

# **CHALLENGING INSTITUTIONAL FRAMEWORKS IN LAND ADMINISTRATION: MANY INSTITUTIONS, BUT LESS PROPERTY RIGHTS (CASE OF BURUNDI)**

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## **Abstract**

Land administration as one of the mechanisms of availing property rights to owners cannot be achieved unless there are well-functioning and coordinated institutional frameworks. Institutions are there to provide legal frameworks, technical, human and financial support to help land administration initiatives work effectively. The number of these institutional frameworks may be insignificant on rendering property rights if not well organised and focussed. Instead of being opportunities, they may become challenges to land administration in the country. This paper explored the challenges emanating from the existing institutional frameworks dealing with land administration in providing property right in Burundi.

A mixed research design has been applied to capture qualitative and quantitative data. A desk review of different government reports, academic and professional papers as well as books have been consulted. Also, structured and semi-structured interview have been used to collect primary data on property rights in Burundi. A total of 60 respondents have participated in this paper such as officials in land department, local leaders, and individual land owners. A nonprobability, with snowball sampling method has been applied to identify 60 respondents (40 for structure interview and 20 semi-structured interviews). Descriptive analysis and inferential statistics have been used in data analysis.

The findings show that Burundi has got many institution frameworks, but are fragmented and dispersed. This engendered the lack focus on specific issues related to land administration. As results, challenges faced by many groups of people are not addressed by these institutions which make these people to have less property rights. Consequently, these people are marginalised; becoming poor and pauper, and suffering from food insecurity. Also, they live in extreme poverty, their children are dropping

out from their studies and even some families flee the country. Therefore, the government of Burundi is advised to have one ministry that will deal with land issues with focus and specificity.

**Keywords:** *Land Administration, Institutional Framework, Property Rights, Burundi*

### **1. Background information**

The emergence of land administration started as a land administration theory that dated for long time as means of supporting land taxation and markets by providing clear land information, legal recognition of owners and related infrastructure to parcels (Williamson, Enemark, Wallace & Rajabifard, 2010). William (et al., 2015) highlight that collecting and availing land related information was in place more than 400 years. But the heyday of land administration is attributed to Napoleon's Government which concentrated its effort to documenting on land information for the betterment of his imperial land. Step by step, the importance of land administration was broadened to support the provision of security of tenure, a basis for valuation and taxation of property; access to credit for further investments, for sustainable land use, minimisation of land conflicts, and better management of natural resources (Oosteroma & Lemmen, 2015). This can be stressed on as the root cause of land administration being aspired and inspired by development agencies, government and researchers to support the theory.

### **2. Land administration: approaches and tools**

Land administration is a process once followed effectively, land rights are enhanced for all land owners despite their socio-economic, political or gender status. For that, many tools have been invented and adopted to cater for needs of poor and marginalised people so that they can access to land rights. For example, the Fit-For-Purpose is an approach that was conceptualised to meet the needs of poor and vulnerable people to access to system that can register and protect the land rights in short time, low and affordable cost needed via large scale mapping, participatory as well as inclusivity (Enemark, Clifford-Bell, Lemmen & McLaren, 2014). According to the authors, it is not a new concept as well, but its flexibility, upgradability, reliability and attainability, added to other features allows vulnerable and other disadvantaged people to secure their property rights. However, its application and effectiveness have to be checked especially in developing countries where it is not easy to apply all new concepts.

Also, the Pro-Poor Approach is inscribed as another tool due to its affordability in cost and process as well as in time saving to provide land tenure security to the poor (Zevenbergen, Augustinus, Danilo, & Bennett, 2013). Many benefits to be accumulated after the implementation of the approach were listed, but what can be accepted with the authors is their sincere agreement that these benefits are not set as default for poor people. This shows how far these tools and approach must be checked and even re-checked before applying them in African context. Moreover, tools like Participatory Land Administration, Crowdsourced, Participatory, and Voluntary participation approaches have been designed and piloted in many African countries. But none of them has been proved to be effective and massively adopted for duplication in other countries of the same status. Participatory Land administration has been recently tested in Northern part of Ghana, but the results show that it needs further studies for its effectiveness so that it can be integrated in the formal land administration system (Kwabena, Bennett & Zevenbergen, 2017).

### **3. Role of institutions in land administration**

In order these tools, approaches and strategies to be effective in responding to challenges in hands, they need well-functioning and coordinated institutional frameworks. These institutions may be termed as hardware institutions for organisational structures such as ministries, commissions and private actors including NGOs and the software institutions such as legal texts that include policies, proclamations and directives or rules and regulations for land access, land use, users' rights and the like. Williamson, Enemark, Wallace and Rajabifard (2014) talk about land administration systems that are considered as a country's infrastructure to implement land policies and other land related decisions. To support the idea, Lee, et al. (2016) argue that institutional frameworks in land administration should be affordable and good practices included so that land issues might be addressed effectively. That is what we are missing in African and developing countries. Many institutional frameworks are designed or even imported by donors and governments are requested to apply them as they are. At the end, the problems persist or even are aggravated due to the lack of focus and contextualisation.

