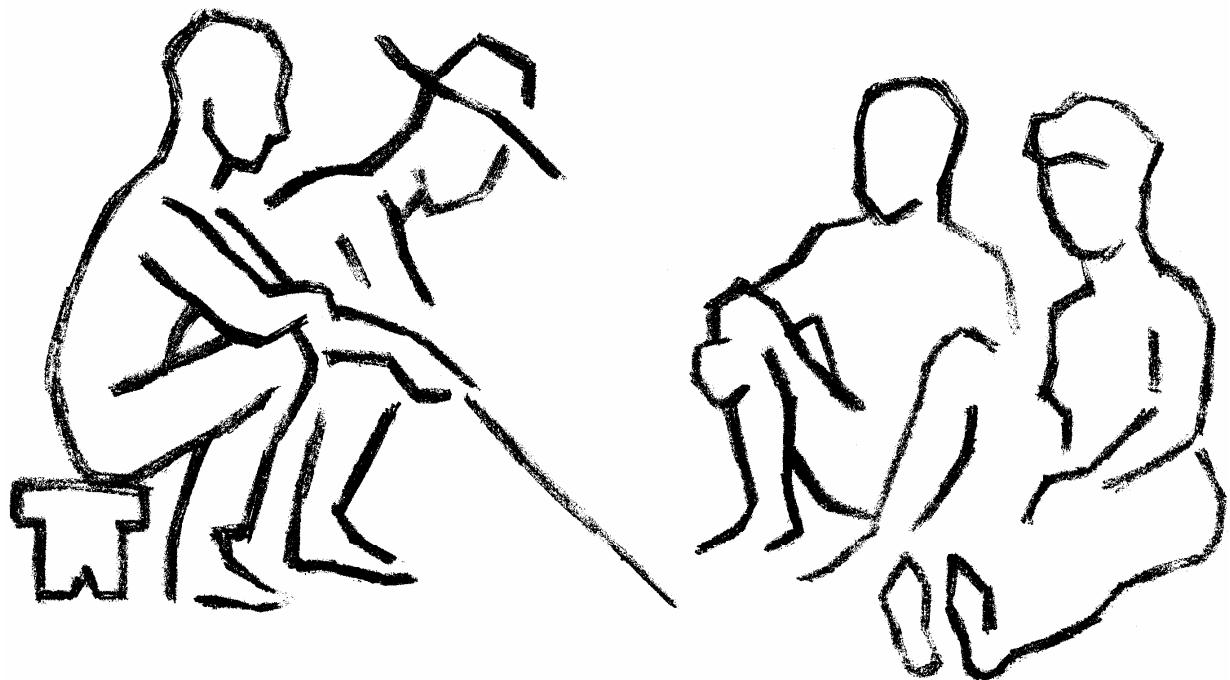


Land disputes and local conflict resolution mechanisms in Burundi



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A research for CED-CARITAS Burundi

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Foreword and acknowledgements

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. 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 is 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. The current report is the outcome of the latter research.

Funding for this first phase of the CED-CARITAS project has been provided by the Dutch relief and development organization CORDAID. Mathijs van Leeuwen, who was responsible for the qualitative research component, is a PhD Candidate at Wageningen Disaster Studies, a section of the department of Rural Development Sociology, at Wageningen University, the Netherlands. His PhD research takes place in the context of ‘Beyond Conflict’, a collaborative research programme between Wageningen Disaster Studies and CORDAID, to investigate views and practices of peacebuilding of CORDAID and its partners. The PhD programme of Mathijs van Leeuwen is financed by WOTRO (Netherlands Foundation for the Advancement of Tropical Research). Linda Haartsen holds a Masters Degree in Tropical Land Use, and specialized in the management of natural resources and livestock production in the tropics, also at Wageningen University.

This research could not have been implemented without the support of Francine Umwari, who made the logistical arrangements for the fieldwork and co-facilitated the initial meetings in the different communities. Also special thanks to Olivier Heck, who conceived the research and came up with helpful suggestions for methodology and reporting. We are very grateful to our counterparts in the communities: Cyriaque Nsengiyumva (southern Rumonge), Honoré Bahigeze (Giteranyi), Zéphyrin Ntukamazina (Nyagasebeyi), and Gilbert Nshimirimana and Donatien Ntakarutimana (Murazi), for their guidance, translation, and critical comments on the fieldwork. Most of all, we would like to thank those women and men that were willing to share their stories with us, without which this research would never have been realizable.

