

Expert Group Meeting

Good practices in realizing women's rights to productive resources, with a focus on land

Geneva, Switzerland

25-27 June 2012

**Empowering women through land tenure reform:
The Rwandan experience**

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* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

Abstract

Since 2004, Rwanda has embarked on an ambitious land tenure reform programme (LTR) aimed at increasing security of tenure to all land owners and the elimination of all forms of discrimination. This has largely been achieved through the establishment and implementation of a new legal, regulatory and institutional framework.

This paper discusses the ongoing land tenure reform programme and its impact on women's land rights. It focuses on the role of women in the decision making in the course of developing the legal and regulatory framework, the rights that those tools provide to women and the inclusiveness and protection of women's land rights in the ongoing land registration programme. The aim of the paper is then to draw on some best practices gleaned from the programme in protecting women's rights to land.

Introduction

It is widely known that women constitute the majority of people living on the globe. However, their rights and participation in development programmes are often neglected and their capacity to contribute to human development is frequently underestimated or curtailed in many countries. This is largely due to various forms of discrimination and cultural barriers that women face in accessing resources and enjoying fundamental rights such as the right to own land, compared to their male counterparts.

Moreover, the adverse impact of current trends of globalization and commoditization of land affecting developing countries seem to further deepen women's economic vulnerability.

Rwanda is a land locked country located in east Africa with an estimated area of 26,338 km². The country's economy is growing predominantly agrarian (more than 80% of the population depends on agriculture for its livelihood). Rwanda has a population of around 11.5 million people, which equates to an average of over 400 people/km². This high population density implies an extensive use of land, making the average land size 0.5 ha per household. 52% of Rwanda's population are made up of women².

In the past years, Rwanda has been known as a poor and unstable country. This is due to various socio and politico tensions that have characterised Rwandan society since colonial times, culminating in the 1994 Genocide against the Tutsis. These problems have led to massive internal and external displacement of the population.

After the 1994 Genocide against the Tutsis, the country embarked on rehabilitation programmes as the socio-economic infrastructure was left in ruins. As normality was slowly restored and people returned to their homes, the sharp population increase meant that demand for land and housing far outstripped supply. As a result, diversified but complementary short and long term initiatives were initiated by the Government of Rwanda (GoR) to accommodate the returning population. To respond to land and housing scarcity, short term solutions were initiated by

² Republic of Rwanda (2002) National Population and Housing Census Survey.

government, including the establishment of the Tent Temporary Permanent (TTP)³ project in Kigali city and land sharing in rural areas mainly in Provinces where landholdings were relatively large compared to other parts of the country.

As for solutions that aimed at creating long-term sustainable development, the Government of Rwanda established a National Land Policy, leading to the creation of the Organic Land Law on the use and management of land in Rwanda, and numerous other instruments that would guide and implement national strategic development in the land sector. The focus of such policies also included the protection of women's fundamental rights which would mirror those enjoyed by men across the country.

Since 2008, Rwanda has actively promoted women in all positions of governance and leadership. For example, number of women in Parliament is higher than that of men - currently; women represent 52% of parliamentarians in Rwanda. Various tools such as legislation, institutions and commissions have been established to ensure women's rights are protected in various socio-economic sectors including administration and governance of public goods.

Rwanda Land Tenure Reform Programme and women's rights

Policy and legal framework review

The protection of women's fundamental rights to own and occupy land in Rwanda is enshrined in a number of legislative texts.

The Rwandan Constitution of 2003 as amended protects "*equal rights between Rwandans and between men and women without prejudice to the principles of gender equality and complementarity in national development*".⁴ All types of discrimination, including sex discrimination, are prohibited and punishable by law.⁵ With respect to land rights, the Constitution explicitly states that "*every person has a right to private property whether personal or owned in association with others*".⁶

In 2004, the National Land Policy (NLP)⁷ was adopted in Rwanda the aim of which was to "*guarantee a safe and stable form of land tenure, and bring about a rational and planned use of land while ensuring sound land management and an efficient land administration*". One of the key shortfalls of the previous regime as highlighted by the NLP was that according to Rwandan custom, land ownership was the prerogative of men since land rights could only be inherited from father to son. Women were therefore excluded from inheriting land since, even as a widow, a woman only had the right of usufruct over the family land until her sons came of age. The new

³ Under the TTP, Rwandese refugees who were returning back in Rwanda and who had no shelter, were given a piece of land on which they were supposed to erect a temporary shelter before they could find another permanent place to live. This was done in Kigali (Capital City of Rwanda)

⁴ Republic of Rwanda, Preamble to the Rwandan Constitution 2003, paragraph 10.

⁵ Idem, Article 11.

⁶ Ibidem, Article 29.

⁷ Republic of Rwanda, National Land Policy (NLP) by the Ministry of Lands, Environment, Forests, Water and Mines, dated February 2004.

