

## **Peacebuilding Commission**

### **Second Session**

### **Burundi configuration**

#### **Discussion Paper**

#### **Thematic meeting on land issues in Burundi**

**14 May 2008 (*tentatively rescheduled to 27 May 2008*)**

### **Background**

#### **General Observations**

1. Since its independence, Burundi has been plagued by a succession of violent social crises that have forced thousands of Burundians to flee their lands into exile outside the country or to sites for internally displaced persons. With the return of peace, the main concern of returnees, internally displaced persons and refugees about to return home is to regain their “itongo” or family property seen as the expression of their ethnic, cultural and family identity.
2. The massive return of refugees who went into exile in 1972 and 1993 exacerbates an already existing problem of land, poses an additional challenge to the State’s administrative, judicial and legislative capacity and could be a source of tension for the consolidation of peace in Burundi because many of their properties are now either occupied by other people or by State infrastructures. Already in 1993, these conflicts were politically exploited and had led to a new crisis.
3. The repatriation of refugees is taking place against a background of a multifaceted land problem in Burundi. In addition to its cultural value and symbol of identity, land is the main national economic resource. However, very high population density, the exiguousness of arable land, high population growth leading to fragmentation of plots and land degradation, erosion of land, low agricultural productivity, dispersed rural housing, absence of an industrial sector capable of absorbing landless people, and irregular transfers and assignments of land, coalesce to make land disputes a major source of insecurity and bottlenecks in the courts.
4. The amplitude and diversity of land conflicts in Burundi go therefore beyond land disputes of returnees and displaced people. Land issues, which constitute a threat to the consolidation of peace, could also pose a threat to recovery efforts because the type of housing, the fragmentation of holdings, and land degradation are not conducive to sustainable investments.

5. Against this background and the increasing security incidents linked to land disputes, the identification and redistribution of available land to landless persons become an urgent necessity for the consolidation of peace. Similarly, the definition of a national land policy, in consultation with all interested parties, is a prerequisite for the definitive resolution of the crisis and sustainable development. The establishment of an Inter-Ministerial Committee for Land Reform is a first step in this direction.
6. In order to deal with land issues raised by waves of refugees returning home and to create favourable conditions for the resettlement of internally displaced persons, the Government of Burundi established the National Commission on Lands and Other Properties (“Commission Nationale des Terres et Autres Biens”) in 2006. The Commission is placed under the administrative responsibility of the First Vice-President of the Republic and is responsible for processing and settling land disputes involving persons affected by the successive socio-political crises. The Commission has taken over the mandate entrusted to the former National Commission for the Rehabilitation of Affected Persons (“Commission Nationale de Réhabilitation des Sinistrés”) established in accordance with the Arusha Accord.
7. The Arusha Accord acknowledges the eminently political dimension of land issues. It calls for the respect of principles that encourage the return of refugees and affected persons and ensure their social and economic reintegration, including the principle that "every refugee and / or affected person should be able to recover their assets, particularly their land; if the recovery proves impossible, they are entitled to receive fair compensation and / or indemnity"<sup>1</sup>. However, Burundi does not have the resources to provide compensation to families who have been expropriated or who cannot return to their former land.
8. Land known as “paysannat” represents a particular problem, spanning the entire length of the Imbo plain. Planned to settle groups of people from densely populated country side areas during the colonial period, “paysannat” land belonged in theory to the State which, imposed the choice of crops. People settled on these lands only had a right of use. Over time, the occupiers have come to regard these lands as theirs based on customary law, transferring the land through inheritance and renting or selling it despite the lack of land title.
9. The “*villagization*” government policy is seen as an integral part of the sustainable solutions to the crises in Burundi. “*Villagization*” would allow concentrating housing in areas traditionally sparsely populated, and allocate the surrounding fertile land for agriculture. These mixed villages would also promote co-existence between the different ethnic groups, one of the pillars of peace consolidation in Burundi.
10. In order to allow for the proper management of land disputes, a debate involving the parties involved should be initiated on the value of establishing a deadline for the registration and subsequent settlement of land disputes related to the conflicts in Burundi. This would pave the way for moving from the status quo to the "new

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<sup>1</sup> Arusha Accord for peace and reconciliation in Burundi, Protocol IV, 1<sup>st</sup> chapter, article 8, b)

political, economic, social, cultural and judicial order" called for by the Arusha Accord.