In addition to that, many institutions such as Ministries, Commissions, Committees and Organisations are created, all dealing with land issues, but with overlapping responsibilities, conflicting structures, and institutional interface. At the same time, laws, policies and bylaws are issued, but still

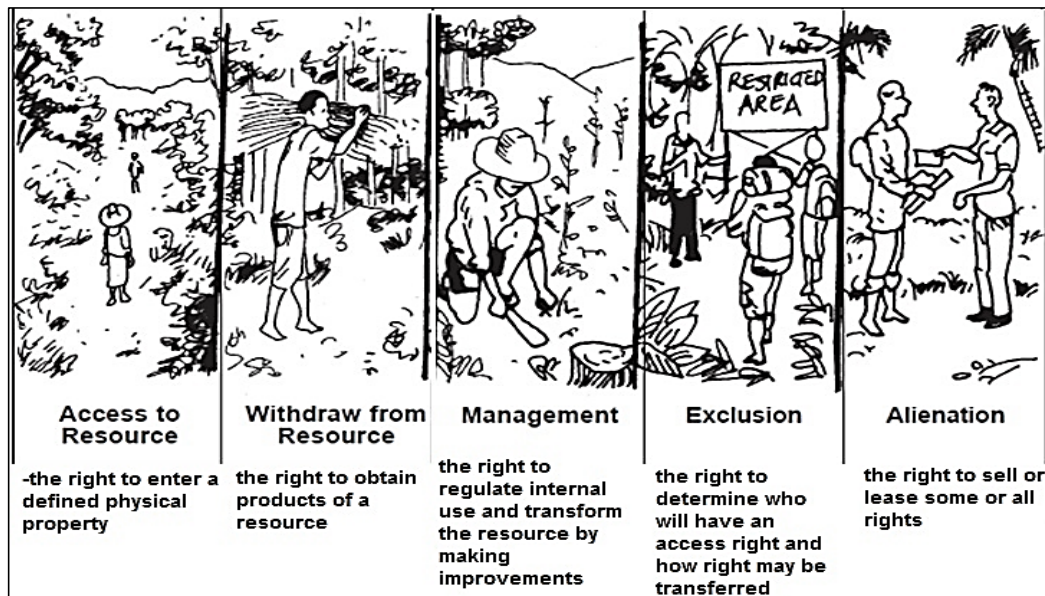
issues in hand remain unsolved. Myers et al, (2004) cited in Ykhanbai (2008) highlights that the failure of institutions in land administration may welcome conflict and instability, insecure land and doubtful property rights as well as inefficient land cadastre, landlessness and or inequitable land distribution, poorly performing land markets, and unsustainable natural resources management. From here, we can understand that having ill-functioning institutional frameworks have further impacts to the existing challenges on land and land owners especially on land or property rights.

#### **4. Concept of property rights**

Property in this paper refers to land and or development on it which can be transformed in an asset or capital (Platt, 2014; De Soto 2000; and McAuslan, 1987). De Soto goes far by stating that 'property is not the house itself but an economic concept about the house, embodied in a legal representation that describes not its physical qualities but rather economically and socially meaningful qualities we humans have attributed to the house' (2000, p.2). In other hand, McAuslan (1987) argues that land has multidimensional aspects (economy, social, political, and development) and can harnesses social relations between people and society, and economic relations between persons and persons. The author is in view that to understand the concept of land, we need to mirror it in three circuits: (i) customary land and its regulation via traditional processes; (ii) an unofficial market in land regulated by custom and practice; and (iii) the modern official land market regulated by statutory codes of law interpreted and applied by professionals and state officials. All these meanings and explanations on land lead us to think of rights that human as the user, planner and active actor have on it and how these rights are among fundamental human rights.

When you consult literatures on property rights, different definitions are provided. However, Bromley (1991:15) has defined property rights concretely as "the capacity to call upon the collective to stand behind one's claim to a benefit stream". Then, Schlager and Ostrom (1992) grouped these rights in bundle whereas Meinzen-Dick & Di Gregorio (2004) broadly established the table showing the relationship between the user rights and decisions to be taken on property. Therefore, all bring us about to understand the concept of property rights in broad sense. Di Gregorio et al. (2008) link directly the property rights with the poverty reduction where institutions work hard to enforce and enhance property rights to individuals and groups of people in the society. Many authors and land administration practitioners have tried to update and upgrade the bundle of rights but, still

the five fundamental rights as propounded by Schlager and Ostrom (1992) remained as the best reference.



**Fig.1:** revised bundle of property rights as propounded by Schlager and Ostrom

**Source:** <https://capri.cgiar.org/2015/11/18/blog-reexamining-a-classic-an-update-to-schlager-and-ostroms-bundle-of-rights/>; Re-examining a Classic: An Update to Schlager and Ostrom’s Bundle of Rights.

#### 4.1 Types of institutions and property rights support

Property rights need to be supported by institutions so that they can be enjoyed by property owners. Di Gregorio et al. (2008) state that ‘to be effective, property rights need recognition and legitimacy. This, in turn, implies the need for governance structures that enforce rights and the corresponding duties of others to respect those rights’ (2008, p 6). This shows how institutions play key roles in making sure property rights are available, enjoyed and render what is expected by property owners. In the same perspective, Wolfgang (2007, p. 4) supported Di Gregorio et al. (2008) that “property rights – like human life, liberty and other human rights – are protected primarily by internal institutions of society, rules which have emerged from experience and which are spontaneously enforced”. However, considering institutions at that level can create some confusion on the individual capacity to protect his or her property rights. What I understand is that institutions provide machinery and mechanisms for

harnessing property rights by using state law, police and courts to impose and punish lawbreakers which individuals may not afford. Also, institutions work in harmony with public interest and sustainable development when it comes to property issues. Finally, these institutions are not only state based structures, but, they include private and traditional institutions that can have any stake or contribution in providing and or harnessing property rights to local people.

Svitlana (2000) points out that private institutions play key role in enhancing property rights that lead to development and improvement of business among entrepreneurs and other actors; whereas Avis (2016) stresses on how private sectors work hard to address conflicts in fragile conflicted affected societies so that they can revive their wellbeing. Here, we can also include non-governmental organisations and development partners such as World Bank, African Development Bank, UNDP, FAO, UN-Habitat, African Union-UNECA and others that work closely with governments to make sure property rights and tenure security in general are enhanced in developing countries. In many countries especially in developing countries, all these institutions can work together or separately in addressing property rights issues.

Nonetheless, how much these institutions may be effective and efficient is still doubtless especially when they are in big number and varied. According to Tchatchoua-Djomo (2017) when he was exploring the linkages between land governance reforms, institutional pluralism and tenure security in Burundi, he revealed that the outcomes were ambiguous due to institutional multiplicity. This shows how the big number of institutions that were in the case study were not helpful in rendering the projected outputs. The reality is that some confusion may appear in terms of focus on issues. Also, there may be overlapping of responsibilities and difficult to control the accountability during technical, financial and human resource mobilisation. In land sector, property rights may not be provided adequately and with specificity.

