



**IS LAND TENURE “SECURE ENOUGH” IN RURAL RWANDA?**

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# Responsible Land Governance: Towards an Evidence Based Approach

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## Abstract

In Rwanda, the Land Tenure Regularization Program (LTRP) successfully improved land tenure security for women and men and led to increased investment in land. However, well-meaning agricultural policies such as the Crop Intensification Program, Land Use Consolidation, and limitations on land subdivisions have produced emerging threats to tenure security, with potential implications for future economic development and social stability. Applying a “secure enough” tenure framework, we conclude that despite increasing informality of ownership, land tenure in Rwanda is “secure enough” to incentivize smallholder investment in land, but that the emerging threats arising from the implementation of agricultural policies could constrain the country’s development gains in the future. We recommend that the Government of Rwanda consider allowing informal landowners to progressively formalize their land, while allowing for the continuation of customary practices, such as *umunani*. In support of this, we also recommend that the Government of Rwanda lead robust research to better understand the farm-size productivity relationship and the impacts of the provision on Rwandans’ ability to adapt to economic, social, and environmental changes.

**Key Words:** Agriculture, Formalization, Rwanda, Security, Tenure



## **Introduction**

In Rwanda, one of the most densely populated countries in Africa, the majority of households depend on land and agriculture for their livelihoods (Bizimana, Nieuwoudt, & Ferrer, 2008). Low agricultural productivity has long been a challenge in Rwanda due to land scarcity and agricultural intensification strategies that exhausted the country's natural resources (Ansoms, Verdoodt, & Van Ranst, 2008). Following the Rwandan Genocide and the cessation of conflict, the Government of Rwanda established a vision for the country's development based, in part, on the registration of land rights and the transformation of agricultural practices through the Crop Intensification Program (CIP), Land Use Consolidation (LUC), and restrictions on land subdivision through Article 30 of the 2013 Land Law.

While credited with increasing yields of select crops, the CIP and LUC have been linked to reduced decision-making authority over land and, in some cases, decreased tenure security for participating landowners. Similarly, preliminary evidence suggests that Article 30, which rests on the assumption that agricultural parcels smaller than one hectare are unproductive, may force farmers into informality rather than successfully preventing subdivision.

This paper draws on literature review and original research conducted in Rwanda to argue that while the Land Tenure Regularization Program (LTRP) successfully improved land tenure security for women and men and led to increased investment in land, well-meaning agricultural policies designed to transform the agricultural sector have produced emerging threats to tenure security, with potential implications for future economic development and social stability. We apply a "secure enough" tenure framework to assess how land tenure security and agricultural outcomes may be improved for rural landowners while also contributing to the Government of Rwanda's ambitious vision for agricultural development.

## **Evolution of Tenure Security in Rwanda**

### *Pre-Reform Tenure Arrangements*

In pre-colonial Rwanda, land tenure systems were characterized by collective ownership of land among members of patrilineages for agriculture or herding. Family lineages were subdivided into clans, each of which was led by a clan chief. The predominant systems were *ubukonde*, a lineage-based rights system primarily practiced in the north and northwest of the country in which principal authority was held by a



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chief and land use rights granted to tenants, and *igikingi*, a system predominant in central and southern Rwanda in which grazing rights were granted to families by the king (MINITERE, 2004; RISD, 2003). According to the 2004 National Land Policy, “these land tenure systems promoted economic production and were a factor of stabilization and harmony in social relationships” (MINITERE, 2004). With the protection of the king, who served as the guarantor of the population’s well-being, land rights were well-respected and effectively managed under customary practices (MINITERE, 2004). From pre-colonial times up to 1958, a clientage system known as *ubuhake* linked farmers and herders and defined land use patterns, whereby services were exchanged from one group for the use of cattle and land by the other (Bangamwabo et al, 1991).

It was onto this customary system that the Belgian colonial administration overlaid their legal framework governing land. While the law provided land tenure security to settlers, foreigners, and religious institutions, all other occupied land continued to be managed under customary tenure (MINITERE, 2004). Land titles were reserved for settlers and foreigners, particularly the Catholic and Protestant churches, colonists, and traders from East Africa (RISD, 2003), and were most common to urban areas (MINITERE, 2004). It is important to note that much of the land granted to these groups was taken from areas already heavily populated by Rwandans, rather than from so-called “vacant” land (Lemarchand, 2009).

Customary tenure practices evolved during this period due to shifting power relations and priorities under the Belgian colonial administration (RISD, 2003). A system of grouped homesteads (*paysannats*) was introduced, which provided households with land for the cultivation of cash crops to meet Belgian production objectives. This represented a shift in national priorities from herding to agriculture, thereby upending the traditional balance between the two productive sectors (MINITERE, 2004) and the socio-professional groups operating within them. Furthermore, during this period the king abolished *ubukonde* and decreed that the landholders would share land with their tenants.<sup>1</sup> These alterations to the land tenure system led to political turmoil and active conflict, resulting in a wave of displacement (MINITERE,

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<sup>1</sup> Though abolished during the colonial period, remnants of the *ubukonde* system were evident into the post-Genocide period (Brown, Land, Natural Resources, Poverty and Community Level Institutional Factors Influencing or Mitigating Conflict in Rwanda, 2002a).



2004). However, Lemarchand (2009) argues that land-related conflict also arose as a result of long-standing competition over land.

At the time of Rwandan independence in 1962, approximately 90% of land was held under customary tenure; however, those systems had been irrevocably altered (MINITERE, 2004), with particularly negative impacts on women's rights to land. According to RISD (2003), "Colonialism eroded the remaining institutions that gave women access to resources and intensified the development of institutions where women's labor was appropriated by the rulers and by the state." During this time, land resources also became scarcer as the population increased, forcing households to increasingly rely on agricultural intensification strategies, including reduced fallow periods, increased cultivation cycles, as well as bring more marginal lands into production (Ansoms, Verdoot, & Van Ranst, 2009).

