

RWANDAN LAND : ACCESS, POLICY & LAND REFORM

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Abstract

The history of Rwanda is shaped by the issue of land access and use. The political, economic, legal and demographic evolution of the country have greatly influenced the land use system *isambu-igikingi* in the regions conquered by the Central Kingdom and *ubukonde* in the forested regions of North and Northwest Rwanda. It has also changed the land use and the pastoral and land tenure clientship relations. These changes -which resulted in land insecurity- forced the authorities (advised to do so by the Belgians) at the end of the fifties, to implement legal reforms towards individual ownership in favour of the settled farmers. The *isambu-igikingi* system was abolished and *ubukonde* was limited. The state became the owner of all land and gave using rights to the occupants.

On mission lands and in urban areas land ownership is governed by written law, introduced by the German colonisers. This means that there are two systems (written and customary law) governing land rights. Furthermore, customary law is not codified and has changed over the past 40 years. These changes, as well as changes in the written law, produce great insecurities with regard to land access and use. The high population growth in rural areas (of which more than 90% depend solely on agriculture as a source of income) as well as the recent influx of returnees pose a serious threat to the capacity of Rwanda to provide a subsistence income for all inhabitants.

If demographic pressure results in changes to the land use system, these changes face institutional constraints which result in turn from an overall economic and institutional crisis. In response to the recent arrival of refugees without land, the government adopted emergency policies, i.e. construction of villages and lodges, and land distribution and redistribution. These land distributions make us doubt whether the Arusha agreements are being respected. Government policies are not being implemented correctly and create insecurities which influence the agricultural productivity.

The history of Rwanda has revealed that the exclusion from land generates social tension and violent conflict. History has also shown that land access and use were determined by customary rules established along the lines of existing power structures. Therefore, a question remains: can a reform unify different land tenure systems which are used in different ways by different categories of the population? Will the population accept this new system of land rights?

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Key words

Land, access, policy, reform, Rwanda

1. INTRODUCTION

Rwanda is dependent on agriculture which accounts for almost 40% of GDP and more than 80% of its export earnings (tea and coffee). More than 90% of the population works in and derives their subsistence from this sector. This article seeks to describe and analyse the different systems of land tenure. Firstly, we will focus on describing the customary mode of accessing and occupying rural lands up until 1960. Subsequently, we will show how the latter evolved, as well as influences and factors which contributed to changes in the customs and their effects. Rwandan law recognises two types of land access and occupation : the first is private access by the individual, regulated by the written law and which mainly covers urban and registered land; the second system of access is defined by custom which governs rural lands. Custom is a group of practices, rules and non-codified agreements. These evolve over time and change according to situations, places and regions. To the outsider, this flexibility within the system can make it vague and complex. The same plot of land could form the subject of multiple claims, and then it is the power relations which determine land access and occupation.

In Rwanda, the current issue of land access is characterised by insecurities and uncertainties regarding land access and occupation which have provoked conflicts. These could have an impact on land exploitation systems and explain somewhat the agrarian crisis in Rwanda. The high population increase is also often mentioned as a factor explaining a blockage of land exploitation systems. Land reforms are justified not only by the need (or temptation) to unify and regulate the land system but also as an attempt to bring agriculture in an economic manner, out of its structural impasse.

2. THE HERITAGE OF THE PAST : LEGAL AND CUSTOMARY LAND PRINCIPLES

2.1. Land Access and Occupation until 1960

When the Europeans arrived at the beginning of the century, there were two main systems governing land access and occupation in Rwanda¹ : in the Centre, East and South of the country, the *isambu-igikingi* system governed lands controlled by the Central Kingdom, while in those so-called “peripheral” zones of the kingdom in the North and Northwest, the *ubukonde* system governed forested areas on which land-clearers’ lineages exercised their political and land authority. Under the former system, land access is determined according to the political authority which the Central Kingdom’s representative had over a certain territory, while in the latter system, land access was the result of land clearance and land exploitation by a certain lineage.

The first system, *isambu-igikingi* is termed “political” in contrast to the *ubukonde* lineage system. The *isambu* is an individual agricultural tenure to which access and occupation were accorded by the political authority against fee and duties. The *igikingi* is grazing domain, initially for common use, and which then were, in some areas, appropriated and conceded for exclusive use by the political authority under a *ubugerewa* clientship relationship.

The *ubukonde* covers wooded lands cleared and developed by powerful lineages. Clearing the land, its first occupation and development conferred political power and land ownership on the lineage which cleared land. Land access and occupation (namely the right of exploitation) were permanently conceded to the other members of the lineage or granted to landed clients in exchange for rights and obligations (fees, duties) under the land clientship

¹ We will limit ourselves to a very brief description of land exploitation and tenure systems before 1960, and mainly highlight the directions of the changes they have undergone. For a more detailed description of the land systems during the colonial period, see : REISDORFF, I., *Enquêtes foncières au Rwanda*, s.l., s.éd., 1952; BOURGEOIS, R., *Banyarwanda et Barundi. La coutume, tome II*, Bruxelles, Institut royal colonial belge, 1954; MAQUET, J., *Le système de relations sociales dans le Rwanda ancien*, Tervuren, Musée royal du Congo belge, 1954; MAQUET, J., NAYIGIZIKI, S., 1957, "Les droits fonciers dans le Rwanda ancien", Zaïre, vol.11, n°4, 1957, pp.339-359; ADRIAENSSENS, J., *Le droit foncier au Rwanda*, s.l., s.éd., 1962; D'HERTEFELT, M., "Le Rwanda", D'HERTEFELT, M., TROUWBORST, A.-A., SCHERER, J.-H., *Les anciens royaumes de la zone interlacustre Rwanda, Burundi, Buha*, Tervuren, Musée royal de l'Afrique centrale, 1962; VIDAL, C., "Le Rwanda des anthropologues ou le fétichisme de la vache, Cahiers d'Etudes Africaines, vol.9, n°3, pp.384-401.

system. The clearer's lineage, holder of the rights to the cleared land, controlled land access and occupation and had the right to withdraw land from the concession of land client as well as the right to evict the latter.

According to some authors², it seems that land access and occupation in the South, Centre and East of the country was controlled by a similar system known as "*ingobyi y'igisekuru*", under which land access and occupation were conferred by the cultivation or by concession of the land in the form of rental or even through the land clientship system. This system has been gradually replaced by the *isambu-igikingi* system in regions where the Central Kingdom was politically powerful.

Under the *isambu-igikingi* regime, the *mwami*, the supreme political authority, was the ultimate holder of *isambu-igikingi* land rights. The usufruct of lands was granted and controlled by political representatives at the local level, and conceded in return for obligations such as fees, payments and duties. The political concessionaire held rights to the lands of client : rights to take away land, priority access to certain lands, the right to confiscate land and expel clients, the right to appropriate escheat or abandoned lands.

In both systems, the political and land authority (representatives of the Central Kingdom in the case of the *isambu-igikingi* system, or the land clearer in the case of the *ubukonde* system) managed the lands and retained rights to the conceded lands (withdrawal and expulsion rights, etc.); while the usufruct was indebted to the one who had granted him the land.

The *ubukonde* system continued to exist in some regions in the North and Northwest until 1930, and was influenced by the *isambu-igikingi* system when the Central Kingdom extended its political power to regions in the North of the country under German colonisation and the administrative standardisation of the country led by the Belgians.

German colonisation had introduced a third system to govern lands managed by its citizens and lands conceded to missions. This third system recognised private access and

² NEWBURY, C., "Deux lignages du Kinyaga", *Cahiers d'Etudes Africaines*, vol.14, n°53, 1974, p.34; MESCHI, L., "Evolution des structures foncières au Rwanda: le cas d'un lignage hutu", *Cahiers d'Etudes Africaines*, vol.14, n°53, 1974, p.46; NTEZIMANA, E., "Le Rwanda social, administratif et politique à la fin du XIXème siècle", in HONKE, G. (dir.), *Au plus profond de l'Afrique. Le Rwanda et la colonisation allemande, 1885-1919*, Bonn, Peter Hammer Verlag, 1990, pp.74-75; DE LAME, D., "Une colline entre mille ou le calme avant la tempête. Transformations et blocages du Rwanda rural", *Annales Sciences Humaines*, vol.154, Tervuren, Musée royal de l'Afrique Centrale, 1996, pp.98-99.

occupation obtained from the *mwami* by way of a gift or purchase, and was governed by the written law of private property under the Napoleonic code.

During the first half of the century, the political evolution of the country³, and also other factors such as population growth⁴, largely determined the direction of changes of these land systems, carrying in its wake land and pastoral clientship. In fact, Belgium applied the political administration of the Kingdom to the territory of the country, whose borders had been defined under German colonisation. Those regions which were not (or only partially) integrated into the Central Kingdom, reacted to the new political authorities and the land tenure system they tried to impose : at the end of the 1950's, families of land clearers/settlers reclaimed their right to access the lineage lands of their ancestors, appropriated by the political authorities under the *isambu-igikingi* system. Moreover, by seeking to rationalise and standardise the political organisation, Belgium made the political system of the Central Kingdom more oppressive, on the one hand, by breaking the delicate balance of land and pastoral relations, and, on the other hand, by opening the way to the abusive practice land prerogatives of the political authorities : the latter abused their rights of land withdrawal and expulsion. As a reaction to these abuses and attempts at expulsion, the land clients demanded more secure rights to the lands in order to protect and guarantee their right to access and occupy conceded lands. In regions of the *ubukonde*, land clients also reclaimed a more secure access and occupation of their land, rights they also perceived as being threatened by the abuses of their land concessionaires. Furthermore, in some regions, the spread of private property rights by religious missions, was also contested by the former occupants or entitled parties. Violent conflicts erupted opposing not only land and pastoral land clients to the political and lineage authorities, but also contesting the rights of missions to land. Belgium took a stand in favour of the landed and pastoral land clients and to resolve the problem of land insecurity of land clients. Belgium upheld their claims and pushed the authorities to take steps to restrain and limit the rights and prerogatives of landlords, by proposing rights which were more individual and more exclusive through the institution of individual property. In fact,

³ See : REYNTJENS, F., *Pouvoir et Droit au Rwanda. Droit public et évolution politique, 1916-1973*, Tervuren, Musée royal de l'Afrique Centrale, 1985, pp.103-116; VIDAL, C., *op. cit.*, p.400.