#### **4.2 Why property rights**

Property rights are directly linked to the capital generation (De Soto, 2000) and wealth creation (Wolfgang, 2007). This implies that addressing issues of property rights to many developing countries may be among the remedy to challenges that hamper the development of these countries. FAO (2002b) points out that property rights catalyse the economic growth and (Everest-

Phillips, 2008) is convinced that production can be increased manifold once property owners have full rights on property. This situation will allow individuals to increase their incentives. Individual property rights encourage individual property owners to involve in various economic activities and spent much time looking how they can generate more profit from their properties. At community level, households are eager to work together and invest labour and other resources in land to make sure they make profit together.

Generally speaking, people whether in urban or in rural areas are conscious with security of tenure and rights on their property when it comes to investing in land. Of course, when property rights are secured, property owners save money and time that were to be used in defending their property rights in courts and other legal institutions. For example, the literature shows that among others challenges that poor and marginalised group of people are facing in Burundi, are the time and cost incurred when searching their rights in courts. Also, this group of people spent much while looking for formal way to own their properties especially in urban areas (GoB,2008). Having property rights and tenure security has been important in Burundi and in developing countries because many research findings show that women with full rights on land are no longer vulnerable or marginalised in their families. One of the reason is that they save time and cost as well as energy that are invested in other economic, social, cultural and political activities (Hemalatha, 1994 and Luna, 2014). Other implication is that, it is easy for them to form associations that are engaged in generating income, even allowing them shifting from on-farm to off-farm activities. In addition to that, other researchers bridge property rights to equity and poverty reduction when poor and marginalised people access to land and enjoy the bundle of rights.

## **5. Methodology and data analysis**

This paper explores the challenges emanating from existing institutional frameworks that are in place and in use when administering land related properties for the case of Burundi so that property rights can be enhanced. It addresses the following two research questions (i) what are existing institutional frameworks that are used in Burundi to address property right issues, (ii) who and how lack of property rights affect some groups of people in Burundi?

To respond to these questions, a mixed research approach is applied to generate qualitative and quantitative data from different sources as secondary and primary data. A desk review of different government reports, academic and professional papers as well as books have been consulted. Also, structured and semi-structured interview have been used to collect primary data on property rights in Burundi. Therefore, 60 respondents have contributed in one way or another as information providers through the mentioned tools. Respondents in this paper included officials in land department, local leaders, investors in land and individual property owners. The paper applied nonprobability with snowball sampling method to identify these 60 respondents (40 for structure interview and 20 for semi-structured interview). The paper used descriptive analysis and inferential statistics in data analysis. Critical examination of respondents' personal perceptions about property rights have been qualitatively analysed. Findings are presented in text form, figure and percentages;

## **Findings**

### **3.1 An overview on Burundi**

Burundi is one of six East African Community members. It is bordered by Rwanda in North, Tanzania in East and South and Republic Democratic of Congo (DRC) in west. Burundi is among small countries with 27880 km<sup>2</sup> and a population estimated at 10.8 million. It has a density is 451 per Km<sup>2</sup>. Also, it is a country that has been torn by civil wars from 1962 up to 2015 where many Burundians have fled the countries, sometime repatriating and then fleeing again. Among other sectors that have been affected by these frequent civil wars is land sector. According to (Tchatchoua-Djomo, 2018, p.1) "violent conflicts significantly affect land tenure and land governance". This show how land has been one of central issue that is in need of intervention. Land tenure in Burundi is exercised in customary and statutory way.

### **3.2 Land tenure regimes in Burundi**

According to Polack and Cotula (2011) defines land tenure regimes as the reference of systems of rights, rules, institutions and processes under which land is held, used, managed and transacted. In the same perspective, Damonte (2016, p.10) defines land tenure regimes as "systems of individual or collective control and regulation (collective-choice level rights) of individual or collective access and use (operational level rights) of land". There is a similar thought that land tenure regimes should be defined by