The subsequent decades were characterized by agricultural expansion into previously unsettled areas due to ever-increasing population pressure and declining productivity of previously established farms. While families migrated to the Eastern Province in search of unclaimed land in the 1970s, by the early 1980s "there were no more new lands and problems began to emerge; reduction of soil fertility and of the size of land for cultivation, family conflicts stemming from land ownership, food shortages, etc." (MINITERE, 2004). The result was extreme pressure on land and natural resources, leading to the collapse of agricultural growth and declining food production (Lemarchand, 2009; Ansoms, Verdoot, & Van Ranst, 2008).

The challenging land situation has been linked to the 1994 Rwandan Genocide, in which over one million people were killed, millions more were displaced, and the social and economic fabric of the country was destroyed (MINITERE, 2004; Republic of Rwanda, 2013). Following the cessation of conflict, the new Government of Rwanda called for the return of all refugees; between 1994-1996, approximately 800,000 people returned (RISD, 2003). To provide housing and land for these returnees, the government degazetted portions of national parks and forests, parceled out communal lands, and implemented land-sharing arrangements between owners and returnees (MINITERE, 2004).

Despite these actions, many families in those parts of the country already densely populated remained landless or were tenure insecure, with orphans and widows most vulnerable. Land continued to be governed under both customary and statutory tenure systems (MINITERE, 2004). Extreme poverty, waves of displacement and resettlement caused by decades of political upheaval and violent conflict, and a lack of clarity around rights to land, led to ongoing land-related disputes that threatened the country's



newly-established peace (RISD, 2003; Brown, 2002b). Furthermore, while land productivity increased after 1994, traditional agricultural intensification strategies continued “to the point of total resource depletion” (Ansoms, Verdoodt, & Van Ranst, 2008).

With an annual demographic growth rate of 2.6 per cent, the population of Rwanda is expected to increase from approximately 12.2 million people in 2017 to about 14.6 million by 2025 (Republic of Rwanda, 2011). The social, economic and political implications of this projected growth have spurred the government to prioritize land tenure issues, including a greater focus on gender inequities, and the need to shift the agricultural sector away from smallholder, subsistence agricultural practices (Daley, Dore-Weeks, & Umuhoza, 2010; cited in Ali, Deininger, & Duponchel, 2016).

#### *The Land Tenure Regularization Program and Tenure Security Reforms*

In 1999, the Government of Rwanda adopted the Succession Law, which established equal inheritance rights for women and men (Daley, Dore-Weeks, & Umuhoza, 2010). Following adoption of the 2004 National Land Policy, which laid the foundation for land tenure reform, the 2005 Organic Land Law (OLL) outlined procedures for land tenure and titling, registering land and administering land titles, and guidance for land use and development (Gillingham & Buckle, 2014). Additionally, the government established an administrative structure for land administration (Ali, Deininger, & Duponchel, Improving Sustainability of Land Administration through Decentralized Service Provision: Evidence from Rwanda, 2016).

Implemented nationwide, the Land Tenure Regularization Program (LTRP) surveyed and issued titles for all individually-held land in Rwanda for the first time. The goal of the program was to increase agricultural productivity through the consolidation of land holdings and provide greater incentives to invest in agriculture, and thereby foster economic development (Gillingham & Buckle, 2014). From 2009 to 2013, the LTRP successfully registered 11.3 million parcels of land (98% of land parcels in the country) using low-cost and participatory methods (Nkurunziza, 2015; Ali, Deininger, & Duponchel, 2016). The early effects of the program were notable: land tenure security increased for both men and women, including women in *de facto* unions (Santos et al. 2014); the efficiency and functioning of land rental markets increased (Ali, Deininger, Goldstein, Ferrerara, & Duponchel, 2015a); and a basis for agricultural investment was established (references cited in Ali, Deininger, & Duponchel, 2016).

#### **Rwanda’s Agricultural and Land Use Policy Framework**



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The Government of Rwanda has identified traditional agricultural practices as unsustainable and incompatible with its vision for agricultural development, which is to “replace subsistence farming by a fully monetized, commercial agricultural sector by 2020” (Ministry of Finance and Economic Planning, 2000). This vision is also incorporated into Economic Development and Poverty Reduction Strategy II (EDPRS 2) and the Strategy for the Transformation of Rwandan Agriculture (Ministry of Finance and Economic Planning, 2013; Ministry of Agriculture and Animal Resources, 2013).

Rwanda Vision 2020, the country’s foundational policy for land use and agricultural reform, states that:

“A substantial number of rural families who subsist on agriculture own less than 1 hectare, which is too small to earn a living. . . This results in intense exploitation of the land, with no simultaneous application of corrective measures, most notably through fertilizer use. The net result has been a decline in land productivity and massive environmental degradation, contributing to rampant malnutrition amongst the Rwandan population. Rwandans can no longer subsist on land and ways and means need to be devised to move the economy into the secondary and tertiary sectors” (Ministry of Finance and Economic Planning, 2000).

This is echoed in the 2004 National Land Policy, which states that “traditional modes of production lead to “a completely degraded land as a result of such archaic agricultural practices, unable to meet the food demand of an ever increasing population” (MINITERE, 2004). According to the EDPRS 2, the scope to expand cultivable land is limited and therefore the focus must be on increasing agricultural productivity to generate income and foster rural development (Ministry of Finance and Economic Planning, 2013).

Rwanda Vision 2020 and the 2004 National Land Policy lay the groundwork for land and agricultural policies that seek to transform the agricultural sector through the Crop Intensification Program, Land Use Consolidation, and restrictions on subdivisions of agricultural land (Ministry of Finance and Economic Planning, 2000; Kaiser Hughes & Kamatali, 2016). These policies complement the vision laid out in the EDPRS 2, which advocates building off-farm employment opportunities through the establishment of rural and urban micro-, small, and medium-size businesses, as well as more formal opportunities in secondary and tertiary cities where higher technical and vocational skills will be needed.

