

Land, development and conflicts in the Great Lakes

For a renewed engagement by the EU and Switzerland
in land governance in Rwanda, Burundi and the DRC



Table of contents

Table of contents	3	Part II	27	Part III	53
Executive Summary		Land tenure in the Great Lakes: two opposing visions	27	Evaluation and recommendations	53
Introduction	9	Rwanda	28	Concerning the EU's vision and commitment in the field of land tenure	53
Objectives and methodology	10	Land management from independence until the 1980s	28	In general	54
Objectives of this study	10	Restructuring the legal framework after the genocide	29	To the French Development Agency, regarding the implementation of the Voluntary Guidelines	54
Methodology and limitations	10	The 2005 Organic Law and the Crop Intensification Programme	30	Regarding interventions into land tenure by the EU and Member States	55
Part I	12	Land conflicts in Rwanda and resolution mechanisms	33	Regarding interventions in Rwanda	55
Land Governance	12	Conflict resolution mechanisms	34	Regarding interventions by the EU delegation to Rwanda, by DEVCO, SIDA and the Dutch development cooperation	55
Land conflicts	14	Involvement from the EU and Member States	35	Regarding the political dialogue of the EU delegation to Kigali on land issues	55
Land grabbing: land returns to the heart of the development agenda	15	The Democratic Republic of the Congo	36	Regarding DFID support for the land securitisation programme	55
Inequalities in access to land for forest peoples and peasant women	17	The legislative framework and its shortcomings	36	Regarding interventions in the DRC	56
Forest peoples: from legal marginalisation to de facto inequality	17	Customary law and state law	37	Regarding interventions by the EU delegation to the DRC and DEVCO	56
Peasant women and land tenure: when norms institutionalise inequality	18	The reform process for the 1973 law	38	Regarding interventions by the SDC in the DRC	56
The EU's responsibility for sustainable and equitable land management	19	Land grabbing	39	Regarding interventions in Burundi	57
The origins of the consideration by Member States and the European Union of land tenure in developing countries	19	Civil society initiatives	41	Regarding interventions by the SDC in Burundi	57
The EU and France's commitment to the Voluntary Guidelines and the sustainable management of land tenure systems	21	Interventions by the EU and Switzerland	43	Regarding interventions by the EU delegation, DEVCO and GIZ in Burundi	57
The EU's actions for the sustainable management of land tenure systems	21	Burundi	44	Regarding women's rights to access land	58
France's commitment to the Voluntary Guidelines	23	Land management: conflicts and population movements	44		
The EU and land tenure: contradictions and limits	23	Lack of consensus on CNTB and refugee land	46		
		Challenges of the land tenure security programme	47		
		Land reform partners: initiatives and stalemates	50		
		Swiss cooperation and the European Union	50		
		Civil society in Burundi	51		
				List of Abbreviations	60

Cover photo: Onion field in the Mplangu valley, Mbanza-Ngungu. Credit: FAO (Bruno Kitaka)

Executive Summary

Land tenure: a crucial issue for Africa and the Great Lakes Region

The governance of systems of land access remains a central issue in the debate on the development of the African continent. Given that agriculture is the primary source of income for most African citizens, land governance remains a contentious issue. Indeed, the legacy of colonisation on the continent has had a strong impact on how people can access and use land. Contemporary land management systems are often the result of a mixture of the systems inherited from colonialism and the norms that governed access to land in traditional pre-colonial customs. Even today, a significant number of Africans still live and work on land managed according to customary practices. The **variety of tenure systems** creates significant constraints because, if not properly managed, it creates land insecurity that can lead to **conflict**. However, customary tenure often also offers opportunities which may bolster local and community dynamics. That said, the economic development models favoured by governments and donors are also likely to affect land management patterns.

Two major development models for the agricultural sector are fighting over whether and how agriculture can meet the growing demand for food and function as an engine of pro-poor economic development. The first model, inspired by neoliberal thinking, supports maximum growth through the professionalisation of agriculture. The second model supports peasant and family farming, operating on small farms. The position of the countries in the **Great Lakes region** in this debate is reflected in their agricultural policies. These are generally in line with the neoliberal model, no-

tably so that these countries can access the financing from international donors needed to implement their agricultural investment plans, though there are significant differences at national level.

Rwanda has moved towards a land policy that aims to support a growing market-oriented approach to agriculture. The Rwandan model, strongly supported by the United Kingdom (Department For International Development, DFID), the European Union, Sweden and the Netherlands, aims to relegate customary management patterns to the past by centralising land ownership and management in the hands of the state. The Land Tenure Regularisation Programme in Rwanda has now provided 99% of land tenure users with a formal lease title for their land. This impressive result is not free of errors. In particular, the programme has failed to address the lack of access to land for the most vulnerable groups. The system in place, one of the most efficient and comprehensive on the continent, also suffers from a lack of monitoring and updating: a limited number of users contribute to updating the programme by communicating changes in the use or ownership of their land. The system remains too complicated, and often too costly, for a large part of the population. In addition, the 2005 Land Law establishes a clear link between land use and development, while adding additional pressures for small-scale farmers who either do not produce enough, are unable to fit into the State's agricultural modernisation programmes, or who do not have the means to maintain their land according to the productivity criteria set by the government.

Meanwhile there are land tenure problems that land securitisation has not been able to address, such as conflicts involving women, for whom the right to inheritance has now been recognised, and conflicts linked to population movements due to internal violence in the country.

In the **DRC**, land is governed by a number of legal provisions regulating various sectors: the agricultural code, the mining code, the urban planning code, and of course the 1973 land law. All of the above contribute to land management, and this can sometimes lead to confusion and conflict. However, it is the land law that remains the basis of land management. The fundamental principle supported by this law is the exclusive state ownership of land in the DRC. The aim here is to put an end to the duality in land management systems that exist between state law and customary law, which is itself characterised by a variety of land access systems. However, the law lacks an important component: the management and securitisation of these customary rights, which govern almost 90% of the country's land. This legislative void raises serious concerns of insecurity amongst the rural population, and especially amongst farmers who find themselves having to claim the right to use their plots of land in the absence of documentation proving their rights officially.

As a result of the numerous flaws in the land law and the many criticisms that have been levelled at it, particularly those concerning the growing number of land disputes, the President of the Republic began a process to reform the land law in 2012. This reform process has followed a political position paper that sets out a roadmap for the process. The launch of the reform process was accompanied by a series of public consultations with civil society and experts on land issues. Political unrest and conflicting interests hampered the process of discussion and dialogue that promised to respond to the many demands

of Congolese civil society. This legal uncertainty has often resulted in abuses of power by local elites, as well as land grabbing, to the detriment of classes of people with fewer means and networks.

In the DRC, given the deadlock in the reform process, it is often civil society that has undertaken initiatives to reduce land insecurity. This is the case for civil society in North Kivu, which has produced a set of specifications for land reform addressed to national policy makers in Kinshasa. In South Kivu, the NGO IFDP, together with its local partners and the support of international NGOs, has set up foundational programmes to secure land rights.

In **Burundi**, the majority of the population's dependence on agriculture to survive makes land tenure a crucial issue. In addition, the scarcity of land and high population growth make **land disputes** the most common cause for litigation. Both formal and informal mechanisms for resolving these conflicts suffer from a lack of coordination and coherence, as well as from a very high level of politicisation, which makes it impossible to envisage efficient and sustainable ways of responding to these conflicts. Land disputes have been exacerbated since the beginning of the last decade by the gradual return of refugees and displaced persons who left the country following the political and ethnic conflicts of 1972 and the civil war of 1993. The National Commission on Land and Other Property (*Commission nationale des terres et autres biens* or CNTB), in accordance with the Arusha Accords of 2000, was intended to resolve this issue in a spirit of equal treatment, promoting reconciliation. It was gradually politicised however, losing its legitimacy in the eyes of a large number of the population. This illegitimacy is becoming increasingly problematic, as the issues of refugees and displaced persons in 1972 and 1993 have been compounded by the political crisis of 2015, which led to the displacement of more than 400,000 people.

At the same time, the land reform that has been under way in Burundi since 2007, and in particular the 2011 land law resulting from it, is a major step forward in the field of land governance, despite some limitations that can be observed. Nevertheless, it continues to present problems in terms of its implementation. Indeed, the implementation of the reform - which, having not been taken up by the government, has mainly been carried out by donors and involves considerable financial costs - is faced with a serious problem of systematisation and risks failure. Other aspects of the reform, such as registration and proper governance of state-owned land, women's inheritance of land, and land management more generally, remain to be addressed.

The involvement of the EU and its Member States in equitable and sustainable land management

In 2002, the European Commission's Directorate-General for Development (DG DEV, now DEVCO) launched a multi-stakeholder task force comprising experts from the Commission, key experts and representatives of member states to produce guidelines that could guide the action of the member states' development cooperation agencies and of its own Directorate-General for Development. This reflection culminated in the EU's first policy paper on land tenure in developing countries, a communication to the Council and Parliament outlining the EU's approach to land tenure policies in those countries. The paper presented a nuanced point of view, clearly seeking to find a compromise between the value and economic potential of land as a resource and the multiple social functions it performs in many developing countries' societies. In 2012, the discussion on land policies would again take centre stage in discussions of development policies. In part, this renewed attention was justified by the increased attention paid by the media to the numerous cases of land grabbing in Asia, Latin America and Africa in the first decade of the 2000s. Land grabbing in Africa is often jus-

tified by economic investments from multinational companies, or by states looking for land to produce foodstuffs or agrofuels. International civil society, meanwhile, began a discussion process within the Food and Agricultural Organization (FAO Committee on World Food Security (CFS) in 2010, resulting in a set of international guiding principles governing the management of not only land, but also fisheries and forests. The outcome of this discussion was, in the 2012 enactment of the **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests** (hereafter Voluntary Guidelines).

Since their launch, the EU has been at the forefront of popularising and disseminating the Voluntary Guidelines. This is not surprising, as the principles contained in the Voluntary Guidelines are in line with the guidelines in the Commission's 2004 land policy document: they provide for a variety of approaches towards recognising land rights, they pay particular attention to minorities, and they recognise the cultural and social aspects of land and not only its economic value. The EU was involved from the start of the discussion about the Voluntary Guidelines in 2009, and is currently a key player in the development and dissemination of the Voluntary Guidelines.

However, this commitment often fails to translate into action for a number of reasons. Firstly, the EU does not have a specific and ambitious policy to curb land grabbing by European companies. Secondly, the EU and some of its Member States use instruments that promote land grabbing, such as financial instruments (Belgium, Netherlands, Germany, Sweden, Switzerland).¹ Furthermore, the EU intends to align its action with - or even directly support - **multilateral initiatives** launched by the African Development Bank (AfDB), the African Union (AU) and the New Partnership for African Development (NEPAD), the Food and Agriculture Organization (FAO) or the World Bank to **promote agro-industry**. However,

¹ Zimmerle, Brigit (2012), *When Development Cooperation becomes Land Grabbing. The Role of Development Finance Institutions*, Fastenopfer/Bread for All, October 2012.

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the agro-industrial sector, along with the extractive sector, is one of the main culprits of land grabbing in Africa. This type of approach contradicts the Commission's 2004 guidelines, and it is a far cry from the user rights-based approach promoted by the Voluntary Directives, a document that has been approved by DEVCO. However, in two of the countries in the Great Lakes region, Rwanda and Burundi, the EU is present and provides financial support for programmes to reform land management systems. Although the goal of these programs is land tenure security, it is noted that they often stem from a pro-securitisation approach which sees commercialisation as the ultimate goal of tenure security. In the DRC, where land issues play multiple roles in the emergence of both communal and armed conflicts, and where the economic stakes associated with land use are high, the EU does not intervene in the land sector.

The involvement of the EU and Switzerland in land tenure in the Great Lakes

In **Rwanda**, progress in terms of land reform has been made possible thanks to the presence of a highly effective governmental system, but also as a result of the financial and technical support of the European Union (through its budget support programme in Rwanda) and its member states. In fact, the programme to create a national land database and the registration initiative launched in 2010 by the government received vital support from the British cooperation agency (DFID) through the Rwanda Land Tenure Regularisation Programme. The programme attracted the attention of other international donors, such as the European Union delegation, as well as Dutch and Swedish cooperation agencies. The EU contributed 4 million euros to this programme, intended for the technical training of the Rwanda Land Management and Use Agency. The programme also supported the establishment of the Land Administration and Information System (LAIS), a national computerised database that

collects and updates information on land tenure and changes in land use. The German cooperation has also indirectly contributed to the success of the programme by supporting local NGOs involved in its implementation. Finally, between 2012 and 2017, the EU also supported the agricultural programme to the tune of 200 million euros to go towards food security, spread over five years.

In the **Democratic Republic of the Congo (DRC)**, the EU does not currently have a land tenure programme or land tenure policy. Although the EU has been involved in the sector in Burundi and Rwanda, the DRC is considered too large and too complicated for a subject that is “too political” to carry out structural interventions. More than half of the EU's resources for natural resource management in the DRC (not including the extractive industries sector) are channelled into the management of areas which are peripheral to the DRC's five protected natural areas. In the past, the EU delegation has invested money in the consultation process implemented by UN-HABITAT and followed the debates on land law reform as well as the studies carried out by the World Bank. However, apart from the highly contextual interventions related to the management of the areas surrounding the parks, there appears to have been no intervention to support the land sector. The same will be true in the near future. As already mentioned, the main reasons for this lack of investment in land are linked to the difficult political situation in the country, the ‘political’ nature of land sector reform and a certain fatigue with regard to the political process in the DRC.

What is even more surprising is the lack of initiative in promoting and disseminating the ‘Voluntary Guidelines’ in the DRC. That said, the EU has funded the creation of disclosure procedures and manuals for the Voluntary Guidelines, and is funding the implementation of

outreach projects for the Guidelines, especially in countries that have experienced the phenomenon of land grabbing. The Swiss cooperation agency has been the only one to intervene directly in the field of land tenure, providing financial support for customary rights protection initiatives set up by the IFDP as mentioned above.

In Burundi, without donor support for land registration processes, the current results of the reform would not have been achieved. Among these donors is first and foremost the Swiss cooperation agency, which has been the lead donor supporting land registration over the past ten years. Its programme ends in December 2017 and questions remain as to the future of land registration in Burundi without further Swiss support. The European Union is currently supporting a state-owned land registration programme through the German cooperation agency. This program also ends in December, and the lack of ownership of this program, as well as the government's hesitation to pursue it, is a concern for the future governance of these lands.

RECOMMENDATIONS

In general

Generally speaking, **EurAc** calls on :

- ▶ **The European Commission, and in particular DEVCO, to consider integrating the principles contained in the Voluntary Guidelines into the heart of the Union's development policies. This means integrating them into any land intervention project set up by European cooperation;**
- ▶ **The European Commission, and in particular DEVCO, to take the initiative in establishing binding legislation applicable to European companies, which provides for mechanisms for due diligence in the event of large-scale land investment, based on the principles of the Voluntary Guidelines;**

- ▶ **The European Commission, and in particular DEVCO, to maintain and expand the scope of existing programmes for the extension of the Voluntary Guidelines, with a specific strategy for the Great Lakes region;**
- ▶ **The European Commission and the European Parliament to use existing political and institutional mechanisms (e. g. the Africa-EU Partnership) to re-launch the policy dialogue on land tenure in Africa, with particular attention given to European investments and the protection of the rights of indigenous peoples, women and minorities;**
- ▶ **The *Agence Française de Développement* (AFD) and PROPARCO to systematically adopt the ex-ante analysis guide for agricultural investment projects as a pre-evaluation tool for projects that have an impact on the land sector;**
- ▶ **AFD to broaden the ex-ante analysis guide's scope of use for agricultural investment projects by systematically applying it to any project involving changes in use, rights of use and land ownership, and not only to agricultural programmes.**

Regarding land tenure issues in Rwanda

EurAc calls on the DFID to

- ▶ **Carry out a thorough, independent and publicly accessible impact assessment of the land regularisation programme. This should also contain an impact assessment on the livelihoods and food security of small-scale agricultural producers and should not confine itself to accounting for land registered as an indicator of success.**

EurAc asks the DFID, DEVCO, SIDA and the Dutch development cooperation to

- ▶ **Continue to support the updating of the LAIS and the training of land office managers;**

- ▶ Support efforts to vulgarise the land law, especially with regard to women's right to inheritance;
- ▶ Support the Rwandan government in the training and capacity building of mediator committees (*abunzi*) as a mechanism for resolving conflicts at the grassroots level;
- ▶ European donors should also take ownership of the evaluation of the securitisation programme supported by DFID in order to develop a reflection on the advantages and constraints of programmes with a securitisation-based approach;

EurAc invites the EU delegation in Kigali to

- ▶ Make any EU support to Rwanda for the management of the land tenure system or access to justice contingent upon a public and independent inquiry into recent cases of land rights violations by military and police authorities.

Regarding interventions in the DRC

EurAc asks the EU delegation to the DRC, DEVCO and GIZ to

- ▶ Support civil society-led initiatives to secure customary land rights, particularly as they have the potential to fit into the provincial legal framework, which is likely to ensure their sustainability over time;
- ▶ Support initiatives to produce provincial terms of reference and create discussion forums on the reform process. Trials like those run by the North Kivu Consultative Committee should be supported with the aim of developing them, as they could serve as a future basis for innovative initiatives in land governance;
- ▶ Commit to spreading and vulgarising the principles of the Voluntary Guidelines in DRC.

EurAc calls on the Swiss Development Cooperation (SDC) to

- ▶ Continue its support for initiatives aimed at securing customary land

rights and the organisations that implement them;

- ▶ Support similar projects in other parts of the DRC, so that the variety of experiences can improve their sustainability by being tested in culturally different areas.

Regarding interventions in Burundi

EurAc calls on the SDC to

- ▶ Maintain its involvement in Burundi and, above all, to engage in capacity building for decentralised actors, without which the work carried out by the programme in recent years risks being lost;
- ▶ Make feasibility studies, evaluations and assessments of its experiences available to the Burundian government. These documents will enable the Burundian government to assess the feasibility of systematising land offices in Burundi.

EurAc invites the EU delegation to Burundi, DEVCO and GIZ to

- ▶ Continue working in the field of land tenure by supporting civil society organisations, particularly the Synergy of civil society organisations in Burundi, in their work on reflection, advocacy and the development of alternatives for conflict resolution and land management in Burundi;
- ▶ Continue to push the Burundian government to approve its report within the scope of the state land inventory and to take legislative measures to protect these areas of land;
- ▶ Put pressure on the Burundian government to ensure that, in accordance with the Burundian constitution and the Arusha Agreements, Burundian women are granted their constitutional right to inheritance and succession;
- ▶ **EurAc** calls on the EU to support Burundian civil society initiatives to raise awareness of the importance of women's access to land.

Introduction

The African Great Lakes region, in particular Burundi, Rwanda and the Democratic Republic of the Congo (DRC), is once again experiencing a period of political instability, security crises and democratic gridlock. This new crisis period has emerged as the latest manifestation of long series of crises of political and democratic legitimacy. A region which until recently seemed to be on a path towards lasting peace and political stability now appears to have once more hit an impasse.

These new conflicts have not sprung from nowhere; rather they are often the most recent manifestations of long running historical trends, the result of a series of unaddressed (or poorly addressed) problems which can ultimately be traced back to a fundamental issue in the development process of each state: the usage and distribution of natural resources.

Aware of the crucial role that land tenure plays in the dynamics of the region, and of the fact that peace and development in the Great Lakes will be impossible without sustainable and equitable land management for the citizens of the three countries, six **EurAc** member organisations - the Justice & Peace Commission Belgium, CCFD - Terre Solidaire, HEKS/EPER, Broederlijk Delen, Entraide & Fraternité and Fastenopfer - requested that **EurAc** produce this report.

The situation regarding land tenure varies greatly in the three countries. In the **DRC**, the state seems to have stalled in the process of reforming land tenure with the intention of responding

to historical shortcomings, notably regarding the insufficient regulation of customary land tenure, which governs 80% of Congolese land. In **Burundi**, the efforts made in recent years by civil society, donors and the government are currently collapsing under the weight of a political crisis of democracy which shows no sign of weakening; rather it is responsible for a steadily increasing number of refugees. On the other hand, **Rwanda** has enjoyed great success in establishing genuine land tenure reform, and the majority of Rwandans now possess a title of ownership (or rather a long-term lease agreement). The results achieved in Rwanda have made the reform process in the land of a thousand hills a model worth following by other African states. However, the Rwandan model is not free of faults; rather it has a several from which lessons can be learned in order to improve future interventions.

It is true that land tenure and land management fall within the fundamental responsibilities of the state and that the ultimate responsibility for establishing fair, equitable and sustainable systems of land tenure lies with national governments. However, it is equally true that the **European Union and its Member States**, in their role as principal donors at global level, and within the scope of its renewed partnership with the African Union, can and must play a crucial role in establishing sustainable land tenure in Africa and in the Great Lakes region. Political instability cannot be an excuse for avoiding the challenge of land tenure, as despite a lack of state engagement, land tenure remains a topic of lively discussion amongst civil society organisations in the three countries, who do not lack for

innovative solutions and who are able to guarantee, at least in the short term, that land tenure rights are secured, whether through legal, customary or informal channels.

This report examines all of these issues. It is divided into three parts. The first part presents an overview of the concepts of land governance, and a brief look at the land situation in the Great Lakes region. The second part focuses upon Rwanda, Burundi and the DRC, for which we cannot hope to provide a complete overview of the challenges faced in each country here but we highlight the key elements, the crucial issues and how the intervention of donors in Europe and Switzerland can play a role. Finally, the third part presents **EurAc**'s analysis of involvement from the EU, its member states, and Switzerland in land tenure in the Great Lakes. This is followed by recommendations for a more thoughtful and robust engagement in the future.