⁴ This thesis is defended by ADRIAENSSENS, J., *op. cit.*

the legal measures taken at the end of the 1950's, sought to assert the rights of individual farmers to access and occupy lands, by trying to limit or even abolish the *isambu-igikingi* and *ubukonde* clientship systems of land management.

2.2. Legal Measures Taken at the End of the 1950s and After Independence to Regulate the Access and Occupation of Lands Governed by the Customary Systems of Isambu-igikingi and Ubukonde

In 1952, the first measure comes into effect : the abolition of the *ubuhake*, a form of pastoral land clientship, with the transfer of cattle to clients. However, this measure is not accompanied by the transfer of access and occupation of the pastures. The legal measures are taken after the conflicts of 1959 : the decree of May 2nd, 1960 affects the institution of the *igikingi*, by suspending access to and occupation of pastures controlled by the political authorities of the Kingdom and access to fallow lands of agricultural holdings⁵. The pastures temporarily become collectives. The edict of January 28th, 1961, coming into effect on May 26th of the same year, adopts measures targeting the *ubukonde*, abolishing the institution of political land clientship, by proposing the restitution, division, rental or repurchase of the access and occupation of lineage lands by clearers while some measures aim to restrain certain rights they enjoy *vis-à-vis* their clients. As a result, these steps reinforce farmers access to and occupation of lands.

Thus, legally speaking, several steps are taken : the legislation of written law individual establishes private property. It is introduced under German colonisation to govern Europeans' access to land, and mainly that of the missions. The decree of July 11th, 1960, groups the lands in two categories . On the one hand, appropriated lands in accordance with written legislation, are governed by written law : this concerns lands belonging to domanial lands, registered lands in urban areas benefiting from full property rights. On the other hand, unappropriated lands by virtue of the written legislation, are managed by indigenous custom : these are occupied or vacant lands in rural areas. Both types of lands form part of the State's estate. The latter being

⁵ Articles 1 - 3 of the arrêté du résident spécial of May 2, 1960.

considered as the owner without usufruct, the right to private property is, therefore, not fully established. The State is owner without usufruct of rural lands and gives communes the power to allocate temporary or permanent land rights to lands occupied in a non-customary manner. The State recognises individual usage rights to occupants of the land under the *isambu* or *igikingi* land systems. The *ubukonde* land system subsists in the Gisenyi and Ruhengeri prefectures, as there are no complementary legal measures. The institution of land clientship which is linked to this, is not totally suppressed legally, but only limited. In fact, the Edict of 1961 proposes the restitution, division, repurchase or rental of lands occupied by the land clients; it grants immutable access and occupation without a relationship of dependency, but does not totally suppress the institution. The first dualism, therefore, subsists in the written law concerning the customary system of land management, whereby two systems co-exist.

In order to eliminate this dualism of custom / written law and to unify the system of land rights, the decree proposes the registration of customary rights by granting individual property as it is organised by the legislation of written law, with the limits and conditions being fixed by the Rwandan government (i.e. individual usufruct). However, there are no accompanying measures to make registration widespread : in rural areas, lands are not registered, but certificates of occupation are granted. Nevertheless, there are some lands which are governed by the right to private property, notably, mission lands (some of which had their total land area reduced in 1960).

The statutory order n°09/76 of March 4th, 1976, regulates land transactions on the open market in rural areas, imposing land purchases-sales under the customary system, a procedure guaranteeing farmers a minimal land area of 2 ha., an area below which cultivation becomes untenable. The aim of this measure is to ensure an area which is economically viable and to guarantee farmers' access to and occupation of lands. It seeks to avoid that the development of a land market creates an unequal process of farm land distribution and the marginalisation of one section of the population in a country where agriculture is the means of subsistence of 90% of the population.

The different land reform projects in 1967, 1978, 1991 also move in the direction of standardising the written land rights and a generalisation of limited individual property law. In actual fact, the State remains the owner without usufruct of the lands; it places limitations on

land transactions and the various projects propose ways to allow the State to intervene in the management and cultivation of the lands, in order to impose certain intensification measures. These projects are not successful because, among other things, spreading the notion of individual property to those lands governed by the *ubukonde* system would mean that, the client in possession of cultivation rights (*umugererwa*), could lose access to the land⁶. Land registration is seen to be a complex, lengthy and costly procedure, and, at the same time, the source of numerous conflicts⁷.

Some authors believe that the entire set of legal measures will result in relatively more secure land access and occupation for its occupants : the institutions of the land clientship are legally suppressed as well as the accompanying rights and obligations⁸. However, in actual fact, some forms of land clientship continue to exist even though monetary clientelism has begin to appear. The latter has appeared during the last 30 years, and links clients to patrons who have access to the monetary circuits of a business or salaried employment⁹. Other types of insecurities also appear; they are caused by : a movement towards individualisation and the exclusion of the right to access and occupy lands, the co-existence of a written law and a customary land system in full evolution, as well as, linked to this latter point, the development of a land market. The law is not legitimised by the population and, consequently, is not always applied¹⁰, while custom remains the system of reference for land management¹¹. The customary land management system subsists however, customary principles and local practices evolve “*in the shadow of the law*”¹² integrating elements from different influences.

⁶ RUHASHYANKIKO, N., "Réflexions sur quelques aspects du problème foncier au Rwanda", *Revue juridique du Rwanda*, n°1, 1985, pp.1-20.

⁷ ANDRE, C., *Evolution des systèmes d'exploitation et des droits fonciers: le cas du Rwanda*, Namur, Facultés Notre-Dame de la Paix à Namur, p.187.

⁸ BART, F. "Montagnes d'Afrique, terres paysannes. Le cas du Rwanda", in *Espaces Tropicaux*, n°7, CEGET, p.227.

⁹ DE LAME, *op. cit.*, p.177-183; MIGEOTTE, F., "Une colline à travers ses pratiques d'élevage", Tervuren, Musée Royal de l'Afrique Centrale, *Annales Sciences Humaines*, vol.160, 1998, pp.89-90.

¹⁰ Barrière and Bouderbala, masterminds behind the last two reforms, raise the issue of the legitimacy of a system of written laws introduced under Belgian colonisation, laws which are not sufficiently applied because formal legislation “does not integrate the endogenous logic of practices and representations.”. See : BARRIERE, O., *Formulation de la stratégie de développement agricole. Mission d'appui (PNUD/FAO). Réforme foncière au Rwanda. Propositions de fonds en vue de l'élaboration d'une législation foncière cadre. Version provisoire*. Kigali, April 1997, p.11.

¹¹ ANDRE, C., "Modes d'accès et d'occupation des terres au Rwanda", in MATHIEU, P., LAURENT, P.-J., WILLAME, J.-C. (eds), "Démocratie, enjeux fonciers et pratiques locales en Afrique. Conflits, gouvernance et turbulences en Afrique de l'Ouest et centrale", *Cahiers du CEDAF*, n°23-24, Bruxelles, CEDAF, Paris, L'Harmattan, 1996, pp.202-213.

¹² HESSELING, G., *Pratiques foncières à l'ombre du droit. L'application du droit foncier urbain à Ziguinchor, Sénégal*, Leiden, African Studies Centre, 1992.

These situations create different types of institutional insecurities which, in turn, generate social and land conflicts¹³.

2.3. Customary principles of access after independence and institutional insecurities

After independence, land concessions under the *ubugererwa* land clientship systems, were limited to the *ubukonde* areas and suppressed in others : the land clients enjoyed individual usufruct rights over the lands they occupied. The State has replaced the land authorities (*mwami* and the *abakonde* land clearers) and granted individual usufruct to occupants of the country's territory.

After the suppression of the *igikingi* in 1960, pastures are declared communal lands and/or are redistributed to farmers and ownership of cattle is transferred to the clients of the pastures. Lands which are not fully cultivated, swamps and some wooded areas are declared domanial lands, and their management turned over to the communes. The latter can grant temporary or permanent, individual (young households,...) or collective (associations, community projects,...) use. After independence, some scarcely populated areas in the east of the country, known for their grazing lands, became home to populations coming from relatively more populous areas. In the south-east of the country, former grazing lands were converted into "paysannats".

The bloody events of 1959 led to the departure into exile of tens of thousands of persons, former political authorities : their lands were either occupied and cultivated by other inhabitants, or managed by family members or neighbours or even became communal lands managed by the communes which reallocated them following the example of the grazing lands.

The State accorded these inhabitants the usufruct of the lands they occupied and cultivated.

Custom recognised an individual's access to and occupation of land in different ways : occupation and cultivation during a number of years, by their concession (by the State,

¹³ This thesis is developed in the article of d'ANDRE, C., PLATTEAU, J.-P., "Land Tenure under Unbearable Stress: Rwanda Caught in the Malthusian Trap", in *Journal of Economic Behaviour and Organization*, vol. 34, February, 1998.

temporarily or permanently, on an individual or collective basis, a loan or gift between individuals), by transmission - succession, or, finally, through the market (purchase, rental or mortgage).

2.3.1. Access and Occupation Recognised by Custom¹⁴ and the Evolution of Access Practices

Patrilineal inheritance¹⁵ is still the principal way of gaining access to and occupying land. Paternal inheritance is transmitted and parcelled out from father to son. A certain degree of individualisation land tenure appears, which is linked to migratory movements and the reduction in the authority of lineage head. However, in those cases where lineage structures subsist, inherited lineage lands remain under the control of the extended family¹⁶. Furthermore, it is possible to find land holdings under collective management (by the lineage or of an associative nature¹⁷, or even jointly-held lineage lands). This movement is neither unique nor uniform, as will be shown here below.

Various surveys have shown that the share of lands owned outside the family is on the rise¹⁸, coming either from lands allocated by communes¹⁹, or non-monetary transactions of

¹⁴ Our main point of reference is the article of ANDRE, C., LAVIGNE DELVILLE, P., "Changements fonciers et dynamiques agraires: le Rwanda, 1900-1990", in LAVIGNE DELVILLE, P. (dir.), *Quelles politiques foncières pour l'Afrique noire rurale? Réconcilier pratiques, légalité et légitimité*, Paris, Karthala/Ministère des Affaires Etrangères, 1998.

