

Defusing Land Disputes? The Politics of Land Certification and Dispute Resolution in Burundi

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ABSTRACT

There is a growing interest in localized land registration, in which user rights are acknowledged and recorded through a community-based procedure, as an alternative to centralized titling to promote secure tenure in sub-Saharan Africa. Localized land registration is expected to reduce land disputes, yet it remains unclear how it impacts disputes in practice. This is an urgent question for war-affected settings that experience sensitive land disputes. This article discusses findings from ethnographic fieldwork in Burundi on pilot projects for land certification. It identifies three ways in which certification feeds into land conflicts rather than preventing or resolving them. First, land certification represents a chance for local people to enter a new round of claim making, as those ignored or disenfranchised in earlier rounds see new opportunities. Second, it offers an avenue for institutional competition between different land-governing institutions. Third, certification provides politicians with openings to interfere in tenure relations and to expand their support base. The authors conclude that these problems are not simply a matter of inadequate policy design. Rather, there are crucial political dimensions to land conflicts and land tenure in Burundi, which means that land registration programmes run the risk of inflaming conflictive property relations in rural communities.

INTRODUCTION

In rural sub-Saharan Africa, there is a growing interest in localized, low-cost, pro-poor land registration mechanisms both as an alternative to formal, centralized titling programmes and as a more effective means to promote secure land tenure. In such registration programmes, claims to land are acknowledged and recorded through a community-based procedure. Over the past decades, a number of African countries have initiated programmes of land certification with the help of Western donors and development organizations (see, e.g., Deininger et al., 2007 for Ethiopia; Teyssier et al., 2008 for Madagascar). These programmes provide local land users with written evidence of their claims to land, not in the form of a land title—which would grant full ownership—but in the form of a certificate which

acknowledges user rights and protects against alienation of the land (Bigirimana, 2013b).

In the case of Burundi, Services Fonciers Communaux (SFCs)—communal land registration offices—have been established as part of broader post-conflict land tenure reforms. This new localized structure of land governance is responsible for keeping records of land ownership, administering transactions and enabling the resolution of land conflicts during land demarcation operations in their respective jurisdictions. By May 2019, some 71 SFCs had been created. These cover about 59 per cent of the 119 Burundian communes/districts. Communal land registration offices are attached to the existing communal-level state administrative structures (*administrations communales*) but operate in parallel to the existing national land registry (*direction des titres fonciers*).¹

At this stage, the legal status of certificates of land ownership—in comparison to land titles—is not entirely clear (Habwintahe et al., 2014). The general expectation has been that localizing land registration will improve tenure security of small landholders in sub-Saharan Africa (Deininger et al., 2007; Zevenbergen et al., 2013). A derived assumption is that it will also help reduce land disputes (Kanji et al., 2005). In the case of Burundi, in particular, the idea that land certification would also resolve disputes was an important rationale behind policy reforms (Bigirimana, 2011). For this purpose, the 2011 Revised Land Law established so-called *commissions de reconnaissance collinaire*—community-level land or area surveying committees—to mediate local land disputes identified in the certification process.

There is little to no evidence, however, on how this instrument works in practice and whether or not the land certification programmes in general, and the area surveying committees in particular, contribute to dispute resolution in Burundi. Habwintahe et al. (2014) have suggested that land registration may reactivate silent conflicts such as intra-family disputes over undivided land. Outside Burundi, there is conflicting evidence as to whether and how localized land registration contributes to resolving land disputes. Localized land registration is sometimes found to reduce disputes, such as in Tigray region in Ethiopia (Holden et al., 2010) or in Rwanda (Biraro et al., 2015), where the incidence of boundary disputes between neighbours decreased. On the other hand, studies in Uganda (Bosworth, 2003; Deininger and Castagnini, 2004), West Africa (Benjaminsen et al., 2009) and Ethiopia (Adenew and Abdi, 2005) note an increase in disputes in the context of registration. The outcomes of certification programmes are particularly uncertain in the face of disputed land claims of migrants (Justin and van Leeuwen, 2016; Pritchard, 2016), ethnic minorities (Lavers, 2018), or

1. This is discussed in more detail in Tchatchoua-Djomo (2018).

returnees whose membership of the local community is contested (Mathys and Vlassenroot, 2016). This article aims to address this knowledge gap by studying certification programmes and their impacts on land disputes in two regions of Burundi.

We are particularly interested in understanding how localized land registration impacts dispute resolution in a conflict-affected setting with a high incidence of competing claims related to displacement and return of refugees. Drawing on ethnographic research in Ruhororo Commune in Ngozi Province, northern Burundi, and Mabanda Commune in Makamba Province, southern Burundi, during 2013 and 2014, this article illuminates several ways in which pilots for land certification not only fail to address most existing disputes but even generate new conflicts.²

Our central argument is that localized land registration, with its introduction of new rules and institutions, enhances competition over both resources and authority, offering opportunities for different stakeholders to promote their interests. First, to villagers, the certification process represents a new set of opportunities for making land claims, when those ignored or disenfranchised in earlier rounds of claim making have the chance to press their case again. Second, to representatives of local institutions, the certification process opens a new round of competition for local authority and legitimacy. Third, the process provides politicians with avenues to interfere in local land tenure relations and to expand their local support base. Our findings suggest that, at least for conflict-affected settings, the expectation that localized land registration will reduce land disputes needs to be tempered.

This article is organized as follows. A brief description of the methodology is followed by an introduction to our analytical approach to land registration and dispute resolution in conflict-affected settings. The third section sketches the institutional framework underlying localized land registration in Burundi and its envisaged bearing on dispute resolution. Building on two case studies, the fourth section focuses on the workings of and complications around dispute resolution mechanisms in current certification programmes, and how these programmes were instrumentalized by different stakeholders to further specific interests. We demonstrate that the interrelationship between land certification and the urgent issue of dispute resolution was not properly addressed in the reforms. At the same time, beyond issues of inadequate policy design, there are crucial political dimensions to land conflicts and land tenure in Burundi, as a result of

2. This article builds on fieldwork for the doctoral thesis of the first author. Articles published elsewhere elaborate on other aspects of land tenure security and reform in these regions, notably institutional multiplicity in land governance (Tchatchoua-Djomo, 2018) and identity politics in claim making on land (Tchatchoua-Djomo et al., 2020). This article explores land certification programmes and their impact on land disputes.

which land certification programmes risk contributing to conflicts in rural communities.

