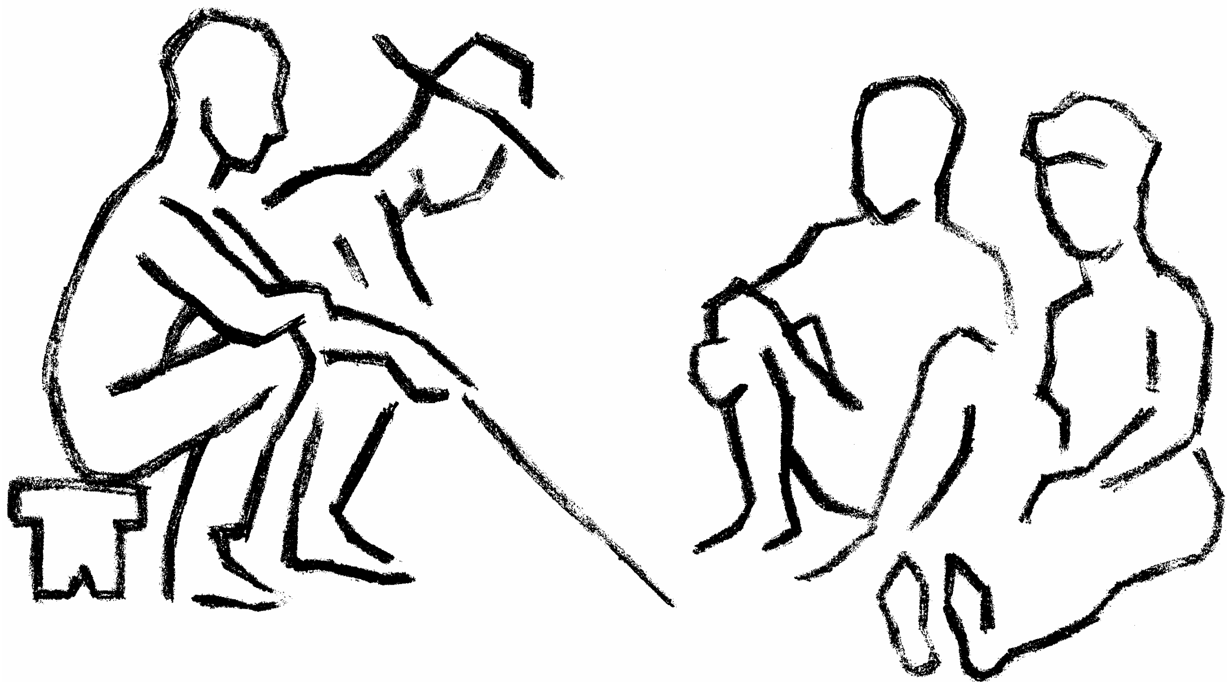
Land disputes and local conflict resolution mechanisms in Burundi



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Foreword

Over the year 2004, CED-CARITAS has been assisting the return of Burundian refugees and accompanied their reinsertion in their original communities. The progressive return of refugees accentuates the already existing pressure on agricultural land. Convinced that the question of land property is a key factor for sustainable peace, the Catholic Church of Burundi would like to start a project for 'accompanying the peace process and reinsertion of victims in Burundi through the identification of land properties in dispute'.

The first phase of the project consists of an identification and analysis of disputed land properties, to provide precise information on the nature and magnitude of the actually existing disputes about land.[1] This research is meant to help decision takers in defining strategies for the prevention and peaceful resolution of disputes arising from the return of refugees. Hence, in cooperation with the Commission Episcopal Justice & Paix and its sub-offices in the communities, CED-Caritas has conducted a quantitative enquiry to identify all land problems and disputes existing in the different parishes of Burundi.

To enhance the quantitative analysis, a qualitative research has been carried out in a series of selected communities. This research meant to provide insights in the nature and origins of current land disputes in Burundi, the methods for resolution actually used in the communities, and what this implies for the assistance of NGOs and churches to strengthen local conflict resolution mechanisms. This paper is the concise version of the English research report.[2]

On the authors

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[1] This first phase of this project has been funded by the Dutch relief and development organization CORDAID.
[2] The original, English report provides more detailed descriptions of the communities where research has been conducted, as well as a series of cases of particular disputes for each community. For a copy of this report, please contact CED-Caritas, or Mathijs van Leeuwen, at mathijs.vanleeuwen@wur.nl

Introduction

With the elections in Burundi approaching, and hence the end of the transition period, it may be expected that most refugees still staying in neighbouring countries, as well as numerous IDPs, will soon return home. The resolution of the land disputes that accompany their return may be decisive for the successful reintegration of these returning refugees and the maintenance of the fragile peace. The violent events of 1993 show, that the reinstallation of refugees and IDPs is a sensitive political issue. One of the triggers to violence at that time was the expected massive return of Hutu refugees and the accompanying land reclamation. Dissatisfaction with the results of the land policy may easily turn into a political 'bombe foncière'.

Land is anyway a contested issue in Burundi. Since 1972, conflicts about land have exponentially multiplied, and nowadays about 80% of conflicts appearing in court are about land. Inequitable access to land, spoliation by the authorities, and a confused land tenure system are further compounded by a high population density and degradation of the land. In the communities, a huge variety of conflicts around land exists, ranging from disputes within families about the division of the inheritance or the limitations of plots, to those resulting from the occupation of land by displaced people, or those about land-use between cultivators and pastoralists.

The level and scale of the disputes around land pose huge challenges to conflict resolution institutions. Legislation on land is inadequate, difficulties arise between the customary and 'official' system to administer land disputes, and the judicial system is not equipped to deal with the task placed upon it. The need to strengthen conflict resolution mechanisms to deal with land disputes is apparent. Various organizations have started programmes to support the Tribunals, the *Bashingantahe* (the customary institution for settling disputes in particular about land), or other institutions within the communities (such as the Commissions Justice & Paix of the Catholic Church), or have started their own structures (such as the *Communautes locales de Paix* of Miparec, and the *Conseils des Leaders* of Search for Common Ground).

