

Burundian government initiatives for securing land rights: the case of the commune of Ngozi

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Abstract—Following the *Arusha Peace and Reconciliation Agreement for Burundi* in 2000, Burundi entered into a long process of decentralizing government activities and reforming the land sector. Many legal and institutional initiatives tried, in a directive approach, to protect land rights and improve their security. This raised the question whether all these legal and institutional changes achieved their goals, reached the people and provided positive impacts on the security of tenure. Specifically, the aspect of how the implementation of the land office in the commune of Ngozi affected the practices of the people in terms of the recognition and enforcement of land rights was studied. It was expected, if the measures were successful, that practices related to the recognition and the enforcement of land rights were clarified and normalized.

The results of the study show that, after the implementation of the land office, the land certificate became the most important means of recognizing land rights. In many cases, the land certificate was the first written evidence of ownership and the first graphical evidence of the parcel. In addition, land officers also helped to clarify and specify the objects of right and to solve land conflicts. But, if the properties were registered, some updating processes were still deficient and only transfers by sale were registered in a large proportion. The results also show that the authorities were not competing with each other and their responsibilities generally were well defined, but the rules they applied were not clearly stated, mostly unwritten and evolving between the customs and the provisions of the law. Consequently, the practices related to the recognition and the enforcement of land rights were still not clear and normalized after the implementation of the land office.

Keywords— Burundi, Land law, Security of tenure

I. INTRODUCTION

The rule of law, key issue for the consolidation of peace in post-conflict societies, is defined as the “principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards” (United Nations, 2004). The *Universal Declaration of Human Rights* (1948) gives recognition to the right to own property and consequently constitutes an

incentive for land laws to be “publicly promulgated, equally enforced and independently adjudicated”.

Following the *Arusha Peace and Reconciliation Agreement for Burundi* (2000), Burundi entered into a long process of reforming the land sector. In relation to land rights, with this peace agreement, Burundian authorities committed themselves to:

- protect and guarantee property rights (Protocol IV, chapter I, article 8, paragraph a);
- provide the conditions for refugees to recover their property (Protocol IV, chapter I, article 8, paragraphs b to f);
- create a Sub-Commission on Land empowered to examine and judge cases related to the redistribution of land to refugees (Protocol IV, chapter I, article 3 paragraph b and article 8 paragraphs j and k);
- take series of measures to avoid subsequent conflicts over land (establishment of a register of rural land, promulgation of a law on succession, completion of a cadastral survey of rural land) (Protocol IV, chapter I, article 8, paragraph g);
- revise the *Land Act* (Protocol IV, chapter I, article 8, paragraph i).

In concordance with the terms of the peace agreement, in 2005, guarantees were given for property rights by the article 36 of the *Constitution of the Republic of Burundi* (République du Burundi, 2005a). In 2006, the *Commission on Lands and Other Assets* (CNTB) was created and empowered to examine and judge cases related to the redistribution of land to refugees (République du Burundi, 2006a). The *Land Policy Letter*, presented in 2008 (République du Burundi, 2008a) was the first step toward a national land policy. The document was voted in 2010 (République du Burundi, 2010a). The *Letter* set common objectives to insure the coherence of public initiatives in relation to land. Subsequent legislative renovation of the *Land Act* in 2011 (République du Burundi, 2011b) introduced a new legal framework for facilitating land registration at the communal level. Following the *Communal Administration Act* of 2005 (République du Burundi, 2005b) and the *Land Act* of 2011, land offices were established in twenty-six communes (Elbow et al.,

2014) and, amongst others, in the commune of Ngozi.

Before the renovation of the *Land Act* and the implementation of land offices, the recognition and enforcement of land rights were submitted to different authorities: magistrates of the *Tribunaux de Résidence* (lowest judicial instances for civil matters in Burundi), *bashingantahe* (traditional council of elders), communal administrators, authorities at the zone or at the hill level, etc. These different authorities applied in some cases the provisions of the law, in other cases the customs, in other cases their personal conception of an equitable solution, in other cases they simply comply with the request of the most influent party (RCN Justice & Démocratie, 2004). The erosion of social norms, the weakness of all forms of authority – official as traditional – and the gap between the laws and the social reality have created a situation where different authorities recognized and enforced differently different “rights” and contributed therefore to a general climate of confusion and insecurity in the land sector (RCN Justice & Démocratie, 2009).

Since the *Arusha Peace and Reconciliation Agreement for Burundi*, many legal and institutional innovations tried, in a directive approach, to protect property rights and improve their security. This raises the question to know whether all these legal and institutional changes achieved their goals, reached citizens’ practices and bring positive impacts on the security of tenure. This research evaluated the impacts of communal land office on the beneficiaries’ practises for securing their land rights in the commune of Ngozi.

