

# LEGAL LAND OWNERSHIP IN RWANDA: OVERVIEW OF THE EFFECTIVENESS OF LAND REFORM

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## Introduction

Land access and ownership constitute a topical problem because of various factors including rapid population growth, global economic dynamics due to land rush and commercialization by large-scale actors for businesses (Ansoms & Hilholst 2014), and political conflicts resulting in land competition by political elites (Claessens *et al.* 2014). Land grabbing by richer and politically connected classes at the expense of poor people is making it an expensive and inaccessible commodity to the majority (Nyenyezi Bisoka 2014; Zoomers 2010) and more especially in urban areas (Manirakiza 2015).

Land plays a vital role in the economy of developing countries where wealth and survival are measured by control of, and access to land in urban, peri-urban or rural areas (Lund 2008; Deininger 2003). In Rwanda, land is the backbone of livelihood because agriculture is the mainstay of subsistence for about 85% of the working population and accounts for over one-third of GDP. However, the growing decrease of land ownership per household due to rapid population growth is a serious challenge. Indeed, household ownership decreased from 2 hectares in 1960 to 1.2 ha in 1984, to 0.89 ha in 1990, to 0.5 ha in 2001 and to less than 0.4 ha in 2014 (NISR 2011; 2016).

Lack of land leads to substantial consequences. It is one of the major causes of poverty and a source of conflict. In post-conflict societies like Rwanda (Musahara & Huggins 2005), Colombia, Timor-Leste, Sudan (Darfur region), and Democratic Republic of the Congo, grievances over land ownership and access are often a source of conflict between families or tribes (Elhawary & Pantuliano 2013). In Rwanda, sharing a small land between residents and repatriated Rwandans after the 1994 genocide

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perpetrated against the Tutsi raised many challenges. Land conflicts were reported in different areas mainly in Southern and Eastern Provinces, ex-Butare, and Kibungo prefectures (Takeuchi & Marara 2009). Leegwater (2015) has termed that as 'sharing scarcity' in the case of Kibungo, describing an arrangement that, however, was not based on any legislation or a decree to prevent further conflicts. In the city of Kigali, the struggle for land is rife due to space reorganization for the sake of urban modernization (Manirakiza & Ansoms 2014). Apart from the conflict, land right – especially women's right to it – has been a serious issue in Rwanda as it is now in many African countries.

The Government of Rwanda (GoR) initiated a Land Tenure Regularization Program (LTRP) to establish good management and rational use of land as a way of addressing land-related problems. For instance, an Organic Law of September 2005 determining the use and management of land in Rwanda sets out the role of the State, the rights and duties of landowners, the categories of land, and the institutions for land management. The Succession Law of 1999 strengthens women's rights to land and recognizes different channels of land acquisition such as customary inheritance, *inter vivos* gifts from father to son (called *umunani*), buying/selling, and donation. The same law defines land tenancy modalities. In 2009, the government initiated a huge countrywide project of land mapping and registration to guarantee land tenure. Since then, land ownership is legally acquired after its registration in District land bureaus. Despite those endeavors, there are still several issues associated with land reform and that impede legal ownership.

The most reported issue in many areas in Rwanda is an increase in land conflicts, particularly during land registration (Ansons 2011). Those conflicts result from the whole process involved, and it requires a deep understanding. From the analysis of the achievements of, and the challenges associated with, land tenure reform, this paper informs about the issues impinging on its effectiveness. It analyses the process of land ownership focusing only on two aspects: the first is *land right* that includes the gender issue, land sharing, and expropriation. The second aspect is about the state of *land services* related to transactions to ensure legal ownership. The objective is to highlight the importance of the recognition of one's land right and efficient land service delivery as a way to effectively perpetuate the programme. The paper is based on the authors' experience on land issues and the data drawn from various documents, including official reports and policy documents as well as the results of different studies on the land sector. It is structured into three parts in addition to the introduction and conclusion. The first section gives a short overview of land reform in Africa. The second section depicts the journey of land reform in Rwanda. The last section is dedicated to the achievements and challenges of the land tenure reform process in Rwanda.