The question of course, is in how far those different initiatives are appropriate and effective, and how they could be further enhanced. For this, a more detailed understanding on the local dynamics of land disputes and their resolution is necessary. For this purpose, field research was conducted in four communities. In each community a series of cases of land disputes was identified, to explore the diversity of the nature and origins of land disputes in Burundi, the practices of resolution by various local conflict resolution mechanisms, and the sentiments of conflicting parties on the resolutions achieved. On the basis of those findings, some lessons have been drawn concerning the assistance of NGOs and churches on strengthening local and 'official' conflict resolution mechanisms.

Some remarks on the methodology

In the selection of the four communities, it was tried to have diversity as to historical and contextual factors, such as population pressure, histories of land disputes, population movements, intensity of return, presence in the past of state development programmes, and the presence of programmes of international or local organizations to strengthen conflict resolving institutions. All selected communities were located relatively close to parishes of the Catholic Church, to facilitate the researchers to be accommodated in the communities. Motivations for the selection of communities were as follows:

Southern Rumonge, Bururi	**Giteranyi, Muyinga**	**Nyagasebeyi, Ngozi**	**Muriza, Ruyigi,**
• Many 1972 refugees; spoliation of their properties • Large scale expropriation by authorities and development programmes • Fertile lands in the plain (Imbo)	• Many 1993 refugees; returnees from Rwanda • Famine not as severe as in neighbouring communities • RCN Programme for strengthening the *Tribunaux de Résidence*	• High population density • Limited number of displaced and refugees • IDP sites • Central highland region • CARE Programme for strengthening *Bashingantahe*	• Limited number of refugees • Low density of population • Action Aid programme for strengthening local conflict resolution mechanisms

Fieldwork took about eight full days in each community. In all communities, an initial meeting was organized, attended by members of the parochial commission Justice & Paix, several *Bashingantahe*, the *chef de colline*, some school teachers, and some representatives of local associations. During those initial meetings, an inventory was made of the most frequent disputes about land in the respective communities. For each type of dispute identified, participants were asked to provide a series of examples, including both disputes that had been solved and unresolved cases. It was also tried to have diversity as to the level at which disputes had been solved (amicably, by the Commission Justice & Paix, by the *Bashingantahe*, by local authorities, by the Tribunals at various levels).

During the remaining days, interviews were conducted to follow up the disputes thus identified. Those interviews focussed on:

- The nature and origins of the dispute (the various actors involved and their objectives, the origins of the dispute, details of the property concerned, its course);
- The efforts for resolving the dispute: the mechanisms used (why those, costs and duration), difficulties during resolution, and considerations in the resolution (reference to what principles);
- Opinions and sentiments on the final outcome

A total of 55 dispute cases have been followed up. In addition to the dispute cases identified during the initial meeting, we have added some cases we encountered during our stay in the communities, either because we considered the number of dispute cases for a particular dispute type too limited, or because of interesting details about those disputes.

Apart from the interviews with persons involved in the disputes identified, in each community separate discussions were held with representatives of the commission Justice & Paix, and with the *Bashingantahe*. Interviews were also held with the *chefs de colline*, the communal administrator, and a representative of the *Tribunal de Résidence*. Further, several of the development organizations working in the communities concerned were approached for interviews. Those interviews were meant to collect general information on the communities concerned, perceptions of the nature and origins of land disputes in the communities, the opportunities and constraints of actual conflict resolution mechanisms and the assistance of churches and NGOs for strengthening those.

Main findings

The nature and origins of land disputes in the case study communities

It is difficult to generalize about the types of land disputes people experience: each community studied had its own particularities in the types and characteristics of dispute that were frequent.

In **southern Rumonge**, overall and in comparison to the other cases studies, there were very many disputes related to land. Firstly, there are many disputes about the former properties of 1972 refugees. After their departure, individuals took their land, facilitated by the authorities. These individuals were often from the other ethnic group. Other important disputes result from the expropriation and redistribution of land as part of large scale para-statal development programmes in the 1980s (like SRD and PIA), in which land was taken with no or little compensation. Many people are demanding that something is done to address this injustice from the past. With the return of refugees, many disputes have arisen concerning lost properties, and still more are expected to appear with continued repatriation.

The land disputes in southern Rumonge are often highly complex, with the occupation of land of refugees followed by the redistribution of land as part of state development programmes. The origins of the first disputes date many years ago, creating a situation in which several people may have legitimate claims to the same property. The reclamation of redistributed of land is difficult, as the government of Burundi has not yet pronounced itself on the issue. It was striking to see that many individuals have been affected by various rounds of spoliation and expropriation. This makes it also a complicated affair for individuals to demand for justice. Other land disputes in the community concerned the division of inheritance, particularly in case of polygamous marriages (which have been frequent in the area), and limits of parcels.

In **Giteranyi**, the majority of the population fled after 1993. Many disputes were related to polygamy (and divorce) and the double or illegal sale of (family) land. Particular disputes –notably about the limits of parcels as well as about the division of the inheritance- are often related to repatriation. The continued return of people is expected to lead to further problems with their installation. At the same time, problems of repatriates are often very similar to those experienced by people that have not left their community. Striking is that many severe land disputes in the community concerned relatives rather than strangers or neighbours. Further, in various disputes the resort to severe threats had an important role in withholding people from bringing their cases forward to be dealt with by conflict resolving institutions.