### **Legal and administrative observations**

11. The coexistence of modern and customary law, which is still very present in the daily relationships amongst the population, lies at the root of many land problems, such as women's right to inheritance, the uncertain legal status of "paysannat" land, or the problems related to the thirty years prescription.
12. The 1986 Land Code of Burundi, often misapplied or simply ignored, contains significant gaps and provisions the interpretation of which has led to validate the plundering of State owned lands or those belonging to the 1972 refugees. The custom in Burundi excludes women from succession rights but the successive conflicts have meant that more and more women are heads of households and therefore need access to land to support their families.
13. The issuance of land titles has remained marginal because of the lengthy, complex and costly procedures it requires. In addition, rural people do not understand the need for land titling as their land rights come from their ancestors and are recognized as legitimate by all on their hill.
14. The multiplicity of management structures for land disputes – the recently established National Commission on Lands and Other Properties, the local administration, the "*Bashingantahe*" (persons known for their honesty and integrity by members of their community), civil society organizations and the judiciary - is often the cause of disputed decisions and the overlap of jurisdictions and interventions. It also leads to multiple solutions to land disputes and lengthens the procedure.
15. The regular courts of Burundi, which constitute the courts of appeal against rulings made by both alternative land conflict resolution mechanisms and the National Commission on Lands and Other Properties, are very congested. Their procedural delays are another reason for advocating for the removal of land disputes from the regular courts system, and establishing a negotiated transitional justice mechanism. The objective of the latter would not only be the management of land conflicts in general but also reconciliation and peace in the country.
16. The management of State owned lands, vested with provincial Governors, Ministers in charge of land use and urban planning, presidential decrees based on proposal by the competent ministry, favour patronage in the management of State owned lands, which should in principle remain fair and technical.

### **Observations on the specificity of the Burundian experience in resolving land disputes**

17. The settlement of land conflicts in Burundi is done through the regular judicial system and through the more recent intervention of the National Commission on Lands and Other Properties, an institution specially established by the Government to resolve land disputes of persons affected by the crises. The Commission is guided by the imperative to reconcile the objectives of the rule of law, equity, reconciliation and social peace. Its 23 members at the central level are the only ones empowered to endorse the parties' proposed solutions or decisions, thereby limiting the capacity of the Commission.
18. The settlement of land disputes is also done through alternative mechanisms, such as civil society organizations, local authorities elected at municipal level or the "*Bashingantahe*", wise men recognized on the hills as judges and referees of conflicts, whose procedures follow local conciliation customs and practices. Rulings made by the "*Bashingantahe*" have the binding force of compromise if both sides come to an agreement.
19. The recourse to a justice system based on consensus to manage land disputes also presents the advantage of a fast justice mechanism that is close to the population. It also plays an important role in maintaining social peace. Many disputes are settled by the "*Bashingantahe*", which contributes to reducing the congestion of the local "*tribunaux de Résidence*".
20. However, the free and conciliatory rulings made by the "*Bashingantahe*", the elected local officials, and civil society organizations are revocable. It is important that this free, conciliatory and non-punitive justice be fully involved in land conflict resolution mechanisms given their contribution to the restoration and maintenance of a just and equitable order necessary to the peace process.
21. Resources mobilized by the international community towards the consolidation of peace in Burundi have supported programmes for the management and resolution of land issues and land conflicts. In this context the contribution by the Peacebuilding Fund in support of the peaceful resolution of land disputes has led to the strengthening of the institutional and operational capacity of the National Commission on Lands and Other Properties.

## **Conclusions**

22. Land tenure security in Burundi requires the introduction of land governance, which in turn calls for the unequivocal affirmation of the political will of the State. A dialogue between all parties involved to define a national land policy, the resulting revision of existing legislation and the establishment of a mechanism for monitoring the implementation of this policy are necessary steps towards land reform.
23. With the massive return of refugees to their communes of origin, land issues have developed into a matter of urgency, requiring immediate and special attention so that they do not become a real political bomb.

24. The risk of mismanaging the reintegration of refugees and displaced persons, particularly with regards to land issues is a major source of insecurity and a threat to the fragile peace in Burundi. It is urgent that steps be taken to manage and resolve land disputes so as to avoid the politicization of this issue during the 2010 electoral campaign.
25. Immediate action is required to identify, demarcate and register all available and usable State owned lands, which should then be redistributed as a priority to landless persons. Likewise the establishment of land titling mechanisms should be made accessible to the majority of the rural population.
26. While the scope of this note confines its key issues to land conflicts, their management and resolution, the issue of land tenure is a multifaceted problem requiring a conflict prevention and development approach.