## 1. Overview of land reform in Africa

Land is a key factor in a country's development. Appropriate land reforms promote investment, contribute to land-resource management, and reduce poverty as well as land-related community disputes. Land reforms involve elaboration and implementation of different policies and operations that concern legal land access, ownership, rights, registration, titling, taxation, etc.

In Africa, the question of land has been among the top concerns for development goals since the 1950s. Before the 1950s, the security of land tenure started to be considered a driver of economic development in the years after the Second World War. Since then, as highlighted by Dickermann *et al.* (1989) quoted by Obeng-Odoom *et al.* (2013), the advocacy for security of tenure as an important pillar in improving the social and economic conditions of poor people was undertaken by the UK's colonial office in East Africa. The East African Royal Commission, inaugurated in 1953 to look into the claim and make recommendations, concluded that wide and large-scale processes of land registration needed to be carried out swiftly to individualize land ownership, liberate it from the structures of community, and commodify it to provide tenure security (Obeng-Odoom *et al.* 2013). Consequently, the initiative would lead to the creation of the necessary conditions for a take-off into agrarian-based industrialisation and economic development. The implementation of recommendations started from the mid-1950s. Replication of Kenyan reforms were done in other developing countries like Malawi and Seychelles in the 1960s (Dickermann *et al.* 1989 quoted by Obeng-Odoom *et al.* 2013).

From the 1960s, land reforms were among the priorities to alleviate customary systems to make land more productive and encourage investment in the agricultural sector (Peters 2009). Unfortunately, about 75% of land is under customary tenure (Sage 2005 quoted by Odeny 2013). In sub-Saharan Africa, most land is not recorded and the assumed 'owners' do not have property rights to use it. Land is mainly accessed through different informal channels such as first settlement, conquest, allocation by government, long occupation, or market transaction (Toulmin 2006).

Lack of land title means insecure livelihoods for millions of farmers in rural areas and more than 60% of urban dwellers living in informal settlements. These categories, incapable of securing their land rights, are exposed to eventual dispossession by politically powerful groups or by governments in terms of expropriation for public purposes, usually with minimal compensation (Ansons & Hilholst 2014; Zoomers 2010).

Some African countries have launched land reforms but are still facing various challenges. The latter include mainly the complex legal process to access land – which is costly in terms of money and time –, inexperienced

personnel, top-down initiatives, and bureaucratic implementation (Sikor & Muller 2009). For instance, the land registration process is estimated to take more than 100 days in sub-Saharan Africa, while land transfer may go beyond 300 days in some countries like Angola (335 days), Côte d'Ivoire (340 days), and Ghana (382 days) (Toulmin 2006). In urban areas, poor governance frameworks and highly centralized and corrupt land agencies are reported to be responsible of land reform inefficiencies (AMCHUD 2011). Another problem concerns the persistence of land disputes. For example, in Ghana, an estimated 30,000 titles were disputed in the courts in the year of 2000 (Kasanga & Kotey 2001). Land reforms have not yet solved the problem of women who have been denied right to land for long periods even if most African governments have ratified the international Conventions on Elimination of all forms of Discrimination Against Women (CEDAW). There is still constitutional bias on women and stereotypes that allow right to land exclusively to men (Odeny 2013). Thus, despite the fact that women produce more than 80% of the food in Africa, their ownership of land is estimated at only 1% (SOFA 2011).

## 2. Land tenure reform in Rwanda

Unlike many sub-Saharan African countries currently struggling with land reform processes, Rwanda is seen to be at an advanced stage in addressing land issues (Musahara & Huggins 2005; Rurangwa 2013; Cronin 2014). In this regard, the GoR has developed a legal framework, put in place institutions, and defined land administration processes to ensure efficient and effective land administration and management.

Land management has always been a subject of controversy in Rwanda because of the juxtaposition of customary and statutory land tenure. The introduction of written law dates back to the colonial period by the decree of 11 July 1960. It distinguished mission land and registered land located in urban areas accessed through statutory settings; and lands located in rural areas governed through a non-codified customary law. This attempt at land reform initiated others that were carried out in 1967, 1978, 1991 and 1997 in a bid to harmonize the two land tenure systems and to ensure the equitable distribution, exploitation and effective management of land. These reforms legitimized the role of the government in land management (André 1998).