An observation that should be made in view of the Giteranyi case is about the categorizations of disputes about land. While land grabbing of vulnerable women appears as very prevalent, it was not identified as such by the people in Giteranyi. Neither does it appear often in wider discussions about land disputes in Burundi. Supposedly, this is because most literature on land disputes and assistance to affected people focuses on the type of dispute, and not on the type of victim. The examples in this case suggest the need for an approach that takes account of the vulnerability of people.

In **Nyagasebeyi**, the decreasing availability of land made the fair distribution of the inheritance very difficult, and hence many disputes occurred between brothers and cousins, or resulted from the disputed legitimacy of children (and hence their rights to inherit were in dispute). Frequently, disputes concerned limitations of plots, and the secret sale of land. The construction of displacement sites on individuals' properties is also problematic.

Particular about the case study of Nyagasebeyi were the disputes about the distribution of the inheritance, which appeared as severe, as a result of the high pressure on the land. In some cases, it appeared no longer possible to equally divide the family property, as this would result in unrealistically small plots. Striking were the examples of people that –with reason- feared an unfair distribution in case they left the matter to their children, in particular if there were large differences in age between the

children. Also remarkable is the difficulty of the *Bashingantahe* in resolving disputes about the limitations of parcels in this community. In the other case studies, such disputes were commonly solved by this institution.

Many disputes in **Muriza** are about inheritance (often concerning children from different mothers), or are about the right of women to inherit. A large number of disputes result from the limitations between plots. Interesting about the examples in Muriza is that it is in fact rather difficult to differentiate between disputes about limitations, inheritance, and illegitimate sale of part of the family property. In the past land was not scarce, and people did not bother much about delimitating inherited properties. From this seems to stem the prevalence of disputes about limits between co-heirs, as well as the disputes about the sale of parts of the land, which by one party are regarded as their personal share and by the other as family land. In other instances, limitations between plots are not honoured, precisely because one of the neighbours did not agree with the initial division of the inheritance.

With the migration to the area and the considerable increase in prices of land, land disputes have gained an important monetary character. Land in Muriza has come to represent not only livelihood, but for some people business. This is often at the disadvantage of less-advantaged relatives, for whom land still represents their way of making a living.

Land disputes related to the return of refugees and displaced

While the intensity of return of refugees and displaced seems related to the prevalence of particular disputes (for example illegal occupation, border limits), many types of dispute have no relationship with the return of refugees and displaced, and equally affect both returnees and on-staying population. In southern Rumonge, indeed many disputes concern (double) expropriation of properties that were formerly belonging to refugees. Nonetheless, *both* returning refugees *and* people that have not fled have experienced spoliation and expropriation. At the same time, many returnees also suffer from what we could call the more ‘regular’ disputes about land, such as those resulting from the division of inheritance or the limitations of properties, which disputes did not have direct relations with the crisis. In Giteranyi, to a certain extent, disputes are related to exile and return, such as the modification of the limits of parcels, or the occupation or sale of land in absence of the owner. Disputes also result from second (polygamous) marriages in the refugee camps in Tanzania. Again, in general land disputes of returnees are not very different from those of people that did not flee.

The case studies further suggest that the complexity of disputes over land accompanying the return of refugees may be related to the scale of returnee movements as well as the period of exile. While in Nyagasebeyi the return of refugees (mainly from the 1990s, and in limited numbers) did not pose serious problems to the community, in Giteranyi (with a high number of returnees) the situation was more complex. In southern Rumonge, most disputes resulting from 1993 returnees are handled with relatively easy. On the other hand, repatriates from the early 1970s had a lot of difficulties with recuperating their properties.

Though the return of refugees may be a major factor in disputes about land in Burundi, other types of land disputes are also very much affecting the stability of people’s livelihoods, and community relations. Overall, many disputes in the communities appear related to the division of inheritance, and are thus primarily affecting intra-family relations. Those disputes are often very difficult to solve, particularly as conflicting parties tend to continue prosecuting. Disputes about the inheritance represent a wide variety of types, including disputes between brothers or cousins, disputes resulting from disputed legacies or disputed legitimacy of children, and disputes between women and other relatives that dispute the claims of those women to inherit.

Organizations that would like to contribute to the resolution of land disputes in the region should be careful in considering their target group and rather assist on the basis of vulnerability and needs. An intervention focussing on the ambivalent category of ‘victims’ (implying those affected by war, and

hence including all returnees) will add to feelings of deprivation, and may even be seen as ethnically biased, and hence contributing to conflict.

Typologies of disputes

While the typologies of disputes above suggest a certain homogeneity in particular types, the case studies pointed out the variety in disputes of certain categories. While in southern Rumonge disputes resulting from polygamous marriages emerged among the children of the several wives, in Giteranyi, the disputes were between wives and husband. This appears to be related to the historical context. In southern Rumonge polygamous marriages occurred mainly in the 1970s, when men from highland communities settled in the Imbo plain, leaving their wife and families on their family property and starting a new family (both stimulated by the authorities and not). In Giteranyi, the prevalence of polygamous marriages is associated with the flight to Tanzania, the earlier return of women, as well as the easy life in the camps. And while the disputes related to polygamy in southern Rumonge were disputes about livelihoods, between brothers from different mothers claiming inheritance of the land, in Giteranyi, the disputes were rather of a relational nature: between a man and an abandoned wife, with land coming often at the second plan, after settling the separation of the household and the custody of the children.

While in southern Rumonge and Nyagasebeyi many disputes about limitations concerned neighbours, in Muriza many of those concerned relatives. In Muriza, disputes that in other communities would be described as resulting from illegal sale of land or disputed inheritance basically resulted from the fact that family property never had been properly divided and demarcated. Hence, to address land disputes in a community, it appears necessary to explore the local dynamics of particular land disputes, rather than trying to identify generalized dispute types.