METHODOLOGY

This article is based on in-depth fieldwork in two communes (districts) of Burundi — Ruhororo in the northern province of Ngozi, and Mabanda in the southern province of Makamba — over a period of 18 months (2013–14). Both localities have a complex history of conflict and displacement, and land tenure is highly contentious. During past episodes of violence, irregular appropriation of land was rife as customary institutions and tenure arrangements eroded.³ Pilot programmes for localizing land registration were launched in Ruhororo in 2008, and in Mabanda in 2013. Scrutinizing these two cases enabled us to compare policy impacts in an earlier and a more advanced stage of the reform process.

In these two communes, semi-structured interviews were conducted with 60 informants from various backgrounds, including development organizations involved in land certification, government representatives at the province, commune/district and hill levels,⁴ and local land users. This yielded data on changes in land tenure, history of land occupation, land disputes, evolving institutional arrangements, and practices and challenges of land registration. Eight focus group discussions, gathering a total of 52 participants, provided details about the practices, perceptions and pitfalls in the implementation of land certification and dispute resolution. Participants included local landholders (holding land certificates or not, returnees, internally displaced persons [IDPs], non-displaced), hill surveying committee members, hill authorities, traditional elders, both men and women, and representatives from different development organizations supporting decentralization in land registration. In addition, the main researcher was hosted by ZOA, one of the NGOs supporting the establishment of localized land registration structures. This exposure provided opportunities for informal conversations and participant observation of policy implementation and local debates on the process over a longer time span. Key insights were also gained through attending 14 workshops that brought together development practitioners and government officials at different levels, and five community meetings with villagers, hill and district authorities, and development workers. Casual interactions with key stakeholders in these workshops and community meetings also informed the arguments and analysis in this article.

3. For more details, see for example Tchatchoua-Djomo et al. (2020); see also ICG (2003).

4. Each commune/district is divided into zones, hills, sub-hills and units of 'ten-households'. In other literature, the term 'village' is used as a synonym for 'hill' in the Burundian context.

LAND REGISTRATION AND CONTESTED CLAIMS OVER LAND IN WAR-TORN SETTINGS

To understand the processes of land registration in war-torn settings, our analysis builds on the work of authors such as Lund and Boone (2013), Peluso and Lund (2011) and Sikor and Lund (2009), who argue that the recognition of land claims is intimately connected to authority and legitimacy, and offers critical avenues for renegotiating control over resources and people. For war-torn contexts, where the legitimacy and enforcement of prevailing tenure regimes are already in question, this means that we need to be attentive to how political and legal reforms add to institutional negotiability and competition by introducing new norms and arrangements. The starting point for this article is that post-conflict land tenure reform represents a key political space not only for parties seeking to validate and legalize claims to land, but also for institutions dealing with land issues. This adds to the complexity of reform processes.

More specifically, this article aims to further our understanding of how land registration impacts the dynamics of land conflicts. Land policy reforms and the ensuing reshuffle of the roles of land-governing institutions can either reinforce or subvert particular interpretations of legitimate claims to land and relations of authority in local land governance (Justin and van Dijk, 2017; Kobusingye et al., 2016; Lund and Boone, 2013). Effectively, this may worsen existing disputes over land, or generate new contestations. A primary reason for this is that registration of land rights often brings to the surface latent land disputes, as land users realize that land rights will become fixed and definitive as a result (Benjaminson et al., 2009). Moreover, in war-torn settings, shifting political regimes and land reforms may fuel contestation over the legitimacy and legality of tenure arrangements, notably about who is in charge and which norms and conventions apply to establish land access and to control land (Broegaard, 2009). Changing power constellations in such settings might provide new opportunities for staking land claims (Korf and Funfgeld, 2006; Lund, 2008).

Second, while the reform process offers opportunities for local landholders to start a new round of claim making, it also provides new opportunities for different local institutions and politicians to assert their power and legitimacy through their involvement in land governance, or through delegitimizing other land-governing institutions. Consequently, the actual outcomes of land registration schemes may not only reflect earlier contestations around land ownership, but will also depend upon the ability of specific actors to impose their understanding of property relations and legitimate authority (Lund and Boone, 2013).

Third, processes of land registration tend to connect local land politics to wider political developments and provide opportunities for political stakeholders from the outside to enter into local land governance arenas. As a

consequence, property formalization in war-torn environments is more than a legal and technical exercise of clarifying and recording land rights and needs to be understood in terms of its politics (van Leeuwen et al., 2016). For this reason, we highlight how powerful political stakeholders at regional and national level may appropriate local land reform processes to court their constituents and expand their support base (Nyenyezi Bisoka and Ansoms, 2015).

In the remainder of this article, we discuss these dynamics for the cases of Ruhororo and Mabanda communes. In these localities, we found that the implementation of land registration schemes reinforced the authority of government representatives. These cases also demonstrate how certain actors instrumentalized land registration to advance their political interests and to impose alternative interpretations of ownership and authority within local communities. The cases further highlight that people affected by these land reforms are aware of the role of local and national power struggles. As a result, while land-governing actors consider localized land registration as a means of legitimizing and strengthening their local authority, local people see it as another strategy through which the central government manages to reclaim and secure control over land at the local level, which may effectively leave them with less tenure security (Nyenyezi Bisoka and Ansoms, 2012; Nyenyezi Bisoka and Panait, 2014).

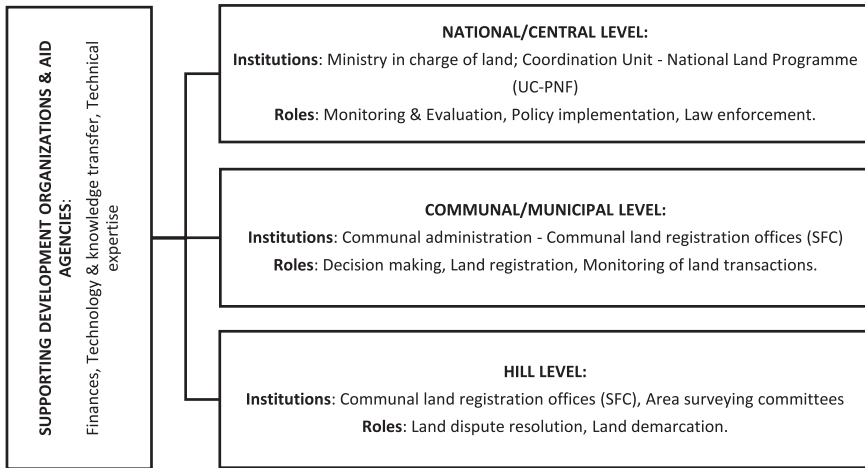
Before zooming in on the case studies, the next section describes the current institutional framework for localized land registration and dispute resolution in Burundi. It shows how devolution of land-governing responsibilities to local government structures and community-based institutions results in ambiguity and overlapping responsibilities with existing state institutions.