OBJECTIVES AND METHODOLOGY

Objectives of this study

This study was initiated by six members of the European Network for Central Africa (**EurAc**), with the aim of better understanding land tenure issues in the Great Lakes region. In particular, it seeks to analyse how these land tenure dynamics, often a source of conflict and crucial for economic development, are influenced by the involvement of the EU and its Member States as donors of development aid. The research, and the following report, was guided by four key research questions:

- 1) *What is the EU's regulatory vision for land tenure in Africa generally, and in the Great Lakes region of Africa in particular?*
- 2) *To what extent do the EU Member States and Switzerland fall within or deviate from this regulatory vision?*
- 3) *How do the EU, its Member States*

and Switzerland ensure the coherency of their land policies in the Great Lakes region, whether across sectors (peace building, governance, agriculture, environment), levels of government (EU/Member States; Europe Aid and other DGs), or States (Member States; Switzerland)?

- 4) *How do the EU, its Member States and Switzerland take into account the impacts of land tenure, particularly for the most vulnerable populations, in the policies they support and implement in the Great Lakes region?*

In answering these questions, **EurAc** has sought to understand how European and Swiss interventions in the area of land tenure fit into social, cultural and legal frameworks in areas featuring complex social dynamics and complicated recent histories. Although development assistance interventions can support and strengthen local processes, they may also contribute to the dynamics of conflict or fail to take sufficient account of local dynamics. For this reason, the ultimate goal of our research work was to produce practical recommendations for European and Swiss decision-makers.

Methodology and limitations

This research is the product of close collaboration between **EurAc**, its members and many of their partners in both North and South Kivu (international organisations, universities, NGOs, etc.), Rwanda and Burundi.

This research followed an inductive approach that used field research, from which the data was constantly compared with the abundant literature in the fields covered by this report. Indeed, **EurAc**'s expertise on land tenure and EU programmes in Great Lakes Africa has identified a large body of literature in these various areas, which has in turn enriched this report. During the period of April to August 2017, we also organised several field trips to Burundi (Bujumbura, Makamba and Cibitoke), Rwanda (Kigali, Rusizi, Rwamagana) and the

DRC (Kinshasa, Goma, Bukavu).

A total of 35 semi-structured interviews were conducted with international organisations, NGOs and local civil society organisations working in land and related fields. We also had the opportunity to discuss land issues with national, provincial and local authorities in these countries. We also used data collected by the two senior editors, Giuseppe Cioffo and Aymar Nyenyezi, during their research work on land issues in the region.

Nevertheless, there are some limitations to this report. We will make mention of two here. Firstly, the geographical scope of the research was limited, especially in the DRC. The available resources did not allow us to broaden our analysis beyond the South and North Kivu and Kinshasa. This is a considerable limitation, given the size of the DRC and the high degree of diversity in the country. However, the two Kivus are also amongst the Congolese provinces which historically have a very active civil society in the land sector.

Secondly, as some topics were more relevant than others in different contexts, we had to focus our analysis on some themes rather than others. Thus, in Burundi, the needs of the context led us to take a deeper look at the discussions on refugee land at the level of the CNTB and the reform underway since 2008. In the DRC, current civil society initiatives in relation to the ongoing reform process and issues of problematic overlapping between land rights (legal and customary) and other legislation (mining/forestry) are made the focus of our discussions. The same has been true of Rwanda with respect to land securitisation issues, mediator committees and the links between land tenure and agricultural reform.

Part I

Land tenure is a fairly broad field, involving a wide range of (state and non-state) institutions, actors and interests. It is therefore impossible to analyse the context of land tenure in the Great Lakes region without introducing the fundamental concepts that drive discussions on the subject and the regulatory approaches that guide the actions of the actors concerned. The purpose of this first part is therefore to introduce the key concepts for discussing land tenure. It is divided into three sections. The first introduces the concepts of governance, land conflicts and land grabbing. The second presents the specific challenges faced by marginalised groups in the land sector in the Great Lakes region. Finally, the third part presents the vision of the EU and its Member States with regard to land tenure in developing countries.

LAND GOVERNANCE

‘Land governance’ indicates the range of rules and collective processes, formalised or otherwise, via which relevant actors participate in the decision-making process for and the implementation of the **public actions which impact land management**. In a democratic society, governance is intended to serve ‘the common good’. Such a term describes the ability of the State to provide for citizens’ basic needs, a civil society which participates in the decision-making process, and the rules, standards, laws, procedures and behaviours which relate to the common interests of the State and its citizens. Equally, this refers to participative, responsible and effective management allowing for the State

and civil society to carry out their respective activities in the pursuit of common economic and social development goals.

The technocratic nature of the word ‘governance’ is subject to fierce debate as it tends to depoliticise the management of public affairs. As in other areas concerning the management of natural resources, in the field of land management governance is determined by politics; that is to say a given vision of the world and of society, the power struggles and imbalances operating behind the scenes, and the measures taken to overcome them. Land governance is also a result of **land policy**, which is itself derived from a vision of society which different actors are seeking to make reality.

In Africa, to give a broad example, a series of land policies have historically been established: ²

- ▶ The colonial land policy of France, which sought to generalise private ownership, or even the colonial policy of Belgium which aimed for a dual system distinguishing between the land of the local people which was governed by customary law and colonial land governed by modern law;
- ▶ The land policies of the African States which gained independence, which are characterised by aiming for national integration and economic development on the one hand, while seeking to reinforce state intervention on the other.

International land policy, promoted by development donors, is often based around a liberal dogma promoting

² G. Courade, A. Osmont, É. Le Bris, B. Crousse (1991), *Stimuler les politiques foncières à l'échelle internationale, L'appropriation de la terre en Afrique noire*, ch.22, pp.233-257.

internationalisation, privatisation, and regulation favourable to national and foreign investors and suppliers of capital. 80% of agricultural rural land is not officially registered in Africa,³ which encourages the adoption of **new legal frameworks** intended to streamline the occupation of land, favouring investments in land by foreign businesses. These **reforms** consist of registering areas of land, making them marketable and mortgageable. This trend is supported by international financial institutions, particularly the World Bank, with the agreement of national authorities. Private investments and land reforms in the agriculture and extractive sectors are in some cases leading to land grabbing, depriving communities of their vital resources to the detriment of local development and food security. As a result, rural populations are being weakened and migration towards urban areas has increased.

Currently nearly 80% of disputes awaiting judgement before the court and tribunals in the Great Lakes region concern access to land. The same is true of conflicts brought to the **informal conflict resolution mechanisms** typically found in rural areas (family councils, village elders councils, churches, local associations, NGOs).⁴ This situation is in part due to the fact that the **legal frameworks** regarding land have long been imprecise and ineffective, increasing land insecurity as a result.⁵ The orthodox legal solutions applied to these problems in the 1970s and 80s strengthened institutional pluralism, which has exacerbated conflicts. This is particularly the case in the DRC, where the 1973 Land Code recognises multiple claims to land ownership, which in seeking to include everybody, satisfies nobody.

The legal frameworks in the countries of the region are characterised by the often chaotic coexistence of these new legal norms stemming from formal law, which are supposed to rationalise land use and customary law. Indeed,

access to land for the rural poor is often based on custom and traditional practices. Land tenure systems such as those in the DRC and Burundi formally recognise the jurisdiction of customary law to govern collective rights concerning grazing land, as well as exclusive private rights concerning agricultural and residential plots. In other words, the population generally turns to customary chiefs or elders to address issues regarding the ownership or the use of local land. The World Bank also recognises that it is possible for customary and informal land rights systems to ensure full respect for property rights.⁶ In practice, many land conflicts are fuelled by the failure of legal frameworks, particularly in the management of land uses that are sometimes incompatible with each other (livestock vs. agriculture), and also as a result of the coexistence of state and customary law. The juxtaposition of these rights sometimes leads to competition between formal land titles issued by the administration and decisions taken by customary authorities.

This confrontation between *de jure* rights (existing under formal laws) and *de facto* rights (existing in practice through custom) often occurs in conflict-ridden or post-conflict areas, with the arrival of displaced persons sometimes giving rise to considerable uncertainty as to what rights are or should be held by newcomers or residents already in the area.⁷ The complexity of the situation and the risks of litigation can become even more acute when, for example, land is allocated to foreign companies or declared to be publicly owned without the prior consultation of customary owners (whose rights are nonetheless not considered illegal). Local communities are struggling to assert their rights acquired according to custom, as formal title deeds usually take precedence over others in court.

Since the 2000s, legal reforms have largely evolved towards a more rapid and decentralised land management system.⁸ However, this has taken

³ Lottier, Anthony (2013), *Accaparement des terres africaines: La question foncière devrait être une opportunité*, Radio France Internationale

⁴ Pèlerin, Émilie; Mansion, A. and Lavigne Delville, P. (2011), *Afrique des Grands Lacs : droit à la terre, droit à la paix. Des clés pour comprendre et agir sur la sécurisation foncière rurale*, Coll. Études et Travaux, online series n 30, co-publication with CCFD-Terre Solidaire

⁵ *Ibidem*

⁶ World Bank (2007), *Agriculture for Development*. World Development Report, World Bank, Washington.

⁷ FAO (2002), *Land Tenure and Rural Development*.

⁸ Nyenyezi, B. A., Panait O.M. (2014). « Dispositif », du jeu au sens. Programme de sécurisation foncière ou instrument du pouvoir-savoir au Burundi ?, in S. Marysse, F. Reyntjens & S. Vandeginste (ed.), *L'Afrique des Grands Lacs. Annuaire 2013 – 2014*, L'Harmattan, Paris p.77-99.

⁹ Mudinga, E., Nyenyezi, B. A. (2014). Innovations institutionnelles des acteurs non étatiques face à la Crise foncière en RDC : légitimité, efficacité et durabilité en question, in Reyntjens, F. & Vandeginste, S. (éds.), *L'Afrique des Grands Lacs. Annuaire 2013-2014*, L'Harmattan, Paris, p.177-197.

¹⁰ Kohlhagen, D. (2011). In Quest of Legitimacy: Changes in Land Law and Legal Reform in Burundi, in Ansoms, A., Marysse, S., *Natural Resources and Local Livelihoods in the Great Lakes Region of Africa: A Political Economy Perspective*, Palgrave Macmillan, London.

¹¹ Nyenyezi and Panait, Ibid.

¹² Civil Society Dialogue Network, *Mise en œuvre de l'Accord-cadre pour la paix, la sécurité et la coopération pour la RDC et la région: quel soutien la communauté internationale, en particulier l'UE, peut-elle apporter à la société civile congolaise ?* Report from the meeting on the 18th March 2014,

¹³ Mudinga and Nyenyezi, Ibid.

¹⁴ Ibidem

¹⁵ Richards, P. (2013), "Land Conflicts", in OECD, *Conflicts over resources and terrorism. Two facets of insecurity*

very little account of the institutional innovations of local actors, which raises questions about their sustainability or effectiveness.⁹ In **Rwanda**, the country which has advanced furthest in the reform process (see part 2, para. 4), the questioning of local arrangements and the brutal implementation of a new legal framework since 2005 continues to increase latent discontent and conflicts. In **Burundi**, the decision in favour of an overly technical legal framework¹⁰ in place since 2011 makes its effectiveness virtually impossible, while at the same time delegitimising local mechanisms for conflict resolution.¹¹ In the **DRC**, "the entanglement of legal systems including land law, agricultural code and customary code needs to be clarified and a land management plan established. However, the law for land reform is not progressing and civil society participation is limited."¹² The suspension of the work on land reform which began in 2012 leaves an outdated legal framework in place, which is confronted with local palliative actions that are unsustainable and without a legal basis, legitimate though they may be.¹³

There is also a need to question the effectiveness of customary law in resolving land disputes within communities. This effectiveness varies, particularly depending on the context of the local community, as in North Kivu, for example, where customary power often fuels community rivalries rather than alleviating them. It also varies according to the individual capacity, leadership and legitimacy of the customary leader, who will ensure that his decisions are respected in some areas, while they are perverted or ignored in others.

The interplay of power relations engendered by these legal uncertainties often leads to land grabbing by local and national elites as well as by international entrepreneurs, thus constituting a serious potential for conflict: in the three countries, government decisions (concerning the green revolution in Rwanda, the management of the

land belonging to those returning to Burundi and the so-called vacant land and other natural resources in the DRC) regularly lead to land grabbing by elites and the creation of a class of landless peasants.¹⁴

Land conflicts

According to the Organization for Economic Cooperation and Development (OECD), the term **land conflict** refers to all aspects of human contestation over land resources. In Africa, land conflicts include territorial conflicts (for example between herders and farmers), agrarian land disputes (fighting for the possession of agricultural land) and disputes over the use of mineral and forest resources.¹⁵ These land conflicts can be sorted into two macro-categories. First, **socio-environmental land conflicts**, which are linked to the impact of intensive exploitation of natural resources, often as a result of industrial activities or of the building of transport infrastructure (ie. land grabbing, and health, environmental, socio-economic and cultural impacts). They therefore include some of the agrarian territorial conflicts (those related to the presence of large companies) and conflicts over the use of mineral, oil and forest resources.

Then there are **community land disputes**. These land conflicts are often interpreted as a consequence of increased competition for control and management of natural resources. But they also reveal the social dynamics that cut across African societies, particularly with regard to identity and ethnic issues. In the Great Lakes region, these conflicts underscore the need for clarification and change, both in terms of the legal aspect of the land tenure system and the organisation of land management. The models currently in place - whether regulatory or traditional - are no longer appropriate to contemporary land tenure issues. One of the major challenges is therefore to ensure that people have the opportunity to live together, and to use and develop the available resources at

their disposal. When this isn't possible, competition for natural resources gives way to broader forms of conflict.

Indeed, land conflicts have played a **key role in the armed conflicts and civil wars** experienced by the countries of the Great Lakes region in the 1990s and 2000s, and they have intensified over the past decade as refugees from the three countries have returned to their respective states. To begin with **Rwanda's** case, part of the Tutsi population fled to neighbouring countries during the period 1959 to 1963 in response to the conflict between the Hutus and Tutsis. When they left, their lands were either occupied by the remaining population or "confiscated and reassigned by the authorities".¹⁶ Nevertheless, the change of political regime in 1994 encouraged their return. Once they were back in the country, their need for land could not be met in accordance with the Arusha Peace Agreement and the so-called "alternative land" state policy. As a result, many of the Tutsis who had returned to Rwanda began to settle in the territories of the Hutus who had fled the country in 1994. This was the source of many social tensions and land conflicts when the Hutus returned from 1996 onwards. The land redistribution solutions proposed by the Rwandan government have not solved this problem. Cases of illegal expropriations and seizure by political elites have provoked discontent, with complaints often being suppressed by local authorities.

The same situation concerning refugees has occurred in **Burundi** following two main waves of population displacement, which corresponded to two major periods of conflict: 1972 (the beginning of politico-ethnic conflicts) and 1993 (the beginning of the civil war). In this case, it was mainly the Hutus who fled, and their lands were occupied by neighbouring Tutsis or internally displaced persons acting of their own initiative or with the agreement of the administration. Several legislative and regulatory attempts to find a solution

to the refugee problem were first put in place in the mid-1970s and then in the early 1990s, but these were without success.¹⁷ It was necessary to wait until the Arusha Peace Agreement in 2000 to find political solutions which nonetheless experienced great difficulty in being implemented. Equitable solutions were proposed by the National Commission on Land and Other Property (*Commission Nationale des Terres et autres Biens* or CNTB) before being suspended by the ruling party. The ethnicisation of land conflict resolution by the CNTB then led to a real political crisis in 2012 and the politicisation of the work done by the CNTB consequently resulted in land grabbing by the elites.

In the case of the eastern **DRC**, the same problem first arose in 1996, when, during the war, entire populations had to either move within the country or take refuge in neighbouring countries such as Burundi, Rwanda and Tanzania.¹⁸ There have been several waves of population displacement as a result of shifting fronts in the war as well as multiple attacks by militias or rebel groups.¹⁹ Upon returning, these displaced populations have found their lands occupied by other people who have taken them over or acquired ownership of them via the government or third parties.²⁰ In the DRC, the problem of refugees and displaced people has been exacerbated by multiple waves of Rwandan refugees who have been coming to the DRC since the 1950s, occupying indigenous peoples' lands by either taking those left vacant by displaced populations or instead appropriating lands occupied by indigenous peoples.²¹ While there are hardly any State structures dealing with this problem, the issue is being compounded by government injunctions for the occupation of so-called "vacant" land, which favours land grabbing. The solutions proposed by NGOs involved in the management and resolution of these conflicts are continually invalidated by state structures, raising the question of their sustainability.

¹⁶ Leegwater, M. (2011). Sharing Scarcity: Issues of Land Tenure in South-east Rwanda, in A. Ansoms, S. Marysse (ed), *Natural Resources and Local Livelihoods in the Great Lakes Region of Africa. A Political Economy Perspective*. New York/ Basingstoke: Palgrave Macmillan, p. 104-122.

¹⁷ Nyenyezi, B.A., Ansoms, A. (2013). Dynamiques de pouvoir et d'autorité dans l'arène foncière au Burundi : instrumentalisation du pouvoir étatique, in Marysse, S., Reyntjens, F., Vandeginste, S. (ed.), *L'Afrique des Grands Lacs. Annuaire 2011-2012*, Paris: L'Harmattan.

¹⁸ Ansoms, A., Hilhorst, Th. (ed.) (2014). *Losing Your Land: Dispossession in the Great Lakes*, Boydell & Brewer, USA.

¹⁹ These wars took place during the periods of 1996, 1998, 2001, 2004, as well as some conflicts which are still ongoing in certain parts of eastern DRC.

²⁰ Nyenyezi, B. A., Ansoms, A. (2012). *L'arène foncière au Burundi : comprendre les rapports de force*, in : Marysse, S., Reyntjens, F. & Vandeginste, S. (ed.), *L'Afrique des Grands Lacs. Annuaire 2011-2012*, 2012, L'Harmattan, Paris, p. 49-72.

²¹ This is the case for the Kyniarwanda speaking populations now living in eastern DRC (*banyamulenge*), for example, or different groups of Rwandan speaking Hutus and Tutsis living in the same area.

Land grabbing in the Great Lakes: the DRC at the forefront

The **DRC** is certainly the Great Lakes country most affected by land grabbing. It has a total area of agricultural land that is unparalleled in Africa, as only 5-10% of its 80 million hectares of arable land are officially used. It is thought to be the third African country most affected by large-scale land grabbing (3 million ha), behind Madagascar (3.7 million ha) and Ethiopia (3.2 million ha). According to the Natural Resources Network (*Réseau de ressources naturelles* or *RRD*), the vast majority of Congolese soil and subsoil is already under concession..

In the agricultural sector, 2,850,356 ha were recorded by the **Landmatrix** project. The Congolese Government is also considering the creation of new **agro-industrial parks**, for which 3 sites have already been identified: 53,000 ha around Nkundi (Cataractes district, Bas-Congo), 10,000 ha on the Bateke plateau (Kwango district, Bandundu), 40,000 ha around Kimbinga (Kwilu district, Bandundu). There are also plans to open five other sites for investment in Katanga (Kalemie, Kasese), Maniema (Kindu and Kasongo), Équateur (Bumba, Businga) and in Orientale Province.

In the **mining sector**, there are no fewer than 102 companies and 75 private investors who have been granted one or more exploration or mining permits by the Kinshasa authorities, a large part of which are concentrated in Katanga province. These figures certainly do not reflect the scramble for mining stocks, with some sources counting more than 300 mining operators. The largest of these mining projects involve companies appropriating thousands of hectares of land, which are often partly inhabited and used by local communities (for agriculture or small-scale mining). The latest mega-mining project, the Kamoia project in Katanga, awarded to Ivanhoe Mining of Canada and Zijin Mining of China, involves the world's largest remaining copper reserves and will occupy an area equivalent to that of the city of London, covering an area of nearly 400 km².

In the **forest sector**, the DRC has more than 45% of the African equatorial forest and 6% of the world's tropical reserves, containing rare wood varieties. According to Global Witness, there are currently 57 industrial forest concessions in the DRC, totalling 10,840,328 ha. SODEFOR, the largest forestry company in the DRC, has concessions totalling close to 2.3 million ha. According to Global Witness, «the largest companies - both in terms of concessionary forest area and harvested timber - (...) have all been identified as having committed the most serious violations of [Congolese] law.» This is in spite of a moratorium on new forest concessions which was introduced in 2002 and renewed in 2005. In March 2016, the Congolese Minister of the Environment, Robert Bopolo, declared that the authorities intended to «reopen the issue [of ending the moratorium] in the [financial] interest of the Republic». The World Bank itself recognises that improving the «business climate» and building infrastructure and roads in the DRC «could lead to increased deforestation».

Land grabbing: land back at the heart of the development agenda

For over 10 years, land grabbing has been one of the major problems faced by our global development model. These problems usually revolve around issues of climate change, food sovereignty and human rights. Seizure of land is not a new phenomenon, but it has recently experienced a sharp and sudden acceleration, making agricultural assets, especially land, “a strategic resource on the same level as oil or certain minerals”.²²

There are **several terms** for land grabbing, depending on the type of actors using the land and the point of view they express. These include the following: “large-scale land acquisition” for the World Bank, “large-scale appropriation” for the French

bilateral development cooperation agency (French Development Agency), “commercial pressure on land” for the International Land Coalition (ILC), “large-scale commercial land transactions” for the International Development Research Centre (IDRC), and “land grabbing” for peasant organisations.

When discussing land grabbing, the use of the term “large-scale” is open to debate, in particular because it refers to different realities depending on the local context: “large-scale” may refer to 30,000 hectares in Bandundu (DRC), but to 5 hectares in Burundi or coastal South Kivu (DRC). It is therefore important that the definition adopted be as broad as possible to encompass the greatest number of situations

²² Jean-Paul Charvet, “Land grabbing ou accapement de terres agricoles”, Encyclopædia Universalis

reflecting the issue of “land impacts”. Land grabbing includes acquisitions and leases that share one or more of the following **characteristics**:²³ they are contrary to human rights; they are not based on the free, prior and informed consent of affected users; they are not based on careful assessment, or do not consider social, economic and environmental impacts; they are not subject to transparent procedures setting out clear and binding commitments on activities, employment and benefit-sharing; or they are not based on effective democratic planning, independent oversight and meaningful participation.

