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# Returnee land access: lessons from Rwanda

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This background briefing reports on a study of land access for returnees in Rwanda, and the impacts of land access policies in the post-conflict period. It also seeks to understand better the roles international humanitarian agencies and NGOs have played, and how their performance can be improved. It is not suggested that Rwanda is typical, but rather that the centrality of land issues there has thrown up a revealing set of broader questions.

## Large refugee returns to a small country

Rwanda has experienced the most dramatic refugee returns of any country in Africa. Democratic elections at independence passed political control from the previously dominant, landed Tutsi minority to the Hutu majority, and massacres beginning in the late 1950s prompted Tutsis to flee to Uganda and Tanzania. In 1994–95, in the wake of genocide led by Hutu extremists against Tutsi and Hutu moderates and the collapse of the Hutu-dominated government, roughly 700,000 Tutsi refugees returned to Rwanda. At the same time, up to three million Hutu fled to what was then Zaire and Burundi, many fearing revenge for the genocide, others forced to accompany fleeing Hutu militia. In late 1996 and 1997, roughly two million of those Hutu refugees returned.

Rwanda is one of the most densely populated countries in Africa, with an average family landholding below the Food and Agriculture Organisation (FAO)-recommended minimum of 0.9 hectares. Pressure on land had been a contributing factor to the conflict. Experts differ as to the relative importance of different causes – poverty, land scarcity, population growth, environmental trends, unequal land distribution – but all recognise the important role played by competition for land in fuelling the conflict.

## Land access for returnees

Land access for returnees has been a problematic and potentially explosive issue. Hutus had occupied most of the lands abandoned by Tutsis in the initial refugee outflow. At the negotiations leading to the 1993 Arusha Accords, land access for returning Tutsi refugees was on the agenda. The Tutsi-led Rwandan Patriotic Front (RPF) recognised that displacing those Hutu occupants on any large scale would only lead to further conflict, and agreed that returnees who had been out of the country for more than ten years would have to be accommodated on state-owned lands.

The situation after the genocide was, however, quite different from that envisaged by the negotiators at Arusha. The new RPF government reaffirmed its commitment to the land conditions of the Accords, including the 'ten-year rule'. The government's core Tutsi constituency constituted only 14% of the population, and it deemed adherence to the Accords essential to its legitimacy in the eyes of most Rwandans.

Many of the early returnees were accommodated on land taken from parks and game preserves. Others received land in resettlement villages known as *umudugudu*. Some Tutsi returnees were able, contrary to expectations, to reclaim land which had been occupied by Hutus, because those occupants had themselves fled the country. When Hutu refugees returned *en masse* two years later, compromises had to be struck. Local officials in some localities initiated 'land sharing', whereby those who held land were 'encouraged' to share it with earlier returnees and other landholders. Both in the creation of the *umudugudu* and in the land sharing, land takings from existing holders took place in an atmosphere of fear and insecurity, with a degree of compulsion, and without due process or fair compensation.

The *umudugudu* effort for a period became a national programme of compulsory relocation and villagisation, but faltered as development and then human rights NGOs noted the many problems experienced in the refugee return phase – poor locations, lack of services and lack of compensation. Donor agencies have withheld support. But land-sharing continues in some localities, to accommodate late-arriving or late-claiming refugees (see Box 1).

### Box 1: Land sharing in Rukungeri

Land sharing was taking place in a number of sectors in the northern area of Rukungeri when the author visited in December 2006. Local officials explained that those being accommodated were refugees who had left the country in 1959, and had returned some time ago but were now asking for land. They had been back in the country since 1994–95 in most cases, but had come to this area in 2001. Due to the incursions by Hutu insurgents from the Democratic Republic of Congo (DRC) into the area, and the security-driven forced villagisation in Rukungeri, they had not been able to obtain land earlier. Now that things were calmer, they had asked for land and were going to be accommodated. One official noted that local residents in this heavily Hutu area had complained: 'These are people whose families came to this area as feudal officials; how can we be asked to share land with them?'. But, he said, they were told that they must share and the sharing had begun. (The sharing had begun in two sectors and it would be carried out in four.) An official explained: 'No one likes giving up land, but people have a good will and it is going smoothly. It will be finished in a year. Of course the land plots are very small; no one can get as much as a hectare'. No compensation is being provided to those losing land.