Succession Law⁸ which had come into effect from 1999 sought to resolve this problem stating that “*all legitimate children under the civil law shall inherit equally without any discrimination between male children and female children*”.⁹ The NLP emphasised that subsequent land laws should take this into account, in particular, that women whether “*married or not, should not be excluded from the process of land access, land acquisition, and land control, and female descendants should not be excluded from the process of family and land inheritance*”.¹⁰

The policies set out in the NLP led to the creation and adoption of the Organic Land Law (OLL) in 2005,¹¹ the core piece of legislation setting out rights to land and how land is to be used and managed in Rwanda. Article 4 of the OLL reiterates the general principles set out in the Constitution, namely that “[a]ny discrimination either based on sex or origin in matters relating to ownership or possession of rights over the land is prohibited. The wife and husband have equal rights over the land.” The law therefore affords women the same rights to acquire land as men. In this regard, the OLL enables land to be transferred to an individual (whether man or woman) by: (i) sale; (ii) inheritance; or (iii) gift.¹² In addition, the Succession Law 1999 explicitly enables property to be transferred through legal marriage. In fact, the Succession Law creates a presumption in favour of equality: although the law provides three alternative matrimonial regimes for spouses to choose from, if no affirmative choice is elected, spouses are deemed to be married under the community of property regime, whereby spouses maintain joint ownership of their moveable, immovable, present and future property.¹³ In effect, therefore, women who have attained beneficial rights to land (such as through legal marriage or inheritance) are therefore protected under the law. The OLL moreover provides that consent from all such beneficiaries must be obtained in all cases where land is transferred, mortgaged or leased.¹⁴

From a management perspective with respect to land in Rwanda, Article 8 of the OLL enabled the establishment of land commissions at national, provincial, and the City of Kigali level and at the level of district, town and municipality. At each stage, the OLL confirms that the land commission will be made up of both men and women. As a matter of law, therefore, women’s rights and their views cannot be ignored since women must be represented at every level in the management of land across Rwanda. In practice, women currently represent 39.5% of officials in the land commission.¹⁵

Notwithstanding the various reforms which protect women’s rights as a matter of law, the GoR has recognised that in practice, special attention must be afforded to protect certain groups of women, particularly those who represent the potentially vulnerable, such as widows, orphans,

⁸ Republic of Rwanda, 12/11/1999 Law No. 22/99 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Gifts and Estates.

⁹ Republic of Rwanda, Succession Law 1999, Article 50.

¹⁰ Republic of Rwanda, NLP, paragraph 4.2.

¹¹ Republic of Rwanda, Organic Land Law (OLL) No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda.

¹² OLL, Article 34.

¹³ Succession Law, Article 2.

¹⁴ OLL, Articles 35 and 38.

¹⁵ Republic of Rwanda, (2012) Prime Minister’s Order No 18/03 of 09/02/2012 appointing members of Land Commissions at district and city of Kigali levels, Annex.

and those in non-legal marriages. With respect to the latter, the Law on Prevention and Punishment of Gender-based Violence¹⁶ states that where a man has lived with several women in non-legal/polygamous relationships, the man is required to share his property and belongings equally with each of these women.¹⁷ Potentially vulnerable women's interests must especially be considered when land is registered to ensure that these rights are protected accordingly. This was observed in the GoR's Phase I Field Consultation Report, where trial interventions were undertaken in four districts in Rwanda, the aim of which was to "*engage fully at district, sector and cell level in order to build confidence in the overall land tenure reform process, to design both the scope and content of the trial interventions, and to ensure that the drafting of decrees is supported by factual evidence from the ground*".¹⁸ During this process some 2,500 people (both men and women) were consulted in rural, urban and peri-urban settings, through 229 focus group discussions with members of the public and 139 structured interviews with local authorities and other local and national stakeholders. Key findings of the Report noted that: (i) orphans and widows were particularly concerned about protecting their land rights from relatives, guardians and in-laws, but expressed confidence that formal land registration would help achieve this; and (ii) although women were generally aware of the importance of legal marriage in securing their land rights, they were still perceived to require specific attention during the implementation of land registration across Rwanda.¹⁹

It is clear from the legal and policy objectives as set out above that the GoR is focused on ensuring that women's rights to land are safeguarded and even promoted. In the sections to follow, this paper deals with the implementation of the legal and regulatory framework in Rwanda, and sets out best practices as to how women's land rights are protected in practice.

How is land registration protecting women's lands rights?

Although the OLL recognises rights to land acquired through customary tenure, it makes land registration mandatory. Land registration is one of the main components of the ongoing LTR programme in Rwanda. Most of the best practices are observable through the land regularisation (land registration) process.

From the outset, it is important to clarify the land institutional arrangement. In Rwanda, land is managed via different institutions which include: the Ministry of Natural Resources (MINIRENA), which deals with policy issues; the National Land Commission, which works as an independent advisory commission to the Ministry; the Department of Lands and Mapping (DLM) together with the Office of the Registrar of Land Titles (ORLT), which have been established in Rwanda to carry out all land registration related work, land administration, land use planning and land management. They are supported by the District land Bureau (DLB), district land commissions, sector and cell land committees at local level established to operate as

¹⁶ Law No.59/2008 of 10/09/2008 on Prevention and Punishment of Gender-based Violence.

¹⁷ Ibid, Article 39.