### **Key issues**

#### **Government of Burundi**

27. Proceed immediately with updating the inventory of available and usable State owned lands in Burundi, and their delimitation and registration.
28. Establish a cadastral register of rural lands and make land titling functions more accessible and less onerous.
29. Suspend all irregular transfers and concessions of State owned lands, and return to the State unused lands and those lands irregularly allocated or occupied. Proceed to the equitable redistribution of those lands as well as non-forested lands giving priority to landless persons, while taking into account the imperatives of environmental preservation and protection of lands that have already been made fragile.
30. Initiate a national dialogue to define a national policy on land issues, as a first step towards land reform, and a development policy for the country. Monitor and expand the government policy of “*villagization*” as an integral part of the sustainable solutions to the crises in Burundi.
31. Establish a permanent consultative mechanism by the Government to guide, monitor and ensure synergy of all interventions on land, allowing for the clarification of overlapping ministerial competences.
32. Capitalize on experiences in land issues management and resolution to revise the Land Code of Burundi, adapt the code to current problems, resolve the existing duality between customary and statutory law, and clarify the issue relating to the implementation thirty year acquisitive prescription as well as the status of the lands known as “*paysannat*”. Harmonize all other legislation relating to land issues.

33. Ensure the explicit recognition of women's right, particularly widows, and that of orphans to own land in the future law on succession, and sensitize the population and all interested parties to the new legal provisions.
34. Expand the mandate of the National Commission on Lands and Other Properties to enable it to validate the decisions reached through mediation and peaceful settlements, particularly those facilitated by community leaders and civil society organizations.
35. Consider the establishment of a simplified local mechanism which specializes in land disputes and has the relevant capacity, including the capacity to enforce court decisions. Adjust administrative land procedures to the reality of illiteracy and poverty of the rural population.
36. Define the criteria and modalities for fair and equitable compensation and / or indemnity to families who have been expropriated or who cannot return to their former land.
37. Initiate, in consultation with the parties concerned, a debate on the value of setting a deadline for the registration and subsequent settlement of land disputes related to the crises in the country, to provide for the proper management of land conflicts and mark the passage to the new political, economic, social, cultural and judicial order called by the Arusha Accord.

#### **National Commission of Lands and Other Properties**

38. Strengthen the operational capacities of the Commission at the provincial and commune levels in areas of major refugee repatriation and high population concentration through the recruitment of full time local staff.
39. Decentralize the decision-making power of the Commission to the provincial level to expedite the processing of land dispute cases.

#### **Community leaders and civil society organizations**

40. Continue to favour mediation and peaceful resolution approaches for land disputes and consider monitoring the jurisprudence of decisions taken by the "*Bashingantahe*" and civil society organizations.
41. Strengthen the coordination and consultation efforts as well as the harmonization of approaches to the peaceful resolution of land conflicts.

#### **Government of Burundi, National Commission of Lands and Other Properties and civil society organizations**

42. Establish a framework for dialogue at national and local level to facilitate dialogue and consultation on the reform of land issues, the mechanisms for resolving land disputes and the harmonization of approaches.

#### **International financial institutions and donors**

43. Strengthen the synergy between the initiatives by various donors to programmes related to land issues in Burundi.
44. Support the Government's efforts in terms of land inventory and registration, the establishment of cadastres of rural lands and the implementation of more accessible and less costly land titling systems.
45. Continue to implement existing financial commitments in favour of all stakeholders, to build capacity in land disputes management and resolution, and implement sustainable solutions. Strengthen commitments to support government institutions such as the National Commission on Lands and Other Properties.
46. Consider additional or complementary financial support to implement legislative changes relating to land issues, and sensitize all stakeholders.
47. Consider providing financial support to the establishment of a fiduciary fund, managed with a financial institution to compensate and / or indemnify families who have been expropriated or who cannot return to their former land.

#### **United Nations Secretariat, Agencies, Funds and Programmes**

48. Strengthen coordination efforts among the initiatives of the various United Nations agencies involved in land issues in Burundi.
49. Support the Government of Burundi's efforts to define a national land policy, as a first step toward land reform.
50. Continue to support efforts by various stakeholders in land disputes management and resolution. Also support the need to share relevant experience with other countries.
51. Continue to fulfill the commitments for sustainable development, the creation of non-agricultural employment, the improvement of agricultural productivity, and in general the prevention of land conflicts, all of which are necessary requirements for the consolidation of peace in Burundi.
52. The Peacebuilding Commission makes the commitment to continue to follow closely developments on land issues in Burundi, in particular, to monitor progress and problems encountered. The Commission will continue to encourage the international community to lend its support in resolving land issues in Burundi.