We are much indebted to all those people that were willing to comment on earlier drafts of this report, in particular Denise Holland. However, any mistakes in the lines of argument and conclusions are our own.

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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 politically sensitive issue. One of the triggers to violence at that time was the expected massive return of Hutu refugees and the accompanying land reclamation (Oketch and Polzer 2002; ; ICG 2003). Dissatisfaction with the results of the land policy may easily turn into a political ‘bombe foncière’ (ICG 2003).

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 (ICG 2003: 3). 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 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.¹ 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*, 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 *Communautés 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. For this, a more detailed understanding on the types and origins of conflict is necessary, as well as on the practices of resolution actually used in the communities, and the opportunities and constraints they provide. This research tries to shed light on the local dynamics of land disputes and their resolution.

Recently, a variety of studies have been conducted on land disputes in Burundi. Notably are the studies done by CARE/APDH/Global Rights (2004) and RCN *Justice & Démocratie* (2004). While the former is a precise and elaborate inventory of the types of conflict in Ngozi province, the latter discusses the juridical intricacies of various types of land conflicts. Rather than trying to provide a complete overview of the different land disputes in Burundi, or to explore the legal implications of particular disputes, the underlying research tries to better understand how local actors experience land conflict, and the strategies they use to resolve them.

For this purpose, case studies of four communities are discussed, each including a series of specific cases of land disputes. The aims of presenting those dispute cases in detail are:

- to identify the diversity of the nature and origins of land disputes in Burundi: their causes, origins, and evolution; and
- to demonstrate experiences with various mechanisms to resolve those disputes: their difficulties and constraints, and the opinions of conflicting parties on the resolutions achieved.

On the basis of those case studies and conflict cases, some lessons are drawn concerning the assistance of NGOs and churches on strengthening local and ‘official’ conflict resolution mechanisms.

¹ For details on the problems of the judicial system in Burundi, consult Dexter (2005 draft); Huggins (2004); Kamungi et al. (2004); Leisz (1998); Oketch and Polzer (2002).

Some remarks on the methodology

The research consists of four case studies of land disputes in four particular communities of Burundi, and the mechanisms used in those communities for their resolution. Each case study considers one or a few *collines de recensement*.² Such a relatively small unit of analysis facilitated a thorough understanding of the local circumstances and characteristics of the communities studied. Criteria considered to select the different communities were the following:

- Different 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;
- Possibility for the researchers to be accommodated in the communities. For this reason, all selected communities were located relatively close to parishes of the Catholic church;
- The presence or absence of programmes of international or local organizations to strengthen conflict resolving institutions.

The considerations for the selection of the particular communities in this research were the following:

Southern Rumonge, Bururi	Giteranyi, Muyinga	Nyagasebeyi, Ngozi	Muriza, Ruyigi,
<ul style="list-style-type: none"> • Many 1972 refugees; spoliation of their properties • Large scale expropriation by authorities and development programmes • Fertile lands in the plain (Imbo) 	<ul style="list-style-type: none"> • Many 1993 refugees; returnees from Rwanda • Famine less severe than in neighbouring communities (which would make fieldwork difficult) • RCN Programme for strengthening the <i>Tribunaux de Résidence</i> 	<ul style="list-style-type: none"> • High population density • Limited number of displaced and refugees • IDP sites • Central highland region • CARE Programme for strengthening <i>Bashingantahe</i> 	<ul style="list-style-type: none"> • 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, which would be followed up during the fieldwork. For each type of dispute, it was tried to gather examples of disputes that had been solved, as well as 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). In general, it turned out to be much easier to identify disputes that had not been solved.

In the identification of types of disputes, we have tried as much as possible to follow local categorizations of disputes about land. Nonetheless, during the further exploration of the cases identified, it turned out that various disputes identified as an example of a particular dispute type, turned to be something rather different. Though this partially might have resulted from the limited time we had to identify examples for each dispute type, it apparently also had to do with the fact that details about particular disputes were not widely known by other community members. Also, disputes

² The *colline* is one of the lower subdivisions of the administration. Burundi is divided in 17 provinces, which are subdivided into communes. In total, there are 129 *communes* in Burundi. Each *commune* is divided in *zones*, headed by *chef de zones* or *conseilleurs*. The *zones* are divided into *secteurs*, and those again in *collines* (although in some cases those categories coincide) or *quartiers* (in urban areas). Those again are divided in *sub-collines* or *cellules*, and *nyumba kumi* (literally ‘ten houses’; in practice this may be up to twenty). In the elections of municipal officials of June 3 2005 (after the fieldwork), appointed officials have been replaced by elected local government representatives.

that had been presented in the initial meetings as ‘solved’ sometimes turned out to be still in process when we did their follow-up. In various instances people turned out to have several disputes about land at the same time.