INEQUALITIES IN ACCESS TO LAND FOR FOREST PEOPLES AND PEASANT WOMEN

In the Great Lakes region of Africa, inequalities in terms of accessing, controlling and using resources, in this case land, frequently affect forest peoples and peasant women. These inequalities have been gradually introduced through land management rules that discriminate against these two social groups. Some of the determining factors of these inequalities are primarily the result of legislative, political or cultural constructs, as opposed to economic factors.

Forest peoples: from legal marginalisation to de facto inequality

Several social groups belonging to the category of ‘forest peoples’ are scattered along the equator in Central Africa. They can be found in Gabon, Cameroon, Burundi, Rwanda, the DRC and Uganda. These groups are mainly hunters, gatherers and fishermen living in forests and around the Great Lakes in Africa; they are generally considered to be indigenous people (called Batwa or Bambuti).²⁴ It is believed that they were joined and then taken over by the farming and pastoral peoples who arrived in the region as early as the 5th century BC. The development

of legislation in the region has not taken into account the customary law of these peoples in almost any area, including land tenure. This has had a number of discriminatory consequences for these people, including inequalities in access to land. This process spans the pre-colonial, colonial and postcolonial periods.

First, the various systems of customary law that prevailed during the pre-colonial period did not take into account the land tenure practices of indigenous peoples. The customary systems that governed access to land or the land tenure of indigenous peoples at the time “were collective in nature, organised around the rights of specific clans and based on concepts of seasonal land use covering vast tracts of land largely covered by forests”.²⁵ However, as land and forests were conquered by other ethnic groups, forest peoples were forced to integrate into land tenure systems that did not account for their customary norms. Throughout political and historical developments that have seen the affirmation of a number of customary rights according to peoples’ cultural identities, indigenous peoples have simply been forced to conform to the prevailing general custom.²⁶

Second, during the colonial period, history was to repeat itself when it came to the land rights of forest peoples: once again, their rights were not taken into account in successive reforms. Let us take the cases of Rwanda and Burundi. Germany, which colonised these countries towards the end of the 19th century, maintained traditional institutions and did not modify land rights. Consequently, throughout the German colonisation, which ended in 1916, an indirect administration policy was promoted. The *Mwami* and its representatives were responsible for managing the land in these countries, with a few exceptions. When Rwanda and Burundi were attached to the Belgian Congo on behalf of Belgium in 1916, the situation changed completely and the lives of forest peoples living in these

²³ **Tirana Declaration**, signed by the Assembly of members of the International Land Coalition, attended by civil society organisations and international organisations, including the World Bank, on the 27th May 2011.

²⁴ Amani J.P. (2009). « *Les droits fonciers et les peuples des forêts d'Afrique. Perspectives historiques, juridiques et anthropologiques. N°1, Evolution historique du droit foncier et son incidence sur la propriété foncière des Batwa au Burundi* », Report by the Forest Peoples Programme, United Kingdom; Huggins Ch. (2009). « *Les droits fonciers et les peuples des forêts d'Afrique. Perspectives historiques, juridiques et anthropologiques. N°4, Les lois foncières historiques et contemporaines et leur incidence sur les droits fonciers des peuples autochtones au Rwanda* », Report by the Forest Peoples Programme, May 2009.

²⁵ Huggins 2009, Ibid.

²⁶ Acquier J-L. (1986). *Le Burundi*, Les Parenthèses, Marseille, France.

territories were intertwined. Ruanda-Urundi was subject to the laws of the Belgian Congo. This was to have very negative impacts on the land rights of forest peoples in all three countries. For example, in 1925, an ordinance required customary authorities to make wetlands and swamps available to all farmers, a rule that would prove problematic for forest peoples. Several other colonial legal texts went on to systematically introduce problems of compatibility with the traditions of indigenous peoples, but it was the forest peoples who would suffer the most. These laws included, for example, the principle of vacant land, the prohibition of inhabiting newly protected areas, restrictions on hunting, failure to take collective ownership into account, etc.

Third, contemporary land rights have not done justice to dispossessed forest peoples as reforms in these three countries have progressed. The approach introduced by colonial legislation persisted after independence. The commodification of land and the protection of the environment featured as part of earlier colonial reforms and did not take into account the land tenure systems of these peoples. As a result, during the postcolonial period, forest peoples were not only expelled from protected areas without compensation, they were also forced to pay to extract clay from the marshes.²⁷

Peasant women and land tenure: when norms institutionalise inequality

Some women in the region can now enjoy equal rights to man (e.g. since 1999, Rwandan law has granted women the right to inherit land), but generally speaking, things have not changed much in terms of access to land. The traditional society of this region was structured according to a very elaborate patriarchal system. From birth, since girls and boys were not seen as equals, they were treated and socialised differently. While male children were viewed as intended to perpetuate the family line and ensure the protection

and survival of the family as a whole, female children were not thought to belong to their families of origin. Girls were destined for marriage, to leave their family homes and then belong to another family. This is one of the main reasons why customary laws in this region have not allowed women to inherit land; so that they cannot bring their fathers' land holdings into the families of their husbands. By excluding women from access to land, customary institutions have officially institutionalised gender inequalities, making women more vulnerable, poor and economically dependent.

Throughout the colonial period, settlers did not promote equality between women and men for several reasons. Not only was this issue still very controversial in western society at the time (Belgian²⁸ and German society in this case), but there was also a clear lack of interest in women's emancipation at a time when the links between the status of women and underdevelopment were not yet clear. For women, as well as men, education was mostly provided by religious figures. These were convinced that gender inequalities were part of a divine plan, contributing to women's persistently inferior status during colonisation. The situation was similar in the three countries of the Great Lakes region, which were then one and the same country, colonised by Belgium from 1916 onwards. Land tenure was no exception to this rule, as we will see below.

Finally, as regards the similarity of the post-colonial political and institutional/legal process, the situation of women remained the same in the aftermath of independence, during the one-party period - which ended in the 1990s - and during the periods of political transition that followed. The political and legislative changes that took place in the 2000s favoured a certain degree of progress in relation to women's position in society often accompanied by the survival of customary practices. Indeed, these developments have not

²⁷ Couillard V., Gilbert J., Kenrick J., Kidd Ch. (2009). « *Les droits fonciers et les peuples des forêts d'Afrique. Perspectives historiques, juridiques et anthropologiques. Aperçu général : analyse et contexte* ». Report by the Forest Peoples Programme, United Kingdom.

²⁸ Gubin E., Vogel-Polsky E. (2007). *Une femme de conviction*, Brussels, Institute for the Equality of Women and Men.

ceased to clash with the customary practices that prevail in a situation of legal pluralism. This pluralism manifests itself in terms of the contradiction between customary and state law in Rwanda, for example. The same situation can be found in Burundi and the DRC, with the only difference being that in the latter two countries, the contradictions within the State law regarding the status and rights of women support the application of custom. As a result, despite all the international legal instruments ratified and the advances contained in the constitutions and laws of Burundi and the Congo, either the implementing laws have not followed the logic of gender equality, they have referred to customary law to govern the matter, or they have not been applied in the face of attitudes or customs that failed to evolve. However, the Rwandan government's efforts in favour of gender equality, which it is trying to promote despite the remaining patriarchal burdens still in place, are to be commended.

THE EU'S RESPONSIBILITY FOR SUSTAINABLE AND EQUITABLE LAND MANAGEMENT

The origins of the consideration by Member States and the European Union of land tenure in developing countries

It was in the period between the 1980s and the early 2000s that some of the EU Member States began to take an interest in land tenure issues in developing countries and started to reflect on land tenure as a possible lever for economic development and poverty reduction. In 1996, France set up a steering committee on rural land issues, natural resources and development. "At the same time, France and Britain decided to conduct common works on development issues, based on their extensive field experience and a wide range of research on that matter. It was decided that land tenure would

Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests

- ▶ **Establish** the duty of states to **recognise, protect and facilitate the exercise** of legitimate land rights, whether they are formal, informal or customary.
- ▶ **Urge** states to recognise the social context in which rights are exercised, and recognise that no land rights, including those to private property, are absolute.
- ▶ **Recognise** the inextricable link between **land rights** and **human rights** and urge states to respect the civil, political and economic rights of land rights holders, farmers and environmental advocates.
- ▶ **Affirm** the principles of **non-discrimination** and **gender equality** in access to land rights.
- ▶ **Encourage** states and non-state organisations to make investments in land that **respect local rights and indigenous peoples**, which take into account their **environmental impact** and which do not neglect the interests of small-scale farmers and peasants.
- ▶ **Encourage** states and non-state actors to establish due diligence mechanisms that provide for the **prior informed consensus** of the communities involved in **large-scale land transactions**.

be one of these common works", ²⁹ which led the United Kingdom to create a committee similar to that set up by the French. The two working groups were respectively then led by the Technological Research and Exchange Group (*Groupe de recherche et d'échange technologiques* or GRET) and the International Institute for Environment and Development (IIED). Both groups worked with a multidisciplinary approach and did not consider land issues as exclusively economic ones, rather they took into account the importance of land as a "social object at the heart of important sociological questions such as identity, citizenship, social equity, etc."³⁰

The Franco-British exchanges contributed to the discussion among land-related donors, and in 2003 the two working groups would go on to support the World Bank's "Land Policies for Growth and Poverty

²⁹ Bergeret, P. (2008), [EU Land Policy and the Right to Food](#), Transnational Institute and 11.11.11

³⁰ EU Task force on Land Tenure (2004), [EU Land policy guidelines, Guidelines for support to land policy design and land policy reform processes in developing countries](#)

Reduction” report, a document that would have a major impact on land-related donor policies in subsequent years. The Bank’s paper, largely written by its chief economist Klaus Deninger, emphasises individual property rights as an institutional reality of rural areas in developing countries, and stresses the importance of securing individual land titles as the main response to land inequalities and low levels of agricultural investment in these countries. It is through securing individual property rights and creating efficient land title markets that land can become a lever for economic growth and poverty reduction. The Bank acknowledges that the formalisation of customary property and usage rights, where they exist, should take precedence over the imposition of state law, but these rights (as well as collective rights) are seen from an evolutionary perspective: they represent the remnants of outdated forms of social organisation, and their recognition is only a prerequisite for their eventual integration into the dominant legal system.

³¹ *Ibidem*

While the British and French working groups had limited influence in World Bank publications, their research and exchange of experiences went on to have a greater impact on the EU’s perspective on the issue. In fact, in 2002, the European Commission’s Directorate-General for Development (DG DEV, now DEVCO) launched a multi-stakeholder task force comprising experts from the Commission, key experts and representatives of the Member States to produce guidelines that could guide the actions of the Member States’ development cooperation agencies and its own Directorate-General. The paper, which was only a few pages long, provided a critique of approaches that place individual property rights at the centre of land interventions, while embracing an evolutionary conception of land rights. Through this document, the Commission and DEVCO launched a debate to help clarify the economic vision promoted

by the World Bank. This reflection culminated in the first EU policy paper on land tenure in developing countries, a communication to the Council and Parliament outlining the EU’s approach to land tenure policies in developing countries. The document put forward a nuanced viewpoint, clearly seeking to find a compromise between the value and economic potential of land as a resource and the multiple social functions that land performs in the societies of many developing countries. The paper acknowledged that the land tenure “closely binds together issues of wealth, power and meaning. Control over land forms a significant part of the identity and maintenance of rural society.” Within the same set of ideas, land tenure is broadly defined as a “system of access to and control over land and related resources” and land rights “are not limited to private ownership in the strict sense, but can be a very diverse balance between individual rights and duties, and collective regulations, at different levels”. The vision of land policies presented in this paper therefore recognises the multidimensional nature of land as a social issue, and the variety of forms of management and access stemming from state legal systems and customary land tenure. This variety of sources of land legitimacy, the Task Force continues, is often a source of inefficiency in land management and conflict. It is for this reason that the EU recognises the need to find a compromise between “formal land tenure standards and informal norms and institutions”.³¹

The document went further and, contrary to the approaches that would be proposed by multilateral donors such as the World Bank and International Monetary Fund (IMF), the EU Task Force recognised the crucial role of land policies as a cornerstone of not only economic development and poverty reduction, but also of social stability, conflict prevention and social equity. In this sense, land policies became a fundamental tool to achieve a range of objectives such as food security,

environmental sustainability, gender equality and respect for human rights. This was a radically different approach from that of multilateral donors and aligned with the positions of social anthropology and development studies. This was particularly important in the rest of the paper, where the Task Force considered positions which were critical of the approach founded upon a market-based view of the land and the economic value of individual title deeds. The Task Force clearly recognises that “titling may not be the solution”, and that the objective of a sustainable land policy should not necessarily be to provide each land user with a formal title, but to guarantee access to users through a variety of land access and management models. It recognises that an effective land policy should not be limited to securing land rights, but should recognise existing rights by integrating them into the range of legitimate management models in order to achieve a maximum impact in terms of poverty reduction and economic growth as well as social equity, conflict prevention and human rights protection. It is in this spirit that the EU document suggests an approach based in equal parts on the need to secure titles to obtain economic benefits as well as on the need to protect the human rights of populations, which are recognised as a prerequisite if the most disadvantaged sections of the population, especially women and indigenous peoples, are to have access to basic human rights, as well as to civil and political rights.

The EU and France’s commitment to the Voluntary Guidelines and the sustainable management of land tenure systems

The EU’s actions for the sustainable management of land tenure systems

In his analysis of the European guidelines on land tenure, Pascal Bergeret³² writes that “Since the guidelines were published in November 2004 through a Communication by the Commission, very little attention has been given to them” and that this fact shows that “the work of the task force, although formally endorsed at the highest levels of EU governance (Commission, Council and Parliament) is not actually owned by the EU system. The point of view of the task force, as we have seen, slightly diverges from the point of view of other donors through its political flavour.”

In 2012, the discussion on land policies would again take centre stage in discussions of development policies. In part, this renewed attention was justified by the media attention paid to the numerous cases of land grabbing in Asia, Latin America and Africa in the first decade of the 2000s, a topic which was gaining prominence in the Western media. Land grabbing in Africa is often justified by economic investments from multinational companies, or by states looking for land to produce foodstuffs or agrofuels. International civil society, meanwhile, began a discussion process within the FAO’s Committee on World Food Security (CFS) in 2010 in order to speak with representatives of governments and civil society, with the aim of creating a set of international guiding principles governing the management of not only land, but also fisheries and forests. The outcome of this discussion was, in 2012, the enactment of the **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests** (hereafter Voluntary Guidelines). The purpose of these guidelines is to propose a clear framework for national governments

³² Bergeret, P. (2008), *Ibid.*

and private investors to ensure that the growing number of agro-industrial projects targeting land in developing countries are conducted in ways that promote food security, the protection of the rights of local communities, the equitable distribution of economic benefits, and the respect of state and customary land tenure rights, especially those of women, ethnic minorities and indigenous peoples.

Since their adoption by the CFS, the Voluntary Guidelines have emerged as the key instrument for sustainable and equitable land management. Although they are non-binding in nature, they represent a soft law instrument that can be mobilised by communities interested by large-scale land investment projects which involve the land where they live, as well as civil society organisations that aim to influence ongoing land reform processes in their respective countries. In addition, the Voluntary Guidelines provide civil society organisations in developed countries with tools to monitor and hold to account private entities wishing to invest in the natural resources of host countries in Europe, Africa and Latin America. The Guidelines, in fact, establish a set of clear principles and good practices for the responsible management of relevant natural resources.

Since their launch, the EU has been at the forefront of popularising and disseminating the Voluntary Guidelines. This is not surprising, as the principles contained in the Voluntary Guidelines are in line with the guidelines in the Commission's 2004 land policy document (see para. 3.1): they provide for a variety of approaches towards recognising land rights, they pay particular attention to minorities, and they recognise the cultural and social aspects of land and not only its economic value. The EU was involved from the start of the discussion about the Voluntary Guidelines in 2009, and is currently a key player in the development and dissemination of the

Voluntary Guidelines. This EU support manifests itself through its involvement in a number of initiatives:

► **EU-UN Partnership on Land, Natural Resources and Conflict Prevention**

Since 2009, the EU and the UN have established a strategic partnership to address conflicts over natural resources in developing countries. This partnership had a regional "Great Lakes" component with projects implemented in Rwanda, Burundi and the DRC. These projects focused on small-scale mining (in Burundi), the mediation of land conflicts by arbitration committees (in Rwanda, see also 2.2) and land conflicts in the mining sector (in the DRC).

► **Thematic Programme on Land**

DEVCO implemented a series of programmes in 2013 and 2015 that aimed to support sustainable management of land tenure systems in beneficiary countries, including technical support to local authorities in charge of implementing land tenure programmes and actions to popularise the Voluntary Guidelines. The actions carried out in 2013 resulted in a total of 33 million euros, while for actions carried out in 2015 the total was 31 million euros. Most of these interventions are concentrated on the African continent (Angola, Burundi, Ethiopia, Cote d'Ivoire, Kenya, Malawi, Niger, Somalia, South Sudan, Swaziland, Cameroon, Ghana, Uganda and Guinea-Bissau). It should be noted that some of these interventions are cross-cutting and form part of the EU-FAO partnership (see next point).

► **EU-FAO Partnership**

Between 2012 and 2017, the joint EU-FAO action resulted in the implementation of more than 140 programmes on the management of natural resources, land, and mining, forest and fishery areas, often with the explicit aim of disseminating the Voluntary Guidelines, with a total value of more than 600 million euros.³³

► Land Policy Initiative

The EU also participates in the Land Policy Initiative, an initiative of the African Development Bank, the African Union Commission and the United Nations Economic Commission for Africa to establish a fair and equitable land tenure system in the member countries of the African Union. EU support, amounting to 8.8 million euro, ended in June 2017.

► Support for the International Land Coalition (ILC)

The ILC is an initiative that brings together international civil society organisations, NGOs and some UN agencies to promote land tenure systems that are inclusive, fair and put the interests of farmers first. The EU has pledged to financially support ILC's 2016/2021 strategy for a total of 5 million euros.

► Support for the Land Matrix initiative

The Land Matrix is an independent, non-governmental initiative aiming to set up a system of monitoring and accountability for large-scale land transactions. In its strategic planning for 2017/2020, the Land Matrix plans to set up a system of regional observatories to monitor major land transactions and land grabbing. The EU is supporting the project for a total of 1 million euros by 2020.

France's commitment to the Voluntary Guidelines

As we have pointed out, France has been present since the beginning of the discussion on land policies in developing countries. It has in fact been active within AFD since the beginning of the 2000s, where the Land and Development Technical Committee has been an advisory structure at the forefront of shaping the French perspective and policies on the issue of access to land and land tenure. The contribution of this committee has been central to influencing land policies at the European level (see paragraph 3.1). As soon as the

Voluntary Guidelines were approved in 2012, the Technical Committee and AFD were the first to disseminate and implement the Voluntary Guidelines. In fact, since 2014, AFD has been using its own implementation and guidance system to comply with the Voluntary Guidelines. It is an *ex-ante* guide to be used prior to land investments.³⁴ Modelled on the principles of the Voluntary Guidelines, this guide was produced with the aim of serving as an "implementation manual" for investment projects carried out by French investors. Although the guide is a remarkable initiative and has been adopted by DEVCO in the implementation of some of its programmes, its use has been relatively limited. In particular, the guide is not systematically used by AFD or by PROPARCO, AFD's sister organisation which groups together private sector organisations, though it has been used in pilot projects. The fact that this tool produced by AFD was not taken up or used in a systematic fashion by the organisation of private sector investors grouped within PROPARCO is a cause for concern for **EurAc**, as it shows a lack of commitment from AFD and PROPARCO beyond simply producing tools. In addition, the guide provides a series of pre-assessments for agricultural projects that are equally relevant in other land related sectors, such as the energy, mining and real estate sectors. There is no reason why the mechanisms provided for in the ex-ante analysis guide should not be applicable in other cases.

The EU and land tenure: contradictions and limits

EU interventions in developing countries, whether in the area of land, agriculture, access to justice or education, have **poverty reduction** as their ultimate goal. In the Great Lakes region, as in the rest of sub-Saharan Africa, poverty is concentrated in rural areas, where 75 % of poor people live;³⁵ in addition, more than 80% of the population still depend on agriculture to survive.³⁶ Amongst the various

³⁴ Comité Technique Foncier et Développement, *Guide d'analyse ex-ante de projets d'investissements agricoles à emprise foncière*

³⁵ Zimmerle, Brigit (2012), *When Development Cooperation becomes Land Grabbing. The Role of Development Finance Institutions*, Fastenopfer/Bread for All.

³⁶ Pèlerin, E., Mansion, A. and Lavigne Delville, P. (2011), *Afrique des Grands Lacs : droit à la terre, droit à la paix. Des clés pour comprendre et agir sur la sécurisation foncière rurale*. (30), CCFD-Terre Solidaire/Gret; 1-127.

factors explaining impoverishment in rural areas are the scarcity of arable land (often an average of 0.4 hectares per family), which is also linked to population growth and climate change, as well as the intensive exploitation of natural resources (forests, mines, etc.). This **land shortage**, caused by the scarcity of available land, is creating a growing market for land.³⁷ In this sense, **farmers' access to land** seems to be one of the main challenges to effectively combating poverty. However the EU's interventions in development cooperation or support for the land reforms described in this report **open doors to possible abuses**.