¹⁵ Land is passed on from father to son, i.e. patrilineally. The lands are divided between all the sons in several stages : firstly, on the occasion of their marriage, and then on the death of the father. However, one part of the succession could also be made while the father is still alive. Girls do not inherit, but sometimes receive, either collectively or individually, land on some social occasions (birth, death of a relative).

¹⁶ According to ANDRE and LAVIGNE DELVILLE, "*The power of household heads increases with the individualisation of the land tenure systems, the autonomy of the family and migratory movements. However, in cases where the head of the lineage or a segment of the lineage still exist and maintain some authority, the household head remains under his authority*". The lineage retains control over land transactions and lineage lands. ANDRE, C., DELVILLE, P., *op. cit.* See also YUNG, J.-M., *Les formes de la production au Nord-Rwanda*, Thèse EHESS, 1985, p.33 and MESCHI, L., *op. cit.*

¹⁷ See the experience studied by Bart: BART, F., *op. cit.*, pp.485-486. See also the experience described by Ntidendereza in NTIDENDEREZA, A., "Gestion du pâturage collectif de Kiyonza (Rwanda)", LAURENT, P.-J., MATHIEU, P. (dir.), "Actions locales, enjeux fonciers et gestion de l'environnement au Sahel", Cahiers du CIDEF, n°27, Paris, L'Harmattan, Louvain-La-Neuve, Academia-Bruylant, 1995, pp.189-196. Cultivated land could also remain under the management of the collectivity or the lineage and remain jointly-held, passing from one generation to the next : this is the case for plots which the lineage grants to head of the lineage, in recognition of his authority, his position and role within the lineage. See ANDRE, C., PLATTEAU, J.-P., *op. cit.*, pp.30-31.

¹⁸ This argument is developed in the article of ANDRE, C., LAVIGNE DEVILLLE, P., *op.cit.*

¹⁹ The communes allocated plots of land to young persons or landless immigrants, thereby playing a role of land regulation between 1960 and 1980 (GUICHAOUA, A., *op.cit.*, p.380). The land area distributed varies from region to region. According to different surveys, 20% of the households in the North-East of Byumba would have received most of their land in this manner (YUNG, J.-M., *op. cit.*); in Gitarama, Blarel estimates the proportion of land received from communes at 30% but only 2.3% in Ruhengeri (BLAREL, B., "Tenure

loans or gifts, or even through the land market. Monetary transactions of rental, sales and purchases and mortgages are multiplying, although the latter two are prohibited by law. The share of purchases out of the total number of exploitations varies over a period and depending on the region²⁰, however, purchases and the sales of land have tended to increase over the past few years; the sales of lineage lands are accepted in cases of force majeure²¹. Lands purchased are appropriated and managed in an individual manner, exclusively and wholly by the individual. For their acquisition, management and transmission, they are entirely under the control of the person whom acquired them; they fall outside lineage control and do not form the subject of claims regarding access, which are linked to a social obligation²².

Faced with a scarcity of land, some marginal and swamp lands are being exploited : the community recognises individuals' rights to use these newly-exploited lands. Generally speaking, these swamp lands belong to and are managed by the State, but are often not checked by the State²³.

security and agricultural production under land scarcity. The case of Rwanda", in BRUCE AND MIGOT-ADHOLLA (eds.), *Searching for land tenure security in Africa*, Kendall/Hunt publishing compagny, 1994, pp.71-95).

²⁰ In 1973, Meshi noted that in Butare, the land purchases and sales were exceptional; after a survey conducted in Byumba in 1980, Yung notes that 17% of all lands were acquired through purchase; the agricultural survey conducted in the country in 1984, estimated at 19% the share of fields bought by households; Uwizeyimana cites 20% for the national agricultural survey conducted in Ruhengeri; Blarel, in a survey in Ruhengeri in 1988, estimates the land area bought in relation to the total cultivated at 14.9% but only 4% in Butare; in two surveys conducted in Gisenyi in a 5 year interval, André observes that the share of purchases per exploitation has increased from 28.7% to 39.6%. See MESCHI, L., *op. cit.*, p.74; GUICHAOUA, A., "Budgets et stratégies monétaires des paysans au Burundi et au Rwanda", in *Revue Tiers-Monde*, tome 27, n°106, avril-juin, 1986, pp.370-380; YUNG, J.-M., *op. cit.*; REPUBLIQUE RWANDAISE. MINISTERE DE L'AGRICULTURE ET DE L'ELEVAGE, *Description sommaire des principales caractéristiques de l'agriculture au Rwanda, E.N.A 1984. Rapport 2*, Kigali, service des enquêtes et des statistiques agricoles (SESA), février 1987, p.49; UWEZIYIMANA, L., "Croissance démographique et production agricole au Rwanda. Impossible adéquation?" in *Cahiers du CIDEP*, n°8, janvier 1991, pp.33-36; BLAREL, B., "Tenure security and agricultural production under land scarcity: the case of Rwanda", in BRUCE, J.-W.; MIGOT-ADHOLLA, S.E. (eds), *Searching for land security in Africa*, Kendall/Hunt publishing company; ANDRE, C., PLATTEAU, J.-P., *op. cit.*, pp.19-20.

²¹ Monetisation of land is not a recent phenomena. According to REISDORFF, who conducted land surveys throughout the country at the beginning of the 1950s, one sees the sales of plots of land, but, generally speaking, they were only authorised in cases of extreme poverty, in REISDORFF, I., *op. cit.* According to a survey conducted by André in 1993 in the north-west, 65% of land sales were distress sales (expenditure on food between two harvests, health care, death, ...). See ANDRE, C., PLATTEAU, J.-P., *op. cit.*, p.25.

²² MESCHI, L., *op. cit.*; YUNG, J.-M., *op. cit.*; André observes that lineage lands are divided while the father is still alive, however, he reserves purchased lands for his personal use, e.g. a pension fund, to which his sons have no rights to claim. These lands are the fruit of his individual labour and he uses them in a privative and absolute manner. In the same way, a divorced sister or an illegitimate grand-child will not be able to claim rights linked to a social obligation over purchase parcels of land.

²³ For more information on access to swamp lands see the article of ANDRE, C., LAVIGNE DELVILLE, P., *op. cit.*

2.3.2. Exclusionary Processes within the Different Systems of Land Access and Occupation as well as Institutional Insecurities

As land becomes scarcer, the endogenous evolution of customary practices provokes conflicts between various types of land access and occupation claims and causes the marginalisation of some categories of persons.

When pressure on the land increases and production relations change, individual and privative claims arise within the lineage lands, but they are sometimes contested on the basis of “ancient” principles of access by those categories of marginalised persons. In fact, as land becomes scarcer, exclusionary processes and/or a restriction of the rights of access of some members of the community to lineage lands (young persons but especially women and illegitimate children, widows²⁴, followed by orphans and emigrants,...), appear. Disputes relating to social obligations linked to certain statutes, giving rise to access to additional lands²⁵ also become apparent. Obligations and social norms are no longer respected, reinforcing the exclusionary mechanisms with the tendency to affirm individuals’ rights. This movement towards individualisation and privatisation is neither unique nor uniform: it is opposed by the claims of some categories of the population excluded by this movement of privatisation and the restriction of the rights to land access and occupation. The former claim, or try to, protect

²⁴ According to custom, women do not have right to inherit their father’s land. They cultivate, manage the harvests from their husband’s lands, ensure the continuation of the lineage by bearing children. When the land is plentiful, the women as well as the children they gave birth to, contribute to strength and power of the lineage, not only through their labour, but also by the relations they establish with other lineages. However, when land becomes scarce, this social model becomes perverse, particularly for women, whose value is no longer recognised and whom no longer have any power. Women and children do not benefit from protection within the lineage. Powerless, or considered as illegitimate by the lineage, their rights to lands of their father or that of their partners or husbands, are contested, e.g. widows, women in free love, separated or divorced. In principle, members of their own lineage (brothers, father), should grant them land, but they tend to dispute their obligations towards their sisters or separated, divorced or unmarried daughters, who return home with their children. Women and their children are the first victims to be excluded from land within their lineage. See ANDRE, C., *op. cit.*, 1996, pp. 204-206; DE LAME, D. *op. cit.*, pp.272-280. According to the results of a socio-demographic survey conducted in 1996, 1/3 of all households in Rwanda are heading by women (34%), 61% of these female household heads are widows (and risk seeing their access to their husbands’ lineage lands contested by their brothers-in-law or their nephews), 11% are separated or divorced and 6% are unmarried (the latter risk having their right to a plot of lineage land contested by their brothers, and in rare cases, by their parents). Juridical proposals have been introduced in order to legally guarantee married widowed women access to their husbands’ lands. See : MINISTRY OF FINANCE AND ECONOMIC PLANNING AND NATIONAL OFFICE OF POPULATION, *Socio-demographic survey 1996, Revised preliminary report*, Kigali, 1997, July, pp. 6-7.

²⁵ The divisions are carried out on the basis of land availability. Successions gave rise to violent inter-generational conflicts. All the wishes of the father were contested, even the rights granted to certain individuals (the oldest, youngest, head of the lineage,...) to additional land, in recognition of their status and social

their rights of access on the basis of “ancient”²⁶ principles, stemming from a system in which the power and wealth of a lineage were expressed in terms of hands and cultivated lands and where all supplementary persons participated. When land becomes scarce, communities limit their land rights to individuals recognised as those legitimately entitled to the land. These exclusionary processes and disputes lead to violent conflicts; the latter are translated by the filing of individual and exclusive claims which are not accepted by those excluded. They highlight a strategy which seeks to preserve the family’s patrimony within a context of increasing pressure on the scarcer and scarcer resources and the lack of off-farm income-generating alternatives. These social changes reflect a profound social breakdown.

Other types of land conflicts and social tensions reflect economic uncertainties. These arise from the increasing fragmentation and loss of lands linked to market development in a context of the rising scarcity and lack of alternative means of subsistence outside agriculture.

The system of succession and, linked to this, the fragmentation and growing scarcity of lands, no longer allows the economic subsistence of young households. One type of economic insecurity results from a generalised land scarcity, and, in particular, for young persons who only have very little land in their possession in comparison to older households²⁷. Faced with this type of insecurity, only economic development in other areas of the Rwandan economy could provide a solution.