LAND CERTIFICATION AND DISPUTE RESOLUTION IN BURUNDI

General Framework of Land Certification

In Burundi, land policy reform emerged as part of a broader set of post-conflict policies, against a background of protracted ethno-political violence and forced displacement, the widespread misappropriation of landholdings and the erosion of customary tenure arrangements (see, e.g., van Leeuwen, 2010; Tchatchoua-Djomo, 2018; Tchatchoua-Djomo et al., 2020). After the 2000 Arusha Peace Agreement, and on the insistence of the international community, the Burundian government identified land tenure reform as a key priority to preserve the fragile peace, to enable reconstruction and to enhance food security. International aid agencies supported these governmental efforts, contributing funds and technical expertise (Netherlands Embassy in Burundi, 2011; République du Burundi and Communauté Européenne, 2007; World Bank, 2012, 2014). The peace agreement also set in motion

Figure 1. Institutional Framework of the Implementation of Land Certification in Burundi



Source: authors' own compilation

a large influx of returning refugees who sought to reclaim their properties. It is important to take into account the changing political context over that period. At the time of the peace agreement, the government was dominated by the UPRONA political party, which received most of its support from the Tutsi community. After the 2005 electoral victory by CNDD-FDD⁵ — a former, predominantly Hutu, rebel movement — policy discourse gradually shifted towards prioritizing the land claims of returning Hutu refugees (ICG, 2014b). As we will see below, this shift played a significant role in the politicization and mobilization around land in both case study areas.

A new land policy (*Lettre de politique foncière*) was adopted in 2010, followed by the Revised Land Law (*Code foncier révisé*) in 2011. Largely borrowing from the Madagascar national land policy (ICG, 2014a; Kohlhaugen, 2010b), this Burundian land policy included land certification, with the aim of fostering secure land tenure and reducing land disputes. This land rights registration system involves diverse stakeholders with different responsibilities (see Figure 1) and gives local administrative structures a more prominent role.

After 2007, various (inter)national aid organizations developed projects in support of the creation of communal land registration structures and the training of their staff. These projects generally lasted for a minimum of two to three years, a period during which substantial funding and

5. The acronym 'CNDD-FDD' stands for *Conseil National pour la Défense de la Démocratie – Forces de Défense de la Démocratie* (National Council for the Defense of Democracy - Democracy Defense Forces); it has been the dominant political party since 2005.

technical support were mobilized at different levels of governance (Figure 1). In 2011, the *Unité de Coordination du Programme National Foncier* (UC-PNF)—the Coordination Unit for the National Land Programme—was put in place with the help of the Swiss Agency for Development and Cooperation (SDC). It was located within the *Ministère de l'Eau, l'Environnement, l'Aménagement du Territoire et l'Urbanisme* (MEEATU)—the Ministry of Water, Environment, Urban Planning and Land Development. Between 2011 and 2015, UC-PNF was the major platform for sharing experiences, discussing challenges, and validating technical innovations on localized land registration.⁶

Communal land registration offices include, first, the members of the communal council and the communal administrators,⁷ who are elected by and from within local communities for a duration of five years. Second, they include land agents (*agents fonciers*) who are recruited on a regular basis by the communal administrators in collaboration with the supporting development organizations. They are involved in operational decision making, planning, land certificates fares,⁸ expenses, and liaising with other land-governing actors. Land agents are directly involved in land demarcation operations and land dispute mediation, in collaboration with hill-level actors. Manual labourers are often hired on a temporary basis to assist land agents in the physical work involved in land demarcation, such as transporting tools and planting boundary marks.

Third, there are the so-called area surveying committees, mandated to implement demarcation and dispute resolution.⁹ These committees are a new type of institution, composed of hill-level stakeholders, under the lead of land agents (see Figure 2, below). They generally bring together seven members: three nominated communal, zone and hill-level authorities, two representatives of community-based organizations, and two traditional elders (*Bashingantahe*).¹⁰ The latter four members are elected at the hill level with a view to fairness and inclusiveness. After land demarcation is over, the surveying committees are disbanded.

6. When donor funding ended in 2015, this division was renamed *Secrétariat Permanent de la Commission Foncière Nationale* (Permanent Secretary Office for the National Land Commission), under the Ministry in charge of land management (MEEATU).

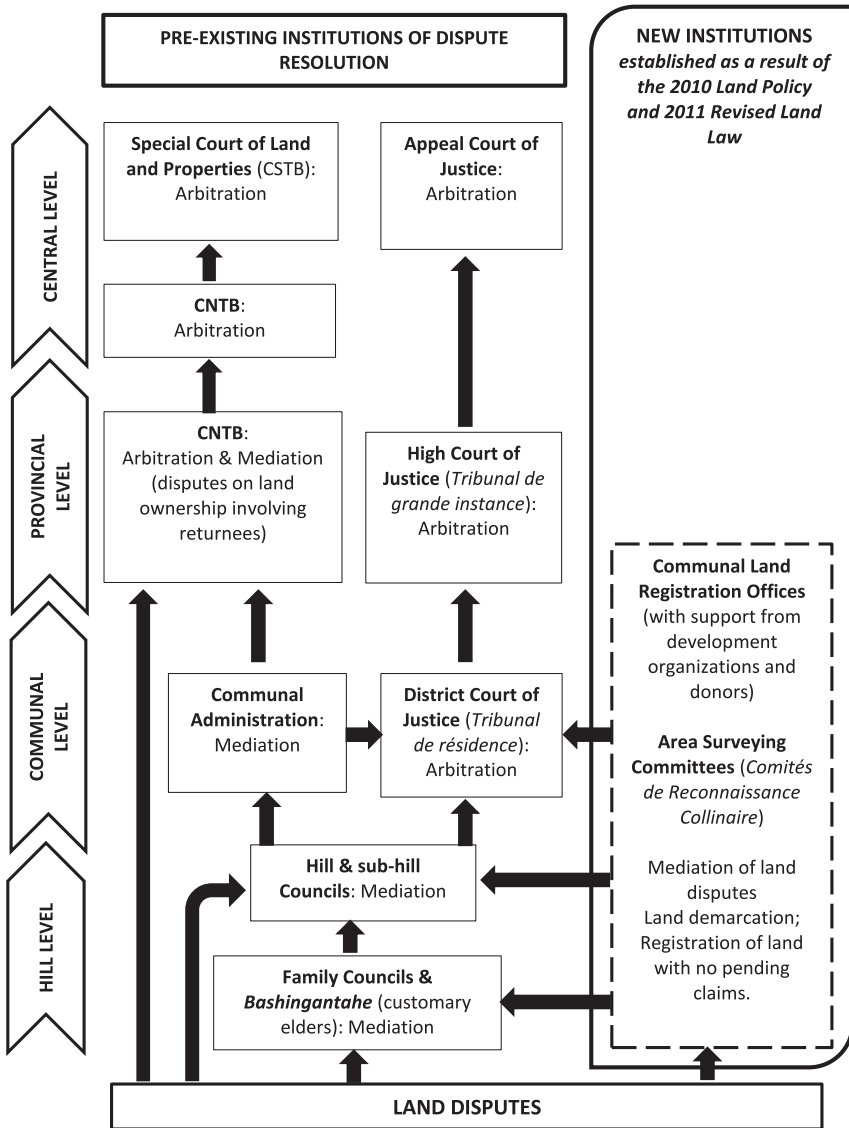
7. They also act as representatives of their respective political parties at the communal level.