The Poverty Reduction Strategy Paper I developed in 2001 stated that the security and resolution of land disputes should be of primary importance to the government (GoR 2002). Hence, the Land Law No. 08/2005 of 14 July 2005 was enacted in 2005. This law produced a comprehensive governance framework for land ownership, use, and management. It also recognized land as an instrument for social, economic, and political transformation (Rurangwa 2013).

In 2008, the GoR initiated the Land Tenure Regularization Program (LTRP) to secure land ownership, enhance efficient management and administration of land, contribute to poverty reduction, increase investment, and optimize land use. This program defined procedures and indicated documents required for first land registration. Currently, the Land Administration and Information System (LAIS) is operational (GoR 2012).

The legal framework related to land has been fine-tuned progressively and in June 2013 a new land law was enacted to replace Law No. 22/99 of 12 November 1999. This law stipulates that all landholders should formally register their land and transactions in the name of the party(ies) acquiring the land for their rights to be upheld. It recognizes the state as the sole authority to grant rights of occupation and use of land. It grants rights to transfer land rights through succession, gift, inheritance, rent, sale, sublease, exchange, servitude, mortgage or any other transaction, in conformity with the conditions and methods provided by the laws and regulations (GoR 2013).

What is peculiar about this Law No. 22/99 of 12 November 1999 is that it provides for equal access to land rights with no discrimination based on sex or origin. Indeed, though in the 1990s more than 90% of women in Rwanda were engaged in the agricultural sector as farmers and as unpaid family farm labor and wage farmers, they had very little control over the cash earned from what they produced (Diao *et al.* 2009). Furthermore, women's rights to control land generally have remained weak, especially when it comes to decisions over land transfers (renting and selling) or making investments. Additionally, only boys had inheritance rights to their parents' properties (Lankhorst 2012; Brown & Uvuza 2006). Alarming, the women who were in so-called 'informal' or 'illegal' marriages with men, which refers to couples who are not married under civil law, were not granted any right on the husband's land. Women in such *de facto* unions and their children do not have recognized rights to their spouse's property, although the husband can recognize his children as 'legitimate' if he chooses (Abbott & Alinda 2012).

After the genocide perpetrated against the Tutsis in 1994, many households were headed by women and orphaned children, and the urgent need to protect their rights to remain on and manage the land of their husbands or fathers prompted the development of Law No. 22/99 of 12 November 1999, the Law of Matrimonial Regimes, Liberalities and Successions, commonly referred to as the 1999 Succession Law. The Organic Land Law granting husbands and wives equal rights to land has been interpreted as consistent with the Constitution: women and men have equal rights to property. Under formal law, women can purchase and hold property (GoR 2013; 2005; 2003). This law has ranked Rwanda among very few gender-sensitive countries in the world.

To ensure sustainable land administration and management, many institutions have been established. These include the Ministry of Natural Resources

and the Rwanda Natural Resources Authority (RNRA) established in 2010 as a merger of the National Land Centre, the National Forestry Authority (NAFA), and the Rwanda Geology and Mines Authority. In the same regard, the Office of Registrar of Land Titles Provincial and District land bureaus and land committees were also put in place. Since January 2017, RNRA has been divided into three institutions namely Rwanda Land Management and Use Authority; Rwanda Water and Forestry Authority; and Rwanda Mines, Petroleum and Gas Board in line with the new goals set by the government to maximize efforts in the exploration and exploitation of minerals, oil, and gas, as well as efficient management of land, water, and forests.

In summary, the key government initiatives include the following (GoR, 2013; 2012; 2002):

- the Inheritance Law adopted in 1999;
- the new Land Law passed in 2013;
- the National Land Policy of 2004;
- the Land Tenure Regularization Program (LTRP);
- the Land Administration Information System (LAIS);
- the establishment of institutions in charge of land-related issues such as the Ministry of Natural Resources, the Rwanda Natural Resources Authority, the Office of Registrar of Land Titles, Provincial and District land bureaus (DLB), and land committees.

### 3. Successes and challenges in land tenure reform in Rwanda

#### 3.1. 'Ambitious' achievements

The huge cost of the LTRP has not been a challenge to its implementation because of its presumed big efficiency. At least most of land right holders, especially in rural areas, got the interests of tenure security (Adams 2013).