## Crop Intensification Program and Land Use Consolidation

The Crop Intensification Program (CIP) and Land Use Consolidation are key components of Rwanda’s approach to agricultural transformation (Dawson, Martin, & Sikor, 2015). Launched in 2007, the CIP is a



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nationwide program which provides inputs to participating farmers with a goal of increasing agricultural productivity, particularly for food crops. These inputs include improved seeds and subsidized fertilizer, extension services, post-harvest handling, and marketing of agricultural products. (Ministry of Agriculture and Animal Resources, 2017).

The CIP largely works through Land Use Consolidation (LUC), through which participating farmers volunteer to consolidate aspects of their operations while retaining individual ownership of their land (University of Rwanda, 2014). Prior to the beginning of the agricultural season, farmers commit to participation in the program and agree to forego traditional intercropping techniques in favor of cultivating a single, government-approved crop<sup>2</sup> in collaboration with neighboring farmers. By agreeing to participate in LUC, farmers have access to the inputs associated with CIP (Ministry of Agriculture and Animal Resources, 2017; Huggins, 2014). Government statistics have reported that these programs have successfully increased crop production and decreased income-based poverty (NISR, 2012; cited in Dawson, Martin, & Sikor, 2015). By 2011 approximately 13% of the total land area under cultivation in Rwanda was under LUC, with approximately 40% of the farmers in the country participating (Ministry of Agriculture and Animal Resources, 2012).

A recent study found that respondents who participated in LUC reported increased crop yields and that the majority were ‘very satisfied’ with the program. Respondents also had access to improved seeds and most used chemical and organic fertilizers (University of Rwanda, 2014). However, the same study also found that food insecurity remains an issue for households engaged in LUC and that these households continue to be vulnerable to shocks, primarily drought or poor rainfall, as well as high food prices (University of Rwanda, 2014).

While the program is ostensibly voluntary, several studies have indicated that participation in LUC may be imposed (Huggins, 2014; University of Rwanda, 2014). The University of Rwanda (2014) found that 24% of respondents did not participate in the program voluntarily. In some cases, farmers were compelled by LUC implementers to participate, while in other cases local authorities in charge of LUC uprooted farmers’ crops when they did not comply with the program (Kathiresan, 2012).

Several studies have argued that CIP and LUC have had a negative effect on individual land use rights

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<sup>2</sup> Government-approved crops include corn, wheat, rice, Irish potato, cassava, soybean, and beans (Kathiresan, 2012).



and tenure security (Dawson, Martin, & Sikor, 2015; Huggins, 2014; Kathiresan, 2002). For example, in Rwanda's Western Province, the land use rights of households involved in tea cultivation were found to be strictly controlled as households were obliged to convert land used for other crops to tea plantation and to participate in cooperatives that required the payment of subscription fees. Furthermore, these households were at risk of having their land confiscated and reallocated without compensation if they were unable to manage the land "effectively"<sup>3</sup> (Dawson, Martin, & Sikor, 2015). Additionally, the regional crop specialization policy limits farmer's rights to use the land as they see fit, and as such infringes on farmers' decision-making authority over land, an essential component of their ability to respond to risks such as market volatility and climate change (Huggins, 2014), reducing their resiliency. In a 2012 study, farmers that participated in LUC reported feeling that they had lost ownership of their land, as they could no longer make decisions over what to plant (Kathiresan, 2012).

### Preventing Land Fragmentation

In support of the CIP and LUC, the Government of Rwanda has taken steps to prohibit further land fragmentation and subdivision (Bizimana, Nieuwoudt, & Ferrer, 2004).<sup>4</sup> Landholdings tend to be small and non-contiguous and customary practices, such as inheritance and the giving of *inter vivos* gifts of land (*umunani*) as well as land sales and leases, result in ongoing land subdivisions (Bizimana, Nieuwoudt, & Ferrer, 2004; Musahara & Huggins, 2015).

At a global level, land fragmentation has been identified as both a challenge and a benefit to agricultural productivity. In regards to the former, it "hinders mechanization, causes inefficient production and involves large costs to alleviate the adverse effects, resulting in a reduction in farmers' net incomes" (Demetriou, Swillwell, & See, 2012). Internal fragmentation may also pose a challenge to farmland supervision and protection, as well as increased difficulty and cost associated with the transportation of produce (Bizimana, Nieuwoudt, & Ferrer, 2008). Conversely, there are also well-documented

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<sup>3</sup> According to the study, farmers are required to plant tea seedlings, which take several years to mature. In the meantime, they must pay laborers to weed the tea plantation (Dawson, Martin, & Sikor, 2015).

<sup>4</sup> The two types of land fragmentation of relevance to Rwanda are *fragmentation of land ownership* and *fragmentation within a farm* (i.e. internal fragmentation). Fragmentation of land ownership refers to the number of users on a given parcel of land (Van Dijk, 2003), which is referred to herein as *land subdivision*. Internal fragmentation refers to the situation in which a landowner has numerous, non-contiguous parcels (Van Dijk, 2003; Demetriou, 2014).



environmental and economic benefits associated with land fragmentation. Internal fragmentation of parcels across agro-ecological zones is an approach for improving agricultural adaptation, risk management in response to a changing climate, and ecological variety (Demetriou, 2014), evidence for which has been found in Ghana and Rwanda (Blarel, Hazell, & Place, 1992) and in Japan (Kawasaki, 2010).

Several studies have shown that there is an inverse relationship between farm size and productivity; hence, it is possible that smaller land parcels resulting from land subdivision may be more productive than larger, consolidated parcels (Demetriou, 2014). This relationship appears to hold true in Rwanda, where small farms were found to be more productive than larger farms, and that other risk coping mechanisms such as internal fragmentation and multi-cropping also tend to improve productivity (Ansoms, Verdoot, & Van Ranst, 2009). This finding was reaffirmed by a World Bank study in Rwanda, which found that land quality and yields are *higher on small farms* and that profits per hectare are the same across plot sizes (Ali & Deininger, 2014). The advantages of land fragmentation are particularly relevant in subsistence-based agricultural communities. Until farmers have access to improved technology, such as mechanization and irrigation, and wages and non-agricultural employment opportunities increase, small farms are a means of improving rural economic well-being because they absorb excess labor (Demetriou, 2014; Ali & Deininger, 2014).

