

# **Burundi:**

## **Land policy making in a conflict-prone country**

Summary paper for the Annual World Bank Conference on Land and Poverty  
Washington DC, April 23-26, 2012

by Dominik Kohlhagen

### **1. Introduction**

Burundi is a landlocked country in East Africa, neighboring Rwanda, Tanzania and the Democratic Republic of Congo. With its 8,5 million inhabitants living on 28,000 square kilometers, it is the second most densely populated country in Africa after Rwanda. Its economy heavily depends on the agricultural sector and relies to a large extent on subsistence farming. Since independence from Belgium in 1962, Burundi has experienced several outbreaks of violence. Important interethnic massacres occurred in 1965, 1969, 1972, 1988 and 1991. Between 1993 and 2005,<sup>1</sup> a civil war has caused hundreds of thousands of deaths. At all these occasions, people were displaced or had to seek refuge in neighboring countries, leaving behind their land and livestock. Following a relative political and military stabilization, more than 500,000 refugees have returned to Burundi over the last ten years and are now trying to recover their land.

Demands for land or compensation by returning refugees are adding to many other problems caused by land scarcity, dysfunctional land administration systems, unclear inheritance rights and longstanding problems of illegal allocation of public land.

During the last five years, the Burundian Government initiated several policy measures in order to deal with the multiple problems and conflicts related to land management. Surprisingly, these measures were initiated separately by different Ministries and are funded individually by different donor agencies without overarching coordination. Nevertheless, quite some of the initiatives are worth mentioning and could have relevance for other countries. Despite their disconnectedness, all measures put a strong emphasis on decentralization and participation of local stakeholders, and their respective achievements might suggest their merge into a more coherent general approach in the long term.

This short paper gives an overview regarding the different components of policies related to land in Burundi, their commonalities and their achievements. Overall, there is a general tendency towards a valorization of alternative dispute resolution mechanisms and towards better recognition of local practices and local land management systems.

---

<sup>1</sup> It is difficult to determine the exact date of the civil war in Burundi. A formal peace treaty was already signed in 2000, but it was only in 2008 that the last rebel group signed a cease-fire. The year 2005 is actually the year in which first democratic elections resulted in the nomination of a civil government.

## 2. Political achievements since the end of the civil war

Since 2005, three important reform initiatives were undertaken in the field of land administration.

### 2.1. Mediation of land conflicts involving returnees

One recurrent source of conflicts in Burundi relates to the repeated spoliation of land following the departure of refugees and internally displaced people.<sup>2</sup> Especially after the 1972 massacres and in the years following the outbreak of civil war in 1993, many Burundians were forced to flee their homes. In most cases, their land was occupied by neighbors or local administrators, and quite frequently these occupations were sealed by documents countersigned by state officials.

In 1976, a decree formally legalized some of these transactions, limiting the rights of former owners to partial compensation.<sup>3</sup> One year later, in 1977, another decree extended the prescription of land ownership to customary land: all land occupied for a period of 30 years, whether the initial occupation was intentionally illegal or not, was to be automatically transformed into full ownership.<sup>4</sup> This implied that from 2002 onwards, the controversial legal provision started to benefit the new occupants of land left in 1972 and deprived most returning refugees from their former land.

As a result of the various changes in statutory law, most refugees trying to recover land after their return are facing insurmountable obstacles. To deal with these problems, the government created a number of special commissions in charge of dispute settlement and reallocation of state-owned land to landless returnees. The first three commissions, created in 1977, 1991 and 2002, were followed in 2006 by the *Commission Nationale Terres et autres Biens* (CNTB). The CNTB has been installed in all provinces and has parallel competences to the official first-instance courts for all conflicts involving a returnee. Instead of solely applying statutory law, the commission first tries to achieve a mutual agreement between the parties in conflict.

The CNTB got important funding from UNHCR and international NGOs. At the local level, the commission is composed by administrative and judicial officials, by representatives from religious congregations and by other people who are locally recognized for their integrity. More than 1,600 conflicts could be solved through mediation by the commission during the last five years. The commission also has the right to arbitrate conflicts in case the mediation fails. Court records and evidence from fieldwork show that these arbitration awards are usually accepted and are rarely appealed to court.

---

<sup>2</sup> For more details, see: ICG, 2003; Hatungimana et al., 2003; Gatunange, 2005; van Leeuwen et al., 2005; IDMC-NRC, 2009; Kohlhagen 2011b.

<sup>3</sup> Décret-loi n° 1/191 du 30 décembre 1976 portant retour au domaine de l'Etat des terres irrégulièrement attribuées. According to its title and to its first three articles, the decree provided for the recovery of illegally attributed land. In article 4 however, the decree foresaw the full legalization of all illegal attributions of plots smaller than four hectares. This provision allowed massive regularization. See: Vandeginste 2009, 82.