As can be observed in the overviews of land disputes in the different study areas, there are inconsistencies in the frequency and types of dispute as provided by different informants. Considering that land disputes are often sensitive and not widely known, this is not surprising. Discussing disputes about land in their respective areas of concern, the *Bashingantahe*, the *chefs de colline*, the communal authorities, and staff of the Tribunals all based themselves on their own personal experience. With particular disputes never reaching their respective levels of involvement, they presented different pictures of the situation. We have chosen not to try to reconcile different perceptions, but present them next to each other. In addition, while in some communities we were able to identify precisely type and frequency of disputes, in others detailed records were not available.

In the interviews on the particular dispute cases, basically three themes were considered:

- The nature and origins of the dispute (the various actors involved in the dispute and their objectives, its origins, details of the property concerned, its course);
- The efforts for resolving the dispute: the mechanisms used (why those, their costs and duration), difficulties during resolution (cooperation or resistance from different parties or institutions, acquaintance with rights and legal procedures), and considerations in the resolution (reference to what principles);
- Opinions and sentiments on the final outcome

It was foreseen, for each dispute case to approach the various parties in dispute, to collect their views. This turned out problematic. In some instances, the opposing party simply could not be located, or was unwilling to talk to us. Particularly in disputes that were still not resolved, we feared that we would compromise the solution of the dispute by talking to some of the actors. In other examples, we were afraid that we would compromise the research by raising the impression that we had come to solve the disputes. We have tried to validate accounts by other means, such as confirming them with the *Bashingantahe*, the Commission Justice & Paix, or the local authorities.

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. In the annex, a list can be found of details of all the dispute cases explored in the fieldwork. Many other instances of disputes were given during the interviews. Those have not been included in the list though have been considered in the analysis. To protect the privacy of the people concerned in the dispute cases in this report, all names have been replaced by pseudonyms.

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.

The research thus consists of four case studies of land disputes and their resolution in four particular communities of Burundi. The aim of a case study is not so much to arrive at conclusions that are general: its emphasis is rather on exploration and detailed description. Whereas in quantitative research the aim is to identify the distribution of particular variables and relationships, the aim of a case study is to arrive at identifying new variables and their possible interrelatedness. In fact, case studies highlight particularities with the aim of drawing attention to differences and similarities in

other situations (Mol and Law 2002: 16). Hence, the four case studies presented here should not be regarded as representing ‘the Burundian situation’, but merely as highlighting some particular problems, features and principles of particular land disputes in Burundi, and possible strategies used by Burundians dealing with those land disputes in their communities.

Regarding the particular conflict stories presented in the case-studies, the pretension is not that they are the ‘average’ or ‘ultimate’ example of particular dispute types. Rather, they are selected because they highlight some regularities, practices and principles emphasized by the various informants in their respective communities, or deemed significant by the researchers. It has been tried in the separate case studies to select the whole series of dispute cases in such a way as to assure diversity, but at the same time no distortion.

Nonetheless, the foregoing does not imply that no wider conclusions can be drawn on the basis of the case studies. By evaluating them in the light of experiences and observations by organizations and individuals working on the resolution of land disputes in Burundi,³ as well as by comparing them to experiences from earlier research on the subject, some pertinent observations may be made as to the characteristics of land disputes in Burundi, practices of resolving them and the efforts of (inter)national organizations and individuals to strengthen those conflict resolution mechanisms.

³ Over the research period, interviews were conducted with a variety of representatives of local and international organizations. The research further profited from interviews done for the ‘Beyond Conflict’ research programme, a collaborative research programme between Wageningen Disaster Studies and CORDAID, to investigate views and practices of peacebuilding of CORDAID and its partners. For this research, Mathijs van Leeuwen has been conducting research in Burundi from September 2004 to September 2005.