8. These are events organized by the communal authorities to promote land certification.

9. There could be as many area surveying committees as needed during land demarcation operations in a given hill/village (*colline/village*).

10. *Bashingantahe* are literally 'men of integrity' or traditional elders, nominated by and from within local communities to oversee local disputes. They used to be custodians of customary land tenure. In this respect, people usually refer to them for validating their land transactions, sharing inherited land among siblings, and settling their land disputes. For more on *Bashingantahe*, see Ingelaere and Kohlhagen (2012); Kohlhagen (2010a); Nindorera (2003).

Figure 2. Overview of Diverse Land-governing Institutions Involved in the Resolution of Land Disputes in Burundi



Source: based on Tchatchoua-Djomo (2018)

From Individual to Systematic Registration

Land certification in Burundi followed two basic schemes: land registration based on individual demand; and systematic land registration, which

covered all plots in a given area. Early certification schemes were based on individual demand, but the results did not meet expectations. Only a few, mostly better-off, people registered their land, and certification was limited mainly to land that had been bought rather than family land, due to unresolved intra-family disputes on the latter (Habwintaha et al., 2014; Nindorera et al., 2017). These early experiences motivated the choice for systematic land demarcation in later schemes: the so-called *opération groupée de reconnaissance collinaire*. Development organizations hoped that this would be a more effective and faster way to provide tenure security for all. Yet, despite lower costs per plot, this approach was much more expensive and labour intensive overall. Due to these higher costs, most organizations continued to opt for individual certification and only two organizations have applied systematic registration so far. Among the 50 communal land registration offices existing at the time of fieldwork, only nine communes had received technical and financial support for systematic land registration.

Moreover, systematic registration also failed to yield the expected results. After demarcation, very few people actually went to pay for and collect their land certificates. Many people thought that the written paper would be safer at the communal offices than in their own possession. Interviewees felt that the public and participatory operation of delineating landholdings already provided sufficient clarity about properties and gave a relative sense of security. This threatened the sustainability of the whole endeavour, as the financing of the systematic land registration and its ongoing costs had to be covered by the fees for the certificates.

There were further serious concerns over longer-term sustainability. Systematic registration relied heavily on the voluntary participation of the members of the surveying committees, who did not receive remuneration. During fieldwork, we encountered committee members who had spent several months, almost on a full-time basis, demarcating land. Though they were convinced their services were needed, they indicated it was unlikely that they would maintain this commitment on a structural basis. In several SFCs, doubts about the sustainability of systematic land demarcation were reinforced by the prospect of the ending of donor funding. We found that existing communal land registration structures, nearing the end of NGOs' technical and financial support, privileged land registration based on individual demand, given the lack of public funding to sustain systematic land demarcation.

Under individual demarcation, contested landholdings were not demarcated unless an arrangement had been mutually agreed upon. In systematic land demarcation, a stronger focus was put on dispute mediation. It was assumed that area surveying committees would be able to solve most disputes as part of the demarcation process. In practice, this posed major challenges to the surveying committees, as we will discuss below. Under systematic land demarcation, it is possible to record the boundaries of contested land, regardless of whether the dispute has been settled or not, but land certificates

cannot be given out until contestants show written proof that the dispute has been settled. As we will show in our discussion of Ruhororo and Mabanda communes below, this process is highly conflictive, involving not only the parties in dispute, but also those responsible for land administration.

Area Surveying Committees: Linking Dispute Resolution to Land Certification

Localized land registration, as developed in Burundi, integrates dispute resolution: the area surveying committees are responsible for mediating local land disputes that are identified in the certification process. Existing institutions seemed unable to reduce the amount of land disputes in the country (Bigirimana, 2013a; Kohlhagen, 2011). With localized land registration, policy makers hoped to tackle this, firstly, by coupling dispute resolution and land registration; and secondly, by strengthening the responsibilities of local government authorities and hill-level customary leaders within area surveying committees.

The roles of the surveying committees include identifying land disputes, hearing and evaluating the claims of the parties involved, providing possible solutions, issuing reports on the land dispute mediation, and referring unsatisfied parties to further dispute resolution institutions (such as customary elders or hill councils, or even courts of justice). Our fieldwork has shown that in practice fulfilling all these roles is quite a challenge. This derives from lack of capacity and the complex institutional environment in which the surveying committees operate. In practice, boundary demarcation tasks have proved to be so demanding that the committees have little time left for mediating disputes. Furthermore, they do not have the legitimacy or leverage to solve specific disputes, notably those involving returnees, or intra-family disputes over land sharing.

The area surveying committees are the newest addition to a context in which several institutions already cater for dispute resolution (see Figure 2). In order to understand how surveying committees interact with these existing institutions, it is important to consider the particularities of land dispute management as it operated prior to land certification. Before land certification schemes took off, land disputes were addressed by a variety of non-state and state institutions positioned at the hill, communal, provincial and central levels (Figure 2). At the hill level, community members with land issues would first turn to family heads and councils, customary elders, or members of administrative sub-hill or hill councils. If claimants were not satisfied with the mediation of these hill-level authorities, they could go to the communal administrators and the district court of justice (*Tribunal de résidence*). Dissatisfied claimants could continue their litigation at the provincial court of justice (*Tribunal de grande instance*) to appeal the judgment rendered by the district court of justice. Rarely, they would go to the national courts of justice.