## Re-establishing security of tenure

The Rwandan experience demonstrates the difficulty of re-establishing stability and security in landholding. There are a number of reasons why this is problematic:

1. Refugee returns can be long and staggered. While Rwanda was nearly overwhelmed by two huge and sudden waves of returning refugees, the refugee returns continue and will do so for some time. The returns tend to perpetuate land sharing and other extra-legal takings of property for returnees. In 2006, over 6,000 people were expelled from Tanzania, and are now being absorbed. Many thousands more still remain outside the country (see Box 2). How will they be accommodated in a manner consistent with creating a new sense of security in landholding? Can non-land-based opportunities be found for them?

### Box 2: The continuing return

While the number of refugees returning to Rwanda has been steadily declining from the staggering levels of the mid-1990s, the numbers outside the country are still large. UNHCR figures from 2006 report over 11,000 in the DRC, and over 14,000 in Rwanda, with a total of roughly 50,000 remaining abroad, in over 23 countries. These are registered refugees, and the total is certainly much larger. For example, much larger numbers are believed to remain in the DRC. The return of 6,000 refugees from Tanzania in 2006 involved people who did not appear on UNHCR records because some had been there for many years in a community that had gradually absorbed others fleeing Rwanda. There is also a continuing outflow of refugees: Hutus leaving out of fear of the *gacaca* process.

2. Rectification of past injustices, however grievous they may be, can, if delayed too long, undermine efforts to establish security in landholding. In Rwanda the *gacacas*, local adjudicatory bodies established by the government to judge those who participated in the genocide, have only recently handed down indictments. Some who will be prosecuted are occupying the lands of those killed in the genocide. It is not clear how those landholdings will be dealt with by the *gacacas*, which have the power to order redress for the families of those killed.
3. Development programmes can themselves extend insecurity. In Rwanda, there have been calls for villagisation, consolidation of fragmented landholdings and master-planning of agricultural production, which could potentially involve a degree of consolidation. All three have created uncertainty among Rwandans as to whether they will be able to keep the land they hold. Early in the development of these programmes, the government seemed willing to use compulsion to implement them, but has since stated that coercion will not be used. Nonetheless, a land law passed in 2005 gives the government great discretion in taking and using land.
4. Titling programmes, if poorly administered, can work injustices, and the implementation of the titling and registration effort will need to be pursued by the government with great care, and will need to be carefully monitored by NGOs.

Although conflict over land is no longer taking place, there is still competition for land and many disputes over land. There are widely differing assessments of the potential for a return to conflict. One researcher spoke of tensions over land being passed down generations: 'A father walks his son past a house he had owned, or land the family had owned. He points them out to his son, and says, "This was ours, then they took it". The boy will remember'. Another informant, an NGO worker with long experience in rural communities, said: 'The mentality has changed. Post-genocide work has helped so much, because victims were supported. When you go to the hills, you feel no identity differences'. Another informant acknowledges continuing tensions over land: 'Land registration is our last chance'.

## Lessons from Rwanda

Refugee return strategies need to address both land access and the security of property rights. Such security is essential to developing people's confidence in their future, and can make an important contribution to peace and reconciliation. This does not have the immediate urgency of the need for shelter, but at the least return programming should avoid creating new land grievances – a problem that can easily arise in resettlement villages. It is important that historical injustices are addressed, especially where they have played a role in generating the conflict. But in the end, full justice will often not be achieved – indeed, it will sometimes be difficult to define what full justice is. Yet it is important that a line is drawn under crisis and confusion, even at the cost of foregoing the rectification of some remaining injustices.

What might have been done differently in Rwanda? It would have been useful if state-of-the-art understandings of land policy options had been introduced earlier, at the time of peace negotiations in 1993. The Arusha Accords reflect attitudes towards forced resettlement and land consolidation dating from the colonial period, and were not informed by more recent international experience with such programmes. It is sometimes suggested that refugees returning from Uganda and Tanzania brought models back with them from those countries. If so, they appear not to have learned the hard lessons of forced villagisation from Tanzania, or the disappointments of Ugandans with their leaseholds from the state, which they repudiated in favour of ownership in the new Ugandan Constitution of 1997. Those in a state of insurgency are often cut off from new learning on development policy issues.

A further lesson from the Rwandan experience concerns the failure of the international humanitarian organisations involved to manage the refugee return in a way that recognises the abuses of land rights involved in the *umudugudu* and land-sharing programs (see Box 3). These problems were first brought to light by development NGOs, notably ACORD/Rwanda, and later by human rights NGOs, notably Human Rights Watch. UNHCR, the lead agency for refugee return, claims that it saw no other option in the chaotic circumstances of return. The agency did, however, develop guidelines for donor support for the *umudugudu* programme that sought to limit further abuses.