The various examples in the case studies also showed that particular groups of people are more vulnerable to disputes about land. In particular orphaned children are an easy target of family members or neighbours that want to acquire their lands. Also widows, in particular if they do not have any in-laws to support them, are vulnerable to machinations of others. Again, it is striking to observe that those vulnerable people are often the victims of their own relatives.

Local characterisations of land disputes may be particularly helpful to discuss disputes with community members. In Muriza, people used the typology 'injustices familiales' to point out disputes where one conflict party is trying to exploit the justice system for its own benefit. Rather than a legal characterisation, the term refers to how people feel about and includes a condemnation of those practices. The notion of '*injustices familiales*' seems to fit to perceptions of justice at community level. Such terms might be useful for facilitating reflections on how people themselves believe the state of justice could be strengthened in their community, rather than starting from abstract juridical terms.

The functioning of conflict resolution mechanisms in the communities

To solve their disputes around land, people in the communities in Burundi may address two formal systems for conflict resolution: the customary system of the *Bashingantahe*, and the juridical system of the state. While the former relies in the first place on conventions and customary regulations, the latter bases itself on the legislation of the state.

Before approaching the formal institutions, people may make use of a variety of mechanisms to mediate in and even solve their conflicts. In the case study communities, examples were given of family councils being called together to address conflicts. Government administrators such as the *nyumba kumi*, *chefs de sub-colline* and *chefs de colline*, as well as *Bashingantahe* living in a particular neighbourhood may also try to mediate and reconcile. Nonetheless, it appeared that regarding land conflicts their role is limited, with many land disputes having to be brought forward to the attention of the formal institutions.

People may also approach institutions established by various NGOs (including Ligue Iteka, ACORD, and the Association des Femmes Juridiques) or churches. Those have been a response to the slowness, complexity and costs of juridical procedures in the formal systems. The most prevalent structure is the 'clinique juridique', where paralegals, that have been trained by those NGOs on the land law, family and inheritance law as well as on penal procedures and juridical competencies, may give advise, try to mediate and amicably arrive at a resolution of disputes, or orient people on how to proceed in the formal system. In this research, we have looked in particular at the activities of the Commissions Justice & Paix, a structure established by the Catholic Church. The level of involvement, the reliability and the capacities of these several institutions vary from location to location.

There is some variation in the way the *Bashingantahe* are being organised in the different communities. In southern Rumonge they are organised at the level of the *colline* and the level of the zone. At both levels, the local authorities (respectively the *chef de secteur* and the *chef de zone*) participate fully in their deliberations. In Nyagasebeyi, at *colline* level the *chef de colline* also participates fully, while the *chef de zone* may call upon the *Bashingantahe* to assist him in land disputes appearing before him. In both cases, the authorities do not have to be invested *Bashingantahe* to participate. In Giteranyi the *Bashingantahe* operate at the level of the *colline*, independently from the authorities (unless invested). In Muriza, the *Bashingantahe* are called together by the *chef de colline*, who does not participate in their deliberations (unless invested). In the past, the *Bashingantahe* came also regularly together upon the call of the *chef de zone*. In contrast to the other cases, in Muriza people may immediately pass to the *Tribunal de Résidence* with land disputes and the institution is less frequently resorted to.

With the exception of the commission Justice & Paix in southern Rumonge, the involvement of the commissions J&P in land disputes is very limited or non-existent. In the other cases, their primary objectives are preaching reconciliation, reconciling families, and assisting in the social reintegration of returnees. Some groups organize formation about legal issues, such as the Family Code. In particular in Nyagasebeyi the organization is still very weak, and depending for its activities on the Diocese. In southern Rumonge, the Commission J&P is able to deal with land disputes. Nonetheless, in case of resolution, enforcement by the *Bashingantahe* is considered necessary, while if needed, only the *Bashingantahe* can forward cases to the *Tribunal de Résidence*. In other communities their role in relation to land disputes was more that of a 'watchdog': alerting others to the presence of disputes or referring people to the institutions to solve their conflicts.

Often, the commissions J&P worked together with the *Bashingantahe*, and sometimes there was an overlap in the membership to the 2 institutions. In southern Rumonge, it appears there is a good cooperation between the institutions. Both institutions search for amicable solutions, orienting themselves on customary practices or Christian ideology, as they do not have force to implement their decisions. In others, there was some competition between the institutions, particularly because the Commissions J&P would not demand payment for their services. It appears that the strength and number of activities of the Commissions J&P also has a lot to do with the interest in the commission and support provided by the parish priest. In all case studies, the members of the commission are chosen from within the catholic community only, and the institution is seen as something primarily concerning this group. In all instances, some *Bashingantahe* are also included in the commission. In Muriza, its members also included an official from the *Tribunal de Résidence*.

Considering national and international NGOs, in the case study communities not much could be observed of their activities. In most communities, with the exception of Muriza, they are not widely known, and their interventions are limited in number. Most of their programmes existed of incidental training sessions of a few days, involving a limited number of community members: in particular, officials of the administration, the *Tribunaux* and some *Bashingantahe*. Though several informants observed how their behaviour had changed as a result of these trainings, this could not systematically be confirmed.

From the case study on southern Rumonge, the presence of a variety of conflict resolving institutions appeared advantageous, with people having and making use of several alternatives for appeal before

addressing to the *Tribunal de Résidence*, which was considered expensive, slow, and far away. While many land disputes go beyond the capacities of the *Bashingantahe*, the fact that they are organised at both *colline* and *zone* level makes them more effective, by providing some sort of a *court d'appel*. In Muriza, people often approached the Tribunal directly, as they had limited confidence in the *Bashingantahe*. Striking about the conflict resolution mechanisms in Nyagasebeyi was further the fact that people could chose as to which institution they proceeded (the Tribunal, the gendarmerie, the chef de *commune*) after consulting the *Bashingantahe*.