Although the 2011 Land Law assigns formal responsibilities for dispute resolution to area surveying committees, institutional confusion and overlap were evident, particularly with respect to displacement-related land disputes at the hill level. Addressing these specific disputes is the prime responsibility of the *Commission Nationale des Terres et autres Biens* (CNTB) — the National Land Restitution Commission — which operates as a distinct land-governing structure. Its mandate is embedded in the 2000 Arusha Peace Agreement, which recommended the restitution of customary entitlements and pre-war rights on housing, land and properties to returnees, IDPs and other people affected by wars. Between 2005 and 2014, several legal reforms devolved greater power to the CNTB authorities, making them the paramount authorities for deciding on competing claims in relation to displacement-related land issues. Given the high sensitivity and low rate of cases closed by the CNTB, however, in 2014 a special court was created with the authority to arbitrate these disputes in last recourse: the so-called *Cour Spéciale des Terres et autres Biens* (CSTB). However, most claimants were unable to reach the CSTB, due to the expenses involved (transportation, administrative fees, lawyer fees, etc.).

To date, the relationship between the CNTB and other institutions with respect to dispute resolution has been complicated. On the one hand, under state legislation, only the decisions of judicial authorities and CNTB authorities are legally binding. On the other hand, area surveying committees also have formal responsibilities for dispute resolution. Formally, dispute resolution through land certification schemes is allowed as far as it complies with the legal and institutional configurations in place in the socio-political context. However, the committees' scope of action is not clearly delimited, especially in relation to a powerful stakeholder like the CNTB. Throughout the fieldwork, interviewees raised serious concerns about this ambiguity. At the central level of government, there seemed to be a lack of political will to sort out this lack of clarity.

How localized land registration stirs up competition over land ownership and authority, and hence offers opportunities for different actors to promote their interests, is now further explored in the cases of Ruhororo and Mabanda districts.

LAND CERTIFICATION IN RUHORORO: (RE)ACTIVATING DISPUTES

The locality of Ruhororo in Ngozi province is well known for entanglements between the sensitive issues of land tenure, conflicts and political rivalry (Tchatchoua-Djomo et al., 2020). The land certification process added to the existing complexity around land dispute management in three ways: it reactivated dormant land disputes, fuelled contestations around the IDP settlements, and revived disagreements about land claims of Twa communities.

In 2008, with financial and technical support from SDC, the communal administration in Ruhororo launched its first land registration operations. The Ruhororo case was viewed as a pilot project in the ongoing revision of the Land Law, especially the development of localized land registration. Communal land agents were recruited and trained, and surveying committees were formed in all hills covered by the project. Between 2008 and 2012, the main approach was individual demarcation of plots. Henceforward, the SDC recommended the adoption of a systematic approach to land surveying (*opération groupée de reconnaissance collinaire*), to increase the number of land rights recorded in the communal land registry,¹¹ and guaranteed financial and technical resources for this until 2014. The communal authorities embraced the new procedure, and systematic land demarcation began in the second half of 2012. By mid-2014, about 12 out of 31 hills of the commune were delineated.

However, it soon became clear that the systematic approach reactivated many latent and unresolved land disputes. Until that point, the main demands for certification had focused on landholdings which were free from counterclaims, mainly land acquired through sales. This left out plots that were contested for various reasons, for instance due to boundary encroachment, or the fact that inherited land had never been divided among siblings, or because of resistance to women's claims on a share of family land. However, systematic land demarcation raised the stakes, as people feared that current demarcation would be hard to challenge in the future.

Under systematic land demarcation, plots of land with unclear status — about which people had remained silent during individual land demarcation — could no longer be ignored. This placed high demands on the area surveying committees. In instances of boundary encroachment, they often succeeded in mediating an agreement. However, in many disputes about the division of inherited land among relatives, or disagreement on the fairness of earlier land sales, or contested land ownership, conflicting parties usually failed to agree on a solution and preferred to forward their claims to other, higher-level institutions. Ultimately, surveying committees lacked the authority to settle disputes: they could only advise people involved in land conflicts to reach a compromise and, in the meantime, proceed with demarcating the outer boundaries of the contested properties, so as not to hamper the registration of neighbouring plots.¹² By the end of 2012, most people within and outside the hills covered by systematic land registration had

11. Interviews, SDC project coordinator, Ngozi, 8 May 2014; land agent, Ruhororo, 23 June 2014.

12. For example, if neighbouring families did not agree on specific boundaries, land surveying agents advised them to only demarcate their boundaries with other neighbours, and referred them to other dispute-resolving institutions. Once a settlement was reached, these families could apply for individual registration at the communal land registration office.

become aware of the limitations of area surveying committees in resolving land disputes. This perception in turn motivated opportunistic claim making. It also provided openings for political interference in local affairs, feeding into local land disputes, as we show below.

In Ruhororo, politicians used the certification process to instrumentalize contestations around land onto which Tutsi IDPs and Twa communities had been relocated during the 1993–2005 civil war.¹³ Historically, Ruhororo had been a hotspot of violence between the Tutsi-dominated national army and Hutu rebel groups, including the CNDD-FDD, during the civil war (APDH et al., 2004). This resulted in the forced migration of thousands of people all over the northern region. Most Tutsi fled to camps for IDPs around the administration offices, while Hutu mainly remained behind in the hills, resulting in ethnic segregation (Zeender and McCallin, 2013). Since the early 2000s, several IDP camps have been closed and people have returned to their pre-war hills. But inhabitants of many camps, such as the Mubanga and Ruhororo IDP camps in Ruhororo Commune, were reluctant to return to their pre-war home villages, as they were afraid for their security. Most of them had continued to access their family lands in their home villages. As IDPs' claims on these lands were recognized by community members, some of them managed to register those lands either through individual or systematic land demarcation schemes.