### **Evidence from Original Research into Restrictions on Land Subdivisions**

Regardless of the research demonstrating the productivity of small farms in Rwanda, the Government of Rwanda has identified land subdivisions as a barrier to implementation of the CIP, LUC, and agricultural productivity. The 2004 National Land Policy states that “the critical threshold below which a farmer can no longer meet his family’s basic nutritional requirements from agricultural activity alone is approximately 0.75 ha. According to FAO, a farming unit should have at least 0.90 ha to be economically viable. . .” (MINITERE, 2004). This statement, which lays the foundation for restrictions on land subdivision, is echoed in the EDPRS 2, which links small land parcels to decreased agricultural productivity and increased poverty (Ministry of Finance and Economic Planning, 2013).

These policies serve as the foundation for Article 30 of the 2013 Land Law, which states that: “It is prohibited to subdivide plots of land reserved for agriculture and animal resources if the result of such subdivision leads to parcels of land of less than a hectare in size for each of them. Owners of lands



prohibited to be subdivided shall co-own and use the land in accordance with the laws”<sup>6</sup> (Kaiser Hughes & Kamatali, 2016).

This section summarizes original qualitative research, the objective of which was to better understand how Article 30 is implemented and the outcomes of the provision on land use practices and tenure security in Rwanda.<sup>5</sup> This preliminary exploration into restrictions on land subdivisions has enabled us to develop initial conclusions on the provision’s impacts on tenure security and agricultural productivity, and develop recommendations for further research.

### Research Methodology

The research was informed by Focus Group Discussions (FGDs) and Key Informant Interviews (KIIs) conducted in February and March, 2016. The research team facilitated six FGDs with local leaders (2) and farmers’ cooperatives (4) in Kigali, Rwamagana District in the Eastern Province, Karongi District in the Western Province, Muhanga District in the Southern Province, and Musanze District in the Northern Province. In each session, there were between eight and 10 participants, both women and men. One FGD was comprised of only women. The research team also met with 19 key informants representing local and national government, non-governmental organizations (NGOs), and international agencies. The key informants were drawn from Kigali, Rwamagana District, Karongi District, Muhanga District, and Musanze District.

### Research Findings

#### *Knowledge of the Law*

Among research participants, Article 30 of the 2013 Land Law was generally known though not perfectly understood by all, particularly in rural areas.<sup>6</sup> Participants often did not understand that the provision

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<sup>5</sup> This section is derived from original research that was conducted in Rwanda in February-March 2016 by the USAID | Rwanda LAND Project, implemented by Chemonics International. To read the full report, visit: <https://www.land-links.org/document/rwanda-land-policy-research-brief-implementation-and-outcomes-of-restrictions-on-agricultural-land-subdivision/>.

<sup>6</sup> In some areas (Musanze District and Karongi District), most participating farmers and even some village leaders were reportedly not aware of Article 30.



applies regardless of parcel size and whether transactions are formal or informal. Overall, men were more informed than women.

#### *Perceptions as to the Purpose of the Law*

Perceptions among respondents as to the purpose of Article 30 varied, though limiting fragmentation, facilitation of efficient land use, and implementation of LUC were the most commonly cited reasons. Coordination of LUC is perceived as simpler when there is just one landowner per parcel, as it is harder to convince multiple landowners on a single parcel to participate in the program. This was echoed by a one key informant, a government official, who stated that, “The purpose of the provision is to ensure that Rwanda has big plots of farmland where intensified agricultural activities that are geared towards professional and market-oriented farming or economy can be conducted. This is the vision of Rwanda where the country strives to move from an agrarian to an industrial economy.”

#### *Compliance with the Law: Formal Co-Ownership of Land*

Based on the research findings, compliance with the law could mean (a) registering a single parcel to multiple owners (i.e. formal co-ownership), (b) the registered owner or owners of a parcel of land manage the land themselves and do not subdivide it – formally or informally – among their children, and (c) the registered owner or owners of a parcel sell the entire parcel to a new owner. Research participants stated that formal co-ownership is more common than maintaining individual land rights or selling entire parcels of land, possibly due to the cultural value that is still placed on subdividing land within a family, as well as rural households’ dependence on land for their livelihoods.

The Government of Rwanda encourages co-ownership rather than subdivision into small, individual parcels. To comply with the law, a landowner who wishes to subdivide would jointly register the land, which would then be co-owned under a single land title certificate and, theoretically, managed as a single entity. In such cases, the district advises landowners who want to subdivide their land for *umunani* or inheritance to take measurements of the parcel, which requires a survey, and then bring the measurements to the district. If the survey reveals that subdivision of the parcel would result in parcels of land smaller than one hectare each, the interested parties will need to co-register the land. After following these steps, co-owners can acquire a single land title certificate that stipulates each co-owner’s percentage of ownership in the plot, but not the size of respective individual parcels since this would be contradictory to



the intention of co-ownership and co-management. Government authorities asserted that this facilitates LUC, while enabling co-owners to take loans and sell the land.

However, formal co-ownership of land is rare because the practice is not well-known and the cost of surveying and registering ownership is too expensive for all but the wealthiest households. Furthermore, those who register as co-owners often establish traditional boundaries on the land and cultivate individual parcels, such that the land is fragmented in practice, though this is not reflected in the official register.

*Perceived Benefits of Compliance (i.e. Formal Co-Ownership)*

Preventing Land Fragmentation. Multiple informants expressed concerns about continuous land subdivisions, which Article 30 was intended to prevent. Several discussed the challenge of making fragmented parcels productive beyond limited subsistence levels. For example, one key informant said, “It is challenging to apply fertilizers, good seeds, and other inputs across fragmented parcels. On the other hand, merging small plots to grow one crop can increase production. It is also easier for them to find a market for their produce as a group.”