Firstly, the EU does not have a specific and ambitious policy to curb **land grabbing by European companies**. Although the Commission, through DEVCO, has effectively appropriated the Voluntary Guidelines on the Responsible Governance of Tenure of Land from the FAO, this remains a voluntary instrument that does not oblige the Union, its Member States or private companies to establish mechanisms for assessing and monitoring land investments. Secondly, the EU and some of its Member States use instruments that promote land grabbing. These include financial instruments (Belgium, Netherlands, Germany, Sweden, Switzerland).³⁸ However, a distinction must be drawn here between the DRC, where the phenomenon of large-scale land grabbing by companies is common, and Rwanda and Burundi, where the areas concerned are much smaller. The issue of the size at which reference is made to "large-scale" therefore varies according to national realities. In addition, it should also be made clear from the outset that most of the perpetrators of land grabbing in all three countries are mostly **local actors** (companies, political, military, economic and urban elites). Nevertheless, European companies are still involved in the problem of land grabbing in the Great Lakes. A well-known case is that of Feronia, the company responsible for land grabbing in the DRC.³⁹ According to an initial

GRAIN report, Feronia is supported by France, Spain and Great Britain.⁴⁰ According to a second report, Belgium (Bio) and the Netherlands are also involved.⁴¹

In terms of **European policies** related to land grabbing and tenure issues, it is worth mentioning the "New G8 Alliance for Food Security and Nutrition" (*Nouvelle Alliance du G8 pour la Sécurité Alimentaire et la Nutrition* or NASAN) supported by France, Germany, Italy, the UK and the EU, which "further accentuates the risk of rural communities losing control of and access to their land to the benefit of large-scale investors, mainly as a result of strategic commitments made by African States regarding the granting of land titles and land reform".⁴² Although no countries in the Great Lakes region are currently participating in this initiative,⁴³ it reflects the danger of the approach taken by major international funding providers. In addition, NASAN is expected to merge with another initiative, the "Grow Africa" platform, which involves Rwanda.

Furthermore, the EU intends to align its action with - or even directly support - **multilateral initiatives** launched by the AfDB, AU (NEPAD), FAO or the World Bank to **promote agro-industry**. However, the agro-industrial sector is one of the main culprits of land grabbing in Africa, alongside the extractive sector. The AU, the AfDB and the United Nations Economic Commission for Africa (UNECA) have launched the "Land Policy Initiative" programme, which aims to increase land use for development.⁴⁴ Other areas of European policy have direct or indirect effects on land grabbing around the world, such as EU bio-economy policy (REDD mechanisms), trade policy, or the Common Agricultural Policy (CAP).⁴⁵ Finally, at the global level, the negative role of financial markets can also be pointed out, in particular due to the free movement of capital and speculation on the value of agricultural

³⁷ Ansoms, A., Hilhorst, Th. (eds.) (2014). *Losing Your Land: Dispossession in the Great Lakes*, Boydell & Brewer, USA.

³⁸ Zimmerle, Brigit (2012), *When Development Cooperation becomes Land Grabbing. The Role of Development Finance Institutions*, Fastenopfer/Bread for All.

³⁹ The Feronia case is being monitored by several members of EurAc: Entraide & Fraternité, CCFD-Terre Solidaire, Christain Aid and Miseror.

⁴⁰ GRAIN and RIAO-RDC (2015), *Agro-colonialisme au Congo. Les institutions financières de développements européennes et américaines financent une nouvelle phase d'agro-colonialisme au Congo*.

⁴¹ CNCD-11.11.11, 11.11.11, AEFJN, Entraide & Fraternité, Oxfam Solidarité and SOS Faim (2013), *Ruée vers les terres ? Quelles complicités belges dans le nouveau Far West mondial ?*.

⁴² Curtis, Mark (2015), *Nouvelle Alliance, Nouveaux Risques d'Accaparements de Terres : Étude des impacts au Malawi, au Nigéria, au Sénégal et en Tanzanie*, Action Aid.

⁴³ 10 African countries have joined NASAN : **Benin, Burkina Faso, Côte d'Ivoire, Ethiopia, Ghana, Malawi, Mozambique, Nigeria, Senegal, Tanzania**.

⁴⁴ United Nations, **Land Policy Initiative**

⁴⁵ Madariaga College of Europe Foundation (2013), *Land Grabbing: Is Europe part of the Problem or the Solution?*, Madariaga Report.

land,⁴⁶ to which the EU provides only a weak response in terms of reform or regulation.⁴⁷

These mechanisms increase the **concentration of land ownership in the hands of large investors**. In the agricultural sector, this concentration of land is justified in the name of the need to modernise Southern agriculture and invest in “underutilised” land to increase global food production. In Africa, where more than 90% of rural agricultural land is not officially registered,⁴⁸ the scale of land grabbing is estimated at 56.2 million hectares, or 4.8% of the continent’s agricultural area, followed by Asia (17.7 million hectares) and Latin America (7 million hectares).⁴⁹ Large-scale land grabbing is encouraged by the adoption of new **legal frameworks** that are supposed to streamline land occupation and thus facilitate the massive investment of multinational corporations in land. The same is true of the extractive sector, as the rise in raw material prices over the last ten years has led to the occupation of cultivable and/or inhabited land for the launching of new forestry and sub-surface (mining, hydrocarbons) projects. This phenomenon, however, is the subject of fierce criticism, not only for the attacks on the sovereignty of States over their resources, but also because it favours the dispossession of small-scale farmers⁵⁰. The increase in the value of land **disqualifies the poorest and supposedly least productive sections of the population from land access**, leading to impoverishment and human rights violations.

This trend in favour of agro-industry and land investment is reflected in the promotion of “**Public-Private Partnerships**” (PPPs) for the development of the agricultural sector, particularly in Africa. For example, the “Grow Africa” platform serves to attract private investment in partnerships to support the policies set out in NEPAD’s CAADP, itself promoted by the European Commission. NASAN, supported by the EU and some

member states, is nothing more than a mega-PPP for major investments and reforms in the agricultural sector. In its Communication titled “*A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries*” (May 2014), the Commission proposes to **strengthen this role in the agriculture and agri-food sector, notably by supporting** “inclusive PPPs and business models with due recognition of processes such as the voluntary guidelines on responsible governance on tenure of land, fisheries and forests, responsible agriculture investment and the UNECA’s Land Policy Initiative”. In **Rwanda**, for example, this type of PPP has been implemented in the tea sector in the Nshili and Musubi regions (Southern Province). Another type of PPP that promotes investment leading to large-scale land acquisition is the Emerging Africa Infrastructure Fund (EAIF) from the Private Infrastructure Development Group (PIDG), to which Switzerland, the Netherlands and Sweden contribute.⁵¹ The PROPARCO fund initiated by the French Development Agency (AFD) is also worth mentioning. PPPs are often criticised for introducing profit-driven actors into the agricultural sector,⁵² because of their top-down and business-oriented nature, and for excluding or discriminating against **small farmers and marginalised communities**.⁵³

The EU appears to be encouraging the concentration of land ownership by large private investors in Africa. This is particularly true in the agricultural sector, since the **promotion of agro-industry** is at the heart of European development policy in Africa, based on the “increasingly clear political consensus on the role of the private sector in revitalising African agriculture and developing a dynamic agri-food industry”.⁵⁴ According to former Development Commissioner Andris Piebalgs, the development of the agricultural sector is a priority for many African countries, justifying the fact that the EU has released 8.2 billion

⁴⁶ European Economic and Social Committee, *L'accaparement des terres: une sonnette d'alarme pour l'Europe et une menace imminente pour l'agriculture familiale (avis d'initiative)*, 21st January 2015.

⁴⁷ European Commission, *Tackling the Challenges in Commodity Markets and on Raw Materials (COM(2011) 25 final)*, 2nd February 2011.

⁴⁸ Lattier, Anthony (2013), « *Accaparement des terres africaines: La question foncière devrait être une opportunité* », Radio France Internationale.

⁴⁹ European Economic and Social Committee, *Ibid.*, p.2.

⁵⁰ Observatoire des multinationales, dossier *Accaparement des Terres*

⁵¹ *Une planète aux enchères ? Perspectives*, published by Fastonopfer, 2013

⁵² De Clerck D., Demeulemeester E. and Herroelen W., *Public Private Partnerships: Look Before You Leap into Marriage, Review of Business and Economic Literature*, 2012/57:3, p. 249–61.

⁵³ Heinrich M., *Donor Partnerships with Business for Private Sector Development: What Can We Learn from Experience?*, Working Paper -Donor Committee for Enterprise Development, Cambridge, 2013.

⁵⁴ European Commission (2013), *Agri-business and development. How investing in the African agri-food sector can help support development*,

euros for across the 2014-2020 period for the agricultural sector in Africa. In conjunction with this statement, he said that it is essential that the private sector invest massively in African agriculture because without private sector investment, "there will be missed opportunities for knowledge and technology transfer".⁵⁵ This strategy is based in part on the perception that peasant and family farming has a limited capacity for action and is risk averse, as stated by Rhoda Peace, AU Commissioner for Agriculture and the Rural Economy.⁵⁶

⁵⁵ David Koczij, *Investing in Africa: The challenge of agriculture*, Friends of Europe

⁵⁶ *Ibidem*.

As we have seen, this type of approach contradicts the Commission's 2004 guidelines, and it is a far cry from the user rights-based approach promoted by the Voluntary Guidelines, a document that has been approved by DEVCO. However, in two of the countries in the Great Lakes region, Rwanda and Burundi, the EU is present and provides financial support for programmes to reform land management systems. Although the goal of these programs is land tenure security, it is noted that they often stem from a pro-securitisation approach which sees commercialisation as the ultimate goal of security. In the DRC, where land issues play multiple roles in the emergence of both communal and armed conflicts, and where the economic stakes associated with land use are high, the EU does not intervene in the land sector. The analysis of the Union's land tenure interventions in the three countries will be analysed in the following part.

Part II

LAND TENURE IN THE GREAT LAKES: TWO OPPOSING VISIONS

The 2008 financial crisis, economic adjustments (such as the reorientation of many investors towards the commodities sector), and liberalisation policies in many countries have renewed interest and given increasing priority to the formulation of policies and strategies for the agriculture and natural resources sectors. This renewed interest is based on the idea that **agricultural growth** is crucial for economic development and that the development of the agricultural sector is a prerequisite for the further development of a country. While the contribution of this sector to economic growth is expected to diminish as a country develops, it remains crucial for food security.⁵⁷

Two major development models for the agricultural sector are fighting over whether and how the sector can meet the growing demand for food and function as an engine of pro-poor economic development. The *first model*, inspired by neoliberal thinking, defends maximum growth through the professionalization of agriculture (World Bank, FAO). Liberalisation of the sector would promote its growth through international competition (improving efficiency/productivity in order to survive), the abolition of taxation on agricultural products (which limits the sector's growth prospects) and encouraging exports.⁵⁸ The World Bank's 2008 report "Agriculture for Development"⁵⁹ and then the 2013 World Economic Forum⁶⁰ have (re)launched the idea of a "Green Revolution" in sub-Saharan Africa. This revolution focuses on the

intensification and professionalization of food production; to achieve these goals, it stresses the importance of irrigation, the promotion of large-scale commercial promotion and the development of new technologies.⁶¹

The *second model* supports peasant and family farming, operating on small farms. This school of thought calls for the consideration of both peasant knowledge and technology in the design of an agricultural model that is more resource-efficient and autonomous (and resilient). The political economy of agricultural reform criticises the neoliberal vision of agriculture as several authors argue that the potential of small-scale agriculture has been deliberately disqualified by the dominant discourse on productivity.⁶² Others argue that productivity and efficiency in and of themselves should not be the main criteria for assessing the potential of small-scale agriculture. Rather, the way in which agriculture can contribute to poverty reduction and ecological sustainability should be valued.⁶³

An attempt by the neoliberal model to integrate some of the criticisms levelled at it by agroecologists can be observed from 2013 onwards, at least in the discourse: from promoting the Brazilian model (expropriation of small farmers), we are now moving on to the model of "partnership" with farmers. However, the model remains fundamentally unchanged: the Green Revolution (technical and technological investment), growth (not self-sufficiency) and productivity remain the cornerstones. It should also be noted that this partnership envisaged by the donors does not include the vast majority of farmers who have less than

⁵⁷ Roger D. Norton (2006), *Politiques de développement agricole. Concepts et expériences*, FAO.

⁵⁸ *Ibidem*.

⁵⁹ United Nations Development Programme (2007), *World Development Report*, New York, p.234.

⁶⁰ World Economic Forum (2013), *Achieving the New Vision for Agriculture: New Models for Action*, A report by the World Economic Forum's New Vision for Agriculture initiative, in collaboration with McKinsey & Company.

⁶¹ Collier, P. (2010). *The Plundered Planet: How to Reconcile Prosperity with Nature*. Allen Lane, London, p.216.

⁶² See: Akram-Lodhi, A.H. (2008) '(Re)imagining agrarian relations? The World Development Report 2008: Agriculture for development', *Development and Change* 39 (6): 1145-1161. Veltmeyer, H. 2009, 'The World Bank on 'Agriculture for Development': A Failure of Imagination or the Power of Ideology?', *Journal of Peasant Studies* 36 (2): 393-410.

⁶³ Wittman, H., Desmarais, A., et al. (2010). *Reconnecting Food, Nature and Community*. Oxford, Pambazuka Press.

one hectare. The balance of power at work in this type of partnership, which is supposed to support more sustainable agriculture, effectively excludes the smallest farmers. Support for agro-ecology and peasant and family farming remains marginal in agricultural sector development projects financed by the main international donors.

The **position of the countries in the Great Lakes region** in this debate is reflected in their agricultural policies, which are generally in line with the neoliberal model, notably in order to be able to access the financing needed to implement their agricultural investment plans. It is nevertheless necessary to mention noteworthy differences between Burundi's policies, marked by clear but inefficient postulates, Rwanda's pro-GMO and pro-market productivism, and the DRC's lack of global vision and chaotic implementation. The African Union, and NEPAD in particular, play a key role in this alignment of national policies. Agriculture is one of NEPAD's priority areas, the objectives of which were adopted by Heads of State and Government as the Development Agenda,⁶⁴ itself reflected in the Comprehensive Africa Agriculture Development Programme (CAADP), presented as an African framework for policy and institutional reforms to increase investment and thus enable the agricultural sector to increase its production. Efforts to align national policies with the principles and objectives of NEPAD require national roundtables that result in national covenants between donors and individual governments. These round tables are supported by the Multi Donor Trust Fund created in September 2008 by the World Bank.⁶⁵ Agricultural policies in Africa, including Great Lakes Africa, are complying with these procedures and the neoliberal model.

⁶⁴ AU **Maputo Declaration**, June 2003, Maputo, Mozambique.

⁶⁵ With initial funding from the European Union, USAID, and Canadian and Dutch cooperation agencies. Recently, French and Irish cooperation agencies have provided additional funding. Other contributions have been pledged but are still pending. See: <http://www.nepad.org>.

⁶⁶ This is a simplification; the Rwandan customary system, which is now almost entirely obsolete, included a variety of figures in charge of land, whether for common property, grazing land or family property. A more comprehensive presentation of the systems of customary land management in Rwanda is provided by Des Forges (2006), *Land in Rwanda: Winnowing out the chaff, Annuaire de l'Afrique des Grands Lacs*, 2005-2006

RWANDA

Rwanda is a small landlocked country in the heart of Central Africa, sharing borders with the DRC, Uganda, Tanzania and Burundi. With a surface area of barely 26,000 square kilometres and a population of more than 11 million inhabitants, it has the highest population density on the African continent. It is clear that the issue of land tenure is of crucial importance in a country which, despite the important economic advances of the post-genocide period, is still dependent on agriculture as the main source of income for its population – 85% of which depends on farming.

For clarity of explanation, Rwanda's land management practices will be broken down into two historical macro periods: one starting from independence, leading up to the tragic events of the 1994 genocide, and the period after the genocide, from 1994 to the present day.

Land management from independence until the 1980s

Like its neighbouring countries, Rwanda had several land management systems when independence came about, in particular a system of written or official law introduced by the Belgian colonisers, and a customary system that revolved around the rights of the customary king, the *umwami* and his notables.⁶⁶ At the time of the revolution in 1959, which marked the country's independence from the Belgian colonisers, the state assumed the powers of the *umwami* king to allocate and manage communal land. At the same time, the land management system remained divided between customary management, heavily influenced by the Belgian colonisers, and formal management by the state. In 1976, President Juvénal Habyarimana signed a presidential decree regulating land management and access arrangements. The decree established that any land that is unused in Rwanda, either

under customary or formal law, is owned by the state. It is important to remember that the 1976 decree is part of a political context already marked by ethnic conflicts. At the time of the revolution led by the Habyarimana Democratic Republican Movement in 1962, 20,000 Rwandan Tutsi had already left the country, leaving their land behind. These areas of land created a political opportunity, as they were easily taken over by the remaining Rwandans and the remaining political elites, who often distributed them to their own advantage.⁶⁷ Although the 1960 and 1962 presidential edicts and the May 1976 decree recognised customary rights, they were also intended to stimulate the land market and regulate the sale of land.

These initiatives were part of a broader movement to combat the fragmentation of plots of land. Indeed, given the size of the country, land fragmentation remained a critical concern for the Rwandan pre-genocide government. This trend towards fragmentation, which is still present today, is mainly due to two factors. **The first factor** is the small size of the country and significant population growth. This means that within each generation the family estate is being subdivided among the (exclusively male) heirs of the family, which logically leads to progressive fragmentation of the plots. **The second factor** is the traditional organisation of the agrarian lifestyle of Rwandan households, which are organised in a “scattered” fashion, spread throughout the national territory. At this time it was not uncommon for a Rwandan household to practice agriculture on multiple plots, often far from the family’s home, situated on other hills, often requiring several hours of travel by foot to reach them. Certainly, this type of organisation was productive in that it allowed risk to be managed broadly, spread across several agricultural extensions. However, when coupled with a significant increase in the population, this naturally leads to the fragmentation of agricultural areas

and a lack of crop specialisation. The 1976 law was therefore supposed to deal with the problem of land fragmentation by imposing restrictions on the possibility of selling or subdividing plots below a certain surface area. The implementation of this law encountered difficulties, however. The same was true of the law stipulating that any land transaction had to be authorised by the Ministry in charge, while in reality the procedure to regularise said transactions was often burdensome, which contributed to the development of an illegal market for the sale of land. Moreover, in the absence of real legal provisions concerning inheritance and succession, a large part of the decision-making power covering land allocation at local level rested with the local authorities, in particular the mayors and their deputies, who effectively had the final word on the allocation of plots at the municipal level.⁶⁸ This favoured land grabbing by local elites, and contributed to an unprecedented increase in the level of land inequality in Rwanda: one need only consider that in 1984 the National Survey on Household Spending found that 15% of Rwandans controlled land surface area equivalent to about 50% of the country’s total land.⁶⁹

Restructuring the legal framework after the genocide

In 1994 Rwanda experienced one of the greatest tragedies of modern history, the genocide of almost 1 million Rwandans - Tutsis and moderate Hutus - by extremist Hutus. While the purpose of this document is by no means an in-depth examination in of the role played by rising land inequality at the end of the 1980s in relation to the tragic events of 1994, it is nonetheless important to note that by 1994 the peasantry were weakened by the scarcity of land and the drop in the prices of cash crops on the international market (and particularly coffee prices, Rwanda’s leading export crop).⁷⁰ Rwandan peasant farmer’s productive capacities were weakened by

⁶⁷ Pottier, Johan. (2006), Land Reform for Peace? Rwanda’s 2005 Land Law in Context, *Journal of Agrarian Change* (6:4) pp. 509-537

⁶⁸ This was the administrative structure used in Rwanda prior to the genocide, which brought together numerous ‘collines’, the smallest administrative unit.

⁶⁹ Pottier, *Ibid.*, p. 514

⁷⁰ See Kamola, Isaac. A (2007), The Global Coffee Economy and the Production of Genocide in Rwanda, *Third World Quarterly* (28:3) pp. 571-592

an increase in land inequality, by a land policy that indirectly favoured land grabbing by political elites and local government, and by an inability to engage in profitable export agriculture.

After victory, the Rwandan Patriotic Front (RPF) faced two major problems. **Firstly**, there was the massive influx of Tutsis who had left the country in 1959 as a result of the Hutu revolution, as well as those who had fled Rwanda following the events of 1994. It is important to note that a significant proportion of the RPF's activists was made up of exiles from the first wave of displaced Tutsis, and that the issue of the land left behind by exiled families and its redistribution is central to understanding the events of 1994 and the RPF's political involvement seeking liberation of the country. The Arusha Agreements, signed in 1994, stipulated that the those returning after having left in the 1960s and survivors of the genocide were entitled to claim the land left at the time of departure, but only if the land in question had been abandoned less than ten years prior to the signature of the agreement. That said, it is clear that the arrangements between those returning and people living on the land in 1994 were often decided at the local level of the commune (now district) and often waived the letter of the Agreement. **Secondly**, policies to control market fragmentation and formalisation enacted during the Habyarimana era had failed to manage customary land tenure and combat fragmentation. The RPF found itself with a country with a large population density, which was increased further with the return of refugees, as well as agricultural production methods that it judged to be "anarchistic" and "archaic".⁷¹ Despite the efforts of the Democratic Republican Movement, Rwandans were still organised into "scattered" dwellings.

It is the latter problem that the RPF authorities addressed first. Furthermore, thanks to the contribution of academic institutions such as Michigan State University and multilateral donors such

as the World Bank, it was accepted by the government that the solution for better land management and streamlined farming and food production was the privatisation of land ownership and its consolidation - combining small plots of land into larger land extensions, which should guarantee higher levels of agricultural production.

Land consolidation is the first objective that the RPF government set itself, with the enactment of the law on "villagisation" in December 1999. The land villagisation policy imposes the *umudugudu* (pl. *imidugudu*) as the only permissible form of residence in Rwanda. An *umudugudu* is the equivalent of a village, a cluster of houses often near a main road. The organisation of housing into *imidugudu* was supposed to break away from the "scattered" forms of housing considered traditional in Rwanda, while at the same time the grouping of residences was intended to favour an increase in agricultural production and facilitate the delivery of public goods, thanks to greater proximity to schools and local government offices. The grouping of households would also have made it easier to provide electricity, drinking water and other essential services. However, the *imidugudu* policy has been strongly criticised by human rights organisations and a large number of universities. The basis of these criticisms is often the mandatory nature of the programme and the way in which it has been implemented. It has frequently been demanded that Rwandans destroy their homes (which are often in perfect condition) in order to build new ones in the areas designated as *imidugudu*. Several studies ⁷² have noted that the costs of villagisation policies have been felt more strongly by the poor in rural communities, by women and by the elderly, social categories which have fewer means to move to the new areas designated by the government. Moreover, no benefits in terms of agricultural productivity were recorded as a result of the villagisation policy.