The roles of local conflict resolution mechanisms in land disputes

As appeared from several examples, the *conseil familiale* (the meeting of family members) is commonly referred to for discussing disputes within families. Nonetheless, the examples in which those were able to deal with land disputes were very limited. Many people insisted that land disputes can seldom be resolved in an amicable way. Even if family members manage to bring conflicting parties together, there is still a need to confirm what has been decided with the *Bashingantahe*.

Despite the fact that the *Bashingantahe* have had an important role in the past regarding the administration of land and disputes around land, the various examples in the four case studies show that their capacities to deal with current day land disputes are variable. Though it is difficult to make generalizations, the *Bashingantahe* are mostly capable of dealing with disputes directly related to their conventional responsibilities, such as setting out the borders of plots, and dividing the inheritance. In Nyagasebeyi, probably as a result of the pressure on the land, they also had difficulties with getting their decisions about the limitations of plots accepted (for example if the children simply refused that the property be distributed at all). Regarding disputes about inheritance, difficult cases to solve included those where no witnesses had been able at the moment daughters, women, extramarital children or orphans had been legated part of the property. In southern Rumonge the *Bashingantahe* appeared able to deal with various inheritance conflicts, and they were still considered as the communal memory for land issues. In contrast, in Giteranyi many disputes about inheritance needed to be referred to the *Tribunal de Résidence*.

In general, difficult disputes for the *Bashingantahe* concerned those, where ownership over a whole property was in dispute (such as those resulting from double sale, secretive sale of family property, illegitimate occupation, etc.), and hence compensation or retribution payments were demanded. In southern Rumonge, however, the *Bashingantahe* at *zone* level were sometimes able to solve such disputes. Partially, there appears a relation between the authority the *Bashingantahe* have in the community and their possibilities to intervene in disputes. In southern Rumonge, the *Bashingantahe* were still considered as living 'land memory' of the community, and respected as such.

In southern Rumonge, the commissions J&P appeared as rather strong and capable to take responsibilities in the resolution of land disputes. Some of the cases addressed by the Commission J&P here were similar to those that could also be solved by the *Bashingantahe* at *cellule* and even *colline* level. Nonetheless, they were dependent on the *Bashingantahe* for the confirmation of the resolutions proposed by them. In Giteranyi, their role was more that of a 'watchdog', that reported cases of land disputes to the proper institutions.

Particular disputes were simply above the capacities of any of the local institutions, including the *Tribunaux*, such as the complex issue of the double legitimate claims of returnees and occupants to particular plots and the demand for indemnification by people that lost property as a result of redistribution after expropriation (southern Rumonge), the reinstallation of returnees (southern Rumonge, Giteranyi), and the problem of occupation of land by displaced (Nyagasebeyi).

In the studied communities, not much has been observed of the National Commission for the Rehabilitation of Victims (CNRS), which in theory would have responsibilities for such disputes. In southern Rumonge, many dossiers had been filed with the office about land disputes and for acquiring land, but so far no response has been received.

In southern Rumonge, it was observed that for disputes about land of refugees occupied by neighbours or family members sometimes solutions were found locally in an amicable way, but as the *Bashingantahe* at low level had no means to enforce the execution of their verdicts in case people did not convene, it also *often* failed. Local conflict resolution mechanisms in southern Rumonge were not capable to deal with the problems of expropriation by statal development programmes, and such disputes invariably ended up at the *Tribunal de Résidence*, where they may now have rested for years as state regulation is awaited. Neither can they deal with the need to reinstall returning 1972 refugees. Though they may come up with creative solutions (such as the division of properties between claimants), those will remain temporary as long as national legislation does not indicate a preferred line of action.

Similarly, in Nyagasebeyi, the problems caused by displaced people occupying the land of others are sensitive, and above the capacities of local institutions. So far, for the affected people, there are no venues to prosecute, considering the fact that the authorities are responsible and have not expressed their future policies on the issue. Moreover, as most displaced have been living for a long time on the site, they need assistance for their return to their former communities and to reconstruct their homesteads.

The considerations used in local conflict resolution mechanisms

From all the four case studies, it appeared that in particular regarding the rights of women, the *Bashingantahe* tend to follow custom rather than state law. This should be seen as no surprise, considering that many people in the communities also not favour land rights for women. In most cases, there is thus a reluctance to grant women rights equal to men. The part granted to women by the *Bashingantahe* is in many cases given as a symbolic gesture only, reflecting the Burundian practice of *Igikemanyi* (a traditional gift of land to daughters to express the concern of her parents for her), and is never an equal share. In several of the examples encountered the status of the land given to women remained insecure, and rather that of usufruct. In the examples of divorce in Giteranyi, it was not considered granting women also a part of the landed property of their husbands.

In many of the examples studies, the *Bashingantahe* referred to customary norms of how for example an inheritance needed to be distributed. However, in various examples, explicit reference was made to official state legislation, for example as regarding the rights of extra-marital children to inherit in the family where they are living. In particular in Giteranyi, the *Bashingantahe* attached high importance to land titles in their judgments, rather than trying to refer to their memory or that of reliable witnesses, or to refer to custom. It seems that in Giteranyi this memory is no longer reliable due to the massive displacements that have taken place over the past years. This implies that if people have lost their land titles, they cannot resort to the *Bashingantahe*. At the same time, others may win disputes resulting from the illegal sale of land, which cases might have been concluded in a different way if the *Bashingantahe* would not have relied on the official papers.