II. MATERIAL AND METHODS

In relation to the top-down approaches focused on private property (UNHRC, 2012), assessments and indicators for the security of tenure were for a long time related to the performance of specific organisations or specific development projects depending on the different ways to understand the security of tenure, the different contexts and the different objectives (Simbizi et al., 2014). Since the international organisations started to develop initiatives to recognize a wider range of social arrangements and land rights, a need to evaluate differently the security of tenure in a more inclusive and holistic approach also raised (Simbizi et al., 2014). When the security of tenure is defined in terms of social recognition and enforcement (and not only in terms of private property and registration), the focus moves from the performances of specific organizations to the performances of existing social arrangements. Therefore, the concerns are in relation to the way the existing social institutions work (as a whole) for recognizing and enforcing relationship to land – and eventually how they could be supported and improved to reach a greater security, reliability and efficiency. Referring to the definition of the security of tenure, there is a certain form of security, stability and assurance when the social rules in relation to land are known and enforced, when the different actors performed their role adequately and when the social institutions are stable and predictable. In other

words, there’s security of tenure when a society applied the rule of law to the land sector. Objectively, the security of tenure could be studied through behaviors related to the different aspects of tenure – in way to observe if the behaviors are normalized (and to what degree) and misbehaviors refrained (and to what degree).

The research was designed as an ‘after-only’ study (Kumar, 2005). A part of the data was collected with regards to the survey participants’ report of their behaviors in relation to land rights. Another part was collected retrospectively from the survey participants’ recall of their behaviors in relation to land rights before the implementation of the communal land office. The sampling was designed as a multi-stage cluster sampling. The extent of the commune of Ngozi was divided in zones and hills. All the persons exercising land rights on randomly selected parcel were the subjects of interview. Focused interviews were conducted according to an interview guide. From the 14th of October to the 20th of October 2014, 43 interviews were realized – on the 50 selected in the sampling. The response rate is then of 86%. The results give a distribution of the respondents according to their rights/claims and their practices in relation to the recognition and the enforcement of land rights. By comparing the results before and after the implementation of the land office, the analysis reveals changes occurring the land office impacts (or absence of impact).

III. RESULTS¹

Subjects of right. As the interviews revealed, the land rights and claims are more complex than what is actually represented in the registry. In some cases, the parcel registered under an individual male name is actually used, transformed and controlled by a woman. In some cases, the rights on a parcel registered under an individual male name are exercised by a nuclear family (husband, wife and children). In other cases, the parcel registered under an individual male name is owned by a family group. In some of these cases, the family group owns the parcel in an undivided co-ownership – the parcel is used and exploited in community and the production is shared between the members of the family group. In some other cases, the family group owns the parcel in a divided co-ownership. In these cases, each household receives a private part of the parcels clearly defined for its own needs. These situations could be explained in some cases by a familial strategy for the registration, and in other cases, by inaccuracies in the registry coming, for example, from some problems in the adjudication process or in the updating processes.

Recognition of the subjects of right. The most important means for the recognition of subjects of land rights are the national identity card and the land certificate. Testimonies of family and neighbours, evidences of family relationship and sale contracts and deeds are also used in an important proportion, but their importance substantially decreased since the establishment of land office. The land certificate

¹ The complete and detailed results are presented in Beupre (2015).

gave for some respondents their first evidence of ownership. An important exception to these statements concerns the right to the products. An important proportion of respondents consider the work done on the land as the most important criteria for claiming a right to the products. In this case, the state of affairs overrules all the other modes of recognition.

Enforcement of the subjects of right. Authorities at the hill level are the main actors for solving conflicts related to the subject of right (identity theft, conflicts about owners in relation to the right to use, right to the products or right to dispose). They act as first responders and mediators in conflicts. If a conflict cannot be solved at the hill level, the case evolves toward higher authorities (authorities at the zone level, commune) until it reaches the tribunal – which is the other important institution in conflict resolution according to the respondents. Conflicts can also be directly addressed to the tribunal. The focus is essentially put on the main stakeholders in the conflict resolution. The land office is not perceived by the respondents as a central player in the enforcement process.

Rights. The respondents use actually their property for agricultural purposes and in some cases for housing. They generally crop and harvest on their land without any restrictions in terms or application or duration. According to the respondents, the land office did not affect in substance the rights and the way they are exercised. Purchase represents an important way to acquire land. The right to sell is the only right to dispose to be well instructed and supported by the authorities with the use of many evidences (witnesses, written contracts authenticated and registered). All the other ways to dispose of the land are done in the margins of any forms of authorities. All the ways to dispose of the land are generally concluded by a verbal contract or a private contract and done in front of witnesses (family, neighbours, authorities at the hill level, *bashingantahe*). The right to transmit by inheritance, done during the living of the father when the son reach majority, is the only exception and is exercised within the family in front of witnesses (generally the authorities at the hill level or the *bashingantahe*). Inheritance and purchase are the most common ways to acquire land.