Key informants also expressed concern about the seemingly never-ending pattern of subdivision as a result of cultural practices, such as *umunani*, and the impact of this on the country’s desire to commercialize agriculture. According to one informant, land subdivisions makes it difficult for investors who would “use the land more optimally” to invest in Rwandan agriculture, presumably because they would have to reach agreements with multiple landowners.

Facilitation of LUC. The most commonly cited benefit of co-ownership was related to LUC. Co-ownership, particularly on consolidated parcels, purportedly enables landowners to produce more, as opposed to smallholders who are engaged in subsistence farming. This is in part because co-owners are perceived as easier to convince to participate in LUC.

Co-ownership is also thought to decrease land sales and gifts of land, which might otherwise be detrimental to households. When land is co-owned, all co-owners must agree before a co-owned parcel can be sold. Furthermore, according to research participants, Article 30 restricts the legal subdivision of land for *umunani*, which could leave the original owners in extreme poverty and without enough land to support themselves. FGD participants in Karongi explained that giving *umunani* benefits one’s children,



but leaves the parents with very small pieces of land that are not large enough to sustain them, in effect foregoing personal welfare for that of their children.

The potential for family members to co-own land was seen as positive by some respondents as it strengthens family bonds and fosters a culture of social cohesion. There may also be increased cohesion among women, as they are the ones who work on the land. This contradicted feedback from others who viewed co-ownership as a source of discord within families. According to one person, “There is no benefit at all [with co-ownership], since this will create more conflict. People don’t work at the same rate; how can they share the produce?”

### *Challenges Associated with Compliance*

Several respondents reported that the provision is contrary to cultural practices and the realities of Rwandan agriculture. Because families have very small parcels of land and tend to have several children, it is nearly impossible for people to comply with the provision while also fulfilling their cultural obligations of giving *umunani*, or to address immediate financial needs by selling a small portion of land.

*Umunani* and Inheritance. The desire to distribute *umunani* and inheritance among one’s children was the most commonly cited challenge associated with implementation of Article 30. Regardless of the size of their parcel and the number of children they had, landowners want to subdivide land for distribution among their children. Giving *umunani* is a cultural value and has economic benefits for the children by enabling them to establish a household and a life of their own as a result of such gifts. Subdividing land through *umunani* was also reported to mitigate intra-familial conflicts. Some families, however, are beginning to recognize the value of giving education or cash in lieu of land *umunani*.<sup>7</sup> When land subdivisions for the purposes of giving *umunani* result in parcels smaller than one hectare, beneficiaries

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<sup>7</sup> While the numbers of households engaging in this practice is currently unknown, giving education in lieu of land *umunani* was also identified as a trend in research on gendered land rights conducted by the USAID | Rwanda LAND Project: “In most provinces participants told us that they are increasingly providing their children with an education in lieu of land, and that they considered education to be “a kind of umunani.” In fact, many parents are making significant sacrifices, including selling their small pieces of land, in order to pay for their children’s educations. Both men and women said that education could be seen as a substitute for giving land as umunani.” **Invalid source specified.** This is clearly a trend to be monitored followed.



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are not able to register as individual owners, though they recognize the value of doing so.<sup>8</sup> This, in turn, prevents recipients from formally selling their parcel or using it as collateral for loans.

Land Sales. The occasional need to sell a parcel of land to meet a household need – such as the payment of school fees or health emergencies – was commonly cited as a challenge to compliance with Article 30. Participants in one FGD said that, if a household needs money, the landowner will negotiate with a neighbor to sell a piece of land informally. While a parcel smaller than one hectare that was registered in the LTRP can be legally sold, it cannot be subdivided. This presents a challenge for landowners that need money, but cannot legally subdivide and sell a piece of their land. In such cases, they may have to sell their entire parcel to meet an immediate need, leaving the household landless and impoverished. In contrast, if a landowner cannot sell a part of their holding, they lose access to this source of emergency funds.

Resistance to Co-Ownership. As described above, formal co-ownership is rare in Rwanda. Some people actively resist co-ownership, in part because it is difficult to reach common agreement on how the land should be used, even among siblings. In addition, co-ownership complicates the ability to sell one's land or apply for a loan using the land as collateral. To take a loan, all the co-owners must first reach consensus on the matter, which is reportedly a difficult process. Then, each co-owner must co-sign for the loan and become responsible for repayment. Because of the difficulty of reaching consensus, many co-owners simply forego using their land assets as collateral. Similarly, all co-owners must agree to sell the co-owned parcel of land before district authorities will register the transfer.

### *Non-Compliance with the Law*

Land subdivisions carried out through informal transfers that are not in compliance with the law were reported in all research sites and were reported to be common. In some cases, rural people subdivide land because they do not know about the policy, but in other cases they know the law and ignore it “in order to survive.” Extra-legal subdivisions of land typically occur for purposes of giving *umunani* or inheritance to one's children and selling land. These practices result in separate effective ownership, but not separate legal ownership, of a previously contiguous parcel. Because the land title certificate is not legally

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<sup>8</sup> Research led by the World Bank confirms that demand for land title certificates in Rwanda is high, particularly among female headed households and other very poor households (Ali D. , Deininger, Goldstein, & La Ferrara, 2015).



transferred, legal ownership of the subdivided parcels remains with the registered owner, posing significant risks to the parties of the transfer.

Informal co-ownership<sup>9</sup> within the family. As described above, formal co-ownership of land is rare in part because the practice is not well-known, but also because it is too expensive for many families. Ownership of parcels subdivided for the purposes of *umunani* or inheritance is most often informal. In such cases, the land is divided among children or other family members with friends, family, and neighbors witnessing the transfer of land rights. Though the land is typically registered to the parents under a single land title certificate, it is subdivided in practice and individuals know the traditional boundaries demarcating their plot. While the new landholders' rights are not formally registered, the transfer is recognized by the community.