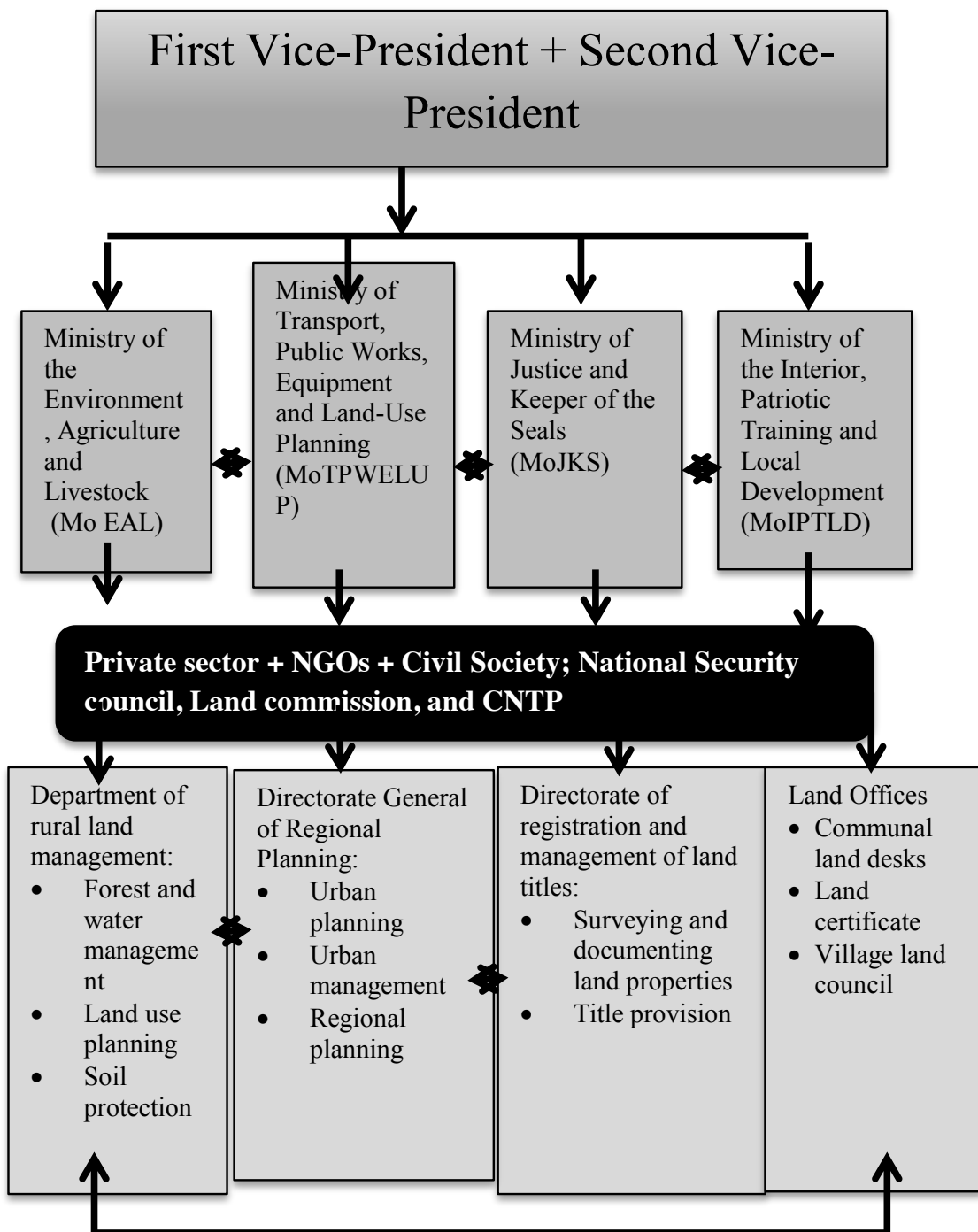


looking on bundle of rights and relationships between people or group of people to a piece of land. For rural setting, the author specifies four land tenure regimes that are individual, family, community, and external. Burundi recognised three types of land regimes where we distinguish the public land that include lakes, rivers and marshes), state land which is land governed by government entities and private land that can be owned by individuals or group of people (Government of Burundi, 2011).

Land tenure in Burundi is guided by customary and state laws. Customary laws are used specially to administer land that is not registered and has no any legal documents. This includes land inherited from the parents or accessed via the gift from friends or families. Other land that falls under customary laws is land bought in rural or peri-urban areas where the documents attesting the transfer are signed by local leaders. The rest of the lands are those found in urban areas where the attribution was legal and documents provided to owners; these lands are governed by state laws. However, it does not mean that customary laws are stand-alone but when it is necessary state laws are applied especially when a serious conflict arises. Land has been a centre of importance for individuals or the state. As it is attributed to be a source of wealth and power, it needs a sound administration which will make the land be profitable and conflict-free.

### **3.3 Institutional frameworks in Burundi**

Land administration in Burundi is one of the tasks and responsibilities that are performed in four ministries: the first being the Ministry of the Environment, Agriculture and Livestock which is responsible for managing rural land and peri-urban land. The second is the Ministry of Transport, Public Works, Equipment and Land-Use Planning which is mandated to manage urban land and other issues related to urban land. The third is Ministry of the Interior, Patriotic Training and Local Development (MoIPTLD) concerned with land certification at local administration level (commune and village). It is responsible on certification of rural land and conflict resolution. The fourth and last is the Ministry of Justice and Seals Keeper (MoJKS) which is concerned with titling and other judicial issues related to land.



**Fig.1:** Organigram of institutions that are concerned with land issues in Burundi

*Source:* own construct in reference to field findings, 2019

The figure shows the hardware as organisational structure of institutional framework in Burundi that deal with land issues from national level at village level. Land administration is performed in different ministries as it is presented in the figure. Each Ministry has one or more duties on land sector. What can be grasped as special in this structural organisation is the in-between position of private sector, NGOs, and civil society in dealing with land issues to provide property rights to property owners.

### **3.4 Legal frameworks in land administration**

These institutional frameworks are considered as software institutions that are formulated to guide, assist and govern land administration in Burundi. If there are among lucky countries that have enough legal frameworks in land administration, is Burundi. Land administration and property rights are mentioned and discussed in many legal texts that are used in the country. This section explores these legal texts in hierarchical order where the challenges or opportunities on property rights rendering are highlighted.

#### **3.4.1 Constitution of Burundi**

The constitution of Burundi does not talk much on land issues except art.29 which stipulates that all Burundians have equal right to own property and enjoy rights on it. However, it does not specify the rights to enjoy among the bundle of rights as highlighted in the previous discussion. In few words, land and property issues are not constitutional as it may be observed in some countries (GoB, 2018).

#### **3.4.2 Land policy (Code Foncier, 2011)**

Burundi is among African countries that have land policy for defining legal rights and conditions to access and/or to own this essential resource. It also regulates its distribution among multiple stakeholders in Burundi. On another hand, land policy reflects the relations and political choices regarding the distribution of power between the state, its citizens, and local systems of authority. Therefore, land policy of Burundi is the core document that states and determines all related land matters. It supports special laws governing certain aspects of activities such as urban planning, real estate development, land use, and other land management issues. It contains also specific laws that determine the respective regimes such as forests, protected areas, water as well as mining substances and oil. The document can be found in French as official language and in Kirundi as national language. It is the document that comprises all aspects of property rights from access to alienation as mentioned in fig.1. The document has the

following parties: Article 16-22: complete or full ownership, Art. 23-29: co-ownership, Art.44-56: emphyteosis, Art. 57-87: usufruct, Art. 88-90: right to use, 96-133: penalty/servitude, 134-186: mortgage.

