LAND TENURE PROFILE: BURUNDI

Summary: Scarcity of land, rather than security of tenure, is the most critical issue with regard to agriculture in Burundi. Under customary land tenure practices, land is held by individual heads of households and passed from father to sons. Customary practices and a dispersed settlement pattern still prevail, although the present government and recent legislation (September 1986) lend support to a program of land registration.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Burundi has one of the highest population densities in Africa (a recent estimate is 177 inhabitants per km^2), and to date there has been little popular acceptance of the notion of limiting family size. The population of the country is relatively homogeneous and almost entirely agricultural; families live in small household units on their holdings. The dispersed settlement pattern is further reflected in the lack of towns and villages. The capital, Bujumbura, has a population of about 200,000, and the only other urban areas in the country are small administrative centers. Although the rate of urban migration has increased in recent years, it is still far lower than in some parts of Africa (e.g., Kenya, Zaire), and thus pressure on the land remains high.

In the years since Burundi independence (in 1962) change in agricultural land tenure patterns has come more from demographic pressures than from alterations introduced by the government or from market forces. There is very little vacant land in the country, and over the years more marginal lands and lands once cultivated only seasonally (such as the marais or marsh areas) have been brought under permanent cultivation. Shortage of land has also affected inheritance practices. Where formerly the eldest son might expect to receive a larger portion of his father's lands and younger sons might not inherit land at all (but would seek land elsewhere), now holdings are divided equally among all sons. One of the results of these new inheritance practices

has been that as fields are divided among a man's sons, the parcels may become too small to be farmed efficiently or even to support a family. This problem is especially apparent in the areas where population densities are high.

The present government of Burundi, which came to power in 1976, has introduced several changes which may have far-reaching implications for land tenure and land use in the long run. A 1977 law abolishes the institution of ubugererwa, a custom which allowed a landless peasant to obtain land from a chief, noble, or other superior in exchange for specified services and gifts. The relationship was thus one of patron and client, and in abolishing the custom the government is seeking to end personal ties that could compete with national allegiances. The law states that if a peasant has been cultivating the land for at least seven years, the land will be transferred to him. This reform is more than a legal nicety: immediately after its enactment commissions were appointed and met throughout the country to hear and hand down decisions on cases of ubugererwa; all indications are that the custom has been abolished in reality as well as in law.

The government has also come out in favor of villagization, a program which would allow the establishment of various educational and social services in the rural areas in a relatively efficient fashion while at the same time providing a partial solution to the problem of individual landholdings too small to be cultivated efficiently. (This is discussed further under B.1. below.) In contrast to Tanzania, the government of Burundi favors a program of voluntary villagization, hoping to use the attraction of improved services to induce farmers to cultivate jointly. It is only in Ngozi Province, where population densities are especially high and holdings extensively subdivided, that the first steps toward providing the necessary services have been taken.

A third, and potentially the most important, recent change is the passage of the 1986 Code foncier du Burundi, a lengthy statement of Burundi land law. Although in many ways the code is merely a restatement of previous legislation, certain provisions emphasize and favor registration of rural lands. Actual implementation of an extensive program of land registration will require a large commitment of both personnel and funds, and the government has as yet taken few steps in this direction. The new code also empowers the government to set standards of development for land in both the private and public sector.

B. Private Tenure

1. Customary Tenure

The myth most Westerners hold of Burundi (as of neighboring Rwanda) is of a country whose population consists of cattle-owning Tutsi, who control the country and live off their herds, and agricultural Hutus, the dominated group who are forced to yield up tribute and produce to their Tutsi overlords. The reality is, and has always been, far more complex, and for the purposes of this summary the point that needs to be stressed is that there is no dividing line, neither ethnic, economic, nor social, between pastoralists and agriculturalists. Most individuals, whether Hutu or Tutsi, farm, and the better-off among them also own a few head of cattle. There is thus no neat division of land and land use between ethnic groups or castes or between geographical areas.

Land in Burundi is held by an individual rather than a lineage. A man acquires rights to land through clearing, planting, and continuing to work it. In the past, in clearing and settling on the land, the individual placed himself under the authority of the chief within whose district the land was, and in exchange for the chief's patronage and protection and as an acknowledgement of his (the chief's) authority, the man would be obligated to supply some of his produce and labor to the chief. Unallocated land was thus given out by the chief. Alternatively (but more rarely), an individual might seek land from a noble or other landholder whose holdings were large and who could afford to grant land to others; this custom, known as ubugererwa, has since been abolished.