The development of a land market linked the endogenous evolution of customary practices creates another form of economic insecurity; it causes the marginalisation of certain categories of households by the gradual loss of lands through distress sales. Land remains the main means of subsistence in a country where other sectors absorb little labour, and are still latent. An unequal division / redistribution of lands benefits a class of households which have income from off-farm activities (employment in the civil service, a business,

obligations (duty to take care of certain members of the family or lineage, e.g. separated sisters, ageing parents, the task of defending members of the family or lineage in court. See ANDRE, C., *op. cit.*, pp. 203-206.

²⁶ *Ibid*, p.206. A lineage’s power is measured in terms of the number of hands. The number of individuals belonging to a lineage or linked to it, determined the quantity of land cleared and cultivated, as well as the number of possible alliances with other lineages, i.e. the lineage’s capacity to use its relations to extend itself socially in space and time, expressions of the wealth and power in traditional society. (de Lame, *Les femmes et la terre. Evocation de quelques liens symboliques et réels*, Kigali, Réseau des Femmes Ouvrant pour le Développement Rural, 1990, pp. 23-24).

²⁷ In the survey conducted by André in 1998 and 1993, young households between 20 and 30 years of age had, on average, 5 times less land than those households between 50 and 60 years of age. See ANDRE, C.; PLATTEAU, J-P., *op. cit.*, p.28., BLAREL, B., *op. cit.*, p.75, GUICHOUA, A., *op.cit.*, p.379.

craftsmanship,..)²⁸. For this category of households, land purchases represent, above all, the investment of liquid assets in an environment where few investment alternatives exist.

A third type of insecurity is created by the land market : juridical uncertainty. Market transactions abound and multiply outside all written regulations, despite its legal prohibition. They have no legal protection and do not guarantee land access and occupation. The law, though it tries to limit and even avoid the process of land marginalisation by the development of a land market, does not respond to the evolution currently taking place.

The dual system of law/custom creates ambiguities and uncertainties concerning one's rights. It provides a large leeway to act in an opportunistic manner and to use the principles of either system in order to acquire or protect land access or occupation. However, the customary system, an alternative to the system of written law, is not codified and practices vary depending on space and time. This is characteristic of its operational modalities. Its flexibility allows the management of conflicts in order to preserve the social cohesion of communities at the level of the hills, but is not always successful in managing and responding to the current social and land evolution.

Insecurities also emerge from the co-existence of customary and legal authority for conflict resolution. State institutions are gradually replacing local one, thereby reducing the power of customary authorities who ensured, among other things, land management and exploitation as well as conflict resolution. Moreover, faced with the current land pressures and social changes, these local institutions can no longer handle all the land and social conflicts.

The customary system can no longer manage the evolution and consequences of local practices. Changes in the society have taken place at a very fast pace and the social institutions have neither been able to adapt nor control the simmering tensions, internal contradictions and the institutional dysfunctioning of the system. These tensions have increased the growing pressure on agricultural resources. Land access and occupation tend to be defined in terms of power relations.

2.3.3. Co-existence, Confusion and the Superimposition in Space and Time of the Principles of Access Resulting from Different Systems of Land Tenure

²⁸ GUICHAOUA, A., *op. cit.*, pp.379-380. The increases in inequality are, above all, the result of land purchases

The land issue in Rwanda is characterised by a confusion and superimposition in space and time of land claims, the latter in evolution and stemming from different systems of land tenure. There are numerous access systems, none of which guarantees total access and security regarding land occupation.

In fact, several customary rules form the basis for access to land :

- a principle of access reserved for the descendants of a family of land clearers (such as in the *ubukonde* or the *ingobyi y'igisekuru* system), which now has the tendency to exclude other members formerly considered as members of the community and thus recognised as those entitled to lineage lands;
- a principle according to which all members of a community have the right to lands of that community. The recognition of this principle is a claim made by those excluded from lineage lands;
- a principle founded on a political basis (as in the *isambu-igikingi* system). This system has also caused an exclusionary process and engendered land conflicts on the part of those marginalised from the land;
- a principle of purchase, recognised by custom, certified by an informal document, but not recognised by the law; the proliferation of market transactions also causes exclusion through distress sales and creates social insecurity (conflicts, thefts, reprisals,...).

In Rwanda, the access and occupation of certain lands may also come under several legal principles :

- a legal rule granting private property rights, as in the case of missions or lands situated in urban areas and certified by a land registration governed by written law. These modes of access have been, and sometimes still are, customarily contested : the rights of missions have been contested at the end of the 1950s. Furthermore, during the war of 1994, the Nyundo mission was the target of boundary-setting between the descendants of land-clearers' families : the latter did not cease considering the parish land as being theirs. By imposing a single system of recording private or individual land rights, the processes of

according to ANDRE, C; PLATTEAU, J.-P., *op. cit.*, pp.21-22.

- excluding those customarily entitled to land, risk being reinforced : it would support privative claims and categorically exclude those entitled with customary rights;
- the decision of a judicial authority which could be contested from the customary point of view and whose application is not juridically guaranteed;
 - a legal principle by which the State allocates a plot of land, certified by a certificate of occupation (such as after independence when the State allocated old plots of grazing lands *ibikingi*, or in scarcely populated regions, plots of “paysannat”). This principle could be contested by the former political land-holders who lost their lands, or by land-clearers’ families who have observed the State re-distributing their own land;
 - the legal principle of land occupation and cultivation during a certain number of consecutive years, which, from the customary point of view, is recognised as a principle of land appropriation and occupation for unoccupied / free lands, and which since 1960 is also principle recognised by the State.

The claims of access emanating from different land management systems co-exist, and are sometimes superimposed in time and space²⁹, and sometimes, even applied to different lands at the same time. These are the power relations which determine the mode of access to and occupation of lands. Tensions and conflicts are created within each of these systems when they become exclusive and those marginalised feel threatened at the level of their subsistence.

Moreover, the law does not respond in a way to better guarantee land access and occupation, on the contrary, in some cases, it causes more insecurities³⁰.

²⁹ In order to demonstrate this superimposition of different systems of land management and the problems of legitimacy which they raise, here are several sentences taken from an interview with land-clearers’ families (the *Abahirwa*). They “remain convinced that the *Tutsis* power, then that of the commune, have seized their own land to settle other families: “What we remember is that the *Ababandas* are living on *Abahirwa* lands. They arrived after the institution of *Tutsi*. They received land from their chiefs. (...). The provincial chiefs designated *Abahirwa* land on *Gafunzo Hill*. At that time, clearing land was no longer done. The provincial chiefs had the right to assign land to other persons. Afterwards, the land was seized by the government. It was all powerful, and it could not be said that this land had been taken by the clearers. Before, the first occupants held all the land rights. Even families whom joined them, first had to ask permission to settle there and, if necessary, pay a fee. Many families were settled by the first occupants after negotiations. In fact, this was done before the population growth. (...). One took enough land for himself and his children. Afterwards, the population increased. With the advent of administration, lands were seized. Laws replaced ancient forms of land acquisition. Consequently, it was understood that henceforth, all land belonged to the State. It is the State which took the decision to give land to persons of little or no means.” in MIGEOTTE, F., “Une colline rwandaise à travers ses pratiques d’élevage”, in *op. cit.*, p. 36.

³⁰ Polygamy is recognised by custom but not by the law, thus, the law cannot guarantee the rights of women in polygamous marriages; under the “ancient” customary system, their access as well that of their children is recognised.

The former *isambu-igikingi* and *ubukonde* systems of land rights, nevertheless, always are a reference system in collective memory, even though they are no longer applied in the same way. This principle of allocating a plot of land to returning emigrant is permitted (even if there is an increasing tendency to contest this), but it has incited and continues to incite numerous fears given the claims and effective return of “old” refugees. The occupants of pastures which were formerly redistributed or allocated to farmers after 1959, mainly in the East of the country, grazing lands converted into “paysannats” in the South, or cultivated marshes, fear that their access and occupation will be disputed on the basis of a principle of access and occupation which is older than theirs, from that moment on the first in relation to theirs and which, consequently, can be imposed; still others fear that their access to land may have come from an ancient system of land management which was modified following the departure of the former political authorities and according to the legislative measures taken after the bloody events of 1959. At the time of the Arusha accords, fear of the thought of a return of refugees from 1959 was as much (if not even more) the result of a fear of claims for former political and land rights lost rather than a purely demographic issue. If the State bestowed permanent and individual usufruct to all inhabitants of its territory from 1960 to date, this principle, recognised by the State since 1960, could be questioned by the present government which should manage and respond to the land needs of the “old” refugees who fled the country in 1959, 1973 and 1990. Faced with movements of the population since 1994, Rwanda is confronted with, on the one hand, the question of land access and occupation, and, on the other hand, the ability of agricultural production currently in crisis, to make the country self-sufficient.

3. THE ECONOMIC SITUATION OF THE AGRICULTURAL SECTOR

According to the latest statistics, 90% of the population depend exclusively on agriculture for their survival while only 70% of the required nutritional needs are met³¹. The population was estimated at 7.666 million persons in June 1997³², while the agricultural situation has been on the decline since the mid-1980s. Rwandan agriculture has adapted to the growing population pressure, however, over the past fifteen years, it has shown some signs which could be interpreted as limits to the land exploitation and management system.

3.1. Demographic Evolution - Changes and Structural Limitations

The issue of adapting land exploitation systems to the demographic pressure opposes advocates of two approaches : subscribers to Boserup's³³ thesis, on the one hand, and those to that of Malthus on the other. The Boserupeans affirm that land exploitation and management systems adapt to the increasing population pressure by developing innovations thanks to the intensification of land exploitation systems, thereby allowing the continuation of growth of agricultural production in keeping with population increase; as for the Malthusians, they think that production systems reach their limits, causing a fall in total production when a certain population burden is reached (according to the law of decreasing returns).

The last estimates taken during the 1991 census puts the Rwandan population growth rate at 3.1% per annum, for the decade of 1980-1990³⁴, an exceptionally high rate. The density of the Rwandan population is 303 inhabitants per km²³⁵. Has this population increase been an engine for change, evolution and adaptation of the agrarian system (confirming the Bosrupean premise)? Or, could the structural crises within the agrarian system be interpreted as limits to

³¹ FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, *Special report. FAO/WFP crop and food supply assessment mission to Rwanda*, Rome, FAO, July, 1997, p.13.