In various examples in this study, a tendency can be observed among the *Bashingantahe* to ground their judgments in a body of legislation, either customary or state. The focus of the *Bashingantahe* is for example on the legitimacy of a child/orphan/woman and hence its/her rights to inherit, rather than on the fact that a person is probably becoming landless in case this body of law is strictly adhered to. In contrast, it seems that the Commissions J&P tend to focus on principles of Christian humanity, and the need to consider what is fair to the parties in conflict (however, their role in land disputes is limited).

Though the considerations used in judging cases of land dispute are important, in most of the examples of land disputes considered, it seems that such considerations appear as second-rate only to the conflicting party when it comes to the acceptation or not of a judgment. In several examples, parties in conflict seemed stubborn and are more concerned with winning the case than with the fairness of the judgment. Even in case they were aware that they would not win, some people would continue to prosecute, in order to delay a final decision taking away their property. A significant practice was

people who continued prosecuting in the hope to outrun the financial means at the disposal of their adversaries.

The difficulties of local conflict resolving mechanisms

While people speak with a lot of respect about the *Bashingantahe* in general, the confidence in the system as it exists in their communities is limited, as the system is not seen as having much authority. In all the case studies, both community members and the *Bashingantahe* themselves observed that a major reason why the *Bashingantahe* were not very powerful was that they were not able to enforce solutions, and only could give advise to conflicting parties. (From this perspective, in southern Rumonge it appeared advantageous that local government officials were integrated in the *Bashingantahe*, which facilitated that their decisions were seen as authorised and could to some extent be accompanied by force).

From the various examples studies, however, it appears also that the lack of authority is not just a lack possibility to enforce their decisions, but also a lack of respect for the institution itself. This is seen in that in many communities parties simply did not appear after being called forward to discuss their case. Many people observed that especially in disputes in which one of the parties was rich, people felt no moral obligations to follow the decision of the *Bashingantahe*.

Loss of authority of the *Bashingantahe* will automatically lead to more cases being brought forward to the *Tribunaux*. This trend is confirmed in southern Rumonge, where people attached a high importance to obtaining land titles, in order to protect their ownership before the state justice system.

Respect for the institution, however, also depends on in how far people considered its judgments as fair. From the case studies in Nyagasebeyi and Muriza it appeared that the fact that the *Tribunal de Résidence* sometimes took different decisions than the *Bashingantahe* did not contribute much to the confidence in the institution. A problem which appears here is also the differences that exist between customary and state law. People get confused in case a conflict is considered from different principles at the *Tribunal de Résidence* and at the council of *Bashingantahe* (e.g. in cases of inheritance by women).

In Giteranyi, the *Bashingantahe* considered land titles as important in their decisions. On the one hand, this may be seen as a strength in that it contributes to the confidence in the Bashingantahe, functioning as a first juridical instance to which people could address themselves. On the other hand, it may be regarded as a weakness, and a failure of the *Bashingantahe* to fulfil their original function of solving disputes in an amicable way, starting from their intimate knowledge of the local community and local notions of justice.

This brings us to a basic problem of the current system of the *Bashingantahe*. Though acknowledged by law as a conflict resolving mechanism, the Bashingantahe do not have the formal authority to judge conflicts: their solutions are not legally binding. For such a system of community justice to work, there is a need of authority and respect for the institution and its decisions in the community. However, in many instances, this authority seems what is actually lacking. While highly respected and considered necessary in principle, the practice of the resolution of land disputes in the communities shows that the respect for the authority of the *Bashingantahe* is waning. Let alone the question of the corruption of some members of the institution, many people do not feel socially pressured to regard the word of the *Bashingantahe* as binding, and the institution is only seen as a necessary step to continue prosecution.

Concerning the Tribunaux, a general observation is that they lack the means to implement solutions proposed by them. In Nyagasebeyi it was deplored that the *Tribunal de Résidence* is not very strong in enforcing their verdicts. In Giteranyi, it was observed how a positive outcome of a procedure in the Tribunal for one of the parties does not imply a positive outcome, in case the solution is not enforced by the Tribunal, or the winning party does not have the money to get it implemented.

Regarding the Commissions Justice & Paix, although their work is appreciated, people were very clear that their role in the resolution of disputes about land is insignificant (except for southern Rumonge). Many people did not consider it an option to approach them in case of land disputes, as according to many "conflicts about land may never be solved in an amicable way". Further it was observed that the Commission Justice & Paix does not have the means to approach each and everybody in the community, considering the limited means at their disposal. In addition, the institution is seen as something primarily concerning the catholic community.

The appreciation of conflict resolving mechanisms

A feeling among many people we spoke to is that money plays an important role in the resolution of land disputes. A frequent discussion about the *Bashingantahe* is that, despite the fact that they should be accessible to even the poorest people in the communities, they tend to demand remuneration. Diverse discussions in the case study communities show, that this remuneration (the *agatutu*) is often not regarded as a prescript, but rather as a social obligation, a traditional part of the ceremony of reconciliation. Nonetheless, despite the fact that the gift of beer is regarded as symbolic and not circumscribed –in principle, any gift according to the financial capacities of the parties would do-, in practice many people in the communities eschewed the *Bashingantahe* for the costs. The convention is clearly, that while for other disputes remuneration is not compulsory, for land disputes it *is*. In some cases the *Bashingantahe* themselves explicitly demanded a payment for their services.

It was clear that in some instances, the costs of bringing a case forward to the *Bashingantahe* were the primary reason people did not approach them and hence left their dispute unresolved. In Muriza, a visit to the *Bashingantahe* was not necessary before proceeding to the *Tribunal*, and the costs of visiting the institution were seen as high as compared to those of the *Tribunal*. It was for the costs of bringing a case forward to the *Bashingantahe* that people had positive opinions of the Commissions J&P. While various *Bashingantahe* mentioned the obligation within their tradition to address any injustice they observe in their communities, various examples were recorded in which the *Bashingantahe* did not take action against injustices involving land, despite apparently being aware of the situation, presumably because the disadvantaged party had no means at its disposal.