The concept of clan--which in any case is not kinship-based in Burundi--played (and still plays) virtually no role in the system of land tenure. Land is inherited patrilineally, passed from father to sons, either at the time the sons marry or when the father dies. It is the nuclear, rather than the extended, family that is at the center of landholding and inheritance rules, just as it is generally the nuclear family that constitutes the unit of production. In the past the eldest son could expect to inherit a larger portion of his father's land than his brothers, with the youngest sons moving onto and clearing new land for themselves. Now, however, with very little land left unused, a holding is more often divided into equal shares for all the sons. The result has been that in some areas where population densities are especially high, holdings have now become subdivided into very small units, and in some cases are too tiny to be farmed efficiently or even to produce enough food for the farm household.

Nevertheless, there remain a number of large individual holdings of land, some of which are larger than an single household can cultivate. In addition to fields, a wealthy individual may hold rights to pasture and forest lands, lands which are not under intensive cultivation. Although individually owned, access to such land is generally shared with neighbors and relatives. Neighbors' cows may be allowed to graze on pasture (or fallow) land, and neighbors may also be permitted to go into wooded areas to collect dead wood for firewood (although such permission does not include collecting live trees). Not all individuals, however, hold forest and pasture land, and allowing others rights to one's land is both a means of alleviating the unequal distribution of land and an expression of the unequal wealth (and status) in the countryside.

Customary tenure, then, when described from the perspective of the individual farmer, would appear to operate (and to have operated) relatively simply in Burundi. Unfortunately, various factors have complicated the working of the system as well as our understanding of it. Pre-colonial Burundi was a hierarchial society, and its government a monarchy. Twentieth-century descriptions of the traditional system of government and land tenure have introduced anachronisms which have only recently begun to be questioned. It has been widely written that under the customary land tenure system all land was considered to belong to the mwami (king) of Burundi, who parcelled it out among various members of the nobility (baganwa), who in turn allocated it to their chiefs and sub-chiefs. These latter then divided the land among their various clients, individual family heads. Such a system was hierarchical in character, with the mwami or his delegates and agents retaining the power to evict the individual tenant. The head of the family held only usufructuary rights to the land rather than actual title, although he could still hand it on to his sons. This description of the customary land

tenure system is inaccurate, however, the product of both accidental and deliberate misperceptions on the part of twentieth-century administrators and scholars. Early colonial officials equated the mwami's power with that of an absolute monarch, and scholars all too often failed to take into account that ideals could express what the more powerful hoped for rather than what actually was. The mwami was not the all-powerful ruler the Germans and Belgians believed. Certain lands, those belonging to him personally, were at the mwami's disposal, to assign or lend as he wished, but neither in actuality nor in theory did the mwami (or his delegates) exercise such power over his subjects or their land. In recent years, researchers and scholars have begun to question the myth as well as the reality, and although the 1986 Code foncier asserts that the State exercises the right to manage the national patrimony and to assure its development as it sees fit, the code does not state that all land belongs to the State.

In the colonial era Burundi (as the southern half of the colony of Ruanda-Urundi) remained a country of smallholder agricultural producers, and almost no land was appropriated for European agriculture or industry. Apart from those changes introduced into the theoretical base of the land tenure system (described above), there were few alterations in land tenure practices. With rare exceptions (urban areas, church mission lands, and minor agricultural and mining concessions), land holdings remained unregistered and continued to be held under the same tenure as in the past. (Paysannats are another important exception and are discussed in section E. below.) Under Belgian colonial law, all land which was not occupied reverted to the State, but because so much land was already under cultivation, the law had nothing of the dramatic impact it did in the then Belgian Congo. Small concessions were made to individual colons, churches, and companies who intended to prospect for minerals, but the total area granted was quite small--due, no doubt, in part to the fact that the country contained little mineral wealth or other easily exploited natural resources.

2. Freehold and Leasehold

The new land code, which encourages registration of land as freehold, is as yet too recent to have brought about an increase in the amount of registered land in Burundi, and very little freehold or leasehold land is found outside the urban areas. During the colonial period, concessions (the equivalent of long-term leases) were made to European companies and a few colons, and the present land code recognizes the State's power to make such concessions. Registration of land in the rural areas occurs most often after the land has been purchased by someone from outside the local area, and is no doubt motivated by the newcomer's need to secure his right to that land.

Until the abolition of ubugererwa in 1977, customary land practices recognized a distinction between land "ownership" and "tenancy." The patron's claim to land was recognized as superior to that of his client or tenant, and despite the presence of someone else on his land, his right to that land remained. Such a relationship rested on the recognition of a sort of leasehold, that it was possible to work the land and yet not be the owner of it.

