

# BURUNDI

## FOOD SECURITY AND LAND GOVERNANCE FACTSHEET

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### ABSTRACT

Food security in Burundi is closely related to access to land. The fear for landlessness in this densely populated country is a concern for many. Women are particularly suffering from this situation as their rights over land and to inheritance are weak. The high competition over land is also intensifying conflicts over land rights, even within families, and which may impede investments. Tenure insecurity is high in areas where refugees are returning. Until now, initiatives to reduce conflicts have focused on land certification, clarifications of boundaries, better recording of land transactions and the improvement of conflict resolution mechanisms. The recent approval by parliament of the new land code shows government's commitment to developing more accessible services for certifying land and transaction at the local government level. With respect to water management, the development of marshlands and plains offers potential for agricultural production, but farmers' user rights are insecure for the plains and complex for the marshlands. Finally, land is a very sensitive issue. When preparing investments in larger infrastructural works, conflict analysis are essential, as the margin for error is small.





This country factsheet was prepared under auspices of LANDac – The IS academy on land governance - and compiled by the Royal Tropical Institute (KIT – Thea Hilhorst and Nicolas Porchet) at the request of the Ministry of Foreign Affairs – The Netherlands.

### **About IS Academy on Land Governance for Equitable and Sustainable Development**

LANDac, the IS Academy on Land Governance for Equitable and Sustainable Development, aims at bringing together researchers, policy makers and practitioners in the field of land governance and development. It is a partnership between several Dutch organisations and their Southern partners involved in development-related research, policy and practice. LANDac is one of the IS Academies for International Cooperation sponsored by the Netherlands Ministry of Foreign Affairs.

### **About KIT**

The Royal Tropical Institute (KIT) in Amsterdam is an independent centre of knowledge and expertise in the areas of international and intercultural cooperation, operating at the interface between theory and practice and between policy and implementation. The Institute contributes to sustainable development, poverty alleviation and cultural preservation and exchange.

### **Country expert contribution:**

We acknowledge and thank Mr. Dominik Kohlhagen( IOB University of Antwerp) for his insights and comments on the latest development impacting land governance in Burundi.

# 1 POLICY AND LEGISLATION

## 1.1 Regulatory Land Governance Framework

Access to land is regulated by the 2011 Land Code (GOB Land Code 2011). The revision of the former 1986 land code had started in 2000 with the Arusha Agreement on Peace and Reconciliation in Burundi. A revised version was prepared in 2004 but not discussed during the first mandate of the new government elected in 2005 under the new constitution. The text of the code was reviewed and redrafted again in 2009. Following the elections in 2010, the new parliament has put the land code up on the agenda and adopted it in 2011.

Policy and Laws	Content
Constitution 2005	Every Burundian is guaranteed the right to property by the Post-Transition Interim Constitution of the Republic of Burundi of 2005.
Land policy 2008 ( <i>Lettre de politique foncière</i> )	Priorities listed are 1) amendment of land legislation; 2) restructuring and modernization of services responsible for land administration and for land management; (3) decentralization of land administration; (4) inventory of state lands and recuperation of illegal appropriations; and 5) responses to land scarcity.
26 <sup>th</sup> April 2011 code foncier	New land code replaces code of 1986. It introduces land certificates ( <i>certificat foncier</i> ) and decentralized land administration; revocation of governors' authority to allocate state land .The delimitation of public land, protection of parks and forests, and payment of compensation in case of land expropriation will be regulated by the upcoming 'Code d'aménagement du territoire' (last draft from 2008). In the meantime, the 1986 code still applies.

## 1.2 Land tenure forms

Forests and grazing lands are often formally state land, and may be managed by a commune. Access to the forest and grazing land is generally shared with neighbors and relatives, who are permitted to use the land for grazing and collection of forest products. Wealthier individuals may have obtained exclusive rights to pastureland and forest areas, by having public lands allocated to them.

Burundi's formal law recognizes state and private land. Under the law, all land that is not used is considered state land. Temporary rights of occupation are available on land classified as private state land (GOB Land Code 2011). Where population density is high, the rate of tenancy and sharecropping increases.

The 2011 Land Code recognizes the legitimacy of land rights acquired and held under customary law. However, it also states that all asserted rights must be registered. Unregistered customary rights do not have the protection of the formal law. However, registration has hardly taken place due to a complex and costly registration process. Consequently, local tenure systems with '*actes de notoriété*' have a quasi-legal status (Leisz 1996). The competition between different institutions and tenure systems contributes to perceptions of land insecurity and conflict over land.