<sup>4</sup> Décret-loi n° 1/20 du 30 juin 1977 étendant le système de la prescription acquisitive aux immeubles régis par le droit coutumier. Before this decree, prescription rules only applied to registered land.

## **2.2. Decentralization of land management**

Besides the specific problems related to the return of refugees, Burundi is also facing more general difficulties to guarantee tenure security and to facilitate the proof of land rights. As in most African countries, land registration procedures in Burundi are not only complicated, long and expensive; they are also disconnected from social reality. In Burundi, land registration offices only exist in three cities. Before submitting their demand to one of these offices, applicants have to hire a geodetic surveyor from the capital city Bujumbura, report the precise land limits to the national cadastral services and demarcate the land boundaries with stones made of imported concrete.

The majority of people in the countryside, used to marking land boundaries at best with perennial border plants, are totally unfamiliar with the official registration procedures. In addition, for most of them, the price they would have to pay for the concrete is already higher than the market price of their land plots, not to mention the cost of the surveyor and the taxes for cadastral services. More than fifty years after the generalization of the titling system,<sup>5</sup> the number of registered land plots is still insignificant: only some 46,000 land plots have effectively been titled (Republic of Burundi 2008, 3), barely more than 1 per cent of the country's surface area.

Since the end of the 1980s, several studies have reported similar evidence from other African countries, stressing the need to give more recognition to customary law and local arrangements within the legal system of the state (Le Roy et al. 1986; Lavigne Delville 1999; Toulmin et al. 2001; Deininger 2003). Since then, different land reforms in Africa have followed this recommendation, either by identifying and formalizing customary land occupancy under a centralized land management system or by recognizing the right of local and customary authorities to administer land.

In Burundi, decentralization of land management in line with these "new wave" land reforms has been recommended on different occasions since the early 1990s (Bouderbala 1992; Leisz 1998; SDC 2007). Since 2007, USAID and different European donors are funding a reform of the Burundian land management system on basis of a policy model borrowed from Madagascar. The reform foresees the creation of decentralized municipal land services that issue certificates recognizing local land tenure arrangements. By taking explicitly into account customary rules and practices, the new land services are meant to provide for a socially more acceptable and an economically more affordable alternative to the centralized titling system.

In 2009, the government adopted a new national land policy, the *Lettre de Politique Foncière*, and in 2011, a revised land law was promulgated. At the beginning of 2012, eleven municipal land services were already functional (out of 129 municipalities). Most of them had started working as pilots before the new legal framework had been put in place. For the moment, none of these pilots has been evaluated externally, and there is still no feasibility and cost assessment with regard to the proposed generalization of the new decentralized system. All existing municipal services are entirely funded by foreign donors, which raises

---

<sup>5</sup> The titling system was already introduced under colonialism, but access to the system was limited to whites and a very small group of Africans. It was only on the eve of independence, in 1960, that Burundians themselves were effectively allowed to register their land.

questions regarding the willingness and the capacity of the Burundian state to support the services in the long term.

### **2.3. Strengthening of the local court system**

Although the Ministry of Justice has not been involved in the previously mentioned reforms, it also initiated measures to mitigate land problems. Compared to other African countries, Burundi has a very high number of local magistrates' courts (almost 150 in total); more than three-quarters of conflicts that are brought before these courts are related to land. Thanks to important funding from the UN Peacebuilding Fund (PBF) and the European Union, most of the courts have been rehabilitated after the war, and legal training has been provided for the judges. Recent surveys and legal statistics have shown that litigation rates are increasing steadily since these efforts have been undertaken and that a growing proportion of conflicts are submitted to the courts.

Despite these improvements and positive trends however, corruption is still a major issue in the judicial system. Also, the courts are facing major difficulties to implement their judgments.

In 2011, the Ministry of Justice organized public consultations in selected rural areas to identify reform needs for the local court system. One major conclusion of the consultations was the demand for alternative dispute settlement mechanisms, especially in the field of conflicts related to customary land tenure, which represents more than 70 % of court cases. Although mediation and conciliation have a longstanding tradition in Burundian customary law, the formal judicial system does not provide for any such mechanism. Until 2005, the customary councils of "wise men" (*bashingantahe*) were incorporated into the court system to fulfill this function, but they were then banned from the system for political reasons.

To fill the gap, training programs will now be provided for the judges to promote court mediation and conciliation, as it has already been experienced by the CNTB to mitigate conflicts involving returnees. In the long term, the local courts may primarily play the role of conciliation boards, rather than adjudicating tribunals.

## **3. Shortcomings**

Besides the already mentioned weaknesses of the Burundian policy initiatives, there are some general shortcomings with regard to the coordination and the viability of these initiatives.