Conflict resolution mechanisms at community level

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. Apart from those formal systems, people may approach representatives of local authorities, or structures established by NGOs or churches, to amicably arrive at a resolution of their disputes, or to acquire consultation on how to proceed in the formal system. The level of involvement, the reliability and the capacities of these several institutions vary from location to location.

Formal systems for conflict resolution

The *Bashingantahe*

Traditionally, disputes around land tenure in Burundi were being mediated by the *Bashingantahe*. This ‘Council of Notables’⁴ was composed of the most respected community members on a hill. Its traditional roles were to settle local disputes, to reconcile individual persons and families, to authenticate all sorts of contracts (such as marriage, inheritance, sales, and gifts), and to represent the local population at higher level. The *Bashingantahe* also had to oversee the maintenance of truth and justice, to ensure the security of life and property, and to provide guidance and balance to politicians in the exercise of their mandates (Ntabona 2002: 24). The origins of the institution date back to foundation of the Burundian monarchy in the 17th century. Originally, the *Bashingantahe* functioned independently of the local chiefs, and hence formed a counterbalance for the power of the central state (Reijntjens and Vandeginste 2001). As such, the institution may be regarded as Burundese civil society *avant-la-lettre* (ICG 2003: 13).

Nonetheless, the institution’s role has gradually been eroded. With the introduction of customary courts by the Belgian administration, the *Bashingantahe* were integrated in the chief’s Tribunals, reducing their independence from the local chiefs. They became answerable to the colonial administration, rather than to the local population (Nindorera 1998; ; Reijntjens and Vandeginste 2001). The essential element of *Bashingantahe* -that of upholding moral values- was ignored (Ntabona 1991, in: Holland 2001). Under the 1st Republic (1966-1976), this trend persisted: magistrates became the only persons with the authority to dispense justice (Nindorera 1998). Under the 2nd Republic (1976-1987), the institution was even forbidden and the *Bashingantahe* were nearly uprooted (Reijntjens and Vandeginste 2001). However, shortly before the end of Bagaza’s regime the *Bashingantahe* were officially re-established as an auxiliary judicial institution. Legislation as of February 4 1987 (Article 209) stipulated that “any dispute at ‘colline’ level shall be arbitrated by a council of respected persons” (cited in: Holland 2001). From then onwards, prior to submitting a case to the *Tribunal de Résidence*, a person needed to submit his case to the *Bashingantahe* first. Only if a claimant does not agree with the solution proposed by the *Bashingantahe*, he can submit it to the Tribunal. The Tribunal will consider the case independently, but will take due notion of the propositions of the *Bashingantahe*.⁵ Political practice under the 3rd Republic (1987-1992) only further contributed to the erosion of the institution. UPRONA (Union de Progrès National) tended to invest as *Mushingantahe* individuals within the UPRONA administrative structure, notably local party

⁴ in the remainder of the text, reference will be made to the institution as *Bashingantahe*, considering the particularity of the institution, which in the first place is associated with certain moral values rather than with wealth or dignity.

⁵ The idea behind the 1987 legislation was that the *Bashingantahe* would be much more familiar with the local context of a conflict and hence more likely to adjudicate in a judicious manner (Reijntjens and Vandeginste 2001)

committee chiefs, thereby decreasing their accountability to and credibility by their communities (Nindorera 1998; ; Reijntjens and Vandeginste 2001). The conflict since 1993 further weakened the institution, and several *Bashingantahe* were the direct targets of violence.

Despite its weaknesses, many Burundians, local and international organizations consider its revitalization as very important. The institution is still widely resorted to in the communities. A research in nine provinces by Ligue Iteka, a Burundian Human Rights Organization, indicates that of all returnees who have sought outside assistance in disputes, over half have approached the *Bashingantahe*.⁶ In a context of conflict and corruption, the *Bashingantahe* are seen as able to present and preserve a certain moral authority, that may serve as an example to their communities and political leaders (Nindorera 1998; ; Ntabona 2002). The Arusha agreement of 2000 explicitly refers to the importance of solidifying the *Bashingantahe*, and emphasizes their role in reconciliation at the level of the *colline*.⁷ Particularly in the context of current land disputes, many of which are related to the repatriation of refugees, observers notice the need for strengthening the institution (e.g. ICG 2003), considering the high costs of procedures in and corruption of the official courts, and also to reconcile different groups.