This is the reason that pilot activities have been started to develop decentralized systems of land registration, provided as a service by local governments. This approach was formalized by the *lettre de politique foncière* (2008) and the new land code (2011). The new land code

introduces land administration at the decentralized level via certificates, which are different from titles<sup>1</sup>. Pilot activities exist in several provinces, under coordination of government and with support from SDC, BTC, FIDA and several NGOs.

### 1.3 Institutional land governance framework

Under customary law, land in Burundi is generally held individually and by households, rather than by lineage. Nowadays, most households obtained land through inheritance, leasing or purchase. In the past, the land may have been allocated by kings or obtained by clearing (e.g. *marais* land). Customary land authorities (chiefs and *colline* or hill authorities) have disappeared in the 1960s (killed or in exile). As a result, customary land authorities who could allocate land no longer exist (Kohlhagen, 2011). Land transactions and succession are now regulated locally within families, possible accompanied by an (informal) deed outlining the transaction, which may have been witnessed by *Bashingantahe* or the local administration (hill or commune).

The allocation and formalization of land rights by issuing documentation rests (or has rested) with several agencies (including the provincial governor) with little coordination. There is evidence that sometimes competing documentation exists for the same piece of land and a great deal of confusion over the legitimacy of documents in the event of transactions or disputes in both rural and urban areas (ARD 2008a).

Formal land administration is spread across several ministries. In particular the departments responsible for the cadastre and for titling (*titres fonciers*) has shifted several times between different ministries (and vice presidencies). "Titres fonciers" and "cadastre" will become one entity. The cadastre is now located in *Ministère de l'Eau, de l'Environnement, de l'Aménagement du Territoire et de l'Urbanisme*. The Ministry of Agriculture (*Ministère de l'Agriculture et de l'Elevage*) is involved in land-use planning. Responsibilities for decentralization and local government is in the hands of two ministries: *Ministère de l'Intérieur* (home affairs) and *Ministère de la Décentralisation et du Développement Communal*.

A "unite de coordination" has been set up in 2009 in support of the implementation of the new land policy. Its task is to facilitate inter-ministerial cooperation, donor coordination and collaboration with civil society. The (temporary) National Commission for Land and Other Properties (CNTB, under the Office of the First Vice President) was set up in 2006 and has the authority to mediate and resolve land disputes related to refugees and IDP and obtain compensation, and update the inventory of state-owned lands. CNTB can also assist other vulnerable people to reclaim their land (Theron 2009). The mandate of the CNTB was renewed in 2009.

### 1.4 Gender

Burundian custom excludes daughters from inheritance. Whereas traditionally law grants widows a lifetime use-right, such custom is fading given increasing land pressures by a growing population. Repeated displacement in Burundi's conflict and post-conflict environment further compromises women's access to land.

Also under formal law, wives and daughters are not granted rights to inherit land. The issue of inheritance is still not governed by legislation, even although Burundi has already signed and ratified the majority of international instruments which establish equality between genders and Burundi's constitution includes these instruments (Kazoviyo and Gahungu, 2011). There have been efforts, supported by civil society, to reform the inheritance and marital property

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<sup>1</sup> A title is always upheld by the state (torrens system) and revoking a title is complex; cancellation of a certificate is easier as this can be done via the judiciary system, but in practice this will not make a difference (pers com. Alain Rochegude 2011)

regimes. A draft law was submitted to the Cabinet in 2006 but might potentially weaken women’s decision making over property. NGO lobbying made the GOB remove a consultation requirement and return the draft law to the Cabinet for consideration (ARD 2008b; Global Rights 2009). The high level of competition over land makes the issues of women’s land rights very sensitive within families, and potential source of conflict and even violence. When women do inherit land, it is reported that they prefer to sell this piece of land quickly. If they hold on to the land they will be under pressure of male relatives to hand over the land.

### 1.5 Foreign direct investment in land

Foreigners are granted equal protections to person and property by the Constitution, without restrictions on foreign ownership of land (GOB Constitution 2005; USDOS 2009). However, there is little land available, the administration is relatively heavy and the political context not stable, and Burundi has so far not attracted many foreign investors In the agricultural sector

### 1.6 Land grabbing

There has been a long-lasting history of land-grabbing in Burundi. It notably took place during the conflict, partly on public land and around the lake, and numerous parcels have been reallocated to local elites. These reallocations which have been legalized are still motives of tensions. The government is conscious and announced again that an inventory of state land will be undertaken to identify illegal land takings<sup>2</sup>.

## 2 INTEGRATED WATER MANAGEMENT

### 2.1 Policy framework around Integrated Water Resource Management

Burundi has ample access to freshwater; as it straddles the Nile and Congo basins and has abundant groundwater resources. The country also hosts three large lakes, including Lake Tanganyika (one of the world’s largest freshwater lakes) and significant wetlands and marshland. Despite this availability, Burundi experienced several droughts between 2004 and 2006. As there are few measures to control runoff, rainwater is actually accelerating land degradation in Burundi (Banderembako 2006; USFS 2006).