When informal land co-ownership is registered in the name of the parents, family members demarcate their subdivided parcels with traditional boundaries and use them separately. However, management of land informally subdivided among family members becomes more complicated when the parents die. In such cases, should the siblings choose to formally register their rights, they must do so in common for the entire parcel and pay for a formal survey in order to formally register as formal co-owners. In other cases, informal co-owners do not want to – or cannot – pay for a formal survey of their subdivided plots. Instead, they may opt for one family member to register the land title certificate in their name and then continue to share the land informally. The new “head of the family” is agreed upon by the other co-owners and witnessed by neighbors. This approach was identified as a potential source of long-term tensions, including disputes.

Fragmented ownership through informal sales. As described above, the occasional need to sell a parcel of land was commonly cited as a challenge to compliance with Article 30. When the parties are unaware of the law, a buyer will usually purchase land from a seller before going to the district to register the transaction. At the district, the authorities inform them that the transaction cannot be registered and might advise the buyer and seller to register as co-owners of the entire parcel. If they agree, the buyer and seller pay for a survey of the parcel before registering the respective percentage of their ownership in the larger

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<sup>9</sup> For the purposes of this research, “informal co-ownership” is a type of informal landholding in which landholders, typically within one family, informally subdivide and own parcels of land that together comprise a single, registered parcel which is registered in the legal owner’s name, usually the landholders’ parents or the mutually agreed head of the family.



parcel. More commonly, the buyer and seller will not agree to co-ownership whereby the seller may either reimburse the buyer for the purchase or sell the entire larger parcel to the buyer. It is also possible that the buyer and seller might choose to keep their transaction informal once they learn that they cannot register the subdivided parcel; however, such practices are not officially reported.

To give informal transactions a modicum of legitimacy, village leaders will act as witnesses to land sales. When an informal sale takes place or land is extra-legally subdivided for *umunani*, village leaders may witness the demarcation of traditional boundaries. Village leaders may also sign the informal sale agreement in return for a token payment of beer. FGD participants in Kigali accused some village leaders of corruption for accepting payment to sanction sales despite lacking the legal authority to do so. However, it is possible that village leaders, like many ordinary citizens, are not aware of Article 30 or its implications for land subdivisions. Regardless of the motivations, research participants suggested that village leaders were responding to a need for a practical way to transfer lands with a corresponding desire for tenure security within their communities. According to one key informant, “It’s just an administrative arrangement to facilitate urgent needs.”

#### *Perceived Benefits of Non-Compliance*

Informal co-owners can and do participate in LUC. If the land has been extra-legally subdivided, agents introducing LUC will consult all co-owning farmers regardless of whether their name is registered on the land certificate. Traditional boundaries, which can be as discrete as a tree or a marker, do not pose a challenge to implementation of LUC. The challenge arises from having to convince many owners on a single parcel to participate in LUC and then monitoring their participation, especially when each owner retains decision-making authority over his or her land. This leads to situations in which one co-owner may choose to cultivate a different crop in contradiction to LUC; LUC implementers having little recourse to prevent this from happening. Still, while informal co-ownership of extra-legally subdivided parcels might encumber implementation of LUC, it does not obstruct the program.

#### *Land Tenure Issues Related to Article 30*

The research found that Article 30 has negative impacts on the land tenure security of landowners in Rwanda. In the short-term, the provision curtails owners’ decision-making authority to gift, bequeath or sell their land and prevents landowners who purchase or receive subdivided plots from registering them.



Landowners complain that Article 30 also hinders their ability to take a loan using land as collateral. Taken together, these restrictions may reduce a vulnerable household's ability to respond to an economic shock.

Registration of land rights was widely valued, yet informal transfers of extra-legally subdivided parcels are common because owners do not know that formal co-ownership is an option, or do not wish to formally co-own, or cannot afford the costs associated with registering co-ownership.<sup>10</sup> They therefore opt for informality. According to FGD participants, landowners have no other choice because of the costs and disadvantages of registering as co-owners and their lack of knowledge of the process for doing so.

The long-term potential for disputes associated with implementation of Article 30 includes those related to both compliance and non-compliance with the provision. For households that co-own, disputes can arise because the co-owners cannot reach an agreement in regards to a land sale, or mortgage, or what to grow, or even disagree on whether or not to participate in LUC. Most potential disputes relate to informal transfers of land and the fact that it becomes harder and harder to identify ownership over parcels, particularly when there are no official boundaries demarcating individual plots. Traditional boundaries can be easily shifted, leading to disputes among those that informally subdivide and transact in land.

Land disputes can arise if prior owners in whose name the land is still registered attempt to re-sell the land to another buyer. The children of a person who sold land informally might later try to reclaim the land since the land title certificate would still be in the name of their parent or parents. Similarly, former owners with land certificates still registered in their name could potentially use the certificate as collateral to obtain a loan, transferring the consequences of possible default to the current informal owner. Informal land transfers for *umunani* or inheritance can be the cause of disputes among the heirs since individual, informally owned parcels are not recorded in Rwanda's Land Administration Information System (LAIS). The potential for land disputes will only grow as the number of co-owners expands through marriage when spouses become entitled to co-ownership. One way of coping with this growing problem is through one of the 2,564 mediation committees found across Rwanda where traditional mediators (*Abunzi*) try to

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<sup>10</sup> While quantitative data on informal transactions is difficult to come by, a 2016 World Bank study has hypothesized that informal land transactions are common, based on the known activity of land markets outside of Kigali compared against the low numbers of registered transactions (Ali, Deininger, & Duponchel, Improving Sustainability of Land Administration through Decentralized Service Provision: Evidence from Rwanda, 2016).



resolve many types of land disputes before these cases are referred to the formal justice system (De Winne & Pohn, 2015).

### *Impacts of Article 30 on Women's Land Rights*

Implementation of Article 30 has both positive and negative impacts on women's rights to land. Positive impacts were associated with formal co-ownership and participation in LUC. Whereas individual female landowners might lack the financial capacity to purchase inputs or labor, co-ownership enables women to consolidate their assets with others to purchase inputs. When women co-own land and participate in LUC, they receive support through the program and see benefits in terms of profits. However, participation in LUC would presumably also benefit women who informally co-own land and participate in the program.