Nonetheless, considering the manipulation and marginalization of the institution in the past, it remains to be seen in how far the *Bashingantahe* indeed can adapt to the current social context. Holland (2001: 22) points to several obstacles to rejuvenating the system of *Bashingantahe*, such as the difficulty of the councils to take their place alongside governors and presidents until they have literate skills as well as an understanding of modern laws and governance; the question whether the central ethos of restoring group harmony is still current; the limited accessibility of the institution to women and Batwa; its relevance for the youth; the strained relationships between local administrative powers and traditionally invested elders; and the current scope of conflicts which may go beyond their capacities. It is for such reasons, that some consider it not worth the effort to invest in strengthening the institution. Others (including politicians from in particular the Frodebu and CNDD-FDD) oppose its further promotion. In the recent legislation on the division of responsibilities between different juridical institutions, the institution of the *Bashingantahe* appears to have lost almost all its responsibilities: it is only attributed a role in assisting the *Tribunaux de Résidence* to execute judgments about non-registered land properties.⁸

There is quite some local variation as to the way the institution is actually functioning in the communities. In general, the *Bashingantahe* convene in council at the level of the *colline*, but in some communities, they also come together regularly at *zone* level. As a result of the efforts of National Council of *Bashingantahe*, representatives have been selected also at the level of the zone, the *commune* and the provinces. The *Bashingantahe* may be called upon to assist in disputes by authorities at *zone* and *commune* level. In the past, to be nominated as *Mushingantahe*, a person needed to be over 25 years of age, and to prove his merit by his general behaviour and attitude, his deeds and public statements. The installation as *Mushingantahe* was preceded by a period of preparation, training and initiation to the function, and conferred upon the most deserving person(s) by a council of *Bashingantahe*. The institution included male Hutu and Tutsi. No women were invested, nor Batwa. While candidates needed not be very wealthy, to prevent corruptibility, poor or indebted persons were excluded (Nindorera 1998). With the rehabilitation of the institution, those procedures have been more or less formalised. Hence, apart from the traditionally invested *Bashingantahe*, nowadays there are those invested by the administration in the late 1980s ('investi au drapeau'), and those invested according to the modernised system.⁹ Nowadays, in principle Batwa can also be invested. Women are invested at the moment their husbands are invested, but are not allowed to hold the *intante*, and hence,

⁶ ITEKA, 2003, Monitoring Des Repatries. Bujumbura, cited in: (Kamungi et al. 2004)

⁷ Arusha Peace and Reconciliation Agreement for Burundi, Arusha: 28 August 2000, Protocol 2, ch 1 article 9 paragraph 8, cited in: (Nindorera 1998)

⁸ Loi No.1/08 du 17 Mars 2005 portant code de l'organisation et de la compétence judiciaires, Article 78.

⁹ to some people referred to as 'investi à la Ntabona', referring to the president of the National Commission of *Bashingantahe*.

while they can speak as witness, they cannot give a verdict. In some communities the *Bashingantahe* are assisted by some youth and women, who make their own deliberations and give suggestions on the cases proposed before the *Bashingantahe*, after which the *Bashingantahe* have the final say.

Efforts to revitalize the *Bashingantahe*

From the side of the government, there have been several efforts to revitalize the *Bashingantahe*. The commission to investigate the question of national unity¹⁰ recommended the revival of the institution. A team of university researchers was brought together to reflect on the subject, which resulted in the publication of a multi-disciplinary study in 1991, with recommendations how to assure the institution to be better suited to present-day conditions. In March 1997, Buyoya decreed the establishment of a National Council of *Bashingantahe*, which had several meetings, discussing issues such as negotiations between the government and armed rebels, adaptation of democratic institutions, and the rehabilitation of the *Bashingantahe* institution. UNESCO facilitated seminars to facilitate the latter. However, being nominated by Presidential decree the council seemed to have little legitimacy (PNUD 2001, in: Holland 2001: 10), and ceased to operate since June 2000.

In May 1999, UNDP launched a program to assist the rehabilitation of *Bashingantahe*. It included a national action plan (based on recommendations of local conference of traditionally invested *Bashingantahe*), workshops to reflect on how to reinforce the decentralized nature of the institution, as well as institutional support for a pilot project in seven communal *Bashingantahe* councils. In 2001, as part of its good-governance strengthening program, a survey was conducted together with local and international NGOs. In 13 provinces, more than 30,000 traditionally invested *Bashingantahe* were identified (ICG 2003). A new National Council for the *Bashingantahe* was established, as part of the PNUD/European Union program. The NGO Action Aid facilitated seminars with *Bashingantahe* in Ruyigi Province. Other NGOs, such as CARE, Africare, Ligue Iteka, and RCN include *Bashingantahe* as participants in their various trainings, for example on the competences and limitations of various juridical institutions, or on various bodies of legislation.