Recognition of the rights. All types of right are seen as deriving from the property right. From the respondents' perspective, they don't suffer any forms of restriction. By themselves, these rights don't have to be recognized or are recognized through a proof of property (testimonies, evidences of family relationship, deeds, land certificates). Only the right to sell and, at a very small scale, the right to donate are instructed by official authorities and receive formal directives and recognition. All the other processes are left to the owners' discretion.

Enforcement of the rights. In general, the authorities at the hill level are by far the main actors for all the types of conflict related to the rights (use without authorization, theft of products and disputed transfers). Authorities at hill level act as mediators, policemen and gateway to the other levels of administration and services. They are the key

actors in all the enforcement processes. The only exception is the prevalence of the tribunal for the enforcement of the right to use. The tribunal dispenses justice in many enforcement processes. In many cases, they act as the ultimate recourse when mediation fails. The *bashingantahe*, the authorities at the zone level, the commune and the police may also play a role in conflict resolution. Self-justice is also a solution for some respondents. Testimony is the most important way to bring evidences in conflicts. Contracts and certificates are also used in some proportion. The importance of the land office and land certificates as such for conflict resolutions is negligible.

Objects of right. Before the land office, boundaries were known by mostly all the respondents. Land office employees, with the help and the consent of the neighbours, officialised the boundaries and registered them in the land registry. During the adjudication process, local authorities and tribunal contributed to the systematic resolution of all the conflicts in the area. Land office employees also act like mediators for conflict resolution. In our sampling, one case of boundary conflict resolution appeared.

Recognition of the objects of right. The major evidence for defining property boundaries was and remains the physical evidences. Obstacles and conventional landmarks were and remain, for most of the respondents, the authoritative way of defining property boundaries. Few respondents consider the land certificate as the authoritative way of defining property boundaries. Sale contracts and certificates are seen as a complementary source of information.

Enforcement of the objects of right. Before the establishment of land office, in case of boundary conflict, some respondents consider the authorities at the hill level as the first responders for the conflict resolution process. In small proportion, the tribunal, the *bashingantahe*, the authorities at the zone level and the commune could also be requested to solve the problem. Some respondents solve the problem by themselves. The establishment of land office brings new possibilities for some respondents: some believe that land office could be a stakeholder in the process and considers the land certificate as a valuable tool for the conflict resolution. Consequently, from the respondents' perspective, the capacity of land office to directly solve conflict in relation to the object of right is minor.

IV. DISCUSSION

Subject of right. The interviews revealed that the legal arrangement of owners is more complex than the situation adjudicated and registered at the land office. The situation raises the question of the flexibility of the land office in the registration process and the land rights recognition. It also raises the question of the lack of legal instruments for the recognition and the enforcement of the rights on land.

The provisions of the *Land Act* (République du Burundi, 2011b) define many different land rights. But because the registry records only full ownership rights, other legal arrangements (as the divided and the undivided co-

ownerships or usufruct) are not registered and other land right owners remain without the formal recognition provided by the land certificate.

Many problems in relation to land are actually related to the definition of the subject of right and not to the substance of the land right itself. What are the partner's rights on partner's property? What are the family members' rights on a relative's property? Who can inherit? These questions are related to the subject of right (who has the right to exercise land rights) and raise the issue of the absence of legal frameworks for family, succession and donation matters. Family laws are especially important for the recognition of the wives' and the widows' rights. They are also important in the issue of the family consent – which is an important source of many family disputes and transaction cancellations. Succession laws are important for the protection of daughters, widows, single mothers, single mothers' children and orphans (ILC, 2004). Succession was the source of 43,7% land-related conflicts according to the respondents to a national survey (Elbow et al., 2014) and represented in itself 35,3% of all the land-related cases and 25,3% of all the cases judged by the *Tribunaux de Résidence* (RCN Justice & Démocratie, 2009; République du Burundi, 2011a). Already in 2000, the *Arusha Peace and Reconciliation Agreement for Burundi* presented the “promulgation of a law on succession” (Protocol IV, chapter I, article 8, paragraph g) as one of the most importance measure to avoid conflicts over land. Marriage, succession and donation are the only important elements of the civil rights to still be judged according to “customs”. These are precisely the elements where the Burundians show major cultural specificities and differences from the civil laws inherited from the Belgian civil code. The lack of legal framework for family rights, successions and donations, leaves the judicial actors without formal guidelines for recognizing and enforcing land rights in relation to the subject of right.

Right. Only the full ownership, the right to sell and, at a very small scale, the right to donate, are instructed by official authorities with evidences (witnesses, written contracts authenticated and registered, land certificates) and receive formal recognition. All the other ways are exercised in the margins of any forms of authorities and risk nullity (*Land Act*, article 345, paragraph 2°). Consequently, the enforcement processes suffer from this lack of official evidences and official guidance.