However, the policy in all 189 pages, 460 articles, no single paragraph that states about redistribution of land so that landless people may access to land (Case of Batwa Community and returnees); issues of inheritance of land by girls and women is not there; property rights of poor and vulnerable groups of people are not mentioned; challenges faced by Internal Displaced People (IDPs), returnees from refugee camps in neighbouring countries and orphans who are declared and registered as “No father” in National Registry are not addressed. Also, the policy does not shed light on the rights of woman on alienation or disposition once they inherit land from their husband in case of death. It has to be noticed that the practice and traditional norms in Burundi do not allow women to sell or mortgage land inherited from their husbands. But she can use it until she dies as usufruct. Also, this usufruct is conditional or guaranteed normally if the woman has males’ children.

### **3.4.3 Code of Family and Persons of 1993 (code des personnes et de la famille)**

This code was supposed to specify the rights of women on inherited land in case of divorce or death of her husband. However, it is mute. Then, it supports the husband during divorce case to enjoy the full rights on property. The Code stipulates that in case of divorce, the two spouses may divide and share the accumulated wealth (GoB, 1993). But, the rights of the wife on these shared properties especially rights on land are not clear whereas for husband it is as ‘set by default’ to enjoy all rights on land. Also, the code does not say anything about the rights of widow in case the husband has died. This state of affairs smoothens the brothers’ in-law from the deceased husband to ill-treat the widow on family property left by her husband. Also, if the woman was not legally married, she has no right or share on the land. If she has no registered child (boy), she is automatically chased.

### **Urbanism, human settlement, and construction Policy 2016 (Code de l’urbanisme, de l’habitat et de la construction au Burundi)**

Concerned by fixing rules and regulations on urban land use, urban development, housing and shelter acquisition, the code is not specific on how women especially those who are head of households, poor and

vulnerable people may access and exercise property rights in urban areas. The code fixes how land in newly planned neighbourhoods should be acquired and developed (GoB, 2016). However, the rules and regulations generalise and do not consider any inconveniences on low and middle income earners they encounter when it comes to acquiring land for shelter and other development activities. As a result, this category of people does not enjoy property rights in urban areas. Consequently, they find themselves in squatters and other informal settlements as well as hazardous areas.

#### **3.4.4 Letter on Land Issues 2008 (Lettre de Politique Foncière)**

This is a document in terms of a letter that highlights all if not some issues related to land. The following issues are identified (i) The land related problems as a central issue, (ii) Increasing pressure on land by different activities, (iii) Tenure and property rights security, (iv) Customary land management erosion, and (v) Failure of the State services in the follow-up of the lease of public lands. The problems related to property rights mentioned here are concerned with land boundaries between neighbours, authentication of transactions, and transfer or concession of state lands. By these means, households want the institutionalization and officialisation of their land rights. These problems are general and not specific whereas there are other groups of people that need other specific property rights that should be mentioned in the document such as women property rights (access, and alienation or disposal right). Therefore, the document reveals some consequences that are prevalent due to these issues such as (i) Security instability situation, (ii) Landless people and cramped agricultural land, (iii) Land degradation, (iv) Public and hazardous land encroachment, (v) Reluctance to investment, and (vi) Congestion of courts due to land conflicts (GoB, 2008). Among other consequences also, the document was supposed to include food insecurity among poor and household headed by women, repatriation of refugees in neighbouring countries, informal settlements in urban areas, street children, beggars dominated by women and physically challenged people, school dropouts and land related conflicts.

#### **3.4.5 Forest policy 2011 and mining policy 2013 (code forestier et code minier)**

This paper has also included these policies because they are linked to exploitation of natural resources that are land based. Also, they are among sectors that are a basis for the daily livelihood of many Burundians in finding food,

job, firewood and the like. Therefore, these policies do not give any attention to marginalised and vulnerable groups so that they can enjoy the rights of using the fruits from these resources. The Mining code does not specify how women and girls will be involved in mining activities, selling and buying given that these activities have been traditionally and practically attributed to men. This means that the existence of these legal frameworks does not change the traditionally and culturally norms set by the society that neglect the women on enjoy the use of natural resources as men.

### **3.5 The affected by less property rights**

As discussed previously, Burundi has many institutions (hardware and software) involving in property right provision as their core responsibilities. However, the existing situation does not witness and prove it. There are many groups of people who are urgently in need and request of property rights and the lack of these rights affects them negatively economically, socially, culturally, environmentally and or politically.

#### **3.5.1 Women and property rights**

Women in Burundi contribute 55% of workforce. The agricultural sector employs 90% of this workforce especially in rural and peri-urban areas. However, accessing to land is not as easy as it was supposed. The root cause is that, there is no any legal documents among the cited above that acknowledges the women needs and importance of accessing to land and enjoying rights on it. The traditional norms do not recognise a woman/girl as one who can inherit land or own land directly. The practices are that there must be an intermediary person such as husband, brother, uncle or other male's relative who can attend her. According to FAO (2012, p.14) 'women have secondary user rights through male relatives'. This is the general situation in African and some other developing countries. Even the accessed piece of land by woman in Burundi is not for her completely; but, she has to use it for a limited time. She is denied the rights of selling and or disposition. For them, this asset becomes a 'dead capital' as Hernando Desoto said since she can generate income by selling or exchanging.

The last census of 2008 shows that women own 17.7%. of plots of land whereas 80.2% are under men ownership. Therefore, women are denied basic opportunity that is fundamental source of wealth, economic growth, social and political power. This is the situation whereas women are responsible for feeding, clothing, educating and entertaining children. It is hitherto proved that not only women who are affected by this situation,

but, even children and other relatives who are close and depend on to them are victimised. The severely affected families are those households headed by women due to divorce or death of the husband. The school dropouts that are now observed in Northern region of Burundi (Ngozi, Kayanza, Muyinga and Kirundo) is linked to denied property rights for women (IWACU<sup>36</sup>, 2017).