³² REPUBLIQUE RWANDAISE, MINISTERE DES FINANCES ET DE LA PLANIFICATION ECONOMIQUE, OFFICE NATIONAL DE LA POPULATION, *Enquête socio-démographique 1996. Rapport final. Volume 1. Résultats sélectionnés*, Kigali, janvier 1998, p.12.

³³ BOSERUP, E., 1965 "The Conditions of Agricultural Growth - The Economics of Agrarian Change under Population Pressure", London, George Allen and Unwin.

³⁴ REPUBLIQUE RWANDAISE, *Recensement général de la population et de l'habitat au 15 août 1991. Enquête postcensitaire. Septembre 1991. Résultats et analyse*, Kigali, Ministère du Plan, Service national de recensement, 1993.

³⁵ REPUBLIQUE RWANDAISE, MINISTERE DES FINANCES ET DE LA PLANIFICATION ECONOMIQUE, OFFICE NATIONAL DE LA POPULATION, *op. cit.*, p.10.

the adjustment limits of the system to the increasing population pressure? Or, should one analyse the crisis in the system from a less reducing point of view, bearing in mind non-demographic factors such as politics, economics, institutional and social?

Generally speaking, authors who analyse the evolution of the agrarian system admit that there have been some intensification and adaptations, but also recognise some limitations of the system, without really being able to present the required empirical “proof”, mainly due to a lack of large scale systematic data covering a long period.

In fact, food production doubled between 1962 and 1969³⁶ and between 1970 and 1983; the growth rate of agricultural production was, on average, 4.2% per annum, i.e., slightly above population growth estimated at 3.6%/year³⁷. These adaptations were possible mainly as a result of the cultivation of new plots of land (marginal lands, former grazing lands and swamps, the creation of “paysannats”, etc.), and, in a limited way, some intensification of agriculture (permanent cultivation of soils, the adoption of more productive varieties, limited adoption of organic fertiliser, the association of agriculture with cattle-raising)³⁸. Between 1970 and 1983, average returns did not increase noticeably³⁹, they declined from 1984-85⁴⁰ and agricultural production began to decrease in 1985-86⁴¹. According to Maton, these years marked the point of inflexion of agricultural production, namely, the point from which the growth of agricultural production slows down. In his opinion, if numerous adaptations were adopted and realised up to a certain point, the agricultural system reaches its limits for adaptation and a Malthusian process is started⁴² : this sudden decrease in agricultural

³⁶ NTEZILYAYO, A., «L’agriculture à l’horizon 2000 ou comment doubler la production vivrière au Rwanda», in *Tiers Monde*, n°106, avril-juin 1986.

³⁷ DELEPIERRE, G., *Evolution de la population et des terres disponibles*, Kigali, 1985.

³⁸ DELEPIERRE, G., *Les besoins en superficie pour les cultures*, 1982; BART, F., *op. cit.*, pp.303-321; ANDRE, C., *Evolution des systèmes d’exploitation et des droits fonciers. Le cas du Rwanda. Seconde version*, Mémoire de Maîtrise en Sciences Economiques et Sociales, Namur, Facultés Universitaires Notre-Dame de la Paix à Namur, 1989, pp.204-236; MIGEOTTE, F., «Marché de location du bétail au Rwanda: une approche par l’analyse des contrats», in *Revue d’Economie du Développement*, n°1, 1997, pp.61-103.

³⁹ DELEPIERRE, G., *op. cit.*, 1985.

⁴⁰ MATON, J., *Développement économique et social au Rwanda entre 1980 et 1993. Le dixième décile en face de l’apocalypse*, Gand, Université de Gand, 1994, p.29.

⁴¹ *Ibid*, graphique n°1.

⁴² This vision is shared by several other economists, agronomists and demographers, who, for the past number of years have been predicting a rupture in the agrarian system and/or who interpret the violent events of 1994 as social consequences of the fall in agricultural productions. See for e.g. SLEDSSENS, G., *L’explosion démographique au Rwanda. La place du planning familial*, Genève, Douglas Deane, 1971, p.13; PREFOL, P., DELEPIERRE, G., *Disponibilité et utilisation des terres au Rwanda. Situation actuelle et perspectives*, Kigali, Ministère du Plan et des Ressources Naturelles, Rubona, Institut des Sciences Agronomiques du Rwanda, novembre 1973; MARYSSE, S., «Income distribution and political economy of Rwanda», in EUROPEAN ASSOCIATION OF DEVELOPMENT RESEARCH AND TRAINING INSTITUTES, *Emerging development*

production and particularly, caloric production, would be one of the explanations for the eruption of violence in 1994.

Other authors qualify this point of view which, in their opinion, is too reducing and mechanical. They question the lack of data over a long period, reveal other causal factors for the decline in agricultural production, highlight local and regional disparities and note the adaptations and innovations made by the farmers. They believe that limits to the intensification are the results of several constraints in the economic environment (limited availability of organic manure, distribution and lack of packages of chemical fertilisers adapted to the needs of farmers, lack of incentives in the economic environment such as a remunerative and encouraging market for crops⁴³, etc.

The crisis in the agricultural sector during the 1980s and the beginning of the 1990s cause a decline in agricultural incomes, the almost non-existence of off-farm revenues, an increasingly unequal land and income distribution to the detriment of the rural population⁴⁴. “*More than a permanent land crisis of the production systems, this concerned a larger crisis in the farming economy in a phase of rapid expansion of economic differentiation*”⁴⁵. Entire social systems were not able to adapt in order to meet and respond to these changes and allow the agrarian system to come up with innovations⁴⁶.

Given the recent population movements, the government is confronted with the re-settlement of a part of the refugees within the agricultural sector.

patterns: European Contributions Budapest, Institute for World Economy of the Hungarian Academy of Sciences, 1983, p.205; KING, M., «Demographic entrapment», in *Transactions of the Royal Society of Tropical Medicine and Hygiene*, n°87, 1993, pp.23-28; MAY, J.-F., *Urgences et négligences: pression démographique et réponses politiques au Rwanda* (1962-1994). Thèse de doctorat en démographie, Tome 1, Paris, Université Paris V - René Descartes, 1996.

⁴³ NEEL, H.; WILLAME, J.-C.; COUSSEMENT, I.; VANDEPUTTE, R., *Rapport de mission d'identification du programme de coopération agricole, Kigali*, Coopération belgo-rwandaise, octobre 1986, p.31; and if the prices of food crops increased at the beginning of the 1990s, these price increases were totally absorbed the increasing profit margins of the traders. (MATON, J., *op. cit.*, 1994, pp.32-33). Moreover, some crops benefited from a favourable market e.g. in the North-West of country - rice, potatoes, or even coffee (when the rate was sufficiently stimulating), tomatoes (which benefited from the demand of one company which canned it for export), enjoyed intensification measures (e.g. fertilisers, etc.). Cultivation of these crops generated enough revenue to allow farmers to invest a part of their income in fertiliser, phytosanitary products, buildings, etc.

⁴⁴ MARYSSE, S., DE HERDT, T., NDAYAMBAJE, E., «Rwanda. Appauvrissement et ajustement structurel.», in *Cahiers Africains*, n°12, Paris, l'Harmattan, 1994; MATON, J., *op. cit.*, pp.26-34; WILLAME, J.-C., "Aux sources de l'hécatombe rwandaise", *Cahiers Africains*, Bruxelles, Institut Africain-CEDAF, Paris, L'Harmattan, 1995.

⁴⁵ ANDRE, C., LAVIGNE DELVILLE, P., *op. cit.*, 1998.

⁴⁶ ANDRE, C.; PLATTEAU, J.-P.; *op. cit.*; DE LAME, D., *op. cit.*

3.2. Recent Population Movements and Consequences on the Land

The estimated population in Rwanda in 1996 before the “great” return of refugees was 6,167,000, rising to 7,651,800 in June 1997, compared with 7,157,551 in 1991⁴⁷. In less than one year, the population of Rwanda increased by almost 25%. In 1991, the average population density for all of Rwanda was 283 inhabitants per km², and is presently estimated at 303 inhabitants per km². Ruhengeri and Kigali have an extremely high population density (between 400 and 500 inhabitants/km², while the eastern prefectures have low densities (about 180 inhabitants/km²)⁴⁸, despite the massive population movements they have experienced.

Estimates of the different waves of repatriated settlers put the number of “old” refugees who left Rwanda over 10 years ago and returned to Rwanda between 1994 and 1996 at 780,000⁴⁹. They accounted for about 13% of the population in 1996 and are 10% of the current population. The prefectures in the east of the country have seen an almost 100% increase in the growth rate of their population; for the prefecture of Kibungo (in February 1997, the latter had over 46.3% of “new” refugees⁵⁰). In Byumba, this is 21.5% (which is 1/3 “new” refugees in its population), while the western prefectures (Gisenyi, Ruhengeri and Cyangugu have seen an increase of 15 to 20%)⁵¹. One can expect land disputes to be more acute in these areas, despite the low population density.

These different numbers raise questions regarding the (re)integration of these refugees in Rwanda, land access and occupation and the capacity of Rwanda to accommodate them. What are the principles and policies of the Rwandan government?

⁴⁷ MINISTRY OF FINANCE AND ECONOMIC PLANNING AND NATIONAL OFFICE OF POPULATION, *Socio-demographic survey 1996 - Revised preliminary report*, Kigali, 1997, July, p.92; INTERNATIONAL ORGANIZATION FOR MIGRATION, UNITED NATIONS DEVELOPMENT PROGRAM, RWANDAN NATIONAL OFFICE FOR POPULATION, MIGRATION INFORMATION MANAGEMENT UNIT, *Population movements and reintegration needs in Rwanda, map series, first edition*, 1997, pp.7, 26 et 31.

⁴⁸ INTERNATIONAL ORGANIZATION FOR MIGRATION, UNITED NATIONS DEVELOPMENT PROGRAM, RWANDAN NATIONAL OFFICE FOR POPULATION, MIGRATION INFORMATION MANAGEMENT UNIT, *op. cit.*, pp.7 et 31.

⁴⁹ REPUBLIQUE RWANDAISE, *Table Ronde 1996 sur le Rwanda. Aide alimentaire et développement*, Genève, 1996, p.4.

⁵⁰ INTERNATIONAL ORGANIZATION FOR MIGRATION, UNITED NATIONS DEVELOPMENT PROGRAM, RWANDAN NATIONAL OFFICE FOR POPULATION, MIGRATION INFORMATION MANAGEMENT UNIT, p.48.