⁷¹ Des Forges, Ibid. p. 360

⁷² See Pottier, Johan (2002), *Re-Imagining Rwanda: Conflict, Survival and Disinformation in the late 20th Century*. Cambridge: Cambridge University Press; Van Hoyweghen, Saskia (1999), *The Urgency of Land and Agrarian Reform in Rwanda*, African Affairs, 98:392, pp. 353-72.; Human Rights Watch (2001), *Uprooting the rural poor in Rwanda*

The 2005 Organic Law and the Crop Intensification Programme

While the villagisation policy was the first step towards consolidating land use, and the introduction of a higher degree of state control by the central government, Organic Law No. 08/2005 on land tenure in Rwanda became the final instrument for land sector reform. This document embodies the thinking of its time, in the sense that it is remarkably inspired by the land tenure conceptualisations common to some international organisations and donors such as the World Bank. The law, accompanied by a policy paper promoted by the government, has had three major effects on land management in Rwanda. It effectively liquidated any form of customary land management. In its 2004 land policy document, the government points out customary land law as one of the major obstacles to rational and efficient land management in Rwanda, especially because of the right to inheritance for male descendants, without any limitation related to the size of the plot.⁷³ Accordingly, the 2005 law **repeals all forms of customary land ownership** (art. 86), making State law the only possible legal form of land ownership in the country. Of the various customary systems present in Rwanda, the law explicitly names the *ubukonde*, the traditional practice in the areas that today form the Rubavu and Musanze districts.

Secondly, the Organic Law of 2005⁷⁴ makes **registration of land ownership compulsory** (art. 30) and establishes a system of land offices (art. 31) responsible for the management of the land registry and the delivery of title deeds. The establishment of the land registry is one of the most remarkable achievements of the land reform programme set up by the Rwandan government. Thanks to the support of the DFID, European cooperation and Dutch and Swedish cooperation partners, Rwanda now has one of the most efficient land registration systems on the African continent. 99% of Rwandans have now registered the land that they own.⁷⁵

The Rwandan approach is part of a legislative and policy framework that sees securing land rights as the key element for resolving land disputes, and the first step towards creating an open market for land ownership. It is an approach rooted in a “commercial” vision of the land, but which also provides for strong state intervention in land markets. Today, the vast majority of Rwandan citizens are in possession of land titles. This title is actually a lease, because land in Rwanda is exclusively state-owned. In rural areas, these leases are emphyteutic, that is they are granted for 99 years and are renewable, while in urban areas they instead last for 25 years and can be renewed.

Article 20 of the Law also prohibits “the fragmentation of land for agriculture and livestock production which is less than or equal to one hectare in size”. The same article also introduces the concept of “consolidation” of agricultural land, which is then developed by the government’s agricultural programmes (see below). The basic idea behind these provisions is that in a context of land scarcity, the only rational choice is to halt the fragmentation of plots and to promote their consolidation, thus creating agricultural areas that allow for a certain level of intensification and economies of scale. This point is fundamental, since the provisions of Article 20 concern most Rwandans, 85%⁷⁶ of whom depend on plots of land to survive which very rarely reach one hectare in size. Moreover, the assumption that consolidation automatically translates into improved agricultural productivity does not seem to be supported by the facts. On the contrary, studies prior to the formulation and approval of the law, including a study carried out by a World Bank consultant, show how land fragmentation can in fact be a valid strategy for increasing productivity in Rwanda,⁷⁷ a point that has been established several times.⁷⁸

It should also be considered that although the law introduces clear

⁷³ Rwandan government (2004), [National Land Policy, Ministry of Land, Environment, Forests, Waters and Mines](#)

⁷⁴ This law was replaced in 2013 by law 43/2013 of June 2016. This new law incorporates the intent of the previous law and does not change its general principles. For this reason, the text refers to the 2005 law.

⁷⁵ Landesa, Rural Development Institutes: [Secure land rights for Rwanda's women are critical for families and the nation](#).

⁷⁶ National Institute of Statistics of Rwanda (NISR) (2012), Third Integrated Household Living Condition Survey. Main Indicators Report. NISR, Kigali.

⁷⁷ Blarel, B., P. Hazell, F. Place and J. Quiggin (1992), *The Economics of Farm Fragmentation: Evidence from Ghana and Rwanda*, World Bank Economic Review, (6:2) pp. 233–54.

⁷⁸ Ansoms, A., Verdoot, A., Van Ranst, E (2008), [The Inverse Relationship between Farm Size and Productivity in Rural Rwanda](#), IOB Discussion Paper

principles for land registration, these are not always known or implemented by citizens. These aspects are highlighted by a USAID-funded research project completed in 2017, which analysed the impact of land reform on farmers and land users in detail. The various project reports present several challenges to the implementation of the letter of the law: in particular the lack of knowledge of procedures by users, the lack of collection of final title deeds (often due to the relatively high cost of this for most users), and the lack of registration of land status transfers - either due to a lack of knowledge of procedures or to avoid registration fees.⁷⁹

Finally, art. 62 sets “productivity” conditions for land ownership. It establishes that the holder of a right to land must ensure the development of the land owned, in accordance with its use and intended purpose. Articles 62-65 thoroughly detail the various types of development, and emphasise the user’s obligation to use the land rationally and in accordance with state law and regulations.

It is possible to understand the project supporting the 2005 Organic Law simply by considering Rwanda’s ambitions for agricultural modernisation. As noted above, the traditional practice of agriculture in Rwanda involved field work across several scattered plots and combining different crops on those same plots. In its 2004 and 2007 agricultural policy documents, the Rwandan government expressed its vision of intensive agriculture, oriented towards both domestic and foreign markets, where land consolidation is associated with intensive monoculture and the use of improved inputs. This vision is reflected in the Crop Intensification Program (CIP), a government program under the guidance of the Ministry of Agriculture (MINAGRI) and implemented by the Rwanda Agriculture Board (RAB). The CIP is based on four main pillars: (1) land consolidation; (2) regionalisation

of crops; (3) improved fertiliser distribution; and (4) post-harvest services. The RAB, together with district and sector agronomists in each of the four Rwandan provinces, offered producers a range of crops selected for the region. At the national level there were six crops available: cassava, beans, potatoes, maize, wheat and rice. It is important to note that often the guiding principles for the choice of crops to be grown in a given area were more the result of economic considerations than of agronomic choices or consultation with local producers. Several crops that are staple food for most of the rural population were excluded from the list, including sorghum, a sweet potato and the ubiquitous banana, a plant central to Rwandan family culture. Banana plants have also been proved to bring significant benefits in terms of the ecology of the family farm by providing materials for organic fertilisers.⁸⁰

The first component of the CIP, land consolidation, aims to coordinate the cultivation of the selected crops so that producers grow the same crop at the same time with the same seeds and fertiliser. This also means constant monitoring by the RAB and local agronomists, who must ensure that every farmer follows the principles of the policy, that all crops are planted at the same time and that farmers use the right fertilisers. The penalty for violating CIP rules can range from a fine to a night spent at the bureau of the local sector, to the loss of one’s own plot, often in exchange for another less “strategic” plot which is often less fertile. Almost eleven years after its inception, the CIP has led to some increase in productivity for the target crops, but it has also been associated with decreases in the ability of households to meet their food security needs.⁸¹ Although it is difficult to prove a direct correlation between the effects of the CIP and the food insecurity experienced by participating households, it is clear that the programme failed to address this particular concern of Rwandan households.⁸²

⁷⁹ See: USAID (2015) *Research on Rwanda’s Land Administration System*; ; USAID (2015) *Final Report: Land Use Consolidation and Crop Intensification In Rwanda*

⁸⁰ See Cioffo, Giuseppe (2014), *Les petits agriculteurs face à la modernisation rurale dans la province du nord du Rwanda : consolidation de l’usage des terres, distribution d’intrants améliorés et sécurité alimentaire*, in S. Marysse, F. Reyntjens & S. Vandeginste (ed.), *L’Afrique des Grands Lacs, Annuaire 2013-2014*

⁸¹ *Ibid.*

⁸² *Ibid.*

Land conflicts in Rwanda and resolution mechanisms

Despite the issuing of land titles for most of the population, land conflicts in Rwanda continue to this day. These conflicts often take place at the micro-level and focus on unresolved family issues, or particular legal situations for which the state law is not capable of finding a solution. It is telling that *RCN Justice & Démocratie* reports that more than 60% of cases taken to the courts of first instance in Rwanda are land disputes. As such the Rwandan example shows that the distribution of legal titles is far from the final solution to land disputes. During our trips into the field, and after a review of the literature, we have identified different types of land conflicts in Rwanda:

► Family conflicts

These are the most widespread and common types of conflict in Rwanda. They are most frequently disputes between members of the same family over the subdivision of family property. This is often the case when, for example, it is necessary to register a plot of land that is the subject of joint inheritance, but which cannot be subdivided - for example, because it is less than one hectare in size.

► Family conflicts related to women's inheritance

As mentioned above, the 1999 law on inheritance and the 2005 land law allow women to inherit family land ownership. This provision, which is of course necessary to address significant gender imbalances in access to land, has also highlighted a significant increase in land conflicts between women and their family groups. Traditionally, in fact, the woman does not inherit the land from her father, because it is believed that by marrying she will inherit the land left by her husband. This custom was essentially a way of protecting the family property by keeping it in the same family and preventing it from "passing" to the wife's new family. Increasingly, Rwandan women, aware of the new

possibilities offered by land reform, are demanding the land owed to them, often arousing the dissatisfaction of their male co-heirs.

► Conflicts related to genocide survivors and forced population migration

As mentioned, the Arusha Accords stipulate that it is not possible to claim land in Rwanda that has been abandoned for more than ten years. When the "first wave" refugees returned in 1994 (those who left the country between 1959 and 1962), the government often favoured land sharing between returning refugees and the local population to fulfil the needs of those who, according to the letter of the agreement, did not have access to land. Although this mechanism aimed to reduce conflicts between 'returnees' and local populations, it has often been criticised by land users and researchers who have noticed the often forced nature of these arrangements. Land conflicts related to forced migration do not only concern Rwandans. In fact, as noted in the introduction, population movements in the Great Lakes inter-lake complex are a well-documented historical phenomenon - the extent of which has often been increased by violence and war in the region. This is the case, for example, for Burundians who left Burundi during the violence in the country in the 1990s and returned in 2006, who can now reclaim the land they left behind when they return to the country, in accordance with Rwandan law. Some of these lands are those that had previously been abandoned by Rwandans who had left the country in 1959-1962, and who therefore no longer had the right to claim them. These lands were often occupied by families of the original owners, or by Rwandans who worked them in the absence of their Burundian owners. Our field visits have indicated this to us as a relatively common occurrence which causes a fair amount of discontent at the local level (also because the same possibility is not available to Rwandans who occupied land in

Burundi during the events of 1994, who then had to abandon them without the legal possibility of reclaiming them).

► **Conflicts connected to the CIP and agricultural modernisation**

As we have seen, there is a strong consistency between the provisions of the 2005 Organic Law and Rwanda's agricultural modernisation programme, particularly the consolidation of land use, which stipulates that producers are to cultivate the same crop in the same area in a coordinated manner. It is sometimes the case that a producer refuses to comply with crops chosen for the area in which he owns plots often for perfectly objective reasons. These may be due to economic unavailability (the producer is unable to obtain the inputs necessary to enter the consolidation programme, despite government subsidies) or because of food preferences and needs (producers may consider that the crop chosen by the government is not the most suitable for ensuring food security in their household). It is at this time that the local authorities will propose to exchange his land with another plot, often located in an area far from the consolidated zone, and which is often less fertile. This mechanism often causes animosities at the local level.

► **Conflicts connected to abuses of power by the authorities**

Finally, there are a growing number of cases reported by civil society and human rights organisations that denounce cases of land grabbing by local elites, often involved in military or administrative hierarchies. These examples of violations often see the government authorities take a side in a conflict between several actors, favouring one party over the other, and sometimes using coercion to force users to abandon their land.⁸³

Conflict resolution mechanisms

It is important here to briefly mention the mechanisms for resolving these conflicts. As local conflicts, land disputes are in fact required to be dealt with by a mediators' committee (in Kinyarwanda *Komite z' Abunzi*). The *abunzi* (sing. *Umwunzi*) are the mediators who sit on these committees, and as of 2005 they represent the face of local justice in Rwanda. The *abunzi* are responsible for reconciling the differences between two parties in conflict, and as mediators they should issue a decision only in cases where reconciliation between the two parties is not achievable. Inspired by traditional law, the *abunzi* nevertheless remain a pre-judicial actor of modern invention, which fits within the larger objective of promoting peace and reconciliation amongst the Rwandan population.⁸⁴ Most Rwandans who feel aggrieved in a land dispute must therefore appeal to this mechanism before going to the court of first instance, to which the citizen can appeal in case of dissatisfaction with the decision taken by the committee of *abunzi*. It is important to note that *abunzi* do not have to suggest solutions based exclusively on official law, but that they may also resort to morality and custom, when these are not in contradiction with the written law.

Although the *abunzi* committees offer an innovative, participatory and community-based way of resolving conflicts based on restorative justice, a good number of analyses have also pointed to numerous faults in the system. Firstly, *abunzi* often have a low level of education, and are often not trained in the basic principles of the how the legal system functions. While it may be true that they are not supposed to be judges, in the case of land disputes (which make up the majority of cases addressed by *abunzi*) it is important that they are aware of the letter of the law - especially in cases involving individuals, such as women, to whom customs grant limited land ownership rights. Secondly, the first goal of *abunzi*

⁸³ Human Rights Watch (2017), *Rwanda: Government Repression in Land Cases. Authorities Threaten, Prosecute Residents Who Speak Out*.

⁸⁴ RCN *Justice & Démocratie* (2011-2014), *La Justice de Proximité au Rwanda. De la Justices au Rwanda : Concepts et Réalité de la Justice Abunzi* (vol. 3)

should not be to issue a decision, i.e. agree with one side or the other in a conflict, but rather they should find a conciliatory situation that works for both sides. However, in its studies conducted between 2009 and 2011, the NGO RCN *Justice & Démocratie* noted that only 46% to 56% of the cases resolved by *abunzi* “involved a real attempt at conciliation”. The NGO concluded that “[...] considering that the search for conciliation is formally recommended by the law on mediator committees, these figures are astonishingly low”.⁸⁵ It is important to note that in the same study, users who achieved conciliation during their experience with the *abunzi* generally had a higher level of satisfaction than those who won the case, and that conciliation was largely preferred by users over decisions favouring one party.⁸⁶ Thirdly, although *abunzi* offer a free and community-based service (a crucial element for a local population that is often far away from legal services and lacks the financial means to reach them), they are sometimes criticised for being prone to corruption and for favouring the parties in a conflict that are close to them, whether through family or friends. While it is true that proximity can encourage conciliation, it is also true that it leaves a door open to favouritism and nepotism. That is why **EurAc** believes that while the innovative efforts of Rwanda’s community-based justice system can be appreciated, the training and capacity building of mediator committees should remain high on the agenda of the Rwandan government and its development cooperation partners.

RWANDA: Between the letter of the law and the experiences of farmers

« The land reform proposed by the government is very interesting because it helps us protect our land. But there are many problems that the government still has to solve. For example, I benefited from the reform because the government gave me a title for my land. But the title only concerned the land on the hillside next to my house. My land that I farmed in the marshland was taken by the government, which claimed to own the marshes [...]. When the marshes were being redistributed, the authorities gave me nothing because they felt that I was one of the people protesting against the redistribution of the marshes. Right now, the problem I have with the reform is that I am not allowed to divide up my land. I have 1.4 hectares of land and the law forbids me from dividing it up because you can’t split less than 2 hectares in order to give away 1 hectare and keep 1 hectare. But since I really needed money, I had to sell part of my land to two of my neighbours, 0.4 hectares to one and 0.3 hectares to the other. Of course, the authorities at the district level are not aware of the transaction. They think that I still have 1.4 hectares [...]. My neighbours who bought it hope that one day the authorities will eventually allow us to register less than 1 hectare. They’re not really afraid that I’m going to deny that I sold them those lands, because these kinds of practices outside the law are common here. The authorities at the local level are aware of these practices; some of them face the same problems as we do and are therefore doing the same thing. If we do this outside the law, it is because agriculture cannot cover our monthly expenses at a time when the survival of our families depends more and more on money, because of the new way farms are organised [...]. Also, even though we are told that we can mortgage our land to get a loan from the bank, very few small landowners like me are able to access those loans. The government should take these realities into account and find appropriate solutions.

Farmer, 45 years old, Rusizi, Rwanda

Involvement from the EU and Member States

In Rwanda, progress in terms of land reform has been made possible thanks to the presence of a highly effective governmental system, but also as a result of the financial and technical support of the European Union (through its budget support programme in Rwanda) and its Member States. In fact, the programme to create a national land database and the registration initiative launched in 2010 by the government received vital support from the British cooperation agency (DFID) through the Rwanda Land Tenure Regularisation Programme, which was funded to the tune of **25.4 million** pounds sterling. The programme attracted the attention

⁸⁵ RCN Justices & Démocratie (2009-2011), *La Justice de Proximité au Rwanda. Le fonctionnement des comités de conciliateurs* (vol. 2)

⁸⁶ *Ibidem*

of other international donors, such as the European Union delegation, as well as Dutch and Swedish cooperation agencies. The EU contributed 4 million euros to this programme, intended for the technical training of staff at the Rwanda Land Management and Use Agency. In 2015, the programme led to the demarcation of 10.3 million plots of land, and the issuing of more than 8 million land lease titles.

The programme also supported the establishment of the Land Administration and Information System (LAIS), a national computerised database that collects and updates information on land tenure and changes in land use. The German cooperation has also indirectly contributed to the success of the programme by supporting local NGOs involved in its implementation. It is important to note and to appreciate the level of coordination among donors, which has been crucial to achieving an outcome that is often seen as a model by other African countries. However, according to the information at our disposal, the securitisation programme will end in 2018. As we have seen, although most of the land has been registered, there is still a need to ensure that the land management system is sustainable, updated and monitored, in order to guarantee that the data collected are in line with the reality on the ground. The Swedish partnership alone will continue to support the land office after 2018, providing three years of technical support worth more than 3 million euros.

Between 2012 and 2017, the EU also supported the agricultural programme to the tune of 200 million euros to go towards food security.

THE DEMOCRATIC REPUBLIC OF THE CONGO

The legislative framework and its shortcomings

Land in DRC is governed by a number of legal provisions regulating various sectors: the agricultural code, the mining code, the urban planning code and the 1973 land law, all of which contribute to land management. However, it is the law on land tenure which continues to underpin land management in the country. It is the product of President Mobutu's "zairianisation" of all land in the country. This law was born out of a need to put an end to the "dual" system of land management in the Congo, i.e. to address the problem of crossover between the system of state law and the systems of customary management for Congolese lands.

The principle underpinning the 1973 law is the State's exclusive ownership of land in the DRC. The aim was therefore to put an end to the duality of the land management systems which until then had been characterised by a variety of land access methods. These methods were derived not just from customary law, but also from *ad-hoc* arrangements which emerged from population movements or contextual security reasons. The 1973 law therefore sought to put an end to non-state land management systems by handing ownership of land to the state. Land owners became "licensees" under a 25-year licence in urban areas and a 99-year licence in rural areas that recognised their usage rights during that period. The law also allows for permanent licences and transfers. It should be noted that this law came about in a post-independence context when the country had politically stabilised and the question of the land which had been previously occupied and then abandoned by Belgian settlers was still open. In this context, the state central authority needed to take a position relating to customary chiefs, whose legitimacy, for the most part, relied on their power over customary land.

One of the main problems with the 1973 law is that it was intended to suddenly get rid of customary land tenure at a time when 90% of the country's land was occupied under customary rights and local arrangements. In addition, these systems of tenure were highly diverse and constantly undergoing change and adaptation. Indeed, the term 'customary rights' in the DRC includes both tenure systems which concentrate power in the person of the customary king (as with the Shi in the east of the country), and others allowing land to be managed by several actors within the same community. Traditionally speaking, for communities in the East of the country, land management is collective, while in the Twa communities, access to land is guaranteed for each member of the community, even for Twa communities not originally from the area in question.

Customary rights therefore concern the majority of Congolese land. According to art. 389 of the 1973 law, "[Customary] land tenure rights acquired on these lands are regulated by an Ordinance of the President of the Republic". This ordinance has never been issued, and the lack of regulation of the customary sector is, according to the informants interviewed, one of the main causes of land disputes in the country. Working and living on land governed by customary law often means having no proof (in the legal sense) of the legitimacy of one's own claims to land tenure.

Customary law and state law

As just mentioned, customary rights govern most of the land in the DRC, and it is clear that the lack of a presidential ordinance regulating customary land poses immediate problems for securing land rights. According to the 1973 law, the registration of lands occupied due to customary law is carried out through the registrar based in the land registry office, and this registration triggers the removal of these lands from the customary

domain and their assimilation into the official domain of the state. It is therefore clear that there is a legislative void concerning the management of customary domains, which raises serious concerns of insecurity amongst the rural population and especially amongst farmers who find themselves having to claim the right to use their plots in the absence of documents proving their rights officially. In the absence of this presidential ordinance, the country's Supreme Court decided in 1982 that customary lands, being owned by the state, should be managed by the central government. However, in 1988 the same Court pronounced that in the absence of the ordinance, customary lands were to be managed by customary chiefs.

The reform process is often marked by complications that make it difficult for most rural actors to access. In particular:

- ▶ The cost of registering customary land is often prohibitive for the majority of the population.
- ▶ Knowledge of the 1973 law is very limited amongst the population; many owners do not know their rights or the procedures necessary to register their plot of land.
- ▶ The presence of several 'alternative' land titles such as informal notes, private written agreements between the parties, and documents signed by customary chiefs. Although these papers offer some degree of security at the local level by recording everyone's rights in writing, they have very limited legal value, primarily when faced with actors who have managed to obtain registry documents for the same land. These informal notes therefore offer no protection against possible land grabbing.
- ▶ Crossover between different normative frameworks poses a problem. This can be seen in the case of land law, the mining code and the agricultural code, for example. This leads to the rights to use the plot being lost when extractive resources are discovered in the subsoil.