Women in Burundi are significantly challenged with the minimum property rights they are having on land inherited from their deceased beloved husbands. They fail to register the land under their names as it was revealed by many findings in title registration offices as well as rural certification projects (Beaupre, 2015). According to the Land Officer in Bujumbura, Ngozi, and Gitega, only 10% of women registered their plots of land, whereas 90% of registered plots of land were on males' names. It is also revealed that even the 10% registered plots of land were not inherited land, but 8% of it was land purchased by widows from their own efforts.

Findings from Swiss Development Cooperation (SDC) in Ngozi province between 2008 and 2014, show that plots of land that were registered under women names were low. The report specifies that in 2012, titles registered under women names were 6%, which in 2013 dropped at 5% (IDLO/ZOA 2016: 49). In the ZOA program, the findings show that even where the families managed to register the bequeathed land, some conflicts may arise from the husband's brother especially if the land was inherited from the husbands' father. These are evidences that show, still women are lagging behind in enjoying the property rights as it is for man. Therefore, it can be newsworthy to say that there is less property rights for women and this state of affairs affect them and their close family negatively.

### **3.5.2 Batwa community and property rights**

When we talk about property rights, we have to target the so considered isolated cases and elements that are not considered during decision making or policy formulation. The Batwa community contribute 1%<sup>37</sup> of population of Burundi. It is one of ethnic group among three ethnics group that are found in Burundi. According to the history, they were the first settlers of Burundi land and other ethnics joined after due to fertile land and other

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<sup>36</sup> Local newspaper found on <https://www.iwacu-burundi.org/englishnews/over-20-thousand-pupils-drop-out-of-school-in-ngozi/>

<sup>37</sup> This is an estimated figure given that Burundi had not carried out any census about ethnic group

natural resources that were found in the territory. The term 'Batwa' or 'Pygmies' is used to describe hunter-gatherers, who are small in stature, live in small groups ... known as 'forest peoples' ... with way of life based around hunting and gathering, moving here and there' (Amani, 2009, p.3). This community evolved and started doing other activities like forgery for men, and pottery for women. All these activities were based on natural resources, land being the basic and fundamental source of raw material. Due to their instability in chasing their prey and livelihood, within the modernisation, institutionalisation, nationalisation and administration of natural resources, they found themselves landless.

There is no information about this community to involve in farming or livestock keeping, but, the members of this community were assuming the land to be theirs as they were known as *Abasangwabutaka* or *Abasangwasi* which is literally translated 'the first occupants' (Amani, 2009). When other ethnic groups came, they farmed the land, fixed boundaries, and developed it in different ways, formed customary laws to protect their property rights, registered their land, inherited it to theirs and so forth. But now, when we talk about Batwa, we mean simply and deliberately, people with no land and living in extreme poverty, marginalized, with no legal land use recognition and protection (FAO, 2012).

How do they live now in Burundi? This community lives in the piece of land as a group given by local authorities without any guarantee of permanent settlement. They are chased at any time the local government needs the land for public interest (Case of Muyinga, 20012). In these given piece of land as sites, they are sometime not allowed to have houses in durable construction materials. Also, they are not allowed to sell or dispose. They live as a rent site or temporal sites like refugees or IDPs whereas they are in their peaceful country. As consequences, they cannot think of any durable and sustainable development, they are not educating their children; they suffer from hunger and malnutrition and other human vices.

### **3.5.3 Internal Displaced People and returnees**

This is another group of people that is facing challenges on property rights and being severely affected economically and socially. Due to several and consecutive civil wars that Burundi faced, many people left their former land to settle in some sites within the country where they may be physically protected. The land occupied during this period was either state land (80%) or private land 20%. Due to long time taken for peace re-establishment,



these people developed the land by constructing their houses with durable construction materials. Then, it became difficult to leave the site whereas the government or the land owners were requesting their land. Also, there was no compensation or any assistance that was promised to these IDPs for reconstructing their livelihoods once they live the land. As results, they remained in those sites and are not now allowed to do any development. Therefore, they feel insecure for these developed properties. They are not able to come back in their former properties since there is no promise for support them to re-establishing their livelihoods once they come back to their former lands.

In the same basket, we find returnees who repatriated from neighbouring countries and failed to secure their properties. FAO highlights that:

There are challenges created by large number of returnees of refugees and internally displaced peoples such as tenure insecurity. Burundi is facing general difficulties to guarantee tenure security and facilitate the proof of land rights. Land registration procedures are complicated, long and expensive for refugees (2012, p.11).

However, the government of Burundi has tried at its best to solve the challenges met by returnees and IDPs, but still, these people are experiencing some problems especially on property rights. Some examples are amendment of the 1986 Land Policy in 2011 so that the formalized land registration in Burundi may be based on the land law (code foncier of 2011). This code tried to provide alternatives of titles to certificates for rural land registration to recognise customary land rights and decentralise land administration (Hilhorst/Porchet, 2012). The code recommends to establish communal land services (Service Foncier Communal – SFC) to deliver titles to land owners. It directs having communal land commissions as part of the SFC to facilitate the measurement of plots and deal with land related conflicts at local level (Commission de Reconnaissance Collinaire –CRC). Lastly, the government initiated the creation of national Commission for Land and other Properties/Asset (Commission Nationale des terres et autres biens – CNTB) to assist returnees, IDPs and other people that have problems on accessing to their property rights (Betge, Lippett, & Irutingabo, 2018). All these initiatives were undertaken to secure property rights to these groups of people. However, the outputs were not positive given that still, there are returnees who are still claiming for their property rights. They are facing complications and unfordable cost to secure their land and

properties as well as exercising their rights largely. Some returnees have opted to return back in their former refugee camps in Tanzania, Uganda, Rwanda, Congo and other counties. Those who persevere, are living in extreme poverty, marginalization, and vulnerability due to landlessness situation.