C. State Land

Legally all unoccupied lands belong to the State, but because such a large percentage of land in Burundi is under cultivation, in reality the State's domains are rather small. State land can be in either the private or the public domain. Lands in the public domain include those given over to various government and communal functions, such as army camps and roads, as well as those held by various parastatal organizations. Private domain land includes vacant land held by the State. Since independence several important parastatal agencies have begun operations which require substantial amounts of land for their activities. Tea plantations have been established at Teza, Rwegura, and Tora and a peat project near Ijenda. It is not clear from the available literature under what terms these lands are held, but if the agricultural research center at Gisozi (established by the Belgians) is the model for these parastatals, then the State has obtained the land through its prerogative of expropriating land for development.

The State also holds land in the private domain for which there are no competing claims. Citizens may still exercise rights to fish, hunt, and gather wood in these areas. One such area is the Bururi forest, in the southern part of Burundi. Until recently local residents were able to gather firewood within its confines as they had in the past, but since the late 1970s the forest has been closed to protect the wildlife and remaining virgin forest--although, no doubt, a number of local residents still continue to enter it.

D. Urban Land Tenure

Under the Belgian colonial regime, Africans were allowed only usufructuary rights to urban land (in housing areas expressly set aside for them); despite the legal regulations, however, there existed a lively market in housing plots within these areas. Since 1962 Africans have been able to acquire permanent title to plots of land in urban areas (i.e., Bujumbura), and the market in urban land and housing now includes virtually all areas of the city. For members of the elite, housing for lease to foreigners is often a highly lucrative investment. Residents of the poorer quarters in town (the original quarters built for Africans by the Belgians) are still unlikely to own the land on which their houses sit, although no longer legally barred from registering it. Nevertheless, the housing market in these quarters remains vital, and buyers and sellers seldom make the distinction that they are selling only houses and not the land itself.

In an effort to lower housing costs in Bujumbura for civil servants, the government recently constructed a new quarter of housing for them. Members of the civil service are eligible to purchase the houses in the new quarter, and after paying toward the mortgage on the house for several years may elect to purchase the land from the State in several annual installments. The government also has laid out several other quarters in the city where residents may apply for land on which to construct housing. As in the area for civil servants, homeowners have the option of purchasing the land from the State at a later period.

E. Distribution of Types by Region or Ecological Zone

Burundi is almost entirely a country of interior highlands, areas of land 1500 meters above sea level or more. The land tenure system, as the population itself, is relatively uniform, although plot sizes may vary with population density from one region to another. In Ngozi, for example, where the population density is among the highest in the country, plot sizes are among the smallest. Lower areas of land are found along the Ruzizi River and the Lake Tanganyika shore as well as in the Mosso and Cankuzo areas that form the eastern and southeastern boundaries of the country, and these areas have traditionally been less densely populated and land less intensively used. (Soil quality is more variable here, and rainfall less reliable as well.) In addition, several new land-use patterns have been introduced in these less-populated areas in the past 30 years for which there are few customary precedents.

In the latter part of the 1950s the Belgian administration began to establish paysannats, large-scale farming and resettlement projects, in the northwestern part of the country. Peasant farmers from more densely populated parts of the country were resettled in the Imbo and Buyenzi areas where there was more land available. In exchange for title to four hectares of land, farmers were required to grow, in addition to food crops for themselves, cash crops such as rice and cotton. The experiment was largely unsuccessful; farmers resented the stringent requirements on their time and crops. Most of the paysannats had broken up by the mid-1960s and participants had disbursed and returned to their original homes in the highland areas. More recently the government has reintroduced paysannats, with rice the principal cash crop. Reports are that peasants are once again finding the cultivation requirements, for crop rotations in particular, onerous.

The Cankuzo and Mosso areas, where population densities are lower than in the highland, have been areas for resettlement of Rwandan refugees, Tutsis who fled from that country after the 1959 revolution. There is no literature which deals with the process of land distribution to them or with the terms under which the Rwandans hold the land. It is very likely, however, that these settlements are similar to the paysannats established in the Imbo area in the late 1950s.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The office responsible for registering land titles is the Office des Affaires Foncières, in the Ministère de l'Agriculture, de l'Elevage et du Développement Rural in Bujumbura. It also retains files from earlier times and for urban land transactions. At present this is the only land registry office in the country, but the new land code provides for the establishment of branch offices to facilitate the proposed registration process. As mentioned earlier, this will require additional trained personnel and funds beyond that of the Office des Affaires Foncières at the present time.

Unoccupied land belongs to the State, and is managed at the local level by the commune administrator. He may called upon, for example, to allocate a portion of this land to a farmer whose lands have been expropriated by the state for a development project such as the agricultural station at Gisozi.