⁵¹ *Ibid*, p. 41.

4. LAND ACCESS PRINCIPLES ESTABLISHED BY THE ARUSHA ACCORDS

In order to manage recent population movements and their access to land, Rwanda has recently made several arrangements : the Arusha Accords set forth several principles for land access and occupation for the category of refugees returning to Rwanda after a long period of absence, while preserving and confirming the access and occupation of lands by its occupants. For one part of the refugees, the Arusha Accords grant refugees new lands (reserved for the National Park) in the north-east of Rwanda, and, for the other part, leaves the issue of re-accommodation and re-integration to the State. A land reform is currently being elaborated and spearheaded by the Ministry of Agriculture and Cattle-raising. However, once again, one observes that the principles emanating from the State are not applied in a strict and precise fashion, and, consequently, land and social insecurity are perpetuated. Faced with this situation, the issue of the “hidden” strategy⁵² of the Rwandan government is raised again, but not explicitly stated (and widely feared by land occupants before 1994) and who could, fuelled the land claims of “old” refugees, be tempted to use the arguments of the economic necessity for land reform to proceed with a complete redistribution of lands. Without an overall development policy, the issue of increasing land scarcity facing Rwanda, will not be resolved.

The Arusha Accords mainly aim to control refugees’, displaced and repatriated persons’ access to land. They recognise the returning resident’s priority occupation rights to lands which were left a maximum of ten years ago, but, regarding “{...} refugees who left the country over ten years ago, {they} should not reclaim their property which has been occupied by other individuals”⁵³ (article 4, line 2 of the protocol of the Accord, June 9th, 1993 on the repatriation of Rwandan refugees and the re-settlement of displaced persons). For the latter, the State is responsible for granting them other lands : “for the settlement of repatriated persons, the Rwandan government should make lands available which are not presently occupied by individuals”⁵⁴.

The first settlement of refugees began on a section of land in Umutara, the former hunting ground of the National Park. In 1994, five main sites had been identified: in the

⁵² An issue raised in the work entitled «Imidugudu». *Assessment of housing and land reform plans in Rwanda*, Kigali, May 1997, p.33.

⁵³ Translated by the author.

Umutara region (58,000 ha.), Kibungo (64,500 ha.), Bugesera (7,800 ha.), Mayaga (245 ha.) and Gisenyi (14,634 ha.)⁵⁵. On the whole, these marginal lands when compared with all Rwanda, are earmarked as grazing lands.

The first waves of refugees who returned after the war of 1994, mainly comprised “old” refugees from 1959 and 1973, and were estimated at 780,000. Some of them went to the cities while others settled in rural areas. The issue of “illegal” land occupation rapidly appeared, mainly in the cities. This issue is also raised from the end of 1996, when there were massive repatriations of “new” refugees from Zaire or Tanzania, on whom the Arusha Accords bestowed priority access to lands which they had left three years hither. Faced with the massive arrival of these different waves of refugees and repatriated persons in need of (re)settlement, the State is confronted by diverse problems of organisation, the means and capacity to accommodate them, i.e., the allocation of plots of land and accommodation to old refugees who occupied lands which they had to surrender to the occupant recognised as having priority access according to the Accords.

5. RE-HOUSING, RE-SETTLEMENT, REHABILITATION AND REDISTRIBUTION OF LANDS

Faced with the massive arrival of landless refugees, the State spearheaded an emergency “volontarist” policy, i.e., the construction of clusters of accommodation on communal lands in rural areas. The creation of these villages fits into a larger framework of development of economic poles in rural areas and should, in the long and medium-term attract a section of the landless population and re-group the rural population. This villagisation of the rural population fits into the framework of land reforms led by the Ministry of Agriculture and Cattle-raising, which seeks to free up agricultural lands.

⁵⁴ *Op. cit.*

⁵⁵ MINISTÈRE DE LA REHABILITATION ET DE L'INTEGRATION SOCIALE, *Problèmes du rapatriement et de la réinstallation des réfugiés rwandais - propositions de solutions*, Kigali, décembre 1994, pp.23 et suivantes.

5.1. The *Imidugudu* : A Voluntarist Policy of the Government - Difficulties, Practices and Consequences

The villagisation project presently comprises 150 villages in the process of creation⁵⁶ bringing together between 100 to 150 families. In January 1997, estimates suggested that only 3% of the needs for the construction and rehabilitation of houses were covered (for the eastern prefectures which accommodated the largest number of refugees, only 2.11% of the needs were met in Byumba, while only 1.50% for Kibungo⁵⁷). However, some sites are seen to be inappropriate while others have never been occupied. In fact, in rural areas, some sites chosen communal lands, artificially constructed, do not meet certain conditions for their commercial and economic development (proximity to a major road, key crossings for different agricultural zones, school and administrative infrastructure,...); for budgetary reasons, some of the accommodation are seen to be too small and do not correspond to the households' needs; some sites do not have enough sanitation infrastructure, the size of the allocated plots of land refer to the plot sizes in urban areas (i.e., some ares (6-12 ares) which does not offer the possibility for an alternative to agricultural revenue, while waiting for the village to develop, and the possible allocation of a field or banana plantation is still unclear. Henceforth, the inhabitants refuse to leave the plots of land they have been occupying temporarily, to go and live in these sites where their security is also not guaranteed. In fact, these sites are initially destined for some categories of "old" refugees, survivors of the genocide who left their hill in search of land elsewhere, then for young landless persons who abandon agriculture. However, some categories of persons fear being grouped together in villages in "mono-ethnic" sites and for their own security. On the contrary, landless young persons whom the State forces to into these villages, see this step a willingness to control the population.

The low levels of agricultural production achieved during the first period of production in 1997, could be explained in part by the insecurity of land tenure prevalent in rural areas.

⁵⁶ BARRIERE, O. *op. cit.*, 1997, p.41.

⁵⁷ MINISTERE DE LA REHABILITATION ET DE L'INTEGRATION SOCIALE, *op. cit.*, p.57.

5.2. Land Redistribution

The lack of sufficient and abandoned communal lands to re-settle refugees, has led some officials in prefectures in the east of the country to take the initiative either to divide some plots of land between “old” and “new” refugees, or to redistribute large pieces of land. In order to maintain land areas large enough to guarantee their viability to be exploited by two families (that of the priority occupant and that of re-settled person). Two plots of 0.7 ha. or more depending on the family size, are re-distributed. If the allocated area allows one to guarantee the viability of exploitation, and even if minimum advantages are guaranteed to those who share their own lands (as the choice of plots of lands they wish to exploit), this situation can create several types of tensions : on the one hand, decisions coming from individual burgomasters, seemingly endorsed by the government, but which are not part of a clear policy on the part of the latter⁵⁸. Furthermore, these land redistributions are not within the legal framework of the Arusha Accords or of any other governmental decision which is binding⁵⁹. The law is not applied, and alternative decisions of individuals are emerging which could create areas of uncertainties and insecurities.

That being the case, what is the status of these land transfers? These divisions and redistributions of large properties, are they temporary (awaiting the construction of accommodation and allocation of other plots of land) or permanent? And, in the latter case, what judicial security and guarantees are given to not only the beneficiary but also the priority occupant? No legal document ensures the security of land tenure. In conformity with the Arusha Accords, the new occupants could fear being forced to leave these lands to be relocated in a village or on another piece of land, allocated by the State, or still, legal proceedings by the priority occupant (although this possibility seems hardly likely in the present context), or still, reprisals and violence on the part of the latter, even more likely if the neither the State nor the new occupant makes no compensation whether monetary or in kind (cattle,..) for his

⁵⁸ Proposition for radical reforms, e.g. that the land redistribution had been foreseen in an official document as the regrouping of plots of land or a villagisation of the population (see : REPUBLIQUE RWANDAISE, MINISTERE DE L'AGRICULTURE et PNUD, *Rwanda: la question foncière après la guerre*, Kigali, décembre 1996, p.52); other documents from international organisations evoke land redistributions, e.g. WORLD BANK, *Memorandum of the president of the international development association to the executive directors of the World Bank Group for the rwandese republic*, Washington, March 1998.

loss. Expropriated of a part of his lands, the priority occupant does not receive any type of compensation from the State or beneficiary, making this transaction even more unclear. This situation could also create tensions in scarcely populated areas where the average available areas are largely inferior to the minimum areas allocated to newly-resettled persons.

5.3. Multiple Access to Grazing and Agricultural Lands

The sites hosting “old” refugees are those ear-marked mainly as high altitude grazing lands bordering forests (e.g. Gisenyi), or even marginal lands in scarcely populated regions (e.g. Umutara, the of Bugesera or Kibungo). These sites mainly accommodated shepherds in search of areas whose agro-climatic characteristics were relatively similar to those regions they had left behind (Uganda or eastern Zaire). However, the hosting sites as well as their accommodation capacity are limited given the mode of cattle-raising practised and the quality of the land. This is a very important issue for Umutara, which, despite the vast expanse of free lands, in reality, can only support a maximum of 200,000 heads of cattle on condition nonetheless that the mode of cattle-raising is intensified. The current situation tends towards this balance : 700,000 heads of cattle arrived in 1994, of which 200,000 were repatriated relatively rapidly to Uganda, while the stock loss in progress accounts for approximately 250,000 animals (because of illnesses or the transfer of cattle to South and North Kivu, as a result of the re-opening of markets and stabilisation of the region). Moreover, measures are also foreseen to grant 2 ha. plots of land to families who so desire. For agronomists, this is only possible if “prestigious” cattle-breeding is transformed into one that is semi-intensive and more viable⁶⁰, and requires massive investments in labour and development of grazing lands capable of supporting the existing cattle burden.

There is some amount of population pressure which could give rise to tensions within communities or between farmers and cattle-raisers whenever land access is neither regulated nor defined in a clear and unambiguous manner.

⁵⁹ Nevertheless, in some reports, land redistributions are evoked as a solution to the re-insertion and re-settlement of refugees in rural areas.

⁶⁰ Current average milk production does not exceed one litre/cow/day.