- Lack of recognition of the rights of indigenous peoples, especially the Batwa (Pygmies).

Finally, the issue of land in the DRC cannot be tackled without returning to a pressing, recurrent and currently unresolved issue: that of the populations often referred to as *banyarwanda* living in the east of the DRC. The fact that these very diverse populations speak Kinyarwanda causes some local political leaders to attribute a Rwandan origin to them, which feeds a desire to take their land and can lead to this land being seized. This problem arises mainly in the east of the DRC (North and South Kivu) and is one of the most politicised land tenure issues in the country.⁸⁷ These are very complex conflicts involving so-called Rwandan-speaking populations who have nevertheless resided in Congolese territory since the Berlin conference, some of whom arrived with the migration of agricultural workers during the colonisation of the Great Lakes region. These migrations, which have a long history in the region, often give rise to disputes about local land which regularly lead to land conflicts.

The reform process of the 1973 law

In response to the numerous flaws in the land law, and to the many criticisms that have been levelled at it, particularly those concerning the growing number of land disputes, in 2012 the President of the Republic began a process to reform the land law. This reform process followed a political position paper that sets out a roadmap for the process. The launch of the reform was accompanied by a series of public consultations with civil society and experts on land issues and included the creation of the National Coordination for Land Reform (*Coordination Nationale pour la Réforme du foncier*, or CONAREF). Initially conceived as a structure for consultation and coordination between the various actors active in the sector, our time in the field revealed a deep

disappointment regarding this institution, a feeling shared unanimously by the actors interviewed. In particular, Congolese civil society actors complain about the transformation of CONAREF from a participative public consultation structure into a political bureau whose members are appointed by the Presidency of the Republic and the Prime Minister's Office.

Moreover, CONAREF was initially conceived as a decentralised body and should have functioned as a national coordination organisation with several local branches. This organisation should have facilitated consultation between the different parts of the country and ensured that the views and perspectives of the different provincial experiences were taken into account in the reform. However, CONAREF's attempts at branching out provincially have been limited to the East of the country.

Within this setting, Congolese civil society therefore organised itself (with the assistance of UN HABITAT), and went on to organise (with EU support) a conference of experts on the land tenure reform in the DRC in 2012 with the aim of producing a set of guidelines to fuel the discussion at CONAREF. The conference returned to the key points of the initiative: the **financial and administrative autonomy** of CONAREF, and the decentralisation of CONAREF by creating **provincial committees for land consultations** (*comités provinciaux de concertation sur le foncier* or CACO). Of these committees only two are active, in North and South Kivu.

In 2012, the World Bank also embarked on a study of the Congolese legal land tenure framework using the Land Governance Assessment Framework. This resulted in a series of controversies centred on the content of the report, which our sources say was viewed by the government as too critical. Since then, several changes in both the ministerial strategy and CONAREF

⁸⁷ For example, there are reports of the return of some 45,000 refugee families to Rwanda, which sparked lively debate in the National Commission for Refugees in the DRC in 2012; but also the Banyamulenge in the East of the DRC, who are often in conflict with the Babembe in South Kivu; the Bahutu in conflict with the Bahavu in Kalehe; and the Hutus and Tutsis in conflict with the Bahunde in North Kivu.

have negatively affected the progress of discussions on land reform in the DRC. In general, civil society seems to express a sense of “fatigue” and distrust towards the institutional process of land reform.

Our informants suggest that internal disagreements within CONAREF also revolve around differences of perspective concerning the very nature of land sector reform. We can organise these differences into two “schools” of thought. A “Kinshasa” school, linked to some land experts and members of parliament who believe that the ineffectiveness of the 1973 law is due to a lack of enforcement of the law itself (e.g. the lack of the presidential ordinance regulating the customary domain) and insufficient popularisation. This first school therefore proposes to focus on the application and amendment of the existing law, and sees no need for a new land law text.

The second school of thought, which can be called the “peripheral” school, believes instead that the existing legislation should be substantially modified or even completely replaced by a new text. In particular, those who support this view would like to see a text that centralises less power in the hands of the state and gives more power to provincial governments and Decentralised Territorial Entities, while clearly securing customary rights, including those of indigenous peoples. As we will see in the following part, it is often within the interactions of national politics and land insecurity that opportunities to abuse power in the DRC are created.

Land grabbing

There are several kinds of land grabbing reported by actors on the ground. The most frequent types can be grouped into three categories:

► Grabbing by local and national elites

In South and North Kivu, during our field visit, civil society actors reported that the most common cases of land

grabbing are carried out by local (provincial) authorities, or originate from the national parliament or the government in Kinshasa. This is the case, for example, for the grabbing of 400 hectares near Kichanga, in the territory of Rutchuru, in North Kivu. In this case, the 400 hectares were purchased by government officials. These 400 hectares had been occupied by military personnel between 1998 and 2005 and were subsequently abandoned. The local population then began to practise agriculture there. It was in 2015 that local government officials, with the complicity of some provincial land administration officials, managed to obtain titles covering the entire concession with the aim of using it as a grazing area - without taking into account the tenure rights of the people who had used the land in the years since it was abandoned. UN Habitat North Kivu has worked to mediate the conflict, working in particular to ensure that local communities still have access to at least part of the land. However, the lack of concession titles amongst the population makes it difficult to assert their rights of usage. Conflicts between local communities and herders/authorities continue to this day.

Similar cases can be found in Shinda and Katali, also located in the territory of Rutchuru. In both cases, national authorities managed to obtain titles for concessions of 1800 and 492 hectares respectively, partly occupied under customary law and partly abandoned during the war. In both cases, the local mediation initiatives of UN Habitat succeeded in restoring access to local populations on 284 hectares in Shinda and 155 hectares in Katali. Similar cases have been referred to us by civil society actors in South Kivu. It should be stressed that exchanges with farmers and other civil society actors in North Kivu have pointed out criticisms of UN Habitat’s mediation initiatives: these are often seen as very top-down, viewed as coming “from outside”, and as seeking to “please” the farmers rather than pursue their interests in a more concrete way.

► **Land grabbing by extractive industries**

In North and South Kivu – and this is probably the second most common type of land grabbing. The mining code prevails over the land code, which means that once minerals are discovered in the subsoil of a concession, those farming there lose any right to farm the concession, which can be reassigned to private individuals who then mine its resources. Local communities are meant to be compensated, but this compensation is rarely fair or reasonable in light of the fact that local communities have to move, often to unknown or infertile areas, in order to make way for extractive industries. Examples of this are very common in North and South Kivu. We can cite a very recent example which was referred to us by the BEST (which conducted a study on this issue); the Itombwe Massif in South Kivu, in the territory of Mwenga. In this case, the Canadian multinational BANRO obtained the rights to mine a significant portion of the land around the massif, which contains gold. At the time of displacement, local populations were not compensated, and were displaced to land situated at a height which was not well suited to agriculture and mining, the two most common activities among local populations. The company claims to have received prior informed agreement from the local people, but there is strong suspicion that this agreement was negotiated with a small group of local authorities. The company had promised to build schools and roads; the former turned out to be small makeshift straw huts, while the latter failed to materialise. The local community did not have the means to organise negotiations with the company. This is a scenario that has been seen several times in North and South Kivu, with BANRO as well as with other international companies. This is an example of the many problems that arise from the absolute supremacy of the mining code over the land code, and from the lack of clear and standardised procedures for providing prior and informed consent

which are then made known to people living in mineral-rich areas.

► **Land grabbing by the agro-industrial sector, the case of Bukanga Lonzo**

Land grabbing in the context of agro-industrial operations has attracted a lot of attention in recent years, especially in the area of bio-fuel production. However, recent projects by the Congolese government are likely to spur a new wave of land grabbing, guided by public-private partnerships between the government and foreign capital. This is the case for “agro-industrial parks”, which are very large land concessions intended for intensive industrial agriculture producing vegetables and animal products. The project to create 8 of these agro-industrial parks emerged under the first Matata government as part of an initiative from the Prime Minister’s office. The planned funding for these projects had not been budgeted in advance. The first agro-industrial park, the only one to have seen the light of day, is that of Bukanga Lonzo, 250 km south of Kinshasa. This park, managed by TRIUMF RDC, a multinational company controlled by TRIUMF SOUTH AFRICA, covers 80,000 hectares of land previously occupied by numerous local farmers. Local populations in the area were expropriated and displaced without any compensation or allocation of alternative land. Some of the local farmers remained working in the agro-industrial zone but, according to reports from the stakeholders interviewed, a majority left the zone while refusing to be employed by TRIUMF RDC. According to our informants, there was no attempt to verify informed and prior consent from local communities.

According to information collected in the field, only 5,000 of the 80,000 hectares occupied by the company are currently used for cassava and maize production. These products are then sold at points of sale in Kinshasa which are also owned by TRIUMF RDC.

Following the displacement of local communities, the National Coordination of Agricultural Producers (*Coordination Nationale des Producteurs Agricoles*, or CONAPAC) set up a multi-stakeholder dialogue, which did not really have any concrete results for the populations concerned. There is a lack of information about the local dynamics in Bukanga Lonzo. It is also unclear where the government plans to set up the 7 remaining agro-industrial parks, but there is a strong likelihood that one of the next will be located in the Ruzizi lowlands in South Kivu, an area that is already heavily affected by land conflicts.⁸⁸

Civil society initiatives

The numerous legal, administrative and land governance shortcomings in the DRC have prompted reactions from Congolese civil society organisations, particularly in North and South Kivu, two of the provinces most affected by land insecurity. Two of these reactions are listed below. Both of these initiatives attempt to address some of the challenges we have highlighted above, such as:

- ▶ The insecurity of persons exercising their rights of use within the customary sphere, and the legislative vacuum that causes this
- ▶ The multiple cases of land grabbing by local and national elites
- ▶ Stagnation of political dialogue on the reform of the current land law
- ▶ Local conflicts between families as well as between farmers and customary authorities

In **South Kivu**, the NGO IFDP, supported by the NGO AAP and with funding from the Swiss cooperation agency and CCFD-Terre solidaire, has set up an alternative system for securing customary usage rights. The programme aims to reduce community and (intra-)family conflicts through the creation of a management system for customary land. The programme has been implemented in the Kabarean Chieftaincy since 2013 and partly in the Walungu territory, both of which

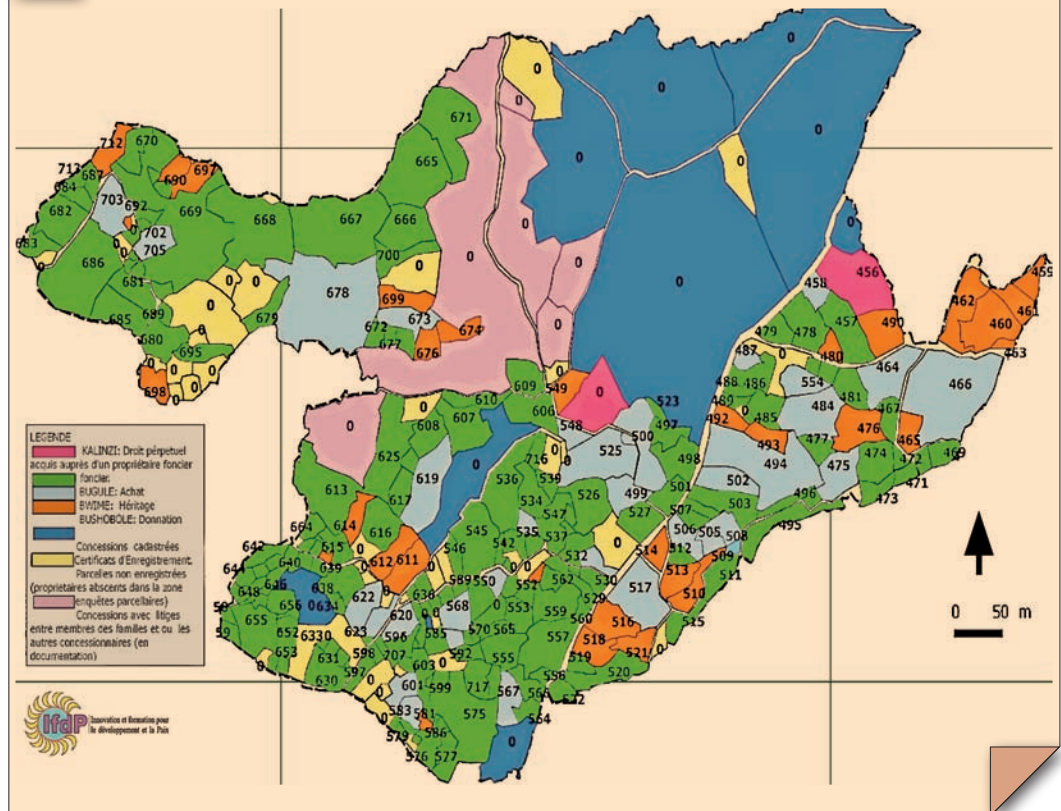
are in South Kivu province. The project started with a phase studying and assessing land problems in the local communities concerned. The programme then set up a series of participatory activities aimed at identifying the status of the different plots in the villages and sub-villages of the chieftaincy (taking into account the different forms of use laid out in the customary systems – *salongo*, *kalinzi*, *bwasa*, etc.), and creating local committees dedicated to the issue (Survey Teams), who are responsible for defining plots of land in a participatory manner with local populations and for issuing “**standard land contracts**”. These are para-legal documents that provide operators with “customary titles”. This intervention is one of the few in the country that seeks to solve the problem of land conflicts by securing customary rights. It is also a reaction to the legislative vacuum in the provisions of the 1973 law. While the standard contracts are being signed, field teams are also creating a detailed map of the plots in the area. The map also specifies their boundaries and the types of customary rights that are practised there.

Although these standard land contracts are not recognised or expected by state law (which, as noted above, lacks provisions governing customary land rights), the IFDP and its partners aspire to have these documents recognised at the provincial level by an edict of the Provincial Assembly. This edict, drafted in part by the IFDP and its partners, was to be discussed at the South Kivu Provincial Assembly in September.

The discussion with land tenure experts in the DRC, including the former cabinet chief of the provincial governor and former member of CONAREF, revealed hesitation about the optimism of civil society to see land tenure security practices incorporated into provincial law. In fact, although they appreciate the validity of the practices, local authorities and land experts were not the only ones to point out the limited nature of such an

⁸⁸ The project has also recently undergone an independent financial audit, which was confidential but then disclosed to the public. This revealed numerous irregularities in the use of public money and in the rarely transparent management of the accounts, including large transfers of money to people close to the Prime Minister.

Figure 1. An example of the type of participatory mapping carried out by the IFDP, with delineation of plots and customary usage conditions in the Kabare territory



Source : IFDP

initiative, since its testing is limited to the Kabarean chieftaincy alone. These areas are therefore mainly populated by Bashi, who have a highly centralised customary land management system and are therefore different from that of other ethnic groups in the province. As such, the model tested in Kabare may not be well suited to other local communities. It is therefore important to refine this type of experiment and test it in diverse environments.

In **North Kivu**, the discussion on land issues addressed the stagnation of the land reform process, seeking to offer a constructive dialogue to decision makers at the national level. Within the CACO framework, three NGOs proposed mission statements addressed to members of the National Assembly in Kinshasa. Between 2013 and 2015, these three NGOs, namely *Aide et Action pour la Paix* (AAP), the *Programme Intégré pour le Développement du Peuple Pygmée au Kivu* (PIDEP) and the *Forum des Amis de la Terre* (FAT), each initiated internal consultations aimed at drafting terms of reference

for land reform. In order to harmonise the different interventions and specific approaches, the CACO (under the leadership of the FAT) began a consultation process between the different actors. This resulted in the production of a joint mission statement which was published in July 2016. The **“Harmonised Mission Statement from the Communities of North Kivu on the Land Reform Process in the Democratic Republic of the Congo”**, produced with the financial support of the CCFD, HEKS/EPER and the American Jewish Service. Cordaid, *RCN Justice & Démocratie* and Search for Common Ground financially supported the production of the FAT statement. The harmonised statement focuses on, among other things, the following:

- Recognition of local customary rights through their legalisation and recognition at the national level;
- The recognition of property rights for local communities, thus breaking the monopoly of state ownership;
- Improving the structure of land

administration, in particular by creating land divisions at the level of municipalities and chiefdoms;

- ▶ The recognition and legalisation of the rights of indigenous peoples (Pygmies) by granting certificates to Pygmy communities;
- ▶ The establishment of a customary registration system different from that governing land registration in the state domain;
- ▶ Management of land disputes by *ad hoc* local committees before recourse to the courts and judicial bodies;
- ▶ The implementation of voluntary prior consent processes before land transactions take place.

The process took place within the local CACO, with the support of UN-Habitat North Kivu. This organisation has also been a very important player in land tenure in the province. It supported the creation of the CACO and contributed to discussions concerning local cases of land grabbing.

Interventions by the EU and Switzerland

Our exchanges in Kinshasa with the EU delegation and DEVCO staff pointed out that the EU does not currently have a land tenure programme or land tenure policy in the DRC.

Although the EU has been involved in the sector in Burundi and Rwanda, the DRC is considered “too large” and “too complicated” for a subject that is “too political” to carry out structural interventions there, as has been the case in neighbouring countries.

More than half of the EU’s resources for natural resource management in the DRC (not including the extractive industries sector) are channelled into the management of areas which are peripheral to the DRC’s five protected natural areas. In the past, the EU delegation has invested money in the consultation process implemented by UN-HABITAT and followed the debates on land law reform and studies carried out by the World

DRC: ELITES AND LAND

« I have been harassed for several months by the police and intelligence services because of a conflict between the local population and the Congolese government. The conflict began with an initiative by the Congolese government, namely a part of its programme for five construction sites which plans to provide electricity throughout the DRC. This programme includes a joint project between the Congolese government and the Rwandan government to construct the Ruzizi III dam. Several infrastructure installations have to be built, but this requires a considerable amount of space that is not available. It is within this context that the Congolese government has expropriated a lot of land from the local population in order to build these installations. No compensation has been provided however. The local authorities have responded to the population that the State does not need to compensate local populations because the soil and subsoil belong to the State. Furthermore, some of the lands that have been illegally expropriated are now owned by

local and national elites that we know very well [...]. I am also facing legal action because of my advocacy regarding a land dispute between part of the Kamanyola population and the Directorate General of Customs and Excise (Direction Générale des Douanes et Accises or DGDA). This state service has appropriated 10 hectares of land, not far from the Kamanyola border, which it registered in its name despite the fact that the land actually belongs to the local people.... If I’m fighting like this, it’s because we have had enough. This not the first or second time this has happened. Ask anyone: if a national deputy or political, military or economic authority wants your land, it’s enough for them to bribe the land registry, register your land and evict you from it. The state doesn’t help us, much the opposite.

Official working at a civil society organisation at Kamanyola, RDC

Bank. However, apart from the highly contextual interventions related to the management of the areas surrounding the parks, there appears to have been no intervention to support the land sector. This will continue to be the case for the time being. As already mentioned, the main reasons for this lack of investment in land are linked to the difficult political situation in the country, the ‘political’ nature of land sector reform and a certain fatigue with regard to the political process in the DRC.

What is even more surprising is the lack of initiative in promoting and disseminating the ‘Voluntary Guidelines’. The EU has funded the creation of disclosure procedures and manuals for the Voluntary Guidelines, and is funding the implementation of outreach projects for the Guidelines, especially in countries that have experienced the phenomenon of land grabbing. The Guidelines and their implementation manual include procedures for informed and prior consent, fair and equitable compensation and the communication of knowledge about the rights of local communities. None of these projects are being implemented in the DRC.

The Swiss cooperation agency has been the only one to intervene directly in the field of land tenure, providing financial support for customary rights protection initiatives set up by the IFDP as mentioned above.

⁸⁹ Republic of Burundi (2000). *Accord d'Arusha pour la paix et la réconciliation au Burundi*, 28th August 2000, Burundian Press Agency n° 6835, 29th March 2011, p. 119.

⁹⁰ Republic of Burundi, *Commission Nationale des Terres et autres biens* (2010). *Organisation et activité 2006-2010*, Bujumbura, CNTB, pp. 1-3. It should be noted that until the year 2000, the number of Burundian refugees residing in Tanzania since 1972 was estimated at about 200,000 people. See more on this topic in: UNHCR (2002), *Statistiques sur la situation des réfugiés burundais au 29 juin 2009*, UNHCR.

⁹¹ *Ibidem*

BURUNDI

Land management: conflicts and population movements

Since the 1960s, Burundi has experienced cyclical violence linked mainly to ethnic divisions: conflicts broke out successively in 1968, 1972, 1973, 1988 and 1993. This situation led to the mass departure of thousands of Burundians to neighbouring countries, leaving their lands behind. Many of them were subsequently taken over by the State or by private individuals “in an effort to make good use of a scarce resource”.⁸⁹ The politico-administrative authorities redistributed the land abandoned by these refugees some time after their departure as if it were vacant land. While upon their return most of the 1993 refugees and internally displaced persons were able to find their properties relatively easily and settle there, this was not the case for the 1972 refugees.⁹⁰

Upon their return after more than 30 years of exile, these former refugees were often challenged over their rights to their former land. However, these lands were seen as their only source of income and for thousands of them it also symbolised their identity. The provinces most affected by these land grabs are the southern provinces of Bururi, Makamba and Rutana.⁹¹ Successive governments since the end of the civil war in 2000 have attempted to respond by setting up commissions to settle disputes arising from the resettlement of returnees and displaced persons to their lands (Manirumva, 2005). The most recent is the National Commission on Land and Other Property (CNTB), which has been operational since 2006.