Land reform contributes to the rational use of land resources and the economic development of both the landowner and the country. In fact, the current national land use master plan is now a tool for efficient land administration and land management. This means that any piece of land is recorded and any service concerning it (registration and transaction) generates taxes for the national economy. For instance, 15,184 parcel transactions done at national level in 2014 generated 32.9 million RWF (GoR 2018). In addition, a landowner can access bank loans using land as a collateral and this promotes private investment in land through increased land tenure security.

Moreover, land registration results in the delivery of land titles to owners and this contributes to land dispute resolution and prevention. In terms of capacity building, training programmes in land administration, GIS, surveying, and the Land Law were organized and at least at district and sector

levels, there are technicians and professionals in land management and administration (Rurangwa 2013; Sagashya 2013; Fosudo 2014).

The timeline of land tenure regularization highlights an ambitious process of land reform since the approval of land rights for all Rwandans by the new constitution and within the 5-year period from 2008, when the Land Administration Information System (LAIS) began, to 2013. In just 3 years, between February 2010 and August 2013, 10.3 million land parcels were demarcated and adjudicated with 81% being approved to title, and 8.4 million leases and freehold titles were prepared with over 5.7 million collected by landowners (Gillingham & Buckle 2014).

#### Timeline of land tenure regularization

- 2003 New Constitution for Rwanda – *Article 29: Every person has a right to private property.*
- 2004 'The National Land Policy' – first step in the new framework for land.
- 2005 Parliament passes the *2005 Organic Land Law* (15 September 2005). This sets out new arrangements for land tenure and titling, for registering and administering land and land titles and for the guidance of land use and land development.
- 2008 *Strategic Road Map for Land Tenure Reform in Rwanda* is accepted by cabinet (March 2008). Last revision dated April 2009.
- 2008 Development of the *Land Administration Information System (LAIS)* begins.
- 2009 *Low Aerial Photography* is completed in Rwanda with 99% of the country covered.
- 2009 *Land Tenure Regularization (LTR)* trials completed. National implementation begins.
- 2010 *Development Partners* provide financial and technical support to RNRA. Implementation of LTR is intensified. Consultants appointed to support the LTR process.
- 2012 June *Demarcation and Adjudication* complete for the whole country (10.3 million parcels).
- 2012 June *LAIS* operational and commencement of transfer of sectors with completed lease issuance form the LTR database to the LAIS.
- 2013 December – projected *Leases* printed and available for all those who have registered with complete information and are eligible for title (anticipated to be 8 million).
- 2013 December – projected 10.3 million parcels transferred to the LAIS, thus establishing the *Rwanda Land Registry*.

Source: Gillingham & Buckle 2014: 19.

The implementation of LTRP formalized land rights in a participatory and socially inclusive manner giving rise to more gender-equitable outcomes. It has ensured equal rights of land ownership to husband and wife married under community of property (Abbott & Malunda 2015; Bayisenge *et al.* 2015; Gillingham & Buckle 2014).

The release of Rwanda Land Management and Use Authority (RLMUA) stated that land certificate spurred more investment on land because people were feeling safer in terms of land ownership, as confirmed by 75% of respondents compared with 44% reported by Abbot in 2015 (RLMUA 2017; Abbot, 2015). Within two years from 2015 to 2017, access to loans through land titles increased from 12% (Abbot 2015) to 16% (RLMUA 2017) especially for vulnerable households who do not have any other collateral to get access to loans.

Furthermore, LTRP has played a critical role in land dispute resolution as reported by 48.8% of respondents across the country in the RLMUA study (2017). They confirmed that land certificate was a decisive factor in getting their land disputes resolved.

### 3.2. Prevailing land challenges

Despite a robust legal, institutional, and policy framework put in place to ensure efficient land administration and management, several concerns still prevail in the land sector in Rwanda (Sikor & Muller 2009). Some of these challenges are discussed below very briefly. They are related to land right (knowledge of gendered land rights, land subdivision, and expropriation) and to land services (high cost and inaccessibility, and limited familiarity with procedures and requirements).

#### 3.2.1. Limited knowledge of gendered land rights and inconsistency in succession law

As mentioned above, the 1999 Succession Law banned gender discrimination in land inheritance. Since then, the extensive sensitization on gender equality was undertaken and resulted in equal rights to parents' properties between all children regardless of their sex.