### **3.1. Lack of coordination**

One major problem of policies related to land in Burundi is the lack of coordination. Formally, the promulgation of the new land code led to the creation of a "National Land Commission" that is competent to oversee all measures in this field.<sup>6</sup> In fact however, the major components of Burundi's land policies are dispersed between different stakeholders without overarching coordination.

---

<sup>6</sup> In accordance with the new land code, the commission was created by presidential decree in January 2012.

The mediation of conflicts involving returning refugees and the work of the CNTB commission fall under the competence of the Ministry of Repatriation and until now were mainly funded by UN agencies. The new land policy, the revision of the land code and the creation of decentralized land services were initiated independently by bilateral donors in collaboration with the Ministry of Regional Planning and the Ministry of Environment. Measures related to the settlement of land disputes and to the reconstruction of the court system were mainly developed within the Ministry of Justice.

Rather than to a complementarity of shared competences, these scattered initiatives led to overlapping and sometimes contradictory projects that will probably be difficult to reconcile in future. The competencies of the CNTB commission for instance are contested by the order of magistrates because they partly contradict the monopoly of the Judiciary that is guaranteed by the Constitution. The revision of the land code also did not take account of existing rules regulating dispute settlement, and for the moment it remains unclear which courts are competent to hear cases related to land rights that are certified by the new municipal land services.

In some cases, the lack of coordination led to last-minute changes to important strategic and legal documents. Despite its similarity with its Malagasy counterpart, the Burundian *Land Policy Letter* for instance includes some specific provisions that contrast sharply with the idea of improving tenure security and individual land rights. Most of these provisions were added to the document on demand of the government during the very last meeting with the donor agencies who had supervised the drafting of the document. Without detailing the ways and means of implementation, the last paragraph of the *Land Policy Letter* foresees the determination of a minimum area for land plots and the proscription of land divisions under this minimum. It also provides for a restructuring of the traditionally scattered habitat through a "villagization" policy and, without giving any further details, even announces a birth control policy.

Especially the idea to restructure the traditionally scattered rural habitat (by "villagizing" it) receives increasing support from UN agencies who are looking for durable solutions to the shortage of land, landlessness and the need to reintegrate returning refugees. In 2011, the President of Burundi repeatedly announced the creation of several hundred villages. Question remains if and how such a policy of massive resettlement can be reconciled with other provisions of the *Land Policy Letter* that foresee the consolidation of existing land rights and the limitation of expropriations and public interventions on private land.

Another problematic issue is the right to ownership on marshland, which represents about a twentieth of the country's surface area. Traditionally, this type of land is considered as being public land, but there are no clear legal provisions regarding the issue. Over the last decades, marshland started to be used for smallholder farming and today tends to be perceived as privately owned land by the local farmers. The absence of legal rules led to many conflicts between farmers and public authorities. The need to elaborate clear legal provisions was presented as a priority by the *Land Policy Letter* in 2009, and the draft new land bill that was elaborated under supervision of a group of donor-funded experts recognized full private ownership. Again, it was at the very last moment that an amendment to the bill called into question this basic decision. Due to the amendment, the code that was finally voted contains some paradox provisions: on the one hand, the code proclaims that marshland can be owned by individuals, on the other hand, the code foresees that these ownership rights

cannot be registered with state authorities and that the state enjoys almost the same prerogatives on this land as it does on public land.

### ***3.2. Absence of participative process***

Overall, the different initiatives in the field of land policy do not only lack coordination at the highest level. There is also quite clearly a lack of participation with regard to the beneficiaries of these initiatives, namely rural farmers. At two occasions, public consultations were held to gather opinions about specific questions: in 2008 about the decentralization of land management and in 2011 about a reform of the local court system. Also, in 2010, a “civil society platform” was created to participate in the reform of the land code. However, as there are only very few associations of rural farmers, almost all participants in this platform are high-educated human rights activists from the capital.

Especially the public consultations of 2008 raise questions with regard to their timing. The consultations involved about 500 people, with more than half of them state authorities. In theory, the drafting of the *Land Policy Letter* and of the revised land code were meant to be based on the outcome of these consultations. In fact, the final version of the “Land Policy Letter” was presented less than three weeks after the closing of the consultations (on September 15, the consultations closed on August 27), replicating the structure and quite some content of the Malagasy land policy letter. The first draft of the new code, which was supposed to be based on the content of the letter, was ready only two weeks later, on September 30. Given this timing, the alleged “participative” character of the process appears to be rather superficial.