#### **3.5.4 Poor and vulnerable people in regard to property rights**

The actual definition and concept of poverty according to World Bank is people living under US\$1.9 per day as poverty line. According to World Bank report of 2017, 74.7% of Burundians live under poverty line. This shows how poor people in Burundi are in large number which makes some of them not afford their property rights if there is any monetary charge implicated in the processes. According to the results from different pro-poor projects that were initiated by the International NGOs to assist rural people to register their plots of land and be granted the certificates at the end of the process; it was revealed that 45.1% failed to collect their certificates in Makamba Province. The charges of these certificates were ranging from BIF 6490 (\$3.6) to BIF 75949 (\$ 42). For other case of Ngozi Province, on 106,000 plots of land identified and processed for registration in three years, only 17000 (16%) certificates were collected (Association Burundaise des Elus Locaux, 2014). The general objective of all these programs was that the owners of the targeted areas have sufficiently secure land rights to allow them to invest in their land and to intensify agricultural production. However, the owners did not embrace the initiatives. Not because they feel very secure but because of the low income that does not allow them to pay for the charges requested. As consequences, they cannot use their land as collateral in local microfinance institutions, they cannot sell their land on market value, they cannot rent it for long term, and, they cannot feel secure whereas they know that they failed to pay for certificates of ownership. Moreover, their property right enjoyment is minimised and are affected in one way or another economically.

#### **4 Discussion and Conclusion**

The aim of this paper was to explore the challenges emanating from existing institutional frameworks that are in place and in use when administering land related properties for the case of Burundi and suggest how we can have focussed institutional frameworks that expand property rights to deprived group of people.

Findings show that Burundi is endowed with many institutional frameworks (software and hardware) that are in place. The land administration issues are under four ministries which you find that some of them do not prioritise land issues. Therefore, these institutions become challenges to land administration processes and property rights to some groups of people since they are fragmented. Therefore, it becomes difficult to have a very committed institution that can prioritize land administration in its responsibilities. The evidence of this discrepancy is the dearth of any Ministry among four that is concerned with land issues in their responsibilities to coordinate little financial, technical and human resources available and implement different projects. Williamson, Enemark, Wallace, and Rajabifard (2010) argue that having hard institutions may lead to have land administration that can motivate the sustainable development. Then, Lee (2016) links the institutional framework on proper land management especially having laws, rules and regulations that are to coordinate the land administration. However, it is not the case of Burundi. The legal frameworks we have are not addressing the challenges faced by women, poor and vulnerable people, returnees and IDPs as well as Batwa community on enjoying property rights. No any law or rules that are on side of these groups of people to provide the complete kit of property rights as propounded by Ostrom and Schlager (1992) as bundle of rights. As results some may take their own decisions either to go to court or flee.

Land as property and asset according to (Platt, 2014; De Soto 2000; and McAuslan, 1987) has a key role in undermining the livelihood of the owners if rights on it are not enjoyed. The results from the findings show that women and Batwa community have been negatively affected with the lack of full rights on property. They are categorised among vulnerable and marginalised groups in the country. They cannot access easily to economic, social, cultural and political opportunities. Di Gregorio et al. (2008) is convinced that once rights on land and other property are provided and enjoyed, there is high probability the owners to profit from it by generating capital or eradicating poverty in their families. This is what the Batwa and women in Burundi are lacking in order to survive as other citizens in Burundi. Small plots of land owned by poor and vulnerable people as well as women and returnees are not yielding what was supposed to be produced due to less property rights. FAO (2002b) & Philips (2008) are in view that once these group of people are granted full property rights, there is a remarkable increased production and economic growth for the community and the country. But the findings show that the mentioned

group of people are suffering from food insecurity, malnutrition, school dropout of their children and an extreme poverty in such away they flee the country. However, those who flee the country do not disclose the really causes, but they normally state the “political crisis” whereas hunger, poverty, and hopelessness on their future and their descendants due to landlessness and minimised property rights are among the root causes.

Many humanitarian NGOs that operate in Burundi such as ZOA, GIZ, SDC and others have been intervening in land administration to support the government initiatives as acknowledged by Svitlana (2000) to make sure these groups of people can be assisted; but they have failed even to pay little charges that was requested to cover some services. Many tools and approaches similar to fit-for purpose (Zevenbergen, Augustinus, Danilo& Bennett, 2013) and pro-poor (Enemark, Clifford-Bell, Lemmen & McLaren, 2014) have been applied to fit with the beneficiaries’ income situation, but still, they failed due to extreme poverty that these people are living in.

Finally, we close the discussion by recommending that the government of Burundi has to revise its institutional frameworks (hardware) to have one ministry that will put together all land issues and deal with them effectively. Also, the legal frameworks are to be revised especially Land Policy (Code Foncier) or Code of Family and Persons of 1993 to insert property rights of women on inherited land from their husbands, inserting the article in land policy about the inheritance of land by women/or girls from the parents directly. Also issue of providing titles to land occupied by Batwa Community is crucial and for emergency so that they can have the same living standards as other communities in Burundi. Finally, returnees and IDPS should be restored in their properties and be assisted in their livelihoods in case they are moved from the land they have been occupied for long time.

### **References**

- Amani, J.P. (2009), Land Rights and the Forest Peoples of Africa Historical, Legal and Anthropological Perspective. Historical developments in Burundi’s land law and impacts on Batwa land ownership, The Forest Peoples Programme, the Netherlands
- Association Burundaise des Elus Locaux (2014). Le Guichet Foncier, Service Viable de l’Administration Communale au Burundi, Bujumbura
- Avis, W. R. (2016), Private sector engagement in fragile and conflict-affected settings. Helpdesk Research Report, Applied Knowledge science.