The situation raises the question of the lack of flexibility for the recognition of the different legal arrangement and the lack of legal instruments for the recognition and the enforcement of certain rights (especially the right to transmit by inheritance and the right to donate). The situation raises also the issue for the government to anchor the public initiatives into the citizens' practises. A study realized in the communes of Ngozi and Ruhororo (APDH, 2013) presented the lack of awareness of the citizen, the lack of financial means, the small risks of conflicts related to familial transactions and technical incapacity to register due to conflicts on the land, as explanations for this

situation.

Object of right. According to the respondents to a national survey, 18,0% of the conflicts were related to the boundaries (Elbow et al., 2014). In Ngozi, during the adjudication process, land office employees proceeded to the systematic marking of all the properties with specific trees according to the traditional customs. The registration was an incentive to solve the boundaries disputes (DDC, 2014). Even for boundaries not actually in conflict, land office employees helped to clarify and precise the objects of right. They also proceeded for the first time to the systematic mapping of the parcels, producing for the first time a graphical evidence of the parcels (DDC, 2013c). The marking of the land with trees has for consequence that disputes related to boundary are seen as very unlikely now.

In general, the impact of the land office on the definition of the objects of right is clear and documented (DDC, 2013). The issues are mainly focused on the way this definition is and will be interpreted during the recognition and enforcement processes.

V. CONCLUSION

The results of the study show that, after the implementation of the land office, the land certificate became the most important means of recognizing land rights. In many cases, the land certificate was the first written evidence of ownership and the first graphical evidence of the parcel. In addition, land officers also helped to clarify and specify the objects of right and to solve land conflicts. But, if the properties were registered, some updating processes were still deficient and only transfers by sale were registered in a large proportion. The results also show that the authorities were not competing with each other and their responsibilities generally were well defined, but the rules they applied were not clearly stated, mostly unwritten and evolving between the customs and the provisions of the law. Consequently, the practices related to the recognition and the enforcement of land rights were still not clear and normalized after the implementation of the land office.

REFERENCES

- Arusha Peace and Reconciliation Agreement for Burundi (2000). Arusha.
- Association pour la Paix et les Droits de l'Homme (APDH). (2013). *Service foncier communal: avancées, défis et incertitudes*. Bujumbura, Burundi.
- Beaupre, J. F. *Recognition and enforcement of land rights in the commune of Ngozi (Burundi)*, Universiteit of Twente, 2015.
- Direction du développement et de la coopération (DDC). (2013). *Analyse de l'impact du service foncier*.
- Elbow, K., Bigirimana, G., Thinon, P., Sindayigaya, S., & Seberegé, P.-C. (2014). *Revue du secteur foncier au Burundi - Rapport complet provisoire du 19 janvier*

2014.

International Land Coalition (ILC). (2004). *Sécuriser les droits des femmes: enseignements tirés d'expériences au Rwanda et au Burundi*. (E. Cangelosi & S. Pallas, Eds.).

Kumar, R. (2005). *Research methodology* (2nd Edition). London: SAGE Publications Ltd.

République du Burundi. Loi n°1/010 du 18 mars 2005 portant promulgation de la Constitution de la République du Burundi (2005).

République du Burundi. Loi n°1/23 du 20 avril 2005 portant Organisation de l'administration communale (2005).

République du Burundi. Loi n° 1/18 du 4 mai 2006 portant Missions, Composition, Organisation et Fonctionnement de la Commission Nationale des Terres et Autres Biens (2006).

République du Burundi. (2008a). *Lettre de Politique Foncière*.

République du Burundi. Décret n°100/72 du 26 avril 2010 portant adoption de la Lettre de politique foncière au Burundi (2010).

République du Burundi. Loi n°1/13 du 9 août 2011 portant Révision du Code foncier du Burundi (2011). Burundi.

RCN Justice & Démocratie. (2004). *Étude sur les pratiques foncières au Burundi: Essai d'harmonisation*. (G. Gatunange, Ed.).

RCN Justice & Démocratie. (2009). *Burundi: La justice en milieu rural*. (D. Kohlhagen, Ed.). Bruxelles.

Simbizi, M. C. D., Bennett, R. M., & Zevenbergen, J. (2014). Land tenure security: Revisiting and refining the concept for Sub-Saharan Africa's rural poor. *Land Use Policy*, 36, 231–238. doi:10.1016/j.landusepol.2013.08.006

United Nations, Security Council. (2004). *Report of the Secretary-General. The rule of law and transitional justice in conflict and post-conflict societies* (No. S/2004/616).

United Nations Human Rights Council (UNHRC). (2012). *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, on the right to non-discrimination in this context* (No. A/HRC/22/46).

Universal Declaration of Human Rights (1948)