The costs of procedures as well as the fact that outcomes are not always predictable were also a reason for people not to approach the various *Tribunaux*. In southern Rumonge, the *Tribunal de Résidence* is clearly considered an institute for the rich, and is not much trusted by people without much money. In Nyagasebeyi it was observed by many people that the progress and outcome of litigation depended very much on the financial means available to people. Moreover, people with money are able to continue prosecuting, speculating on the impossibility of their adversaries to appear before court and to continue litigation, or forcing them to make large expenses. As a result, they are able to win a dispute because of exhaustion of their adversary, or delay the final outcome of a dispute tremendously, in the meantime profiting from the status quo. The same tendencies were observed by people in Giteranyi. In Muriza, several examples were given that showed that people in dispute, rather than being interested in a just outcome, are being interested in getting what they want. People that can afford it continue litigation until they beat their opponent, no matter what the costs. Except for Muriza, the fact that procedures at the *Tribunaux* took a long time was an important reason for people to search a faster solution at community level, were cases may often be decided upon in a few weeks time.

In all communities there was talking about corruption in the formal and informal juridical systems. In Giteranyi in almost half of the examples examined in detail that appeared in front of the *Tribunal de Résidence*, people suspected or alleged that corruption had played a decisive role. A lot of people were convinced that in the Tribunal rich people will by definition win from poor people. However, one should be careful in the interpretation of accusations of corruption. The tendency was observed of people to talk about 'corruption' is case of judgements that were not at their advantage. In other instances, judgments were described as corrupted, because people appeared not to understand the logic behind them. This highlights the need for more transparency and understandable language from both the *Bashingantahe* and the Tribunal.

On the other hand, various irregularities were identified, such as the failure of the Tribunal to check on the correctness of sale of family property, or bringing field-visits without informing neither both parties nor *Bashingantahe*. In Nyagasebeyi, apparently some (rich) people were also able to proceed immediately to the *Tribunal de Résidence* without first consulting the *Bashingantahe*, while others in the same community were obliged to do so. In some cases in various communities there were strong indications that individual *Bashingantahe* had accepted money for bringing a case to a particular outcome. While in principle a *Mushingantahe* can be dismissed in case he does not comply with the high moral standards associated with the institution, in the case study communities we did not hear examples of this.

Lessons for the assistance to local conflict resolution mechanisms

The need to focus on vulnerable people rather than on victims

Many interventions to strengthen local conflict resolution mechanisms in Burundi are motivated by an expected increase in disputes about land with the return of refugees after the elections. The attention for disputes about land of returnees is fed by the memory of the 1993 events, in which the reclamation of property by 1972 refugees played an important role. The case studies in this research warn for starting interventions from such a dramatic presentation of the situation. Not because land disputes in Burundi are not serious: they are. Nonetheless, a focus on disputes resulting from the return of refugees makes one forget the many disputes about land are not related to the return of refugees, and -for the stability of the countryside- require equal attention.

The research suggests therefore, that programs aiming at the resolution of disputes about land of returnees or '*sinistres*' only are arbitrary, considering that in many instances their disputes about land are no different from those that stayed behind. It would be more appropriate to focus on those people that do not have the means to get their problems solved, rather than on a population that is diversified in its opportunities and capacities. The case studies showed that in particular widows and orphans are vulnerable to machinations of people trying to appropriate their land. The need to focus on vulnerability rather than on being a 'disaster victim' is further important because in many regions certain categories of 'victims' belong to particular ethnic groups. Assistance to particular groups of victims may rather complicate the situation than contribute to its resolution.

The need to be present locally

There is no point in identifying cases of vulnerable people on the basis of particular legal categories. As was observed in the case study communities, a variety of dispute types may result in people losing their land and livelihood. Injustices done to the rights of widows or orphans are not related to particular disputes. Moreover, to be able to identify and address the most vulnerable people in land disputes, there is a need for a strong local presence in the communities and for a willingness to work at the grassroots. Local institutions such as the Commissions Justice & Paix could form an entrance to enable such an approach. In particular in case they are not able to address land disputes themselves, they can play the role of critical observers of the different institutions for conflict resolution, and identify the cases where those fall short to provide justice. Such a grassroots approach implies a specialization in particular regions, rather than an overall approach for the whole country.

The need to lobby for government policies for resolving particular land disputes

In the case of southern Rumonge, where disputes related to the return of 1972 refugees as well as disputes resulting from expropriation are numerous, it is the question whether such disputes will ever be solved at the local level at all. The same goes to some extent for the spoliation of land by displaced in Nyagasebeyi. There is a need for a political solution and a political will to implement the propositions. It is unlikely that the Burundian government will ever have means to indemnify those that lost their land in the form of cash or a plot of land. Nonetheless, policies are necessary that, though maybe not solving all disputes, at least acknowledge the injustices. As it will be impossible to satisfy the demands of everybody, there is a need for transparency and public participation in the solutions to be proposed. Even if localized solutions may be found -such as a re-division of property- these will have to be backed up by government legislation. There is an important role for international and national organizations to lobby and to draw the attention of the government to the need to intervene.

The need to search for alternatives to agriculture

Striking is that land disputes are seldom solved in an amicable way. Apparently, land is such a basic asset, that compromising has become very difficult. It should be questioned whether at all the resolution of the land problem in Burundi should focus on the resolution of individual land disputes, rather than on

the development of alternatives for agriculture. As we have seen, many disputes are not the result of displacement or exile. Land disputes in Burundi are here to stay. They require a more general and long-term approach, rather than a short-term focus on the returnee problem only. There is a need for the government and national and international organizations to consider the possibilities for providing livelihoods outside agriculture, and thereby decreasing the severity and potential of land disputes.