One negative impact to women of Article 30 has to do with the limits it places on formal land sales. Before adoption of the 1999 Succession Law, which required that legal spouses must consent to the transfer of marital property, a man could sell a portion of the household land without consulting his wife. A key informant in Musanze District, where informal land sales are apparently more common than in other areas, identified Article 30 as harmful to women because sales of extra-legally subdivided land must happen informally and, as such, women are not required to give their consent. Additionally, when a transaction is informal, the buyer does not need to include their spouse as a co-owner, which has negative implications for a woman's rights to the land.

Implementation of the provision also has negative implications for women's ability to use and benefit from *umunani*. When a woman marries, she may move to another village or even province, making it difficult or impossible for her to cultivate or otherwise use the land. Though it might be more practical for her to sell the land, this may not be possible to do formally since the individual parcel cannot be registered. In some cases, married women request equivalent compensation of their share of *umunani* from their brothers, though the compensation might not be equal in market value. More often, women recognize the impracticality of exploiting or selling their land and simply leave the land to their brothers.

Finally, in cases of divorce, Article 30 complicates the division of property between the spouses. Before a court issues a judgment on subdivision of land between spouses, the size of the parcel needs to be verified to ensure the judgment does not violate the minimum holding size and other provisions of Article 30. However, this is not always applied. When the property is split equally between the spouses, one or both



of the subdivided parcels are typically less than one hectare, such that neither party will be able to register their ownership. In some cases, the district authorities will subdivide a parcel based on a court judgment and guidance from the land registrar, even if doing so contradicts the law. In other cases, decisions by the court to subdivide the land are appealed, leading to a forced sale of the property.

### *Conclusions from the Research*

Adoption and implementation of Article 30 of the 2013 Land Law is based on the widely-held belief that small farms in Rwanda are unproductive, yet empirical evidence contradicts this belief. While there are certainly practical challenges associated with land fragmentation, research has also shown that the inverse farm size relationship holds true in Rwanda, meaning that continued investment in small farmers – including through programs such as LUC – could be more beneficial to rural well-being than restricting land subdivisions (Ali & Deininger, 2014). This research found that land subdivision does not appear to obstruct implementation of and participation in LUC, nor does implementation of Article 30 seem to prevent land subdivisions. The provision is at odds with rural citizens’ traditional practices and needs, which fosters informality and negatively impacts landowners’ tenure security.

### **Analysis**

The concept of “secure enough” tenure has been discussed in the context of humanitarian and post-disaster programming and increasingly through donor initiatives, including those led by the United States Agency for International Development (USAID), the Norwegian Refugee Council, the International Red Cross, and the Food and Agricultural Organization of the United Nations (FAO). This paper adopts the following definition of “secure enough” tenure: “[T]he benchmark of tenure security [is] when rights to land and natural resources are not arbitrarily contested by the state, private entities, or others and that people have incentives to invest and reap the benefits of their investments” (USAID, 2016). Under this definition, the formalization of land rights is not always the ultimate objective, but rather one component of an approach whereby “secure enough” supports participation in economic development, while mitigating against the loss of land rights and access in an ever-changing global economy and environment (USAID, 2016).

Security of tenure cannot be measured directly and is largely a result of perception (FAO, 2002). While useful for the inclusion of customary tenure and institutions in considerations of tenure security, the concept of “secure enough” tenure is profoundly subjective. If the boundaries for establishing “secure



enough” tenure are overly lax, the concept has little meaning – too many cases may be accepted as “secure enough” when they are not. If the bar is set too high, few cases may qualify. Furthermore, there is a range of possibilities for interpretation and negotiation around what constitutes “secure enough” tenure.

Despite the challenges associated with the “secure enough” tenure framework, it is very useful for situations in which formal and informal tenure systems operate simultaneously. We argue that it is also useful in situations in which the state’s visions for agricultural and national development are not in perfect harmony with social and economic realities, as our evidence shows to be the case with land tenure in Rwanda. Utilizing a framework to identify what constitutes “secure enough” tenure can help inform the development of policies and programs to support both tenure security for individuals and families *and* the Government of Rwanda in achieving its development goals.

In our analysis, we explore whether Rwanda’s transformative agricultural policies maintain the benefits to individuals and the government achieved through the LTRP. In particular, we assess whether tenure in Rwanda is “secure enough” for landowners to invest in their land and enjoy the benefits of that investment, and recommend opportunities for future improvement.

*Are Rwanda’s agricultural policies consistent with “secure enough” tenure?*

Given the demographic and economic pressures facing the country, it is understandable that the Government of Rwanda seeks a technical solution to the challenge of producing enough food to feed its population (see Republic of Rwanda, 2013) and enabling a shift from an agrarian to a more urbanized, mixed economy (Ministry of Finance and Economic Planning, 2000). Clearly, such an ambitious agenda requires implementation of innovative and visionary policies. However, to ensure that landowners continue to feel “secure enough” to invest in their land, these policies must also maintain the benefits achieved through LTRP, which resulted in increased tenure security for female and male landowners in Rwanda (Ali, Deininger, & Duponchel, 2016).