- Beaupré, J.F (2015), Recognition and Enforcement of Land Rights in the Commune of Ngozi (Burundi), Thesis for Master of Science in Geo-information Science and Earth Observation, Twente
- Betge, D. , Lippett, A. , Irutingabo, J. P. (2018), The Challenges of Multi-Level and Multi-Stakeholder Land Tenure Projects - The case of Burundi. Land Governance in an interconnected World. Annual World Bank Conference on Land and Poverty, Washington,DC.
- Bromley, Daniel W. 1991. Environment and Economy: Property Rights and Public Policy, Oxford: Blackwell Publishers. conceptual analysis." Land Economics 68 (3): 249-262.
- Damonte,G. (2016). The Evolution of Collective Land Tenure Regimes in Pastoralist Societies: Lessons from Andean Countries, ELLA, Peru.
- De Soto, H.(2000). The mystery of capital: Why Capitalism Triumphs in the West and Fails Everywhere Else. New York: Basic books
- Di Gregorio, M., Hagedorn, K., Kirk, M., Korf, B., McCarthy, N., Meinzen-Dick, R., and Swallow, B.(2008). Property Rights, Collective Action, and Poverty The role of institutions for poverty reduction, International Food Policy Research Institute, 2033 K Street NW, Washington, DC. <http://dx.doi.org/10.2499/CAPRIWP81>
- Enemark, S., Bell, K.C., Lemmen, C., McLaren, R. (2014), Fit for Purpose Land Administration; The World Bank and the International Federation of Surveyors: Copenhagen, Denmark.
- Everest-Phillips, M. (2008), The myth of 'secure property rights': Good economics as bad history and its impact on international development, SPIRU Working Paper 23
- FAO (2000b) "Agriculture: Towards 2015/30, Technical Interim report, April 2000",
- FAO (2012), Governing land for women and men. A technical guide to support the achievement of responsible gender-equitable governance of land tenure, Rome
- Government of Burundi (2011). Loi N°1/13 Du 9 Aout 2011 Portant Révision du Code Foncier du Burundi
- Government of Burundi (GoB) 2008, Ministère de l'Environnement, de l'Aménagement Du Territoire et des Travaux Publics : Lettre de Politique Foncière, Version validée le 15 septembre 2008
- Government of Burundi (2018), Constitution du Burundi
- Government of Burundi (1993), Décret-loi N° 1/024 du 28 Avril 1993 portant Réforme du Code des Personnes Et De La Famille

- Government of Burundi (2016), Loi no.1/09 du 12 Aout portant code de l'Urbanisme, de l'habitat et de la construction au Burundi
- Government of Burundi (2008); Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics : Lettre de politique foncière
- Hemalatha, D. (1994). Affordable Water Supply and Sanitation: Women in environmental protection, Sri Venkateswara University, India
- Hilhorst, Thea and Nicolas Porchet (2012). Burundi - FOOD SECURITY AND LAND GOVERNANCE FACTSHEET, Landgovernance.org, <http://www.landgovernance.org/system/files/Burundi%20Factsheet%20-%202012.pdf> Accessed: 18-03-2019
- IDLO/ZOA (2016). Rapport de l'Etude à mi-parcours, Report conducted by the International Development Law Organization (IDLO) on behalf of ZOA, unpublished..
- Kwabena, A., Bennett. R., & Zevenbergen, J.A. (2017). Lands: A Practical VGI Experiment in Nanton, Ghana
- Lee, B.G., et.al (2016), Meeting Report Of Cadastre and Land Management , Kuala Lumpur, Malaysia. Not published
- McAuslan, P. (1987). 'Land Policy: A Framework for Analysis and Action', Journal of African Law, Vol. 31, No. 1/2 (Spring, 1987), pp. 185-206.
- Meinzen-Dick, R. S. and M. Di Gregorio (eds.) 2004. Collective Action and Property Rights for Sustainable Development. 2020 Focus 11. Washington, D.C.: International Food Policy Research Institute. <http://www.ifpri.org/2020/focus/focus11.htm>
- Oosteroma, P., & Lemmen, C. (2015), The Land Administration Domain Model (LADM): Motivation, standardization, application and further development, Enschede, The Netherlands
- Platt, R. H. (2014), Land Use and Society: Geography, Law, and Public Policy, Third Edition (Island Press), Ch. 1, pp. 13-19.
- Polack, E., & Cotula, L. (2011). Land Tenure Regimes -How prepared is rural Africa for land based investments, International Institute for Environment and Development (IIED)
- Schlager, E. and Ostrom, E. 1992. "Property-rights regimes and natural resources: a
- Svitlana, T. (2000), Property Rights, Institutions And Private Sector Development In Transition Countries, A thesis submitted in partial fulfillment of the requirements for the degree of National University of "Kyiv-Mohyla Academy", not published. Accessed on

<https://kse.ua/wp-content/uploads/2019/02/Taran-1.pdf> June 4th, 2019 9:50

- Tchatchoua-Djomo, R. (2018). Improving local land governance? Exploring the linkages between land governance reforms, institutional pluralism and tenure security in Burundi. Journal online <https://doi.org/10.1080/07329113.2017.1419403>
- Williamson, I.P.; Enemark, S.; Wallace, J.; Rajabifard, A (2010), Land Administration for Sustainable Development; ESRI: Redlands, CA, USA,
- Wolfgang, K. (2007), Secure Property Rights The Foundation of Prosperity and Freedom in Africa, Mont Pèlerin Society, Regional Meeting: The Institutional Framework for Freedom in Nairobi.
- Ykhanbai, H. J. (2008), Experiences of Land Administration and Management in Mongolia. Institutional arrangements. International meeting in Kula Lumpur.
- Zevenbergen, J.A., Augustinus, C., Antonio, D., Bennett, R.M (2013). Pro-poor land administration: Principles for recording the land rights of the underrepresented. *Land Use Policy*, 31, 595–604.
- <https://capri.cgiar.org/2015/11/18/blog-reexamining-a-classic-an-update-to-schlager-and-ostroms-bundle-of-rights/>; Re-examining a Classic: An Update to Schlager and Ostrom’s Bundle of Rights
- <https://www.iwacu-burundi.org/englishnews/over-20-thousand-pupils-drop-out-of-school-in-ngozi/>
- <http://www.worldbank.org/en/country/burundi/overview>, accessed on June 6th, 2019