Law	Content
2012 Water Code	Succeeds to the 1992 Water code and states that water is within the public domain, governs rights of access to groundwater, lakes and water courses, as well as the distribution of drinking water.
The Environment Code (200)	(Law No. 1/010 of 30 June 2000) addresses issues of water resources management and conservation and the development and protection of watersheds and land; and the Public Health Code (Order in Council No. 1/16 of 17 May 1982) requires that all projects relating to water catchment have the prior authorization of the Minister in charge of health (ADF 2005).

The Water Code includes provisions that were designed to: (1) ensure conservation of water and protection of aquatic ecosystems; (2) supply drinking water to the population and protect water resources from pollution; and (3) develop water as an economic good and respond to the water needs of all sectors of the national economy. Although the new code represents a

<sup>2</sup> <http://www.burundi-gov.bi/Burundi-Politique-Conference-de> February 2011

step forward, critics have been formulated with respects to its integration with land issues and regulations, such as the status of the marshlands.

The Water Sector Policy (2005–2007) expresses the government’s commitment to manage water resources, ensuring the quality and quantity of water needed to meet the demands of the different users. The policy goals are to: (1) improve knowledge of water sources for efficient, equitable, and sustainable management of water resources; (2) increase the water and sanitation coverage; and (3) achieve better coordination among sector players (ADF 2005).

## 2.2 Institutional framework around Integrated Water Resource Management

Water resources management involves a number of institutions, sometimes resulting in overlapping responsibilities in some areas. Policy is formulated by the Ministry of Water, Energy and Mines (MWEM) through the Directorate General for Water and Energy. MWEM is responsible for catchment, treatment and distribution of drinking water in urban and urbanizing centers (UN-Habitat 2007; USAID 2008a; ADF 2005). Authority over local water is being transferred to the municipal level.

The “marais” and “the plains” are areas with high potential for agriculture. Farming of the plains started during colonial times when rice and other products were produced for export. Farmers (still) have user rights only (paysannats) and hope for ownership rights under the new code foncier.

Marshes and wetlands have been drained or used seasonally for agricultural production, but which may change the hydrology of a watershed. Drainage of marshlands requires technical expertise. The tenure status of marais depends on the hydrology: “marais land can be governed by the code de l’eau, considered as public land or privately owned but this rarely happening in practice (Ouédraogo, 2010). The government has created an “autorité de marais”, which still needs to be implemented.

Finally, Burundi is also planning hydropower investments which may have implications for water regimes.

## 3 REALITIES ON THE GROUND

Land is a scarce resource in Burundi and fields are very small. There are also some large land owners, and churches own much land.

**Land disputes** are common and can be violent. Land conflicts between neighbours and within families over property, boundaries and transactions are widespread. In Burundi land issues are involved in more than half of all **court cases**, often between family members, and are among the most important factors for all **crimes**. Land governance is a key issue in society and is stretching state and customary offices (Theron 2009; World Bank 2008a; Kamungi et al. 2005; ARD 2008a; van Leeuwen and Haartsen 2005).

Different **institutions deal with land-related disputes**: customary institution (the *Bashingantaha*), ‘conseils de collines’, the formal court system, and informal work by local authorities or NGOs. Disputes related to repatriation of refugees and internally displaced persons (IDPs) may also be resolved by the National Commission for Land and Other Properties (CNTB). However, the civil war and violence affected both state offices and customary institutions important for land governance. Moreover, there is a general mistrust against institutions as several court decisions are not enforced.

The customary institution in charge of village-level dispute resolution is known as the Bashingantahe. It continues to have a significant role, although diminishing. It is an organized, local body of “wise” men, originally known for being true, just, and responsible. They are involved with resolving various types of disputes, including those related to land. Their decisions are not legally binding but carry social weight. Since 2005, the newly created local institution called ‘*Conseils de colline*’ is competing and gaining importance for local mediation. While the Bashingantahe is exclusively male-dominated, the ‘*Conseils de colline*’ is more gender-mixed and have State support. Since 2010, they have been recognized as the only competent authority. Moreover, the legitimacy of *Bashingantahe* has deteriorated in certain *collines* due to problems of bias and corruption; contestation of their rulings over land has been more frequent (Theron 2009; ARD 2008b). The local administrators and ‘*chefs de zone*’ also often intervene for local mediation.

The effectiveness of the formal court system, which is decentralized up to the local government level, is hampered by difficult and lengthy procedures. The capacity of magistrates is affected by limited budgets (including no funds for field visits). The enforcement of judgments is also uncertain in part because corruption is an issue (Kamungi et al. 2005; van Leeuwen and Haartsen 2005).