### Box 3: Remembering the 1994–95 return

A minister in the first post-genocide government recalls: 'The international community did not seem to understand the land issue. The claims were social and political. The international community was preoccupied with the size of the return and how so many would be sheltered. After the genocide, there was a total lack of focus on land. There had been plans for land to be identified beforehand, for the refugees and their cattle to wait at the border, to be provided with goods and funds, their animals vaccinated. None of this happened'. An NGO staffer engaged in setting up *umudugudu* remembers: 'At that time, no one even asked, whose land is this being allocated'.

### Box 4: The Pinheiro Principles

The Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons, the most recent authoritative statement of international standards, declare that: 'The State shall allow refugees and displaced persons who wish to return voluntarily to their former home, lands or places of habitual residence to do so'. It goes on to suggest that the provisions of peace accords should be enforceable only to the extent that they are consistent with international standards. The Principles do allow combinations of restitution and compensation where called for in a negotiated peace settlement, but it is clear that some of the outcomes noted in Rwanda would not meet these standards. Under the ten-year rule, some Tutsi returnees had their former lands restored; others received alternative land, but some did not. Yet the ten-year rule seems to have eased the way towards peace, and the RPF government's attempt to abide by it seems to have played a positive role in re-establishing civil order and public trust.

The problems in Rwanda highlight that international humanitarian organisations lack specialisation in land policy development and land administration. They may also reflect a tendency to focus on the needs of returnees at the expense of the interests of other groups. It is suggested that development NGOs with some expertise in land issues should be drawn into the planning for refugee returns early on, especially in cases such as Rwanda where it is clear that returnee land access will be a difficult challenge. Strategies for achieving security of land tenure early in the post-conflict period should be an integral part of the planning for return, and the political leadership of all groups should receive training in this area.

A number of NGOs remain concerned with land issues, notably Human Rights Watch and African Rights. CARE International/Rwanda has provided support for the establishment of a local land NGO, LandNet/Rwanda. This provides a continuing source of local expertise and potential for dialogue with the government on land issues, and there is evidence that it has been effective, at least on some issues.

## International principles and political imperatives

Many refugees in the 1994–95 return were denied restitution of their land. Restitution is required by United Nations guidelines such as the Pinheiro Principles (see Box 4). Others, including those who had remained on their land and some of the early returnees who were settled on state land, later lost land in ways that violate generally accepted norms concerning due process and fair compensation. Indeed, one of the key issues raised by the Rwandan experience is the relationship between international standards and the terms of peace accords. Each of these has its own legitimacy and it is not possible to dismiss the claims of either; they must sometimes be compromised. Restitution will not always be possible or even wise.

Rwanda's experience makes the point that, in some situations, more than one returnee may have the right to restitution to the same parcel of land, based on competing awards from different governments. There is no simple restitution solution. Rwanda also highlights the fact that, while there are quite appropriately clear international principles which seek to protect returnees and displaced persons, there are no similar international standards governing the rights of others holding land. The international community has not established effective standards to govern state takings of land. Finally, these international principles are not inviolable. The political imperatives of peacemaking may result in agreements whose necessity for peace gives them a legitimacy that trumps general principles.

### Box 5: Key lessons

1. International humanitarian organisations planning for refugee returns should provide input to participants in peace negotiations on relevant experiences in returnee land access and strategies for establishing the security of landholding in the post-conflict period.
2. Programming for returnees should not be focused too narrowly on shelter, but should equally address access to land for livelihoods, including terms of access.
3. Organisations planning for refugee returns should, beginning at the peace accord stage, involve development or other NGOs with substantial expertise in land issues in post-conflict contexts.
4. A further positive initiative by international NGOs and donors is support for one or more 'land NGOs', and encouragement of government openness to dialogue with them and other NGOs on the development of land policy.
5. In land policy development, priority should be given to re-establishing the security of land rights, and it should be recognised that there is a need to close claims at some point, rather than allowing insecurity to continue indefinitely.
6. New land laws should be narrowly drawn to avoid conferring too broad discretion on government, especially with regard to land takings.
7. Where a continuing refugee return is anticipated, governments must recognise the need to develop non-land-based livelihood opportunities for returnees.
8. The international community should be ready to apply principles such as the right of returnees to restitution of their lands with some flexibility, recognising the legitimacy of the land provisions of peace agreements even where they contravene international standards.

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