With the wider adoption of systematic land registration, however, the land occupied by the IDP settlements became the scene of fierce contestation, setting IDPs against neighbouring communities and communal authorities. This was the case with Ruhororo camp, where contested land claims resulted in violence and several casualties. All parties agreed that the contested land had been allocated by the former local administration for humanitarian purposes during the civil war, but they disagreed on what this implied for the current rights of the IDPs (Tchatchoua-Djomo et al., 2020). While IDP communities assumed they had occupancy rights on these residential plots, and hence made claims to register the land as their private property, a group of families neighbouring the IDP camps claimed customary entitlements on part of these lands. At the same time — although this was not backed by state legislation or the cadastre — government officials assumed that the land upon which the displaced people had been settled during the civil war belonged to the state, considering that it had been 'the state' that had authorized the occupation by the displaced. Unfortunately, neither the area surveying committees, nor the communal administration, nor the CNTB, nor the judiciary court were legally entitled to take a final decision in this dispute (APDH et al., 2004). This allowed for competition to continue

13. There is no consensus on the 'end' of the civil war that started in 1993. While some observers consider the ceasefire with the CNDD-FDD in 2003 as the end, others see the 2005 elections, or the 2008 ceasefire with the FNL (*Forces Nationales de Libération*, a Hutu rebel movement turned into a political party) as the end of the civil war.

between these institutions, as well as affording opportunities for politicians to use the case to their advantage (Tchatchoua-Djomo et al., 2020).

Formally, as noted, claims concerning land on which displaced persons had settled fell under the jurisdiction of the CNTB. Nevertheless, as several local government officials reported during the fieldwork, despite the presence of a CNTB office at the provincial level, the CNTB took very little action. With presidential elections approaching in 2015, it seemed that the activities of the CNTB in Ruhororo came to a standstill. Ngozi Province (where Ruhororo is located) is the province of origin of the late president and CNDD-FDD leader, Pierre Nkurunziza. Several informants were convinced that the CNTB leadership had received special instructions from higher-level leaders within the CNDD-FDD to refrain from intervening in displacement-related land disputes in the area, to limit local grievances and protests prior to the 2015 elections. Therefore, with no settlements being reached on these sensitive land issues, higher-level authorities prevented land registration authorities of Ruhororo Commune from taking into consideration the demands for land registration of individuals and groups who 'irregularly' occupied state land.

In this instance, localized land registration reignited existing contestations around land, in this case not between individuals but between different communities. A similar intractable dispute arose between youth groups of Twa background and the communal administration as a result of land demarcation. As elsewhere in the Great Lakes region, the Twa are a minority group, whose members often reside in forested areas, living a semi-nomadic lifestyle, with livelihoods revolving around gathering, hunting and pottery. They are assumed to be among the most marginalized social groups in the region in terms of land ownership and other aspects of social, economic and political life (Jackson, 2003; Lewis, 2007; Warrillow, 2008). They have particularly suffered from the many years of conflict and increasing pressure on land. While in the pre-colonial period, some Twa received gifts of land from the Burundian King (*Mwami*) and ruling authorities, and developed clientelist relations with powerful elites, their land rights were never specifically acknowledged in customary or statutory laws. The Twa communities in northern Burundi are the largest in the country. Local government representatives in Ruhororo reported increasing contestations over land and property from younger generations of Twa against other communities. These tensions intensified over time, partly based upon increasing access of some Twa people to education, and on sensitization campaigns promoted by development organizations about the rights of Twa as marginalized groups.

Over recent decades, there have been various land-related violent incidents in Ruhororo involving Twa youth groups. Their main claim was the recognition of what they describe as their 'legitimate customary entitlements' to land on which former government representatives had authorized

their forefathers to settle in the past and during the 1993–2005 civil war.¹⁴ Moreover, younger generations have come to contest land transactions made by their ancestors. As land registration proceeded on the ground, representatives from area surveying committees reported cases in which the demarcation of land boundaries was interrupted and slowed down by altercations between Twa youth and people who had bought land from Twa in the past. As neither state legislation nor customary law recognized Twa land rights, there was space for any interpretation by local authorities dealing with such disputes.

In most cases, land claims by Twa were not acknowledged. Representatives of the communal administration claimed that customary elders and elected hill chiefs could usually deal with such claims, and that if parties were not satisfied, they could forward their cases to communal and provincial judicial courts. In practice, however, hill-based authorities failed to settle Twa-related disputes over land ownership. As the Burundian Land Law does not acknowledge indigenous land rights, including those of Twa communities, their claims were not protected under statutory law (Nindorera et al., 2017). Even when they wanted to bring their claims to the local court of justice, they usually lacked the financial means and legal connections to file their claims. A few succeeded in getting their claims to court but ended up losing their cases. As a last recourse, young people of Twa background were increasingly trying to keep hold of the occupied land through the use of violence and threats, just as the Tutsi IDPs in the previous case.

Thus, while localized land registration may foreclose the possibility of staking claims on registered landholdings in the future, in Ruhororo, we found that it reactivated dormant land disputes and thus increased the cases of land disputes at the local level. On the one hand, it raised people's hopes that they would get their issues resolved, yet, on the other hand, claims like those of the Twa were left unaddressed. As in the case of the IDP settlements, land certification highlights the lack of clarity around responsibilities for land governance. This provides space for discussion and ongoing competition between land contestants and, at the same time, opens up local debate about whether Twa communities are entitled to own land in the same way as people from Tutsi or Hutu backgrounds.

LAND CERTIFICATION AND POLITICAL INTERFERENCE IN MABANDA

Against the backdrop of a long history of violent conflicts and mass displacement of the local population to Tanzania, both decentralized government and rural communities in Mabanda Commune had high expectations

14. Interviews, SDC project coordinator, 8 May 2014; communal administrator, 9 May 2014; Ruhororo SFC Annual Report 2012.

for the establishment of communal land registration. Nevertheless, this process was challenged by the local political setting and the management of complex returnees' land disputes.

In Mabanda, a land registration service was set up by the communal authorities with the support of the Dutch NGO, ZOA. It served as a pilot project for this organization, which was searching for opportunities to scale up land registration at the national level (Betge et al., 2018).¹⁵ For the pilot project, ZOA partnered with *Mission Paix et Réconciliation sous la Croix* (MIPAREC), a well-known religious organization which has been promoting peace and social cohesion at the community level in Burundi since 1996, and which has accumulated extensive expertise in alternative dispute resolution. Planning of the pilot started in 2012–13, and land registration effectively started in 2014.¹⁶ This project capitalized on the lessons learned from the SDC project in the province of Ngozi; land registration based on systematic land demarcation was adopted, with dispute resolution included as an important component.

Between 1972 and 1973, Makamba Province (in which Mabanda is located) had witnessed ethno-political violence that resulted in the flight of thousands of civilians of Hutu background to neighbouring countries, particularly Tanzania. In their absence, migrants and civil servants from other parts of Burundi, as well as former neighbours and relatives, occupied their land. Some of this land was subsequently sold on to others. This reshuffling of land ownership became even more complicated due to the massive displacement during the 1993–2005 civil war. After the civil war, land disputes multiplied due to the influx of returning refugees. Localized land registration in this case was imposed onto a very complex setting, where ambiguity prevailed about who was responsible for resolving disputes and what rules to apply. Both returnees and the population that was staying on sought validation of their claims by strategically presenting themselves as victims or highlighting the political opportunism of their adversaries (Tchatchoua-Djomo et al., 2020).