However, rural women still ignore their land rights and remain in custom settings (Lankhorst 2012). A countrywide study on gendered legal rights revealed that a third of women were not aware of gendered land rights and though the majority reported favouring land donation (*umunani*) to both sons and daughters, one-third of respondents believe that daughters should receive a smaller portion than sons. It is highlighted that the desire to avoid disputes with their family and ignorance of the law are the two main reasons for which some women do not claim their rights to land, i.e. *umunani*. Finally, the same study points out that women who claim land from their

natal families face serious consequences, mainly rejection by the family, violence, and disputes (Havugiyaremye *et al.* 2015). In addition, as Abbot (2015) put it, Rwanda's laws only provide limited protection for legally-married women and full protection for legitimate children, leaving many women and children without legal rights to inherit or access land.

Some cases highlight this land and gender issue. A study conducted in three districts of Ngoma, Rutsiro, and Huye revealed that women do participate less than men in decision-making over household land use, 56% for women against 66% for men. Decisions about the use of proceeds from sale of land stands at 41% for women and 54% for men, while for the use of proceeds from lease of land it is at 40% against 64% in favour of men. The rate of legal land ownership (registered in owner's name) is 77% for women against 83% for men (Mwendwa Mehta *et al.* 2016). In Musanze district, only 17.2% of women have knowledge about land-related laws, while 25% still think that sons should have a bigger inheritance share of land than daughters (Bayisenge 2018).

#### 3.2.2. Restriction to land subdivision

Since 2013, the land law requires land in rural areas to be not less than one hectare; and this means that owning land is only and legally possible for those who have enough money to afford such a big parcel of land (Cronin, 2014). Obviously, these restrictions cause irregularities in land registration and contribute to land sharing through custom-based means. For instance, in Tumba sector, Huye district, about 52.9% land transactions were done informally (Twarabamenye & Nyandwi 2012). The World Bank study on LTR in 2015 found that only 51% of transactions in rural areas were formally registered (Byamukama 2018); meaning that 49% of land transactions were informally done.

The main consequence is that the so-called landowners do not have legal rights to it. In addition, this contributes to the increase in off-the-record land transactions and LAIS may be outdated in the end. Subsequently, the restriction on land subdivision leads to problematic practices such as land conflicts, informal land markets, and socio-economic inequality.

#### 3.2.3. High cost and inaccessibility of land services

Many studies (Abbot & Mugisha 2015; Ali *et al.* 2015; Biraro 2014; Takeuchi & Marara 2011) pointed out that land-related services are relatively expensive, inaccessible, and require complex procedures. The findings corroborate Transparency International and FAO's (2002) statement that in many parts of the world, formal land administration procedures are (i) time-consuming, bureaucratically cumbersome and expensive; (ii) frequently non-transparent, inaccessible to a large part of the rural population; and (iii) handled in languages and forms that people do not understand. They warn that in

such cases, high transaction costs may result into informal land transfers and other dealings, which are likely to lead to corruption for sake of facilitating and speeding up land registration process.

It is worth noting that land services and construction permits offices have been identified among the main functional areas in Rwanda that constitute potential risks of corruption (RoR 2012). TIR (2017) revealed that more than 10% people encountered corruption while seeking a land-related service in the past 3 years (2015, 2016 and 2017). This explains a considerable level of dissatisfaction with land services that stands at 30.65% and a proportion of 30.20% for land registration services (RGB, 2018).

The fee of 27,000 RWF (2,000 for notification, 5,000 for producing a new land lease document and 20,000 RWF for the service) for registering land transfers is not affordable for most Rwandans (especially in rural areas). On top of this amount, there is the additional cost of private transport to access land services at the sector land bureaus, given the poor road network and the lack of public transportation means (Biraro *et al.* 2015). An additional fee of 60,000 RWF is required to produce two land lease documents when it is a case of land sharing. Land taxes are also too high. According to IPAR (2016), 71% of landowners who pay land taxes are dissatisfied with the amount due.