¹⁸ MINITERE, Phase I of the Land Reform Process in Rwanda, Results of Preparatory Field Consultations in Four Trial Districts, March-October 2006, by the Ministry of Lands, Environment, Forestry, Water and Mines, dated 16 February 2007, paragraph 4.

¹⁹ Idem, paragraph 7.

liaison offices for land registration and land administration thereby making the land reform process decentralised and participatory.

In Rwanda, there is one registrar of land titles and five deputy registrars. In line with the decentralisation policy, there are 30 DLBs across the country that handle land management and land registration issues at district level. Apart from the National Land Commission, there are also land commissions at Kigali City level and at each district. It is a requirement that in every land commission and land committee, women must represent at least 30% of the commissioners and committee members.²⁰ In the National Land Commission which is composed of seven members, three of them are women; and out of 155 Kigali City and District land commissioners, 60 are women.²¹ In addition, out of five Deputy Registrar of Land Titles that are in Rwanda, two of them are women. This serves to ensure that in the land management institutions and decision making levels, women are represented.

When selecting para-surveyors or the support team to carry out the registration process, both women and men may take part in sitting a test (which mainly focuses on the ability to map read) to be part of the team. Both the adjudication and para-surveyors teams are therefore comprised of women and men.

With respect to the land registration process, a number of points need to be noted from the outset. When an area is declared a land regularisation area, women as well as men are invited to a public meeting which is held prior to the commencement of the registration process, and often separate women meetings are held. The aim and purpose of these meetings is to raise awareness and educate people to ensure that they understand their land rights.

The process of land registration is participatory and community led. During the registration of claimants, both men and women are requested to be present. This is of particular importance for couples who are legally married to ensure they are registered against the property as joint owners. Women are registered in the same way as men with equal rights. Children (biological sons and daughters) are registered as individuals with a beneficial interest in their parents' land. This is particularly significant since land registration effectively clarifies inheritance issues previously a major source of dispute in Rwanda where family members, on the death of the landowner(s) wrongly asserted rights over land to the detriment of the genuine beneficial owner(s).

The figures below show how the LTR has tremendously increased women's land rights:

As of 31 March 2012, private land owned by individuals in Rwanda consists of the following: (i) 11% are made up of women; (ii) 5% comprise men; (iii) 83% of the land is joint-owned by married couples; and (iv) 1% makes up the remainder.²²

²⁰ Republic of Rwanda, N° 53/01 of 12/10/2006 Presidential Order determining the structure, the powers and the functioning of the Office of the Registrar of Land Titles.

²¹ Republic of Rwanda, Official Gazette n° 07 of 13/02/2012.

²² Rwanda Natural Resources Authority Department of Lands and Mapping, Support to Land Tenure Regularisation Programme, 7th Quarterly Report to 31st March 2012.

Once the land has been registered, individuals are provided with documentary evidence as a guarantee of their land rights. Women who are de facto owners are provided with a lease with their name and shares recorded as being 100%. The vast majority of co-owners are women who are legally married. They receive leases with both their names and their husbands' names with equal shares (50% each).

In case where legally married women have not been registered together with their husbands as joint owners, the wife is allowed to lodge in an objection so she can also be registered along with her husband. However, when collecting leases, it is mandatory for both husband and wife to be present to co-sign their land documents.

What is the situation during land transfers?

Women's land rights are also protected whenever land transactions are made. Currently, there is a simple land transfer template used by all districts across the country. District Land Officers who are also public notaries in land-related matters help the buyer and the seller fill in the form. The form provides for the wife and husband to sign as co-owners, where applicable. When the land is jointly owned, all registered owners must be present and consent to any sale of land. They must each sign the sale agreement before the public notary. Women are no longer recorded as witnesses on the sale contract.

As is the case for men, women are allowed to use their land as collateral for borrowing money with banks and microfinance institutions.

Policy actions

The land registration process is already transforming Rwanda with respect to, *inter alia* protecting women's rights to land. Whilst the process has undergone some refinement to ensure that, in practice, women's rights are being observed, there are still a few challenges that Rwanda continues to face:

- Despite tremendous efforts put into awareness-raising and broader public education on gender issues, elements of negative cultural beliefs and practices that were entrenched for a long time persist. It is going to take a while for these to be completely uprooted and this requires continued awareness-raising and education of the different strata of Rwanda's population. It is therefore a time-consuming and continuing process to educate women (and men) to understand women's rights to own and occupy land in Rwanda, particularly in more rural areas where old customary law is still understood to be the law.
- Low literacy rates, particularly in rural villages, mean that innovative ways and means to educate women and register their rights accurately are necessary, which is often time-consuming and costly.

- Educating women in polygamous/non-legal marriages²³ that they do not have legal rights to land, and encouraging them to enter into legal marriages to protect their interests.
- Educating all children (boys and girls) from an early age that they are all equal and therefore have the same rights with regard to education, human rights, their parents' properties etc.

²³ Also noted by Polavarapu as a “social obstacle” still being observed in many Rwandan households as a result of engaging in old common law marriages, *Procuring Meaningful Land Rights for the Women of Rwanda*, Polavarapu, 14 Yale Human Rights & Development Law Journal 105, at page 130.