But this form of land grabbing does not only concern periods of socio-political crisis. Since Burundi gained independence, local officials have been taking over state land while in power. Until 2011, this practice was all but legal. The new land code of 2011 is now attempting to remedy this problem by trying to clarify the methods of securing land

tenure, an attempt that will have to be evaluated in the next few years. In addition, since the end of the civil war in 2000, there has been a rush for land by the political elites who have been acquiring vast tracts of land for private investments of various kinds.

Gradually, these land grabs (concerning the land of refugees in 1972 and 1993, the land grabbed by the State since 1960 and the land grabbed by political elites since 2000) have had two consequences: (1) they have created scarcity in a situation where land is limited, thus constituting one of the factors behind food insecurity;⁹² (2) they have also been the root cause of multiple land conflicts.

Until 2008, no investigation to our knowledge had seriously established credible figures on land conflicts in Burundi. As such, it was almost impossible to establish a typology. In our opinion, the very first study that attempts to take up this challenge is an analysis of “land tenure and alternative solutions to the challenges of reintegrating disaster victims”, officially released in 2008.⁹³ It was undertaken by the CNTB with financial support from UNDP/UNOPS. The study identified 43,514 cases of conflict across a sample of 20 communes spread throughout Burundi. Although not reflective of all land conflicts in Burundi, this figure gives an idea of their prevalence. It also reveals the existence of these conflicts throughout the national territory and their unequal territorial distribution. Conducted in 20 communes, this study indicates that there is no direct relationship between the number of returnees and the number of land disputes. Of the 70,284 returnees surveyed, only 10,511 are involved in land disputes, a rate of 15%. The report adds that the number of returnees in a region or locality is not necessarily proportional to the number of conflicts in that region or locality. This shows that the problem of land conflicts in Burundi is more complex and covers several categories of the population, as will be shown in an attempt at a typology presented below.

After the political transition and the first “post-conflict” elections in 2005, the country attempted several types of mechanisms to resolve land disputes. They fall into three broad categories: traditional jurisdictional mechanisms, alternative mechanisms, and special mechanisms. Most land conflicts in Burundi are settled at the local level through these mechanisms. The traditional jurisdictional mechanisms result from the intervention of the competent courts, which are generally Burundian courts and tribunals. For example, the courts of residence, in principle located in each commune, would have to deal with about 6% of these disputes (CNTB, 2008).

Alternative land dispute resolution mechanisms are used when conflicting parties agree to use local non-judicial means. The actors in alternative land dispute resolution are civil society organisations, the *bashingantahe* (sing. *ubushingantahe*) which favour compromise between the parties. Some NGOs believe that this mechanism is more advantageous for litigants because it manages to resolve disputes in shorter timeframes thanks to a very simple procedure and proximity to litigants (FORSC, 2010). However, this mechanism has two main limitations: on the one hand, the mediator has no decision-making power; on the other hand, the resolution that emerges from mediation is not necessarily binding (OAG, 2008; Mudunga & Nyenyezi, 2014). The *bashingantahe* deal with 41% of land disputes, while the use of mediation by local NGOs concerns 6% of these conflicts, and out-of-court conciliation without mediation accounts for 16% (CNTB, 2008).

As for the special mechanisms for settling land disputes, “they result from the intervention of institutions specially set up by the State to resolve exceptional situations” (CNTB, 2008, 2). The prime example of such a mechanism is the CNTB itself, which has a mandate to settle disputes over land and other property between victims and third

⁹² In Burundi, 94% of the working population is employed in the agricultural sector, which itself provides 95% of the food supply. The average size of a farm is estimated at half a hectare. See: Republic of Burundi, Finance Ministry (2006). *Cadre Stratégique de croissance et de Lutte contre la Pauvreté (CSLP)*, Bujumbura, Finance Ministry, p. 52.

⁹³ See: Republic of Burundi, CNTB(2008). *Etat des lieux des problématiques foncières au Burundi. Etude sur la problématique foncière et les solutions alternatives face au défi de la Réintégration*, Bujumbura, September 2008.

⁹⁴ Arusha Agreement, Protocol II, Ch. I, Art. 9 item 8 ; article 4, f.

⁹⁵ Republic of Burundi, CNTB, *Rapport 2012*, Bujumbura, December 2012.

⁹⁶ International Crisis Group (2003), Réfugiés et déplacés au Burundi : désamorcer la bombe foncière, *Rapport Afrique*, n° 70

⁹⁷ UNHCR, *Statistiques sur la situation des réfugiés burundais au 29 juin 2009*.

⁹⁸ Republic of Burundi(2010), *Arusha Peace and Reconciliation Agreement for Burundi*, op.cit., Annex IV, Report of Committee IV, Chapter 1 : Reconstruction and development, item 2, al. e). It should be recalled that before the Arusha Accords, only decree-law No. 1/01 of 22 January 1991, which replaced decree-law No. 1/19 of 30 June 1977 on the reintegration of the rights of persons who had left Burundi following the events of 1972 and 1973, was the only legal reference instrument for land belonging to the 1973 refugees., in : Arusha Peace and Reconciliation Agreement for Burundi, (AAPRB), Annex IV, Report of Committee IV, item 1.2.3. b).

⁹⁹ Republic of Burundi(2000), *Arusha Peace and Reconciliation Agreement for Burundi*, , Annex IV, Report of Committee IV, Chapter 1: Reconstruction and development, item 2, al. e).

¹⁰⁰ *Ibid.*, Art. 8 al. B Protocol IV. Arusha.

¹⁰¹ Governed by law No. 1/17/2006 covering the Aims, Composition, Organisation and Operation of the CNTB. From 2006 to today, the CNTB has recorded nearly 30,000 complaints, of which nearly 20,000 have been concluded and 10,000 remain unresolved.

¹⁰² See: Republic of Burundi, CNTB, State of Play of Burundian Land Tenure Issues, *Communication à l'Atelier national de présentation de l'étude sur la problématique foncière et les solutions alternatives face aux défis de la réintégration des sinistrés*, 24th to 25th September 2008.

parties or public or private services (CNTB, 2008). Although the CNTB is state-owned, it is decentralised and therefore close to the local population, and it deals only with conflicts related to returnees.

All of these land dispute resolution mechanisms are rooted in the Arusha Accords,⁹⁴ but this does not specify how they interact with each other. For example, while the reinstatement of the *Ubushingantahe* is laid out in the Accords (Protocol I, ch. II, art. 7, item 27), the 2005 legislative reforms excluded the *bashingantahe* from the official Burundian judicial system . Although the opinion of the *bashingantahe* was previously a requirement in court, they now operate only in an extrajudicial setting (Kohlhagen, 2010),.

Lack of consensus on CNTB and refugee land

Since the 31st of October 2012, the Office of the High Commissioner for Refugees has begun the repatriation of the remaining 35,000 Burundian refugees living on Tanzanian soil in the Mtabila camp.⁹⁵ These are the last of the 800,000 ⁹⁶ Hutu refugees who ended up in several Tanzanian camps as a result of the politico-ethnic conflicts in Burundi since 1962.⁹⁷ When these refugees departed, their land was systematically occupied by their neighbours or assigned to new occupants on the orders of the public administration at the time. As a result, many of these refugees were unable to reclaim their land once repatriated, leading to numerous land disputes. At the end of the civil war, the Arusha Peace Agreement called for returning refugees to be able to recover their occupied land with the help of the government.⁹⁸ The Agreement set out several principles regarding the return of refugees. Firstly, it had to be voluntary and carried out with dignity and in guaranteed safety. Secondly, welcoming mechanisms had to be set up. In addition, the Agreement called for the recuperation of refugee lands to be carried out in accordance with the laws of Burundi and the principle of the Arusha

Accords, for which “any refugee and/or affected person must be able to recover his or her property, including land”⁹⁹ and, if this is not possible, they “must receive fair compensation and/or reimbursement”.¹⁰⁰ Finally, the Agreement favoured a search for consensus between acquired rights and the restitution of expatriates’ rights.

When the first refugees returned, these principles were scarcely applied. However, a “National Commission for Victim Rehabilitation” (*Commission nationale pour la réhabilitation des sinistrés*, or CNRS) was set up in 2002 to, amongst other things, help returnees recover their land. In 2006, the CNRS was replaced by the “National Commission on Land and Other Property” (*Commission nationale des terres et autres biens*, or CNTB)¹⁰¹ whose mandate is “to hear disputes relating to land and other property between victims and third parties or public or private services”. The president of the CNTB at the time, Abbé Aster Kana, of the Hutu ethnic group, was said to have favoured conciliation and mutual tolerance between the people concerned, whom he first brought together in order to encourage them to seek a fair and equitable solution.¹⁰²

As on the one hand refugees demanded the full and unconditional reinstatement of their original rights, and the occupiers demanded the same in the name of their acquired rights, the CNTB president then tried to find a compromise by asking that the government not maintain the continued threat of land restitution, but support an intermediate position of land sharing. As a result, more than 12,000 cases of land disputes have been settled amicably since 2006. When Abbé Aster Kana died in 2009, he was replaced by Monseigneur Bambonanire Serapion, of the Hutu ethnic group, who called the whole approach of his predecessor into question. For Monsigneur Bambonanire, sharing between the occupants and returnees would maintain the *status quo* of conflict and would constitute a flagrant denial of justice. He

therefore recommended full restitution, which he saw as a guarantee of lasting peace.

Since 2012, several judges, members of civil society, clergy and customary mediators, all intervening directly as “mediators” within various land dispute resolution mechanisms, have opposed such an approach. Except for judges in the traditional courts, most of these mediators are in favour of the approach of sharing land between returnees and land-owners. Judges, on the other hand, are very divided on this issue and seem to favour the “acquired rights” of occupants. Several Hutu political actors have blamed the approach of these judges on ethnic affinities, arguing that “the judges, who are predominantly Tutsi, try to use the rigour of written law for the benefit of their Tutsi brothers who have taken over the lands of the Hutu forced to go into exile during the war”. The same view is expressed by some customary mediators, NGO mediators, or clergy.

Between 2012 and 2014, there has been a huge increase in the number of appeals against decisions that resolved land disputes through an approach of amicable land sharing between returnees and occupants. Since 2009, the law has allowed recourse against out-of-court settlements previously coordinated by the CNTB. The occupiers who have shared the land with returnees believe that the CNTB should try to find a solution for peaceful coexistence between residents and returnees. Their position is based on the fact that they believe it “is not easy to establish exactly who has really has the right to this land”.¹⁰³ They also recall that “the Arusha Accords stipulate that residents should give up the land they had occupied after receiving accompanying measures that would enable them to continue to live”.¹⁰⁴

According to some Burundian civil society organisations, “tens of thousands of land disputes concluded by amicable settlement under the chairmanship of the late Abbé Kana (which attempted to reconcile law, equity, national reconcil-

iation and social peace) were reopened at the request of returnees at the risk of further bloodshed the country”.¹⁰⁵ For example, Article 19 of the law governing the CNTB stipulated that “in the event of failure by the Commission to reach an amicable settlement, the interested party may bring the matter before the competent court and the Commission’s decision shall remain enforceable until all legal remedies have been exhausted”.¹⁰⁶ This law is unconstitutional according to several opposition parties. Indeed, the Burundian constitution provides that there must be no institutional pluralism that would lead to conflicts of authority in the judicial sphere.¹⁰⁷ In order to escape this unconstitutionality, the Burundian government has set up a special court for land and other property where those who are opposed to the decisions of the CNTB can now appeal. This court, however, applies the principles of the CNTB to the letter.

There is therefore still a deep division within Burundian society on how to deal with the thousands of conflicts in Burundi. Added to this is the fact that since the 2015 crisis, more than 400,000 people have left Burundi, leaving their land at the risk of it being taken over once again.

Challenges of the land tenure securitisation programme

As in many sub-Saharan African countries, Burundi has launched the land tenure securitisation programme in 2007, which was initiated and piloted by external donors.¹⁰⁸ This programme is part of a strong demand for land reform at both local and national levels. This demand is reflected first and foremost in the 2000 Arusha Peace Agreement, which politically sanctions the end of several decades of political and ethnic conflicts and civil war in Burundi. This Agreement stipulates that “Burundi’s Land Code must be revised in order to adapt it to current land management issues”.¹⁰⁹

Since the beginning of the 2000s, several factors have made it possible to es-

¹⁰³ Interview with one of the occupiers’ representatives, Cibitoke, August 2017

¹⁰⁴ *Ibidem*.

¹⁰⁵ Interview with civil society representatives, Bujumbura, August 2017.

¹⁰⁶ See for example the report of the press conference on the CNTB led by former president Jean-Baptiste Bagaza on the 12th December 2012.

¹⁰⁷ See: Republic of Burundi. Constitution (2005), Title VII.

¹⁰⁸ See: Swiss Agency for Development and Cooperation (SDC), « Devis-programme N° 2, période de croisière du 1^{er} juillet 2008 au 30 juin 2009 », *Gutwara Neza* programme, Bujumbura, 2008. « Document de planification Burundi 2007-2010. Programme de gestion décentralisée des terres dans la Province de Ngozi », Bujumbura, November 2006.

¹⁰⁹ Republic of Burundi (2008), *Arusha Peace and Reconciliation Agreement for Burundi*, Arusha,.

¹¹⁰ These terms ('repatriés' and 'retournés' in French) are used in Burundi to designate internally displaced people returning to their villages of origin. See: Republic of Burundi, CNTB (2012), *Organisation et activité 2006-2010*, Bujumbura, CNTB, , pp. 1-3.

¹¹¹ See: Republic of Burundi (2008), , *La Lettre de politique foncière*, pp. 3-6.

¹¹² See: Decree No. 100/72 of 26th April 2010 adopting the Land Policy Paper in Burundi.

¹¹³ See : Law No. 1/13 of 9th August 2011 revising the Burundi Land Code.

¹¹⁴ Republic of Burundi, law no.1/13 of 9th August 2011 revising the land code.

¹¹⁵ This diagnosis results in an analysis of the land situation in the commune and an analysis of the financial and material capacity of the commune.

¹¹⁶ See Republic of Burundi, Ministry for Water, Environment, Land Development and Urban Planning (2013), *Ibid.*, pp. 9-11.

¹¹⁷ A 'colline' (French for 'hill') is a sub-division of a commune.

¹¹⁸ A portion of these members are elected by the inhabitants of the colline.

¹¹⁹ This description includes the location, development, and estimated area, and identifies the boundaries and benchmarks used.

establish a consensus among the various national and international stakeholders on the need to reform the land code. These are mainly the limitations of the 1986 land code, the scarcity of land in relation to demographics, the multiple conflicts over land related to returnees and repatriates,¹¹⁰ etc.¹¹¹ However, it was not until 2008 that a *Land Policy Paper*¹¹² could be prepared. It was this *Land Policy Paper* that would serve as the basis for the land law¹¹³ passed by the Burundian Parliament in 2011 and which would form the foundation for land securitisation initiatives in Burundi.

This land tenure securitisation programme is based on the premise that most land conflicts in Burundi are linked to the failure to secure land or to the ineffectiveness of informal conflict mediation bodies. As such, the programme has two objectives: peace-building by aligning land registration authorities (starting with the decentralisation of land tenure), and the promotion of rural development and poverty reduction through access to credit.

The land tenure securitisation programme in Burundi supports the communes' creation of communal land services (*services fonciers communaux*, or SFCs) whose purpose is laid out in Article 384 of the Burundi Land Code.¹¹⁴ This is purely a matter of support however; according to article 398 of the same code, it is up to the communes to decide on the creation of SFCs if they so desire. Since 2007, several provinces have already been accounted for by these SFCs, which can be found in some thirty communes in Burundi and which are financially and technically assisted by various donors.

The institutional creation of a SFC involves several steps, including:

- **The sociological land tenure diagnosis**, which allows the request to secure land tenure to be analysed, and aims to assess the possibility and feasibility of securing land tenure through a SFC.¹¹⁵ This step has

used centralised data collection at the commune level, rather than participatory approaches, which are considered too costly by the government.

- **The physical construction of the SFC**, composed of a communal land service office with related equipment.
- **Determining how the SFC will operate**. The Burundian government expressed the view that the cost of the SFC pilot projects was too high in terms of equipment.¹¹⁶ It therefore proposes to minimise costs, in particular at the office and rolling stock level, which could have a negative impact on the quality of data retention and the speed of service response. The same issue of costs emerges again with regard to the choice to be made by the Communal Council on the arrangements for a paper-based or semi-computerised SFC.

Once the SFC has been physically constructed, the recruitment and training of land officials is planned, who will then provide information and raise awareness amongst the population. It is intended that these officers will be assisted in each commune by a Colline¹¹⁷ Survey Committee (*commission de reconnaissance collinaire* or CRC), whose members¹¹⁸ will be trained and will work on a voluntary basis. Once this step is completed, the certification work can then begin at communal level. Firstly, a survey of the colline is carried out, which consists of a field trip to describe the plot of land¹¹⁹ and draw up a summary plan. A report must then be prepared which may either agree to issue the land certificate, suspend the process pending resolution of objections, or refuse to issue the land certificate. It is important to note that at this level, an ongoing challenge is the management of land service data (ranking and archiving), and the transmission of this data to the provincial land registry teams that prepare communal land plans.

Beyond this procedure, consideration must also be given to managing changes that occur to the elements covered by the land certificate. These may be

the transfer or fragmentation of registered plots, or the recording of responsibilities. Both procedures require another surveying trip, which is mandatory for fragmentation and desirable for transfer.¹²⁰ It should be noted that Article 410 of the 2011 Land Code gives the possibility of transforming the land certificate into a land title. In this situation, it is the transformation applicant who submits the entire file to the land service. After the application has been posted for a fortnight, the land service is then responsible for transferring the file to the relevant land titles department.

Finally, an experiment using grouped survey operations (*opérations groupées de reconnaissance*, or OGR) has been carried out in Burundi, but this requires a great deal of resources that most communes do not have at their disposal. This initiative is ideally launched by the Colline Council in order to systematically survey land across the colline. Land officials head into the field and use GPS to speed up the surveying of plots. The surveying method used within the OGR framework complies with the same legal conditions applied to individual surveys. This method results in numbered batches and plots of land, descriptions of neighbouring areas, and finally the production of a collective plot plan. This serves as a land information management tool for the commune, as well for those who wish to apply for a land certificate, which is an individual deed.

Currently only about 50 of the 133 communes in Burundi have an SFC. Most of these are donor-led pilot projects, some of which are already being closed down without the promise of continued funding. Furthermore, the local opinion in the communes that already have these SFCs is divided as to the need to seek a certificate “so long as the neighbours and the elders do not contest their respective properties”. In addition, very few land users in these communes return in order to record transfers or fragmentation; given that the departure of foreign landlords is often a disruptive

BURUNDI : LAND CONFLICTS AND MIGRATION

« My grandfather was born in 1927 in the centre of the country. In the 1940s, his father received land in the north-eastern part Burundi we call the peasant farms [...] That is the land my father inherited in 1975. It is also the land that a Burundian family from Tanzania came to claim in 2005. This was a family that fled Burundi in 1972 because of the conflict. The head of this family left Burundi when he was five years old and believes that his father had told him before he died in Tanzania that he would one day have to go to Burundi to reclaim their land, that is, my parents' land [...] At first, we resisted because we knew that these lands had always been part of our family since colonisation. But these people from Tanzania insisted so much that the CNTB finally arrived to explain to us that we should share, that is, give part of this land to these returnees. For the CNTB, it was important to do so in the name of peace and to help those refugees who had nowhere to go. We ended up accepting because the priest who was then president of the CNTB had spoken with the parish priest of our church to convince us.... While we were already living in peace with these returnees in 2009, before the elections, we saw police officers arrive on our land to explain to us that we should leave and leave all the land to these returnees. We didn't understand anything. Listening to the radio, we learned that we were not alone. The new president of the CNTB no longer wanted returnees and landowners to share [...] The ruling party politicised the CNTB and we ended up on the street. I went to court, won the trial but my judgment was never put into action.

Farmer, 42 years old, Cibitoke, Burundi

influence, this results in the SFCs failing to function as intended.

The problem with this reform is mainly linked to its systematisation, which seems unlikely. The Swiss cooperation agency is completing its land tenure programme in Burundi this year and does not intend to continue further. The same is true of the European Union, which has not planned to renew its own programme.

Land reform partners: initiatives and stalemates

Swiss cooperation and the European Union

The Programme to support decentralised land management in the Province of Ngozi (6 communes), supported by the Swiss cooperation agency (SDC), and the “Gutwara Neza” programme to support good governance from the European Union (EU), which operates in the Provinces of Gitega and Karuzi, are the main cooperation projects that have tried to support the focus on de-

¹²⁰ See: Republic of Burundi, Ministry for Water, Environment, Land Development and Urban Planning (2013), *Ibid.*, p. 25.

centralised land management to promote land securitisation. The Dutch government has also supported the sector in recent years.

Firstly, the SDC has been the leading donor in Burundi's land sector for roughly the past ten years. The SDC project is a pilot experiment in the implementation of communal land services for registering farmers' plots and issuing certificates of land ownership. As a matter of fact, the SDC has been implementing this project in Burundi as part of its regional programme to support land management since 2008. The SDC has been contributing to peace-building in the Great Lakes Region since 2004, in particular by working on land conflicts.

This programme also contributes to national land reform through its support for the promotion of a legal and regulatory framework and national coordination of the land sector. The SDC programme is currently in its third phase, which was due to conclude at the end of December 2016 but has been extended until the end of 2017.

Switzerland believes that the programme has already achieved several successes, including: conflict prevention, examples of conflicts resolved amicably when land was identified, the identification of land as part of grouped or individual initiatives, subsequent land certification, the establishment of a National Land Commission with a permanent coordination unit, and the implementation of certain texts applying the 2011 Land Law. At the same time however, it admits that there are still many problems related to the appropriation of the programme by the government and the communes, the political will to move forward at the national level, the financial empowerment of land tenure offices, the systematisation of the land tenure offices throughout the country, the recording of changes or transfers after any transaction, the halting of certain activities since the 2015 crisis, and the obstruction of women's rights.