### 3.2.4. Limited familiarity with procedures and requirements related to land services

A considerable number of people do not know of the requirement or the procedures to register their land and have its legal ownership. In 2015, a countrywide study on access to the land tenure administration system in Rwanda and the outcomes of the system on ordinary citizens revealed that fewer than half of the respondents (43.8%) were familiar with the procedures and requirements for registering different land transactions (Biraro *et al.* 2015). However, progress is good because at least in 2017 the level of awareness of requirements for land services was 72.4% (TIR 2017). Lack of awareness of requirement leads not only to submitting incomplete applications, but also spending time and resources unnecessarily.

In the framework of good service delivery, all public services are currently accessed through a government portal named 'Irembo'. Although the vast majority of land-related services have been included in Irembo, there is still a challenge to cope with this new technology (Twizeyimana 2017). While Irembo was meant to ease the process of land services, some Irembo agents do not know about online forms to be completed. In rural areas, more often than not, Irembo agents cannot provide their services expeditiously due to limited internet connectivity. At times, people also have to walk long distances to reach the Irembo agent.

Furthermore, a large number of Rwandans are not aware of any office providing land-related services at district level, 40% and at sector level 30% TIR (2017). More importantly, there is no special way of providing access to land-related services for persons with disabilities as affirmed by one participant in the TIR 2017 study: 'I can't know whether or not my name is really written on the land title I have. This results in our properties to be unduly owned by our relatives'. This finding suggests a need for community sensitization and communication on land-related services and making them more inclusive.

### 3.2.5. Land use, land rights and expropriation

There are many issues related to land expropriation that undermine landowners' rights including chiefly insufficient compensation – usually calculated based on outdated laws – coupled with incidences of corruption, delayed compensation, and arbitrary differences in land values in the process of expropriation. Corruption was reported with regard to land valuation, hence the call for valuation of land by independent valuers from the Institute of Real Property Valuers of Rwanda (IRPV). Regarding the delay in payments, the compensation has been very often paid beyond the 120 days permitted by the law (Legal Aid Forum 2015).

These expropriation issues are observed more in urban than in rural areas especially in the city of Kigali. Most of the expropriations operated in Kigali, like in Kiyovu, Kibagabaga, Kinyinya, etc. were characterized by various irregularities such as delays in the process itself and payment and low compensation (Manirakiza 2015). For example, according to The New Times (2009), it took more than two years to pay residents whose properties were evaluated for expropriation in Kinyinya in 2009, and only 127 of 1,028 families who were evaluated to be compensated in April 2008 were legally remunerated. For Manirakiza (2015), the expropriation exercise in Rugando was the only case of unproblematic expropriation reported in the city Kigali.

The serious consequence of those expropriation inefficiencies is that landowners are denied the right to fully and independently exploit their pieces of land under the expropriation process while continuing to pay taxes. The similar issue of losing land right applies also to the portions of land which were registered under marshlands during the marshlands demarcation program undertaken in 2014-2015 (RLMUA 2017). It is worth mentioning that the expropriation without resettlement sites in the city of Kigali contribute to informal urban settlement and expansion. In fact, only 5% of expropriated households in Kigali are capable of resettling in redeveloped places while others end up in spontaneous settlements and periurban areas (Manirakiza 2015).

## Conclusion

The reconstruction of Rwanda after the 1994 genocide perpetrated against the Tutsi has put much emphasis on land issue as the key factor of livelihood of the population. Land reform was operated as a mechanism to control various types of land disputes.

This paper showed that Rwanda realized considerable achievements in terms of land reform. The most appreciable is that this progress was achieved in a short period of time and that it is contributing to the resolution of various land disputes. Any piece of land is currently officially registered to its owner and clear steps for further land transaction were established.

Although the government has invested a lot to redress land-related issues, many challenges persist. Rural women ignore and/or are denied their land rights even though the succession law gives equal chances to male and female beneficiaries. Land right is not always ensured when it comes to sharing and expropriation. It has been observed that land services are expensive compared to ordinary peasant income, as well as bureaucratic and time-consuming. Consequently, some people maintain their custom-based land transactions. Hence the question arises: What is the effectiveness of land reform in the long term while the land registration system is not promptly updated at any transaction?

The challenges highlighted and discussed in this paper suggest that there is still a considerable way to go to ensure quality land reform. There must be a mechanism to secure landowners' rights. More efforts should also be put into streamlining land services; that is the whole process of legal land registration, transaction, and ownership.

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