The issue of multiple access to land, remains a delicate one in the past and present history of Rwanda and in other regions of the world, because it has led to the exclusion of cows' land rights to the benefit of the right of the hoe, even though in numerous regions of Rwanda, there is some complementarity, based on ancient practices which facilitate multiple access to lands (both pasture and agricultural) and even if some types of exchange and reciprocity (fodder in exchange for manure, labour for cattle, etc.), offer numerous opportunities for co-habitation, remunerative exchanges and help to highlight the advantages of intensifying cattle-breeding and agriculture⁶¹. These exchanges (such as those of cattle, labour and crops) are being observed in the east of the country, between grazing and agricultural regions of the Ugandan border, in Umutura and Kibungo. These exchange networks favour the economic expansion of these regions in the east of the country. Nevertheless, this solution linking agriculture and cattle-raising, which the previous government advocated for a number of years, has been side-lined in favour of an exclusive specialisation on agriculture.

5.4. The Social and Economic Consequences of Land Insecurity

The sources of land insecurity are to be found, on the one hand, in the fact that the law, whose foundations regarding the re-settlement of refugees and repatriated persons are expressed in the Aruhsa Accords, is not applied, mainly because the State does not have the capacity (in land and accommodation) to guarantee a minimum means of subsistence for the population, by guaranteeing them land access and occupation. Whenever government measures and laws are not applied, or are only poorly or partially applied, this situation could create uncertainties related to land access, feelings of insecurity, abusive appropriations and expropriations (depending on the principle of whoever manages to impose himself), situations perceived as being unjust, tensions, violence and conflicts which, if not resolved in a clear and precise manner, favour a climate of impunity. Social and land tensions could be reinforced in

⁶¹ Voir MIGEOTTE, F., «Marché de location du bétail au Rwanda: une approche par l'analyse des contrats», in *Revue d'Economie du Développement*, n°1, 1997, pp.61-103. Moreover, it seems rather that the Government is moving towards a policy of regional specialisation, which would aim to increase grazing lands in regions of low productivity, but, with a high population density, as in the regions of the North and North-west, of the Crête Zaire-Nile. Therefore does the government rule in favour of the cow?

some regions because of relative land scarcity, low agricultural production and a lack of off-farm opportunities.

Furthermore, the Arusha Accords sought to protect recent occupants' access to land, knowing that most of the lands abandoned in 1959 and 1973, had been re-distributed and occupied by migrants. Under the Accords, the latter are viewed with disfavour, as they will not be able to re-claim either the scope of their rights or the lands they occupied before their departure. When in fact, currently estimated at 800,000 persons, they constitute a relatively important political force for the current government and could re-claim other types of rights and lands than those granted to them under the Arusha Accords. This point could provide some insight into the tacit support of the government, faced with land divisions and redistributions by the mayors of prefectures in the east of the country where the issue of land access is even more acute, given the magnitude of the waves of refugees (old and new) who have (re)settled there, in return, this aspect could also make priority occupants fear other measures which would remove all or a part of their land access rights (a legitimate fear justified within the framework of land reform).

6. LAND REFORM UNDERTAKEN BY THE MINISTRY OF AGRICULTURE

As we have already seen, in 1960 dualism subsisted between both land systems, customary and written law, which land reform projects in 1967, 1978, 1991 and 1997, attempted to resolve by unifying the land law, taking care of aspects such as the exploitation and effective land management, as well as the equal distribution of lands. Several land reforms proposals were made in 1967, 1978 and 1991, in the direction of unifying Rwanda's land law, notably, by proposing the institution of individual property, as defined under the Napoleonic code and by organising, through widespread registration, the conversion of customary land "rights" into private property rights⁶². Concerned for social equity, the 1967 project sought to impose not only a minimum land area but also a maximum for those expanses held as private

⁶² REPUBLIQUE RWANDAISE, MINISTERE DE L'AGRICULTURE ET DE L'ELEVAGE (SERVICE DES TERRES), *Avant-projet portant code de réforme foncière*, Kigali, août 1967, pp.36-42; REPUBLIQUE RWANDAISE, *Projet de code foncier et agraire*, Kigali, mars 1978, pp.26-32; BOUDERBALA, N., *op. cit.*, 1991; GASASIRA, E., *Imbanziriza-Mushingira w'itegeko rigenga ubutaka mu Rwanda. Avant-projet de loi*

property, in order to avoid launching an unequal process and to ensure equitable land distribution⁶³; that of 1978 did not seek to do more. Out of concern for efficient land exploitation, the 1967 and 1978 projects deal with the issue of regrouping of lands in order to regulate the problem of land fragmentation. They regulated by limiting land fragmentation in order to guarantee heirs an economically viable land area⁶⁴. The 1967 and 1978 projects place limitations on property rights in rural areas in order to allow the State to play a more directive role through the possibility of imposing certain agricultural directives, seeing to efficient land management by enforcing cultivation under the threat of loss of rights, i.e. by imposing certain duties on the farmer, limiting land transfers but by recognising nevertheless, his possibility to mortgage his land to obtain formal credit for land improvement investments⁶⁵.

Barrière is the current driving force behind recent land reform (but perhaps, is not the last).

6.1. Basic Principles⁶⁶

The objectives of this land reform are not very different from the previous ones : to find a solution to the dualism which exists between written law and custom, and the multiplicity of customary land access principles to facilitate efficient land management and guarantee land rights, but also to allow the State to implement an agricultural development strategy to achieve food security. Barrière, however, proposes a different approach : noting that the imported written law is not legitimised, he proposes to start from reality, dynamics and local practices and to move from a situation of oral rights to one of written law : some customary practices would be legalised and would gradually become a juridical reference⁶⁷. The author breaks new ground in the field of *ubukonde* and *isambu-igikingi* customary systems⁶⁸.

portant sur le régime foncier au Rwanda, Kigali, Ministère de l'Agriculture et de l'Élevage, du Développement et de l'Environnement rural, décembre 1997.

⁶³ REPUBLIQUE RWANDAISE, MINISTERE DE L'AGRICULTURE ET DE L'ELEVAGE (SERVICE DES TERRES), *op. cit.*, 1967.

⁶⁴ REPUBLIQUE RWANDAISE, MINISTERE DE L'AGRICULTURE ET DE L'ELEVAGE (SERVICE DES TERRES), *op. cit.*, pp.26-35. REPUBLIQUE RWANDAISE, *op. cit.*, pp.16-24.

⁶⁵ REPUBLIQUE RWANDAISE, *op. cit.*, 1978, articles 81, 85-88.

⁶⁶ MINISTERE DE L'AGRICULTURE ET DE L'ELEVAGE, *Réforme foncière*, Kigali, 1997.

⁶⁷ BARRIRE, O., *op. cit.*, pp. 4-5.

⁶⁸ For him "The strategy is not to oppose custom to State law, but rather to begin with the logic of the existing social system and the modalities regulating tradition (...). Instead of re-defining custom and claiming a rather

According to Barrière, the “traditional” land systems of *ubukonde* and *isambu-igikingi* are characterised by a great hold of political power over the land (the head of the land-clearers/settlers lineage *umukonde* or the *mwami*): the political authority grants usage rights to individuals and places them in a relationship of allegiance; in exchange for these rights, the individuals have duties and obligations (payments, fees, etc...) towards the political authority, as well as duties pertaining to land cultivation, and in cases of disobedience or even escheat or the abandonment of lands, the political authority reserves the right to reclaim the land and to allocate it to someone else (under the *ubukonde* and *isambu* systems). Consequently, individuals do not have exclusive and absolute rights (which also means the right to dispose of) lands they occupy, which is characteristic of the right to private property.

According to the author of the reform, under the customary system, land is not considered as a good : even if sales are frequent, they do not concern the land itself, but rather an individual’s rights to this land and the sales remain socially repressed. Hence, individuals’ relationship to the land is not one of appropriation, but rather rests on one of patrimony : individuals do not appropriate land for themselves, but exercise the right to exploit a part of the patrimony which they should manage, and on which the extended family, the lineage, or even the political authority retains a certain degree of control, even though the latter’s authority and role in land management has decreased over time. Barrière starts from the principle that *ubukonde* rights have been greatly influenced by the *isambu-igikingi* regime during the colonial period when the *mwami* was the ultimate holder of rights to conceded lands. He transposes this relationship of patrimony to the national level : land should be considered as national patrimony, a factor of production and a site of settlement, and no longer as the property of the State or an individual⁶⁹. This act of viewing land as patrimony means that the inhabitants have *rights to use* the land, but these rights go together with certain *duties* (not to claim the land for speculative ends, duty to cultivate and use it in an efficient manner, protect it in a spirit of sustainability, etc...). If these duties are not respected, the State reserves the right to re-claim the land and to allocate it to someone else. According to this concept of land as patrimony, the

impossible return to tradition, a new law (positive written law) should be found, legitimised by the populations and adopted by the State, using taking inspiration from the past.”(BARRIERE, O., *op. cit.*, p.16).

⁶⁹ In 1960, the State replaces the *mwami* as owner without usufruct of the lands. Power is delegated to the communes, which in turn, allocate exploitation rights to lands which were not settled in a customary manner. The *isambu* system becomes rather widespread.

occupant is responsible for his land while, the State “*is the guarantor of the land and environmental patrimony of the country and should ensure its management*”⁷⁰, should manage lands in such a way as to ensure economic development and the protection of the environment. In order to avoid land fragmentation, usage rights are granted to a family group (corresponding to the *inzu*) and succession is established patrilineally⁷¹. The author rehabilitates the *Gacaca* institution for land management and conflict resolution⁷². Considering the land as patrimony, means that the patrimony of the family becomes jointly-held from a certain land area to be determined, and is managed by the head of the family who is designated by other family members⁷³. Usage rights could be registered while written reports regarding conflicts will be recorded by the Communal Land Bureau. As the holder of rights which are linked to the land, the farmer could rent, purchase and sell them, use as collateral, exchange, give and lend them (within the confines of law of 1976); contracts are registered at the level of the commune. The State manages these land transactions with the concern for an efficient reallocation of lands by means of the communes : the Land Bureau has a pre-emptive right to purchase for the benefit of the National Land Reserve or eventually, to re-distribute the land to a third party; neighbours have a priority right of acquisition with a view to regrouping plots of land⁷⁴. However, this natural land reserve could meet the needs for and offer lands to new applicants (including repatriated persons in particular) and will serve as the relay between demand and supply. Hence, the States delegates its power to control efficient land management (land inventory and control) and the registration of lands rights⁷⁵ to the communes, and more specifically, the Communal Land Bureau. This reform is still in the project stage and requires further elaboration.