The need to identify the future role of the institution of the *Bashingantahe*

The focus of many organizations is on strengthening the juridical knowledge of the *Bashingantahe*. Juridical knowledge in a way implies juridical authority. In case the *Bashingantahe* are considered to be well aware of the official state legislation, this will contribute to people addressing them, knowing that their judgment will be similar to what they will get in the *Tribunal*. However, the question remains whether they would ever be able to fulfil this role of being some kind of alternative judges, without the powers of the *Tribunal*. A more general question is: what is the added value of the institution, if it would function completely in accordance with the state legislative system?

In case the *Bashingantahe* would indeed have to function as alternative judges, there is a need to further formalize the institution, acknowledge them as communal courts, and invest them with certain powers to enforce their decisions, such as accepting their testimony on landed property as a basic land title. Nonetheless, there is still a long way to go before the *Bashingantahe* will be up to date on state legislation and will be applying it. When it comes to the way the *Bashingantahe* judge cases involving the rights of women, it is clear that many of them have a sense of the official regulations, but can not reconcile themselves with those. Here, rather than juridical training a change of mentality is necessary, as well as some enforcement to observe official legislation. The question is whether this can be done through incidental training and the distribution of brochures.

The new legislation of 17 March 2005, however, suggests that the government is not inclined towards such a further formalization. An alternative would be a continued focus of the *Bashingantahe* on reconciliation and mediation, as several organizations are already trying to achieve. In order to be accepted as 'wise (wo)men that compel respect', there is a further need of democratization of the institution, in particular to make it more transparent: clear regulations about the tariffs applicable, to guarantee its accessibility to all people in society, a further exploration of mechanisms for controlling corruption, and enhanced accessibility of the institution to youngsters and women. The stimulation of discussions at community level with both Bashingantahe and community members about what people consider as 'justice' would contribute to the confidence in and authority of the institution.[3]

The need to make the Bashingantahe more accountable

It should not be forgotten that rather than being a materialization of an ideal concept, the *Bashingantahe* are a product of the society in which they live. The efforts of formalization of the institution include the risk of it becoming tainted by the practices of the state juridical system: focussing exclusively on procedure, working on demand only, prone to corruption. The effectiveness of self-regulating mechanisms of the *Bashingantahe* appears to be limited, and there is a need for stimulating community members to be more assertive, and capable of protesting in case they consider the affairs of the *Bashingantahe* unjust.

The need to assist other conflict resolving mechanisms

As for now, the capacities of the various alternative conflict resolution mechanisms are limited. Nonetheless, they have a certain importance in the communities studied. Although they may not be able to solve many land disputes, they represent a counter point to the formal conflict resolution mechanisms of *Bashingantahe* and *Tribunaux*, being considered as more neutral and less demanding. They may contribute by drawing the attention of the *Bashingantahe* to those cases of vulnerable people that

[3] CARE is actually experimenting in Karuzi with communal discussions about land rights, to identify local principles that people in the communities could apply themselves to resolve land conflicts.

themselves are hesitant or afraid to take action. They offer a venue for spreading more knowledge among the general public on legal rights and limitations. There is a need for more concerted efforts in the assistance of local conflict resolution institutions, to facilitate learning from and elaborating on work done by others.

The need to assist the formal juridical system

As many cases anyway finally end up at the *Tribunal de Résidence* more attention is needed for strengthening this institution. Often, the *Tribunaux* lack the means to implement or enforce their decisions, thereby contributing to the loss of credibility of the justice system. Considering that the independent and fair functioning of the Tribunal is often disputed, institutional strengthening should also focus on its accountability and transparency. This might be done by regularly inviting community members and *Bashingantahe* to be present at sessions. Representatives of informal conflict resolution mechanisms may have a role in monitoring how decisions in the Tribunal are taking place, and should be facilitated to bring mistakes in procedures to the open.

The need of legal formation of a wider audience

In general, to make conflict resolution mechanisms at the local level more accountable, more credible and more relied upon, there is a need for making community members capable to be critically following their dealings. Legal formation should not be limited to representatives of the authorities, the *Tribunaux* and the *Bashingantahe*. This does not contribute to them being verifiable. There is a need to train people from all different echelons of the population. If people are aware of rights, they may protest in case those rights are infringed upon. An important role in this vulgarization could be fulfilled by the several alternative conflict resolution mechanisms, as already happens in several communities.

The need to consider other forms of assistance in land disputes

Moreover, most of the organizations now addressing land disputes have a legal background, and the focus is on training people in their rights. Nonetheless, in several examples identified in the case studies, the question rises whether legal assistance was the most appropriate. The disputes on land resulting from polygamy would profit from a more social approach, in which the focus is on counselling and bringing the parties to an agreed upon solution, for example on how to deal with the children. In addition, there seems a further need to focus on prevention of such disputes, by stimulating women to demand registration of their relationship and children, and also to train men on the rights of women, and their legal responsibilities to their children. More in general, the issue is maybe not so much training people in legislation, but rather how to empower them to get their rights acknowledged.

The need to reduce litigation

An important observation to be made from the case studies is that in fact in many cases people are not so much interested in whether justice is being done or not, but rather in continuing their case until they have won. Burundi is one of the countries with the highest number of litigations in Africa. The question should maybe not only be how to improve justice, but also on how to limit litigation. One element in this might be the acknowledgement of other types of evidence of ownership of landed property. The high importance attached to official land titles motivates people to address the *Tribunaux* rather than local institutions. Again, if informal institutions are able to come up with advices that correspond to the outcomes of formal litigation, this may contribute to their credibility as alternative for (continued) litigation at the *Tribunaux*.