Land disputes are settled at the lowest level by local men--formerly by the abashingtahe (respected local men) and now at party meetings at the sub-hill level. Appeals are then made through the court system, which is in the process of being reorganized to allow for the establishment of more local tribunals.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The ability of the State to intervene with regard to land practices is somewhat ambiguous. Article 2 of the new land code clearly states that, the rights of individual landowners notwithstanding, the State retains the right to set conditions for the social and economic development of land, the national patrimony. The State has, for example, the power to evict a landowner who does not develop at least half of his lands. But it remains to be seen how far the government is willing and able to push its rights in setting development conditions. So far there do not appear to be instances of the State confiscating and redistributing undeveloped land, and the development conditions can be easily circumvented by the planting of trees or hiring of laborers.

Other critical tenure issues exist with regard to both villagization and registration. The government's interest in villagization and cooperative farming as a solution to subeconomic agricultural holdings is somewhat at odds with its advocacy of land registration. It is not entirely clear what kind of a land tenure system will be applied to jointly farmed holdings--nor even to what extent farmers are agreeing to pool their holdings. Inheritance rights of sons to land that has been farmed cooperatively have not been established, and there is still a good deal of uncertainty in these projects. Land registration, on the other hand, establishes title to land on an individual basis, and if carried out extensively may actually exacerbate problems of subeconomic holdings. That is, brothers who now practice cooperative farming on an informal basis (preferring not to subdivide their father's fields) or who delay claiming their portion of the inheritance because they support themselves elsewhere may feel compelled with registration of holdings to assert their rights lest they lose them for all time.

Introducing permanent cultivation in the marais or marshy, low-lying areas also raises important tenure questions. In the past, these areas were cultivated only during the dry season, and in the rest of the year were available for the whole community to share. Year-round cultivation of necessity alters this shared tenure, with the result that these secondary rights are overriden. Who receives the right to cultivate permanently is also a difficult question.

B. Land Tenure and Agricultural Production

In a country as densely populated as Burundi, and with as large a percentage of its population dependent on agriculture for survival, land and the level of agricultural production are critical issues. The problems with land, however, are due less to tenure issues than to scarcity of land, excessive subdivision of holdings, and soil exhaustion. The customary tenure system provides farmers with adequate security, and it is questionable whether registration of itself will increase the level of security or provide opportunities for farmers to obtain credit against their holdings.

C. Implications for Project Design

Land and land tenure pose several important considerations with regard to project design. Perhaps the most important concern is whether the proposed project will require significant amounts of land to be withdrawn from customary use. A reforestation project, for example, might necessitate the closing of the forest to those who depend on it for firewood or construction materials; revitalization of eroded pastureland might similiarly remove lands from the use of nearby inhabitants. Such projects would impose hardships on local residents, and these costs must be taken into consideration. And once such projects were carried out, who would then own or even have access to the forest or pastureland?

Projects aimed at increasing agricultural production need be less concerned with security of tenure than with subdivision of holdings. The lack of credit facilities available to farmers is a reflection of the fact that most lenders demand salaried employment or title to urban land as proof of financial responsibility rather than a product of small holdings or of insecure land rights. And registration of holdings would obviously not solve this problem; disputes over land have increased in recent years, but the quarrels have arisen due to population pressures and are most often over boundaries and not over land rights. Moreover, registration of holdings would be prohibitively expensive and may engender a great deal of suspicion; it might even worsen problems of excessive subdivision. Peasants might regard such a project as the first step to the imposition of a property tax or to the cultivation of obligatory crops. A consideration in a project which involved even limited registration of holdings is the question of whose lands were being registered. A program of villagization which included registration of holdings might involve the over-writing of pre-existing claims on the land and the exclusion of some holders from new services and other benefits. There is very little unclaimed and unused land in Burundi, and any project which alters land use patterns will have implications for land tenure.

IV. SUGGESTED READING

Bukera, Joseph. "Les droits fonciers coutumiers au Burundi." Revue Juridique et Politique; Indépendance et Coopération 24 (1970): 1207-14.

Gahama, Joseph. Le Burundi sous administration belge. Paris: Karthala, 1983. Pp. 310-20.

Nimpagaritse, Didace-Olivier. "Organisation foncière et disparité des statuts immobiliers au Burundi." 2 vols. Doctor of Law thesis, Université Libre de Bruxelles, 1983.

Simons, Eugène. Coutumes et institutions des Barundi. Elisabethville: Editions de la Revue Juridique du Congo Belge, 1944.

Verbrugghe, André. "L'Evolution de la propriété foncière coutumière au Burundi." Revue Juridique et Politique; Indépendance et Coopération 24 (1970): 1201-6.