Secondly, the EU programme has included a range of activities under the rule of law component (justice sector) including the establishment and support of land services in the provinces of Gitega (3 communes) and Karuzi (4 communes). This program came to an end several years ago now. Currently, with regard to the land sector, the EU indirectly supports a land project through GIZ, a project which aims to contribute to improving the management and governance of state land. It also aims to create the necessary conditions for improving the management of private land. This project was approved in 2014 and is being implemented in all communes across Burundi, with the exception of communes where this work has already been carried out, that is to say 119 of the 133 communes in the country. The project also plans legal support for local populations and advocacy at the governmental level, still within the public lands sector.

This project was funded to the tune of 6 million euros (5.5 million by the EU and 0.5 million by Germany). The EU drew this funding from regional funds in order to address the issue of land governance. The purpose of the project is to conduct a census of all state-owned lands while integrating a better understanding of conflict resolution. Elements include:

1. The recording of non-confrontational areas of land with the land registry and land title service
2. The provision of legal assistance, aiming to support mediation and conflict resolution, as well as some legal aspects of implementing land reform
3. The establishment of a roadmap for a national approach to systematically securing land tenure which can then be prepared and adopted, as well as continuing financial support for certain SFCs

So far, some results have been achieved:

- Collection, analysis, harmonisation and integration of existing state-owned lands
- Definition and development of the ar-

chitecture of the state-owned land database (SIG)

- ▶ Testing and deployment of equipment, procedure manuals
- ▶ Pre-identification of state-owned lands
- ▶ Development and enactment of implementing legislation for the inventory of state-owned lands
- ▶ Subsidies to three existing communal land services, previously financed by concluded FED projects

But there is still much to be done, particularly as regards the appropriation of the entire process by a government that does not seem to see the value of such a programme. For example, an activity report has already been produced but the government seems unwilling to have it distributed. The project is nonetheless expected to end in early 2018.

Thirdly, the Kingdom of the Netherlands also supports the programme of governance and land reform. For example, the multi-year Strategic Plan 2012-2015 from the Netherlands Embassy focused on the provinces of Bubanza, rural Bujumbura and Cibitoke in its targets for land reform. It also planned interventions in the area of land securitisation as a key element in improving food security through agricultural intensification. Currently, indirect bilateral cooperation projects (OAN) are continuing to work on land tenure. These are mainly the work of ZOA, which operates in Cibitoke and Makamba.

Civil society in Burundi

Civil society plays an important role in the management of land conflicts in Burundi through alternative dispute resolution mechanisms. These mechanisms come into play when the parties agree to submit their disputes to non-judicial means of dispute resolution. The civil society organisations involved here include associations, NGOs, the *bashingantahe*, churches, etc.

There is also a partnership between civil society organisations on land issues

in Burundi, which was established by 14 organisations in 2011. The 'Synergy' is an independent and non-political structure for exchanges, reflections, coordination and actions on land. It has the overall objective of contributing to methods of land management and governance which prevent conflicts and stimulate development in Burundi. It does so through the involvement of civil society, which offers continuous input into the debate and solutions to the sector's challenges. The Synergy's aim is also to support member organisations in the achievement of their common objectives and plans in relation to land issues, in line with its own overall objective.

The Synergy is composed of national and international organisations. National organisations are in the majority. These include the following organisations: Association Burundaise des Elus Locaux (ABELO), Association Ceinture Verte (ACVE), Association des Femmes Juristes du Burundi (AFJB), *Association des Juristes Catholiques du Burundi (AJCB)*, *Agence de Renforcement des Capacités et d'Appui pour le Développement Rural et l'Environnement (ARCADE)*, *Biraturaba*, *Fondation Intahe*, *Organisation pour la Défense de l'Environnement au Burundi (ODEB)*, *Union Chrétienne pour l'Éducation et le Développement des Déshérités (UCEDD)*, *Unissons-Nous pour la Promotion des Batwa (UNIPROBA)* and *Ligue ITEKA*. International organisations include: ACORD, Global Rights, CISV and RCN - *Justice & Démocratie*.

This Synergy of civil society organisations on land issues in Burundi represents a number of interests. First, it reflects civil society's commitment to contributing to peacebuilding in Burundi. This synergy aims to contribute to the reduction of land disputes, which now account for more than 70% of the disputes registered in courts and tribunals. It also wants to contribute to peace in the country by taking into account that these land conflicts are also a source of insecurity (killings, gender-based violence, etc.) observed throughout the

country. Finally, this Synergy aims more generally to influence not only governments but also other groups or public opinion on specific land sector issues.

Each organisation informs the others of land news and data collected on the ground (observed land code violations, information gained from listening to the population's complaints about the quality of services provided by the Communal Land Services, cases of expropriations, etc.), which is shared in the form of reports during the monthly synergy meetings on advocacy. The same reports are shared at a higher level in the Land Sector Group, bringing together all the stakeholders in this sector. Joint missions (state and non-state actors) are organised for the assessment of the status of land code implementation by administrative agents at the grass-roots level. As a result, the voice of civil society is heard by state actors and a positive transformation of land management practices is observed.

However, although the objectives are clear and legitimate, the Synergy of civil society organisations on land tenure issues in Burundi does not yet have the sufficient and necessary resources which could provide it with a strong ability to act and give it considerable expertise and power in the field. In fact, during its three years of existence, it has functioned thanks to the financial and technical support of Global Rights, but this support ended at the end of February 2014. The Synergy also suffers from the low levels of participation by delegates from member organisations in its activities. Delays and absences are observed in monthly advocacy meetings and in the Land Sector Group. Furthermore, the advocacy system and its scope are not sufficient. The voice of civil society on land tenure has not gone beyond the Sectoral Group to reach high levels such as the National Land Commission, the Interministerial Commission on Land Tenure, the Strategic Forum and the Political Forum.

According to its members, these weaknesses could be transformed into strengths by rethinking the Synergy's vision. The Synergy should therefore focus on concrete problems requiring urgent and necessary collective action, instead of formal monthly meetings which are often without substance. This would require a coordination unit. This could be provided with an office, a secretary and a minimal amount of supplies and computer equipment to maintain the administrative records and the proper functioning of the Synergy. It could also be responsible for diversifying partners and mobilising funds to finance activities specific to the Synergy. It would also be responsible for maintaining links between member organisations by mobilising them around this collective interest, which should then be advanced amongst other partners. As a result, it could empower member organisations and involve them more fully in Synergy activities. In that respect, it is only the Synergy's unity, cohesion and readiness to act when necessary that could increase the scope of civil society's message to decision-making bodies and alter the direction of land policies.

Part III

EVALUATION AND RECOMMENDATIONS

Concerning the EU's vision and commitment in the field of land tenure

EurAc considers that, in general, the EU's approach to land tenure issues in developing countries is commendable. The 2004 policy document (see point 3.1) and DEVCO's commitment to promoting and disseminating the Voluntary Guidelines are an integral part of the criticism of neo-liberal approaches to land tenure. In particular, the 2004 document is concerned with the social and environmental consequences of land tenure, with particular attention given to the rights of women and indigenous peoples. It is important for the top donor of development assistance to have a nuanced view of land issues, and to adopt a position that emphasises the adaptation of land models to local realities while highlighting the importance of heterodox approaches that are not ultimately based on individual land titles as a solution to land problems and conflicts.

Likewise, **EurAc** welcomes the approval that the Voluntary Guidelines have found in the Commission and, more specifically, in DEVCO. Once again, the European Union has been at the forefront in developing and disseminating a crucial document to ensure fair, equitable and sustainable land governance. However, **EurAc** also notes that this commitment remains stronger in policy texts and speeches than in practice. At this level, the EU suffers from a strong inconsistency between the spirit of certain policies that it puts on the agenda and the practices found in

its various interventions in developing countries. In particular, **EurAc is concerned that no form of strong ownership of the Voluntary Guidelines will come from the Commission or Parliament.** As the name implies, these Guidelines depend on the benevolence of States for their implementation. The European Parliament and the Commission should provide direct incentives for Member States to be able to clearly specify the legislative tools and institutional mechanisms. This will ensure that the principles of the Guidelines are integrated into the development cooperation interventions of Member States, and above all, into **the principles that guide foreign investment by their companies.**

In addition, EU support for the Land Policy Initiative also raises issues of coherence. Although the EU declares that it supports peasant and family farming, aligning itself with the development policies of the AfDB or the AU also means opening up to an agro-industrial investment model that endangers the rights of local populations and has proven to be contrary to the interests of small producers in the past. In its increasingly strategic partnership with the African Union, the EU should position itself as a critical voice, bringing with it considerable experience in studying issues and development practice while being able to critically examine the link between land, development and the protection of the rights of local communities.

Finally, the Union's internal policies may also conflict with the principles set out in the 2004 policy document. A clear example is the EU's strategy for agrofuel production, a programme

¹²¹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

that elicited strong reactions from European civil society as it indirectly stimulated large-scale land grabbing by European investors seeking land for the production of raw materials for the production of agrofuels. The Commission has sought to solve the problem by amending the directives regulating the agrofuel supply sector and by setting minimum thresholds for changes to land use.¹²¹ This is a first step towards respecting the rights to food security and access to land for people living in areas of large-scale agricultural investment, but this is only one example. There is in fact no European regulation that obliges private investors to set up mechanisms for assessing the impact of their investments, nor regulation that obliges them to safeguard and advance the interests of local communities. In **EurAc's** view, it is time for the EU to engage fully in promoting fair and equitable land tenure systems, and to incorporate the Voluntary Guidelines as a **guiding principle of the Union**, officially recognised by the institutions of the Parliament and the Commission as **the official guideline for European companies' investment in land**.

In general

EurAc calls on:

- ◆ The **European Commission**, and in particular DEVCO, to consider integrating the principles contained in the Voluntary Guidelines at the heart of the Union's development policies. This means integrating them into any land intervention project set up by European cooperation
- ◆ The **European Commission**, and in particular DEVCO, to take the initiative in establishing binding legislation applicable to European companies, which provides for mechanisms for due diligence in the event of large-scale land investment, based on the principles of the Voluntary Guidelines
- ◆ The **European Commission**, and in particular DEVCO, to maintain and expand the scope of existing programmes for the extension of the Voluntary Guidelines, with a specific strategy for the Great Lakes region
- ◆ The **European Commission** and the **European Parliament** to use existing political and institutional mechanisms (e. g. the Africa-EU Partnership) to re-launch the policy dialogue on land tenure in Africa, with particular attention given to European investment and the protection of the rights of indigenous peoples, women and minorities.

To the French Development Agency, regarding the implementation of the Voluntary Guidelines

EurAc and its member organisations welcome the commitments made by France and AFD through the Technical Committee on Land Tenure and Development, the numerous initiatives to disseminate the Voluntary Guidelines, and in particular the creation of the *ex-ante* analysis guide for agricultural investment projects with land rights. However, we find it surprising that the Guidelines have not integrated this guide in a structural way in the development projects promoted by AFD or in the investment projects of similar private entities within PROPARCO. Furthermore, it is the players brought together by PROPARCO that are most likely to engage in large-scale land investments.

- ◆ **EurAc asks AFD and PROPARCO to systematically adopt the *ex-ante* analysis guide for agricultural investment projects as a pre-evaluation tool for projects that have an impact on the land sector.**

EurAc is also concerned that the *ex-ante* guide for the analysis of agricultural investment projects with land rights is limited to an exclusively ‘agricultural’ approach, while the adverse effects of the land investments it deals with are common to several sectors, including energy, resource extraction and real estate.

- ◆ **EurAc asks AFD to broaden the *ex-ante* analysis guide’s scope of use for agricultural investment projects by systematically applying it to any project involving changes in use, rights of use and land ownership, and not only to agricultural programmes.**

Regarding interventions into land tenure by the EU and Member States

REGARDING INTERVENTIONS IN RWANDA

Regarding interventions by the EU delegation to Rwanda, by DEVCO, SIDA and the Dutch development cooperation

The commitment of EU member countries, and in particular DFID, has been crucial for the implementation of the land rights regularisation project in Rwanda. However, there are still gaps in the implementation of the project, detailed in chapter 2 of this report, namely: the lack of knowledge of good practices to be followed by users, women’s difficulty accessing land, the high costs of obtaining titles, the persistence of land conflicts, the updating of the LAIS, and concern for training and capacity building for the *abunzi*.

Following its field visit, **EurAc** understands that the support provided by European donors will end in June 2018 - the end date of the land securitisation project. Only the Swedish cooperation remains involved, providing a support and capacity building programme for the land office. **EurAc** considers that continued support in the following areas is needed.

- ◆ **EurAc recommends that European donors (DFID, DEVCO, SIDA, Dutch cooperation) continue to support land reform processes by focusing their financial support on the problematic aspects of the programme.**

In particular:

- ◆ **Continue to support the updating of the LAIS and the training of land office managers;**
- ◆ **Support efforts to popularise the land law, especially with regard to women’s right to inheritance;**
- ◆ **Support the Rwandan government in the training and capacity building of mediator committees (*abunzi*) as a mechanism for resolving conflicts at the grassroots level.**

- ◆ European donors should also take ownership of the evaluation of the securitisation programme supported by DFID in order to develop a reflection on the advantages and constraints of programmes with a securitisation-based approach.

Regarding the political dialogue of the EU delegation to Kigali on land issues

The EU is committed to ensuring that its development cooperation policies contribute to poverty reduction and the protection of human rights. However, the EU has rarely intervened with its Rwandan partners in cases of violations of the rights to access land held by all Rwandans.

- ◆ **EurAc calls for any EU support to Rwanda for the management of the land tenure system or access to justice to be contingent upon a public and independent inquiry into recent cases of land rights violations by military and police authorities.**

Regarding DFID support for the land securitisation programme

Although the programme is coming to an end, there has been no comprehensive evaluation of its impact. Following our visits to Kigali, we received mixed and inconsistent responses on the planning of a program evaluation - which is not available at this time. Given the importance of this programme for Rwanda, and its influence with other donors and African countries.

- ◆ **EurAc calls on DFID to carry out a thorough, independent and publicly accessible impact assessment.**
- ◆ **DFID should also conduct an impact assessment on the livelihoods and food security of small-scale agricultural producers and should not confine itself to accounting for land registered as an indicator of success. This evaluation should also be shared with other donors involved in the process and with the Rwandan government.**

REGARDING INTERVENTIONS IN THE DRC

Regarding interventions by the EU delegation to the DRC and DEVCO

The EU's withdrawal from the land sector in DRC is understandable but worrying. **EurAc** understands that in the current context of political uncertainty in the DRC, it is difficult to envision a long-term commitment to the process of land tenure reform. It is also true that some of the EU's past commitments have not yielded encouraging results or promising consequences for the land reform process. But it is also true that land remains the basis for building peace and stability in the DRC. As we have shown in the third chapter of this report, many civil society initiatives are attempting to implement community-based forms of conflict resolution and to secure land rights on a daily basis, particularly in relation to customary rights.

- ◆ **The EU should financially support these types of initiatives, particularly as they have, as in South Kivu, the potential to fit into the provincial legal framework, which is likely to ensure their sustainability over time.**

In addition, **EurAc** invites the Delegation to support the discussion on the land reform process at grassroots level by civil society organisations. Indeed, in the DRC, the spirit of decentralisation was at the heart of the national-level reform initiative.

- ◆ **The EU should financially support initiatives to produce provincial terms of reference and discussion forums on the reform process. Trials similar to those run by the North Kivu Consultative Committee should be supported with the aim of developing them, as they could serve as a future basis for innovative initiatives in land governance.**

Finally, it is surprising that DEVCO, which is involved in the dissemination of the Voluntary Guidelines in a significant number of African countries, has not planned similar activities in the DRC. Given the conflicts between the land code and the mining code, and in view of the importance and potential of mining in the DRC, it is important that Congolese citizens and civil society organisations are aware of the existence of this instrument, which could provide them with solid arguments in their advocacy and monitoring procedures regarding the expropriations and abuses that they have often suffered.

◆ **EurAc therefore calls on DEVCO and the EU Delegation in Kinshasa to commit themselves to spreading and popularising the principles of the Voluntary Guidelines in DRC.**

Regarding interventions by the SDC in the DRC

EurAc appreciates the commitment of the Swiss cooperation agency to securing land rights in Eastern Congo (see para. 3.5). Given the variety of local contexts and the many different of forms of customary management present in the DRC, it is essential that Switzerland renews its commitment to securing customary rights and redoubles its efforts in order to achieve a standardised system which can be replicated in other parts of the DRC.

◆ **EurAc calls on the SDC to continue its support for methods of securing customary land rights and the organisations that implement them.**

◆ **EurAc invites the SDC to support similar projects in other parts of the DRC, so that the variety of experiences can improve sustainability by testing the model in culturally different areas.**

REGARDING INTERVENTIONS IN BURUNDI

Regarding interventions by the SDC in Burundi

This year, the SDC is completing its programme for the support of decentralised land management in Burundi. Although this programme has resulted in the registration of a large amount of land, there are still significant problems in terms of ownership of the programme by the Burundian government, as well as a need for capacity building and resources for SFCs.

◆ **EurAc calls on the Swiss cooperation agency to maintain its involvement in Burundi and, above all, to engage in capacity building for decentralised actors, without which the work carried out by the programme in recent years risks being lost.**

The Swiss cooperation agency is the leader amongst donors who have now been working in the land sector in Burundi for ten years. It has exceptional expertise in this field.

◆ **EurAc asks the SDC to make feasibility studies, evaluations and assessments of its experiences available to the Burundian government. These documents will enable the Burundian government to assess the feasibility of systematising land offices in Burundi.**

Regarding interventions by the EU delegation, DEVCO and GIZ in Burundi

The indirect involvement of the EU, through GIZ, has laid the groundwork for the creation of a state land register. This process has been useful to support a future Burundian government in a genuine process of reforming and reorganising the land tenure system. However, **EurAc** understands that Burundi's serious political deadlock makes any long-term commitment difficult.

- ◆ **EurAc** therefore calls on DEVCO and GIZ to continue working in the field of land tenure by supporting civil society organisations, particularly the Synergy of civil society organisations in Burundi, in their work on reflection, advocacy and the development of alternatives for conflict resolution and land management in Burundi.

The work of the European Union in the registration of state-owned lands appears to have gone unappreciated by the Burundian government; at the very least, they have not adopted it in any fashion. Nonetheless, the EU is convinced of the importance of this work and its relevance to the local population.

- ◆ **EurAc** calls on the EU to continue to push the Burundian government to approve its report within the scope of the state land inventory and to take legislative measures to protect this land.

Conflicts over the land owned by refugees and displaced people continue to be one of the main causes of both social and political conflicts in Burundi. The politicisation of the CNTB, which is supposed to resolve these conflicts, does not facilitate their peaceful resolution in accordance with the Arusha Accords. All these problems are compounded by potential conflicts over the land of more than 400,000 Burundians who fled the country as a result of the political conflict that broke out in the country in 2015.

Regarding women's rights to access land

Burundi does not recognise women's right to inherit family land.

- ◆ **EurAc** calls on the EU and its Member States to put pressure on the Burundian government to ensure that, in accordance with the Burundian constitution and the Arusha Accords, Burundian women are granted their constitutional right to inheritance and succession.
- ◆ **EurAc** calls on the EU to support Burundian civil society initiatives to raise awareness of the importance of women's access to land.

List of Abbreviations

AFD	<i>Agence française de développement</i> (French Development Agency)
AU	African Union
AfDb	African Development Bank
CAADP	Comprehensive Africa Agriculture Development Programme
CACO	<i>Comité provincial de consultation sur le foncier</i> (Provincial Committees for Land Consultations)
CFS	Committee on World Food Security
CNRS	<i>Commission nationale pour la réhabilitation des sinistrés</i> (National Commission for Victim Rehabilitation)
CNTB	<i>Commission nationale des terres et autres biens</i> (National Commission on Land and Other Property)
CONAREF	<i>Comité national pour la réforme foncière</i> (National Coordination for Land Reform)
CRC	Commission de reconnaissance collinaire (Colline Survey Committee)
DEVCO	European Union Directorate-General for International Cooperation and Development
DFID	Department for International Development
DRC	Democratic Republic of the Congo
EU	European Union
FAO	Food and Agricultural Organization of the United Nations

GIZ	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i> (German Association for International Cooperation)
GRET	<i>Groupe de recherche et d'échanges technologiques</i> (Technological Research and Exchange Group)
IIED	International Institute for Environment and Development
ILC	International Land Coalition
IMF	International Monetary Fund
LIAS	Land Information and Administration System
NASAN	<i>Nouvelle alliance du G8 pour la sécurité alimentaire et la nutrition</i> (New G8 Alliance for Food Security and Nutrition)
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
OGR	<i>Opérations groupées de reconnaissance</i> (Grouped Survey Operations)
PPP	Public-Private Partnerships
RAB	Rwanda Agriculture Board
RPF	Rwandan Patriotic Front
RRN	<i>Réseau ressources naturelles</i> (Natural Resources Network)
SDC	Swiss Agency for Development and Cooperation
SFC	<i>Service foncier communal</i> (Communal Land Services)
SIDA	Swedish International Development Agency
UN	United Nations
UNECA	United Nations Economic Commission for Africa



Without international consensus on how land should be governed, the interests of vulnerable land users will continue to be swept aside.

Olivier de Schutter

UN Special Rapporteur

for the right to food

(Geneva, 30 October 2011)



European Network for Central Africa- EurAc

Rue Stevin, 115

1000 • Brussels • Belgium

www.eurac-network.org

Tel: +32-(0)2 725 4770

Email: info@eurac-network.org

Twitter: [@EurAc_Net](https://twitter.com/EurAc_Net)

Created in 2003, the European Network for Central Africa (**EurAc**) has 40 member organisations from civil society in 11 European countries. These organisations work on and in the Great Lakes region. They support civil society organisations in Burundi, the Democratic Republic of Congo (DRC) and Rwanda in their efforts to promote peace, the defence of human rights and development.

EurAc concentrates its activities on advocacy towards the European institutions and political decision-makers around 3 central themes for the Great Lakes region: (1) peace and security, (2) democratisation and (3) management of natural resources. Transversely from these fields, the improvement of governance and the strengthening of non-state actors as counter-power are priorities of our advocacy network.

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