⁷⁰ MINISTERE DE L'AGRICULTURE, DE L'ELEVAGE, DE L'ENVIRONNEMENT ET DU DEVELOPPEMENT RURAL, *op. cit.*, p.112.

⁷¹ BARRIERE, O., *op. cit.*, pp.33-34; et MINISTERE DE L'AGRICULTURE, DE L'ELEVAGE, DE L'ENVIRONNEMENT ET DU DEVELOPPEMENT RURAL, *op. cit.*, 1997, pp.115 et 117.

⁷² BARRIERE, O., *op. cit.*, p.37; MINISTERE DE L'AGRICULTURE, DE L'ELEVAGE, DE L'ENVIRONNEMENT ET DU DEVELOPPEMENT RURAL, *op. cit.*, 1997, p.119.

⁷³ BARRIERE, O., *op. cit.*, 1997, pp.31-32 et MINISTERE DE L'AGRICULTURE, DE L'ELEVAGE, DE L'ENVIRONNEMENT ET DU DEVELOPPEMENT RURAL, *op. cit.*, 1997, p.115.

⁷⁴ MINISTERE DE L'AGRICULTURE, DE L'ELEVAGE, DE L'ENVIRONNEMENT ET DU DEVELOPPEMENT RURAL, *op. cit.*, 1997, p.116.

⁷⁵ MINISTERE DE L'AGRICULTURE, DE L'ELEVAGE, DE L'ENVIRONNEMENT ET DU DEVELOPPEMENT RURAL, *op. cit.*, 1997, p.122.

6.2. Strong Points for Boosting Agriculture

According to the Rwandan government, the structural problem facing agriculture is a result of excess land fragmentation, low yields due to the over-exploitation of lands and farmers impossibility to generate enough income allowing them to invest in land improvements, very similar land cultivation systems and high population growth⁷⁶. In order for agriculture to overcome this impasse, several measures have been taken : land becomes jointly-held from a minimum land area considered from the point of view of economic viability and profitability and especially, conservation. On the one hand, this measure aims to make it easier for farmers to keep a sufficiently large area for cultivation in order to earn enough income, so that a part may be re-invested in intensification methods, and, on the other hand, to limit the fragmentation of plots of land by right of inheritance. Other measures aim to limit, and even prevent the fragmentation of lands, the spread of settlements by favouring their consolidation (e.g. banning new *ingo* housing constructions outside a certain family's perimeter) stimulating, in this way, land consolidation).

The State is the agent overseeing efficient land exploitation by imposing duties on the farmer to protect and preserve the land in a sustainable way. The government's policy is to transform the "traditional" and autarkic subsistence mode of farming, into one which is more intensive, specialised according to agro-climatic conditions, as well as being diversified thus allowing a surplus to be made which could then be sold in the markets⁷⁷. Starting with the projections for population growth, the capacity of different lands in Rwanda to bear the population burden⁷⁸, declining productivity in agricultural regions, the necessity to ensure food security for the population and to increase incomes in rural areas, the government is proposing the restructuring of production systems and placing a financial value on lands,

⁷⁶ MINISTERE DE L'AGRICULTURE, DE L'ELEVAGE, DE L'ENVIRONNEMENT ET DU DEVELOPPEMENT RURAL, *op. cit.*, Kigali, juin 1997, p.7.

⁷⁷ MINISTERE DE L'AGRICULTURE, DE L'ELEVAGE, DE L'ENVIRONNEMENT ET DU DEVELOPPEMENT RURAL, *op. cit.*, Kigali, juin 1997, p.16-24; See also synthèse p.56 "réorientation des systèmes de production".

⁷⁸ The capacity of population burden is calculated according to the returns of various types of land utilisations, which are then expressed in monetary terms.

thanks to agricultural diversification and specialisation depending on the type of land⁷⁹. Land reallocation could take place on the basis of the criteria of financial profitability.

Intensification measures would focus on highly productive lands, while lands with low productivity would be reallocated to other more profitable uses such as cattle-breeding, logging or tea cultivation⁸⁰. According to the land reform, the State would be the agent overseeing efficient land exploitation and would have the right to seize lands and assign them to more efficient farmers. The social cost of this operation is high “(...) *considering the enormous investments needed to achieve the threshold of profitability, by the year 2010, there will be 1.4 million persons, or 200,000 families for whom agricultural production will no longer be a source of income*”⁸¹. The agricultural sector could absorb some of these persons through highly labour intensive works (such as the development of swamps, tracks and other rural infrastructure, forest plantations, expansion of cattle-breeding, soil conservation); a wage-earning agricultural class could develop thanks to some intensification in agriculture; employment could also be created through the development of tourism in certain regions or in peri-urban centres if there is urbanisation. According to the government, intensification in agriculture could allow the sector to absorb 800,000 persons. Easing the population pressure on agriculture could facilitate an increase in labour productivity, increase farmers’ income, recapitalise family farms and increase agriculture’s contribution to GDP by 5.6% per annum, a growth rate superior to that of the population⁸². This agricultural policy is to be seen in a context of a general economic liberalisation. This policy rests on several macro-economic conditions which the Rwandan economy does not currently fulfill⁸³, and, moreover, a reallocation of land as well as the marginalisation 1.4 million persons from agriculture risks being sources of more violence and producing more perverse socio-economic effects⁸⁴.

⁷⁹ MINISTERE DE L'AGRICULTURE, DE L'ELEVAGE, DE L'ENVIRONNEMENT ET DU DEVELOPPEMENT RURAL, *op. cit.*, pp.8-24.

⁸⁰ MINISTERE DE L'AGRICULTURE, DE L'ELEVAGE, DE L'ENVIRONNEMENT ET DU DEVELOPPEMENT RURAL, *op. cit.*, p.24.

⁸¹ *Ibid.* (translated by author).

⁸² *Ibid.*, pp. 49-50.

⁸³ See in this same *Annuaire*, ANDRE, C., "Evolution économique au Rwanda en 1997-1998: une reprise apparente?".

⁸⁴ We will not evaluate all the perverse economic effects which could lead to the implementation of this policy. However, the study of Joseph Laure shows that replacing food crop cultivation by cash crops, such as tea, more financially profitable, caused a negative impact on households’ subsistence as the incomes earned from sales and production were not used to the purchase products destined to meet their subsistence needs. See LAURE, J., *Des vivres ou du thé. L'alimentation et les conditions de vie des familles rwandaises*, Kigali, Institut africain et

7. EVALUATION OF LAND REFORM

Land reform is necessary in a context in which the evolution of local land practices no longer guarantees secure land access and occupation to farmers; and in an after-war situation characterised by huge population and cattle movements which the government is unable to control and whose policy on this subject is very unclear and ambiguous. Insecurity of land access and occupation characterises the country and represents one of the causes of the weakness of agricultural productivity in 1997.

The author of the land reform, Olivier Barrière criticises the lack of a legitimisation of the law, inspired by the Napoleonic Code and which does not integrate customary principles. In order to make a proposal for the main outlines of land reforms, he begins, in fact, with not too recent customary principles, taken from the former *ubukonde* and *isambu-igikingi* land management and exploitation systems, which are characterised by a hold of political power over the land⁸⁵. This political ascendancy differed locally (from region to region and sometimes from one hill to another), and the systems described were not applicable to in a uniform manner. The description of these “ancient” systems neither integrated local and regional practices whose principles differed slightly, nor the land changes linked to the political, demographic, economic and institutional evolution of the country during the second half of the century. Hence, one wonders, to what extent does it still represent efficient and legitimate management principles, recognised by the population? The State was unable to counteract endogenous movements of customs during the past forty years. Will it now be able to impose new principles and counter endogenous movements of custom and unify the law? Furthermore, faced with a land system characterised by the co-existence and the confusion in space and time of various principles of land access and occupation, is it possible to respond to the evolution of the tenure systems by one which is unique and uniform?

The government justifies the State’s hold over the land by claiming the economic necessity to manage the country’s lands in an efficient manner. This control by the State, will

mauricien de statistique et d’économie appliquée, Paris, Office de la recherche scientifique et technique d’Outre-Mer, 441 p.

⁸⁵ According to the author, “*The originality of Rwanda’s land history comes from the hold of political power over the land. (...) It constitutes the very foundation of the Rwandan monarchy*”. (translated by the author). In BARRIERE, O. *op. cit.*, avril, 1997? p.6.

it really lead to efficient land management or, on the contrary, will it cause the farmers to withdraw into themselves? How much room for manoeuvre will the State have, and what are its limits at the level of its hold on the land, its means and the criteria used to ensure efficient land management? The solutions being proposed by the government are not new. What are the chances for success?

The population variable is a key variable within the draft of agricultural policy spearheaded by the government. It determines land pressure and the maximum land burden and the direction of agricultural policy. As it has been utilised, the demographic argument has justified the exclusion of those entitled to lands: in actual fact, the former government of Habyarimana used it to justify the inability of Rwanda to accommodate one million “old” refugees who wished to return to Rwanda, and, moreover, the present government of Rwanda, is using this argument to justify the departure of one million persons from agriculture in order to facilitate the expected increases in agricultural productivity. The government estimates at 10% the proportion of landless agricultural population between now and the year 2010. Considering the population pressure as the only determining factor of the productive capacity of the country, poses two problems. If demography is considered as a fundamental variable in the evolution and blockages in the systems of land tenure and exploitation, it should not overshadow the local adaptations observed or the existence of current numerous institutional constraints which have sometimes prevented the adoption and spread of innovations within the agrarian systems in order to intensify agriculture in a context of increased land scarcity. Thus, reducing the agricultural population is not enough to facilitate the expected increases in income and productivity. Other accompanying measures are needed to remove the constraints which affect the economic environment of the country and boost the agricultural sector. Furthermore, Rwanda’s land history has shown that exclusions and the exclusionary process generated within the different land management systems had formed the basis for conflicts, violence and had created enormous social tensions on the parts of those excluded who depended on land as almost the only means of subsistence. Consequently, without a global development policy for the entirety of sectors of the Rwandan economy, there is a great risk of aggravating current social and land tensions and fuelling once again the cycle of violence.

However, the land issue largely surpasses the strictly agricultural and economic framework : it is linked to the development of other sectors of the economy and their functioning as well as that of other institutions in the Rwandan society.