Implementation of the CIP and LUC have implications for landowners’ security of tenure. While it is important to note that the CIP and LUC consolidate *land use*, rather than *land ownership* (University of Rwanda, 2014; Kathiresan, 2012), these programs impinge on landowners’ use rights and decision-making authority over land. This is especially problematic when participation in CIP is involuntary or, in some cases, coerced, as has been reported in several studies, and when failure to participate in the program leads to threats of eviction, fines, or other sanctions (University of Rwanda, 2014; Dawson, Martin, & Sikor, 2015; Huggins, 2014). Additionally, in fulfillment of the government’s goal of



transforming subsistence cultivators into “professional farmers”, those that cannot produce effectively under the CIP and LUC may be sloughed off to become landless laborers or be absorbed into alternative sectors (Huggins, 2014) or, worse still, become indigent. This could also lead to the accumulation of agricultural land by more productive farmers or international investors (Huggins, 2014), with potential implications for conflict and stability.<sup>11</sup>

Additionally, informal subdivisions and transfers associated with implementation of Article 30 of the 2013 Land Law have implications for the sustainability of the LTRP and the Land Administration Information System (LAIS), Rwanda’s database for land parcel information. Because of these restrictions and other barriers to registration, a considerable number of land transfers in rural areas remain informal. A recent World Bank study found that 47% of transfers for newly acquired land have not been registered, which the authors linked primarily to high registration fees, but also to a lack of awareness of relevant regulations and restrictions on land subdivisions (Ali, Deininger, & Duponchel, 2016), confirming the findings of the qualitative research described above. When land is transferred informally, the land title certificate remains in the name of the original owner though the land may change hands numerous times. In such cases, the land title certificate is useless to the current owner. This presents a challenge when threats to tenure security arise, such as land disputes or government-led expropriation.

Despite these challenges, our evidence shows that tenure for even informal landowners is “secure enough” to facilitate their investment in land. When perception of tenure security is high – as has been found to be the case in Rwanda regardless of whether the landowner holds a title certificate – landowners are likely to invest labor and capital to improve and maintain their land. Indeed, investment in soil conservation – particularly among women – increased following the LTRP (Ali, Deininger, Goldstein, & La Ferrara, 2015). Currently, at least some who hold land informally also participate in LUC, indicating that these farmers continue to invest in their land despite lacking a title certificate (Kaiser Hughes & Kamatali, 2016).

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<sup>11</sup> A 2002 conflict vulnerability assessment focused on the connection between land issues and conflict in Rwanda found that, if land tenure security was to increase for some but not others, wealthier households could accumulate larger landholdings leading to an emerging classes of landless laborers. It was suggested that Inequality in wealth and landholdings could become a source of class-based conflict (Brown, 2002).



However, emerging threats to tenure security may have consequences for household investments in agriculture, should landowners' perceptions of security decrease. When perception of tenure security is low, investment and productivity decrease (USAID, 2016). If the LAIS is not maintained, the benefits of the LTRP and the value placed in registration may diminish as actual land ownership is not reflected in the registry. At the same time, increasing competition over land from other farmers, international investors, and even the Government of Rwanda could compound threats to tenure security associated with land disputes and expropriations for those landowners that have not registered their rights. Were this to happen, perceptions of land tenure security could decrease to the point whereby tenure is no longer "secure enough" for households to optimize investment in agriculture.

### **Recommendations**

Since smallholder production has been increasing despite the trend toward smaller average family holding size (Republic of Rwanda, 2013), an argument can be made that farmers are productive despite cultivating small plots. This calls into question the logic behind implementation of Article 30 of the 2013 Land Law. We recommend that the Government of Rwanda lead robust research to better understand the farm-size productivity relationship and the impacts of the provision on Rwandans' ability to adapt to economic, social, and environmental changes.

Results of this research could inform policy around recognizing and protecting rights to land that has been divided informally and is currently barred from registration under Article 30 of the 2013 Land Law. In recognizing and protecting rights to informally subdivided parcels, the Government of Rwanda would support "secure enough" tenure for many rural Rwandans in the face of emerging threats to tenure security. Further, doing so could help slow migration to urban areas, where alternative sectors that could absorb low-skilled, low-wage laborers as advocated in the EPDRS 2 continue to develop.

We recommend that the Government of Rwanda integrate a target for "secure enough" tenure into its development strategy. This definition could evolve over time as development milestones are reached, but may begin with maintaining the status quo, followed by recognition and even formalization of informally subdivided plots. In setting a definition for and better understanding the status of "secure enough" tenure, the Government of Rwanda could consider exploring the following screening questions:



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- Are perceptions of “secure enough” tenure across a representative sampling of Rwandans evidenced?
- Is smallholder agricultural production being sustained?
- Is the contribution of off-farm income to rural households continuing to increase?
- Are smallholder farmers investing in appropriate natural resource management and soil enhancement technologies to secure productivity sustainably?
- Does the occurrence of local land-related disputes mediated by the *Abunzi* suggest that tenure is no longer “secure enough”, leading to more arbitrary challenges to small landowner rights, particularly affecting women?
- Does research indicate that the cultural imperative of *inter vivos* gifts (i.e. *umunani*) and inheritance of land are increasing, stable or decreasing?

With more such empirical research in hand, the Government of Rwanda will be in a stronger position to develop policies that respond to the needs of the many rural Rwandans who will either remain in the agricultural sector, or who will transition elsewhere. In doing so, an understanding of what constitutes “secure enough” tenure for the benefit of all Rwandans will be achieved.

## Conclusion

In pursuit of its ambitious vision for agricultural transformation, Rwanda has implemented the CIP, LUC, and restrictions on land subdivision through Article 30 of the 2013 Land Law. While the CIP and LUC have been credited with increased agricultural productivity, they have also been linked to decreased land use rights and decision-making authority over land. At the same time, research suggests that restrictions on land subdivision force farmers into informality, rather than prevent subdivisions. This has implications for the sustainability of the LTRP and the LAIS, the degradation of which presents an emerging threat to land tenure security. While land tenure is currently “secure enough” to enable even informal landholders to invest on their land, continued demographic and economic pressures could impact this negatively.

Through literature review, original research, and analysis, we argue that while the LTRP markedly increased land tenure security for women and men in Rwanda, agricultural policies designed to transform the agricultural sector have produced emerging threats to tenure security with potential implications for future economic development and even stability. Using the frame of “secure enough” tenure, we recommend that the Government of Rwanda consider enabling rural landowners to progressively



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formalize their land, while allowing for the continuation of customary practices (such as the giving of *umunani*) that represent cultural values and respond to immediate livelihood security and economic needs. Doing so may help maintain the great wins in economic development and stability already made by the country, while maintaining progress toward the Government of Rwanda's vision for development.



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