In contrast to Ngozi Province, where activities by the CNTB were restrained, in Makamba Province this institution was given the power to enforce its regulations in those areas registering high numbers of returnees. Provincial and communal authorities, as well as elected hill chiefs, were requested to support the CNTB and its decisions. For instance, the elected chiefs of the hill council acted as the entry points for filing claims over landownership. They were asked to set up negotiations between the parties in conflict to reach a compromise, and then to draft a written report of the outcomes and to forward this to the communal administration, and later to the provincial CNTB representatives. In cases of land-sharing arrangements, the CNTB issued a written document stating that the land

15. Unpublished report, ZOA Burundi, 2014.

16. Unpublished report, ZOA Burundi, 2017.

dispute had been resolved,¹⁷ while unresolved disputes were transferred to the provincial and national CNTB offices. At the time of fieldwork, hill chiefs and communal authorities stressed that the bulk of landownership disputes in Mabanda—and the most sensitive ones—were overlapping land claims involving returnees. In some cases, these disputes involved multiple categories of returnees, and up to three or four generations within specific lineages.

When the communal land registration service was set up in 2014, many disputes were still pending at the CNTB. In fact, local disagreement with many of the CNTB rulings was rising. Between 2010 and 2014, the CNTB had changed its policies and increasingly stipulated full restitution of the contested land to certain categories of returnees. Earlier land-sharing arrangements were cancelled, which revived and intensified tensions between returnees and land occupants. The CNTB portrayed the latter as ‘illegitimate settlers’, regardless of whether they had acquired the land lawfully or not. Antagonism escalated in Mabanda (as well as in other districts within Makamba Province), and feelings of injustice and mistrust between returnees and their opponents in land disputes were amplified. Starting in April 2014, several violent confrontations took place between groups supporting evicted families and CNTB officials, hill chiefs, communal authorities and the police.¹⁸ As noted by the first author through informal conversations with Burundian informants between 2015 and 2019, these incidents were ongoing in local communities in Makamba.

It was against this volatile background that land registration developed. The governing of returnee-related land disputes came to provide important opportunities for interference by politicians who sought to expand their voter base by supporting the land claims of either the returnees or the land occupants. Even NGOs involved in the certification programme became part of the institutional and political competition developing around the programme.

In early 2014, the governor of Makamba Province ordered the communal authorities and MIPAREC staff members involved in the land registration project to recruit specific youth from the local chapter of the ruling party as land registration officers in Mabanda. Provincial governors in Burundi are not elected but appointed from within the main political party. As a native of the region, and influential political leader of the local youth division of the CNDD-FDD, the governor enjoyed tremendous power and the possibility to push his personal agendas, with an eye on the upcoming

17. The immediate state response in cases of competing claims on land between returnees and secondary occupants was to engage in land sharing, seen by most parties as a temporary arrangement.

18. Interviews with communal authorities, 10 April 2014, community members, 5–19 March 2014 and 8 April 2014, and hill chiefs, 6 May 2014; United Nations Office in Burundi unpublished security reports 25/30 May 2014.

2015 general elections. However, by the time of the deadline imposed by the governor, none of the persons on the list provided by him had been hired within the new land registration structures. The governor issued an ordinance cancelling the operations of MIPAREC in his jurisdiction, while he threatened to jail their field staff. In the meantime, the launching of land registration was delayed, as the police received orders to keep the process under surveillance. As the communal administration authorities were not able to deal with these developments, MIPAREC staff members informed their headquarters (located in a different province, Gitega), asking them to mediate with the governor of Makamba on their behalf. Although they clearly explained to the governor that all candidates had to follow a transparent and competitive recruitment procedure, the governor stuck to his demands. Higher-level engagement from the side of ZOA Burundi headquarters eventually convinced provincial authorities to allow the creation of the local land registration service. Partnership with international development organizations thus became key for the communal administration to stand up to local political interference, at least throughout the life of the project.

In parallel, as sensitization campaigns about land registration advanced in Mabanda, people whose land disputes were still pending with the CNTB raised serious concerns regarding the recognition of their claims during the demarcation of land boundaries. In Mabanda, land registration proceedings differed from the joint surveying operations in Ruhororo. While every landholding within the hills of the project had to be demarcated, irrespective of whether or not contestations over landownership existed, land rights were formalized only on plots without disputes. Resources were made available to reinforce the capacity of local authorities and area surveying committee members in alternative dispute resolution techniques through a close collaboration with MIPAREC. Agreements were promoted, mainly but not exclusively, in conflicts involving returnees. This procedure, however, did not please the CNTB representatives operating in the area, who interpreted the surveying of contested land and the enforcement of agreements as encroachment upon their responsibility. Further, they warned the communal authorities not to get involved in returnee-related land issues.

A partnership convention was negotiated between ZOA and the CNTB, signed on 15 April 2014. On the one hand, the CNTB agreed to guarantee the right of land users holding CNTB attestations to file their demands for land certificates, and to assist area surveying committees in boundary-demarcating operations. On the other hand, ZOA agreed to share information with the CNTB and to support the training of its staff in dispute resolution. Nevertheless, two months later, the CNTB chairman took advantage of the workshop that launched the land registration project in the province to underscore the authority of the CNTB above other government

institutions in land governance, overriding the capacities of the area surveying committees.

CNTB chairman: The Burundian Law clearly states that only the CNTB has the right to settle conflicts related to returnees. Even the judiciary courts and *Bashingantahe* cannot do that. It is very clear that area surveying committees are not empowered to settle conflicts between returnees and land occupants! [Mocking laughter in the audience.] Let me remind you that the CNTB team gathers representatives from the local hill councils, the commune and governor offices, civil society organizations, and different political parties; all ethnic groups are also represented in order to solve disputes at the CNTB. The area surveying committees will try to sort out disputes in their own way, but the law clearly states that the CNTB alone has the power to solve conflicts related to land as a result of war There are conflicts that have been and are being settled by the CNTB and the area surveying committees must not interfere in the resolution of those conflicts!