The juridical system of the state

Many of the disputes identified in this study were finally treated in front of either the *Tribunal de Résidence*, of the *Tribunal de Grande Instance*, the lower echelons of the juridical system in Burundi. Each of the 129 *communes* in Burundi has its own *Tribunal de Résidence*. Those courts are dealing with both civil and penal cases. Most of the less than 1000 magistrats serving these Tribunals only have had limited training: after secondary school they followed 6 months formation by the Ministry of Justice. Most have been ‘educated’ in practice. Their training appears insufficient for the variety of issues they have to deal with (Dexter 2005 draft: 25). As mentioned above, since 1987, the *Bashingantahe* are considered as auxiliary institutions of the justice system. For a civil case to appear before the *Tribunal de Résidence*, a plaintiff first needs to pass the *Bashingantahe* at his *colline*. If one of the conflicting parties does not agree with the solution proposed by the *Bashingantahe*, he can submit it to the *Tribunal de Résidence*, after receiving a note from the *Bashingantahe*, including their conclusions on the case. The *Tribunal de Résidence* does not necessarily need to take notice of the decision by the *Bashingantahe*. Nonetheless, the *Bashingantahe* may be asked to testify or provide further explanations on the case. In case the *Tribunal de Résidence* makes a field visit to identify the particularities of a disputed land property, the *Bashingantahe* are asked to be present as witnesses. If parties cannot come to agreement before the *Tribunal de Résidence*, their case may be transferred to the Court of Appeal, the *Tribunal de Grande Instance*, which exists in each province as well as in Bujumbura Mairie. The magistrates in those courts have a license in law (Dexter 2005 draft: 24-25).

The state juridical system knows many difficulties. Formal legislation of concern to land is still incomplete or contradictory. It excludes for example inheritance, and the acquisition and alienation of non-registered land property. Legislation on the ownership of marshlands is ambivalent.¹¹ Actually,

¹⁰ this commission was installed after the august 1988 massacres in the neighbouring communes of Ntega and Marangara in northern Burundi, in which as many as 25,000 people may have died (Holland 2001: 11)

¹¹ While the Code Foncier classifies exploited marshland as ‘terres appropriées’, the general understanding of the population is that they are ‘terres domaniales’ (CARE et al. 2004: 14,31).

reforms are foreseen to address those lacunae.¹² Moreover, there are a lot of institutional problems. The *Tribunaux de Résidence* have only limited means to implement their judgments, and for example no money to bring a field visit in case of land disputes. There exist serious irregularities in the procedures being followed, the internal regulations of the courts and in ethical issues (ICG ?? in: Huggins 2004). Corruption is a problem, partly as a result of low salaries paid to judges, and as a result some land disputes take extremely long periods in the courts (Huggins 2004). Often plots are double-registered (Kamungi et al. 2004). Procedures in the sale of family land are not properly followed. As a result, the legitimacy of title deeds is undermined.

Examples of initiatives to support the state juridical system, listed by Dexter (2005 draft):

- The World Bank supports the organization of a forum on reform of the justice sector.
- The UN High Commissioner for Human Rights, Ligue Iteka and the Association des Femmes Juristes give training to juridical staff in the field of human rights. GTZ trains some juridical personnel in Bujumbura Rural and Ruyigi.
- Avocats Sans Frontières trains magistrates and assists also in solving the question of an ethnic equilibrium in justice sector.
- GTZ, UE, RCN and PNUD support rehabilitation of juridical institutions: equipment and rehabilitation of physical infrastructure
- Global Rights and OHCDH work on the harmonization of codes and laws with international standard. GTZ works on the modernization and vulgarization of law.
- Ligue Iteka contributes in transport of witnesses to facilitate access to justice. Global Rights and Human Rights Watch work on sensibilization for access to justice.