### ***3.3. Insufficient protection of vulnerable groups***

One major issue that still has to be addressed is the guarantee of land rights to vulnerable groups. Especially women still do not enjoy the same rights to land than men. Under customary law, men and women had equal access to land, but land was administered by the male head of the family. Under colonial law, this right to administer land was reinterpreted into a form of private ownership, which led to the exclusion of women from modern ownership and inheritance rights. Until today, Burundian law does not recognize inheritance rights to women. Especially unmarried women and widows thus encounter significant difficulties to claim rights to the land of their families.

Another vulnerable group are the Batwa pygmies. The Batwa traditionally used land for gathering and hunting. Under colonialism however, only the land rights of farmers and pastoralists were legally recognized, which led to a progressive marginalization of the Batwa. Until today, the traditional land use of the Batwa enjoys no legal recognition or protection. On the contrary, most of the land that was traditionally used by the Batwa has been turned into protected reserves or into private land to the benefit of resident farmers.

For the moment, the new municipal land services that are progressively created also do not take account of the specific needs of vulnerable groups. Evidence from fieldwork shows that the new land services do not provide sufficient protection for people with low bargaining power.

### **3.4 Nepotism and corruption**

Last but not least, one major obstacle for the implementation of a coherent and efficient land policy is the climate of violence and corruption that is still very significant in Burundi. The country is regularly cited as being amongst the most corrupt in the world, and especially during the last year political violence has again become an issue. The judiciary and the administration of land have proven to be particularly sensitive sectors in this regard during the last decades. Important efforts will be necessary to remedy the situation.

### **References and further reading**

- Bouderbala, N. (1992). *Appui à l'élaboration d'un code rural. Rapport final*. Bujumbura: FAO.
- Deininger, K. (2003). *Land policies for growth and poverty reduction*. Washington DC: World Bank.
- Gatunange, G. (2005). *La problématique foncière dans la perspective du rapatriement et de la réinsertion des sinistrés*. Bujumbura: Observatoire de l'Action Gouvernementale.
- Hatungimana, A., & Ndayishimiye, J. (2003). *Politique de rapatriement, de réinsertion et de réhabilitation des sinistrés ainsi que la problématique de gestion des terres au Burundi*. Bujumbura: Observatoire de l'Action Gouvernementale.
- ICG (2003). *Réfugiés et déplacés au Burundi. Désamorcer la bombe foncière*. Nairobi and Brussels: International Crisis Group.
- Kohlhagen, D. (2007). *Le tribunal face au terrain. Les problèmes d'exécution des jugements au Mugamba dans une perspective juridique et anthropologique*. Bujumbura: RCN Justice & Démocratie.
- Kohlhagen, D. (2008). *Appui à la révision et à l'élaboration du code foncier du Burundi. Rapport de mission*. Bujumbura: Swiss Agency for Development and Cooperation.
- Kohlhagen, D. (2009). *Statistiques judiciaires burundaises*. Bujumbura: RCN Justice & Démocratie.
- Kohlhagen, D. (2010). Vers un nouveau code foncier au Burundi?. In S. Marysse, F. Reyntjens, & S. Vandeginste (Eds.), *L'Afrique des Grands Lacs. Annuaire 2009-2010*. Paris: L'Harmattan. P. 67-97.
- Kohlhagen, D. (2011a). In quest of legitimacy : changes in land law and legal reform in Burundi. In A. Ansoms & S. Marysse (Eds.), *Natural resources and local livelihoods in the Great Lakes region of Africa: a political economy perspective*. Basingstoke: Palgrave Macmillan. P. 83-103.
- Kohlhagen, D. (2011b). Conflits fonciers sur ordonnance: l'imbroglie juridique et social dans les 'villages de paix' de Rumonge. In S. Marysse, F. Reyntjens, & S. Vandeginste (Eds.), *L'Afrique des Grands Lacs. Annuaire 2010-2011*. Paris: L'Harmattan. P. 41-46.
- Kohlhagen, D. (2011c). *Les défis de la justice de proximité au Burundi: synthèse de la réflexion nationale de 2011*. Bujumbura: Programme Guwara Neza.
- Lavigne Delville, P. (1999). *Harmonising formal law and customary land rights in French-speaking West Africa*. Paris: Groupe de Recherche et d'Echanges Technologiques.

Le Roy, É., Le Bris, É., & Crousse, B. (1986). *Espaces disputés en Afrique noire. Pratiques foncières locales*. Paris: Karthala.

Leisz, S. (1998). Burundi Country Profile. In J. W. Bruce (Ed.), *Country profiles of land tenure. Africa, 1996*. Madison: Land Tenure Center, University of Wisconsin-Madison.

SDC (2007). *Document de planification Burundi 2007-2009. Programme de gestion décentralisée des terres dans la province de Ngozi*. Bujumbura: Swiss Agency for Development Cooperation.

Republic of Burundi (2008). *Lettre de Politique Foncière*. Bujumbura: République du Burundi.