I have heard that a representative of the governor office told you that the CNTB is trying to stop the land registration project, but this is not true! We have worked together with other implementing organizations in other provinces, and I believe we will continue to do the same in Makamba. Unfortunately, people are not telling the truth here. Let's be honest! ... Only a returnee can tell us he willingly transferred for free part of his land to the occupant; it is not the role of the occupant to request for this piece of land. This is not acceptable! May that not even happen! ... Don't you worry! At the CNTB, we use the law to make decisions on land disputes.¹⁹

Following these bold statements from the CNTB chairman, rumours spread across the hills that land occupants who received eviction notices from the CNTB and who resisted these decisions would lose any chance to get their claims re-examined by area surveying committees in the process of boundary delineation. At the same time, returnees waiting for a judgment on their land disputes by CNTB were not allowed to drop their cases to negotiate agreements with their adversaries and then get their land registered. This fed antagonism between returnees and land occupants, and between land occupants and government authorities.

This was clearly visible during the sensitization meetings preceding land demarcation. Most of the time, communal authorities and land registration agents could not provide a clear response to these concerns. By the end of fieldwork in late 2014, the problems described here were still not resolved. Since then, we have received mixed reports on the development of the land registration schemes on the ground. Although land demarcation operations proceeded, only a few people were willing to pay the fees for collecting their land certificates, and local people could not get land certificates on plots with unresolved disputes.

CONCLUSION

In this article, we have demonstrated that dispute resolution as part of localized land registration in Burundi fell short of initial expectations: land

19. Field notes of first author, Makamba, 9 June 2014.

certification schemes not only failed to attend to many of the most sensitive land conflicts, but in some cases fuelled rather than resolved such conflicts.

Various policy makers and development practitioners in Burundi had raised concerns about the limited capacities of the institutions in charge of localized land registration and about the inability of the procedures to effectively resolve land disputes (see, e.g., Habwintahe et al., 2014; ICG, 2014a). Our own findings suggest that such concerns were justified. While the area land surveyors played a key role in hill-level operations, they lacked the time and legal capacity to deal with many of the disputes arising over land. Their work was not remunerated — in contrast to that of the land agents and temporary workers from the communal land registration offices. This may explain why some were unmotivated and dropped out before the end of operations. Moreover, while systematic land demarcation boosted boundary mapping, this happened at the expense of dispute resolution. These factors explain, in part, why many disputes were left unattended.

However, deficient institutional capacities and procedures are not the only problems affecting land certification in Burundi (see also Habwintahe et al., 2014; van Leeuwen et al., 2016). More importantly, we found that land certification schemes can rekindle old and generate new disputes. As illustrated in the case studies, land certification schemes provide new scope for different stakeholders to promote their interests. This article has highlighted three ways in which this happened.

First, to local people, land certification constitutes an opportunity for a new round of claim making around land. Those ignored or disenfranchised in earlier rounds may try again during local operations of land registration. For many people and groups with pending land disputes, localizing land registration was perceived as a new arena for sorting out their land issues. Yet these high expectations could not be fulfilled due to the poor capacity of land certification institutions to properly address such claims. Local land contestants remained puzzled about which claims should and could be dealt with through land certification. In Ruhororo, the land certification process resulted in new challenges against the land claims of the Twa community. As the central government remained silent on these critical issues, recurrent clashes between land contestants and land-governing institutions obstructed the certification process as well as the fragile peace at the local level. In fact, the certification scheme reignited discussion about the legitimacy of certain land claims. Similar effects of land certification may also be expected in other settings with prevailing tenure insecurity (Chinigò, 2014) or a multiplicity of claims on the same properties, such as situations of displacement.

Second, with its introduction of new institutions and new rules, land certification provides representatives of local institutions with a new opportunity for institutional competition. The (incomplete and confusing) devolution of responsibilities for dispute resolution to communal and hill-based actors allows for ambiguous power relations and overlapping roles in land governance. The formal inclusion of community-based area surveying

committees in land dispute resolution has proven ineffective in the most sensitive land disputes, such as the contested claims involving IDPs, Twa communities or returnees. The legal power to arbitrate and to enforce decisions in such cases is vested in (para-)judiciary institutions (courts of justice, CNTB, CSTB), and eventually in the dominant executive and political leadership. This ambiguity about who has the legitimate authority to deal with contested land claims remains a critical source of tension between different institutions in Burundi and may affect the sustainability of certification schemes. This likely applies to other conflict-affected settings (Kobusingye et al., 2016; van Leeuwen et al., 2018; Tchatchoua-Djomo, 2018).

Third, land certification provides politicians with avenues to interfere in local land ownership relations and to expand their support base. The case of Mabanda revealed that the process of establishing communal land registration structures triggered new prospects for political manipulation by politicians and government representatives who tried to expand their support bases by favouring the job opportunities and/or land claims of their constituents. New land governance institutions not only struggled to carry out their new assignment in providing land services, but also had to navigate complex and tense relationships with politicians and government representatives. Discussing land reform in Uganda, Anne Mette Kjær (2017: 3) points out that central government in low-income states may deliberately maintain land governance as a ‘grey zone’, where a combination of weak implementation capacity and low prioritization of land reform covers up deeper political incentives not to enforce reform. In Burundi, this ‘grey zone’ is notably found in an elusive institutional framework that maintains ambiguous relationships between different land-governing authorities involved in dispute resolution, and which hides the underlying reality that politicians are not eager to achieve an effective reform process. In Burundi’s history, politicians and high-ranking government officials connected to the dominant political party have often instrumentalized the distribution of land and roles in land administration for garnering political support among their constituents (Ndarishikanye, 1998, 1999). In this respect, current policies for localizing land governance should be understood as a political resource for politicians and government representatives to gather authority and power, and to promote political agendas in rural communities.

The case of Burundi raises serious questions about the narrative that land certification may be an effective tool to settle land disputes in conflict-affected settings. Beyond the challenges of inadequate policy design and weak legal and institutional capacities, there are crucial political dimensions to land conflicts and land tenure which need to be taken more seriously in land certification programmes, and which—if unaddressed—risk inflaming conflictive property relations in rural communities. This analysis has critical implications for land governance policies in conflict-affected settings. It suggests that certification projects in such settings need to avoid feeding into ongoing political competition; they also

need an even stronger component of support to dispute resolution mechanisms than those seen in the case of Burundi, as well as sustained commitment from national political leaders to tenure security for small producers. If such commitment cannot be guaranteed, it might be necessary to defer full-fledged certification, and seek instead to design interventions that aim at more tentative acknowledgement of claims, stimulate compromises and land-sharing arrangements, and improve boundary demarcation practices.

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