The violence also produced large **refugee flows (1972, 1993) and IDPs**. Particularly the resettlement of refugees and their descendants, who left in 1972, is a challenge. One conflict between returning refugees and those currently working the land concerns oil palm. In this case the state has expropriated land from refugees who had fled, created a development scheme on the land involving oil palm, which was then allocated to new farmers who are still on the land. It is now estimated that 15 to 20% of all parcels are in conflict.

Decentralized land administration contributes to increasing security, and has legally come into force. However, in 2012, only 11 out of the 129 of Burundi dispose of local land administration.

The rights of the “ethnic minority “batwa”, who live from pottery using special types of clay located in specific marais, are very weakly protected.

## 4 RESOURCES AND OTHER INFORMATION

### 4.1 Related country profiles

- USAID: <http://usaidlandtenure.net/usaidltpproducts/country-profiles/burundi/>
- FAO: <http://www.fao.org/countryprofiles/index.asp?lang=en&ISO3=BDI>
- FAO/Gender: <http://www.fao.org/gender/landrights/report/en/>
- IMF: <http://www.imf.org/external/country/BDI/index.htm>
- World Bank: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/BURUNDIEXTN/0,,menuPK:343757~pagePK:141159~piPK:141110~theSitePK:343751,00.html>

### 4.2 Laws, policy and regulations search engines

- FAO Lex (Land & NR search engine): <http://faolex.fao.org/faolex/index.htm>
- Water Lex (Water laws search engine): <http://faolex.fao.org/faolex/waterlex.htm>

### 4.3 Maps and databases

- Land and soils databases/information systems: <http://www.fao.org/nr/land/databasesinformation-systems/en/>
- Water database/information systems: [http://www.fao.org/nr/water/infores\\_databases.html](http://www.fao.org/nr/water/infores_databases.html)

- Land and water maps and graphs: <http://www.fao.org/nr/solaw/maps-and-graphs/en/>  
[http://www.fao.org/nr/water/infores\\_maps.html](http://www.fao.org/nr/water/infores_maps.html)

#### 4.4 Portals and other resources

- [http://landportal.info/search/apachesolr\\_search/burundi](http://landportal.info/search/apachesolr_search/burundi)
- <http://www.landesa.org/search/?q=burundi>

#### 4.5 Donor support programs

Donor support with respect to land governance is related to land law and administration; the resettlement of refugees; and to building capacity for mediation and conflict resolution.

- Active donors are USAID (land policy); the EU, through the Good Governance (Gutwara Neza) project (justice sector, decentralized land registration).
- The Swiss –in silent partnership with the Netherlands- undertake a pilot program of decentralized land management in the province of Ngozi. Other donors (FIDA, CTB, and the Dutch NGO ZOA) are also engaged in decentralized land registration.
- CTB, FIDA and FAO work on the development of the “marais”.
- UNHCR assists the government with developing a strategy to settle returning refugees, resulting in the creation of “Peace Villages” or integrated village development for returnees (Freudenberger and Espinosa 2008), which is now proposed as more general villagisation model, supported by UNDP. The proposition is that people move to a central place where basic services are available and that the land is then consolidated and worked collectively. It should be noted that “villagisation” was tried earlier in the 1990s and became one of the drivers of the violence of 1993. A conflict sensitivity analysis is required for this type of planning that results in forced urbanization and land consolidation.

#### 4.6 Civil society organizations working on land governance

##### Members of International Land Coalition from Burundi:

- Association pour la Paix et les Droits de l'Homme (APDH). <http://apdh.objectis.net>
- The Eastern Africa Farmers Federation (EAFF) participates actively in national and international discussions on land governance. They also published in 2010 *The Entebbe Declaration on Large Foreign Land Acquisitions* <http://www.eaffu.org/go/downloads/EAFF%20Position%20on%20Land%20Grab.pdf>  
EAFF covers the following countries: Burundi, Democratic Republic of Congo, Djibouti, Eritrea, Federal Democratic Republic of Ethiopia, Kenya, Rwanda, Uganda and the United Republic of Tanzania. General website: <http://www.eaffu.org/go/>

##### *Members EAFF in Burundi:*

- Confédération des Associations des Producteurs Agricoles pour le Développement (CAPAD)

##### Other CSOs:

- “Global rights” also coordinates the civil society platform in the SDC- Netherlands supported programme around land governance (Ministry of Foreign Affairs, 2011).
- There are many NGOs providing assistance to communities in resolving land disputes, including ACCORD, Search for Common Ground, Advocats Sans Frontières, the Burundi Women Lawyers Organization, etc..



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