easy to produce a land policy and a law which is inclusive** – but I would argue that to attempt to do this is an essential part of the process of reconciliation.

In my work with NGOs, I try to encourage civil society groups to engage positively with their governments. Both sides naturally have different interests and relations are often clouded by mistrust or by conflicts over resources. But both sides clearly need each other and I know that you have the potential in the recently formed LandNet Rwanda for sensible dialogue and discussion to take place. It will be important, I believe, both 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.

III. Robin Palmer (Oxfam GB), *Report and Reflections on the Rwandan Draft National Land Policy Workshop*, November 2000.

10. 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.

IV. Kenny Dick, (DFID Senior Rural Livelihoods Adviser), Report on a Visit to Rwanda on Land and Resettlement Issues, 23-27 September 2001.

3.2 Challenges to effective implementation of the new land law

3.2.1 **The land policy document sets out a range of options, some of which appear to be extremely ambitious to implement.** Others appear on first reading to have potentially conflicting aims. For example, the policy enshrines the right of all Rwandans to have access to land and states that the government has a duty to provide land to the landless. It then goes on to state that not every Rwandan can "possess" a land plot and outlines a range of measures by which the Government will have the legal authority to control who has access to land, how much of it and for what purposes it can be used. **Land is such an economically, socially and culturally sensitive commodity in Rwanda that the government must find ways of ensuring that decisions over access to land, most of which will be taken at the local level, are fair, transparent and legally defensible.** The law must not appear to favour one group of claimants to land over another.

3.2.2 **Some objectives of the policy appear to require substantial levels of financial and human resources for effective implementation.** For example:

- all land should be registered based on cadastral mapping of individual plots *(a huge task, the marginal costs of which will eventually be borne by the tenants);*

- once registered land should be valued and taxed accordingly *(this would generate revenue for the government and at the same time open up the possibly that land could be used as collateral for bank loans);*

- national, provincial and district land commissions should be established *(elected?)* to facilitate *(or even "police"?)* the process of land registration and the operations of the new land market. *(Whether these bodies could be charged with both overseeing the registration process and with arbitrating in land disputes that their own decisions may have helped to trigger is open for debate).*

3.2.3 Other aspects of the policy appear potentially contentious. For example:

- **customary law will be replaced entirely by the statutory law** *(most poor people would much rather rely on customary law administered by local people they know, than on a legal process they do not understand and which will inevitably take much longer to address their grievance);*

- a minimum (1 ha) and maximum (30 ha) plot size will be set for registration of land by an individual. Partitioning of land holdings below 1 ha through inheritance and transfer among individuals *(ie. the normal cultural practice among families)* will be prohibited;

- family land plots (which have frequently become scattered as a result of the movement of people in, out and around the country over the last 30-40 years) should be consolidated to create larger contiguous areas of land which can be farmed "more effectively" and this process will be encouraged by regulation of sales by the government;

- the government will retain the right to requisition land or to refuse its registration if its not being "effectively" or "professionally" farmed *(this seems to be particularly targeted at pastoralists who traditionally need large tracks of land to graze their animals and who might be judged not to be using the land sufficiently intensively.)*

3.2.4 **If implemented in their entirety and all at once, achieving the multiple objectives of the policy seems certain to place a heavy burden on local systems of governance, justice and civil administration**, not to mention the technical challenge of mapping the whole country to the degree of accuracy required. Important roles are envisaged for new or still fragile institutions that currently lack the necessary human and financial resources to achieve their intended goals. (NB. The Head of the Department of Lands at MINITERE stated that, already, **80% of all cases heard in civil court are**

related to disputes over ownership of land. It is hoped that the new law will reduce this burden on the courts but there may, instead, be an initial increase in the case-load as people recognise the importance of this opportunity to gain security of tenure under statutory law.)

3.2.5 **If not implemented with care, laws** on minimum plot size, plot consolidation and "professional farming" – all of which are intended to promote the commercialisation of agriculture and reduce the number of people directly dependent on farming for their livelihood – **could create increased numbers of landless poor and heighten social tension.**

V. Peter Brinn (consultant to MINITERE), November 2001

Peter Brinn, who has been supporting MINITERE as a consultant over the past year, has also looked at the National Land Policy and will be presenting his findings to the LandNet workshop on November 22-23.