The relationship between the state and customary systems

While in their judgments the *Bashingantahe* rely in the first place on conventions and customary regulations, the juridical system of the state bases itself on the legislation of the state. All land conflicts should first pass before the *Bashingantahe*. Only in case those are unable to find a resolution, conflicts are passed on to the state legal system. This is advantageous in that the *Bashingantahe* are more familiar with the local context of a conflict and might thus decide in a more fair way.

The state juridical system for a large part respects the customary system. The actual Land Tenure Code of 1986 acknowledges the legitimacy of customary claims, but requires all land to be registered with the state. The land Code further stipulates that if somebody occupies land for more than 30 years it will become his property. Nonetheless, the implementation or dissemination of the Land Tenure Code has been very limited, due to lack of financial and human resources, and land holdings remain largely unregistered (less than five per cent) (Kamungi et al. 2004). The administration of property of land is thus still largely taken care for by the *Bashingantahe*.

¹² According to Kamungi et al. (2004), a May 2004 draft of the new Code seems to be broadly in line with the concepts of land tenure security and the need for land markets, as championed by international institutions such as the World Bank, and the FAO. The draft emphasises universal land registration, but does not consider land redistribution, as it is assumed that land markets will redress some imbalances. The proposed revision of the land code includes revisions on how much land may be allocated by different authorities, and the establishment of national and commune level land commissions, though it remains unclear how its members will be selected. The draft code further proposes that ownership will be awarded after 15 years of occupation (and use) rather than 30 years. Security of tenure will be increased by recognition of the so-far unofficial possession certificates issued at commune level. Kamungi et al. argue, however, that more emphasis needs to be given to improve women's access to land, through equal inheritance rights, and assuring access to legal information and representation.

On the other hand, the customary and modern legal systems may also operate in competition with each other. This is in particular the case concerning the land rights of women. While men and women are equal before the state, this is often not acknowledged by the *Bashingantahe* dealing with matters of inheritance. There are often differences between the judgement of cases by the *Bashingantahe* and the Tribunals on inheritance concerning women (see also IHR Law Group 2002).

Women and landrights

Until today, customary law prevails for inheritance issues. Under customary law, married women are excluded from inheriting land from their father, as long as there are any other male descendants (Sabimbona 1998). Women are supposed to have access to land through marriage: a woman will get *usufruct* rights¹³ to the land belonging to her husband. This implies no ownership, and the land remains the property of her family in law. A divorced wife does not get that usufruct right from her spouse.

Daughters inherit from their fathers only in the absence of other male descendants, or if the father has wanted it that way in his will. Otherwise, women can only acquire limited access through affiliation to the male legatees (Kamungi et al. 2004). If a woman is not married and still stays in the paternal home at the time of her parents' death, after settling her brothers, she may use for her subsistence a portion of land for as long as she is alive. If she gets any children, they will inherit property only in the line of irregular successors or they will inherit nothing at all (Sabimbona 1998: 8).

In 1964, Burundi's Court of Cassation acknowledged that single or divorced daughters could inherit property from their father in the same way as male heirs, and that childless widows returning to live with their father could also inherit. Moreover, a daughter who is an only child can inherit property from her father by substitution (Sabimbona 1998). Nonetheless, women are often in competition with their brothers about their rights (CARE et al. 2004: 20).

The Conseil National pour la Réhabilitation des Sinistres

Though not actually present in the communities, the National Commission for the Rehabilitation of Victims (CNRS) -in theory at least- provides another formal venue for resolving disputes around land. In the Arusha peace agreement, attention was drawn to the problems around land that would arise with the return of refugees. The Accords asked the government to put in place a National Commission for the Rehabilitation of Victims (CNRS), in charge of repatriation of refugees and return of victims, and their reinstallation and reinsertion. A sub-commission would have to take care of questions related to land, including examining the issue of property of long-term refugees, the *terres domaniales* (landed properties not belonging to private persons), as well as conflicts and allegations of misappropriation in land (re)distribution (ICG 2003: ; Kamungi et al. 2004: ; Gatunange Août 2004).

Assessments of the work of CNRS are varied. Kamungi et al. (2004) observe that despite its broad mandate, since its establishment in February 2003, CNRS' activities have been limited to providing short-term assistance to IDPs. The commission is seen to suffer from a lack of autonomy of the Ministry of Resettlement and Reinsertion of IDPs and Repatriates, a lack of a detailed plan of action, and difficult co-ordination with other organizations involved in repatriation and resettlement. Nonetheless, there are also important practical problems in execution of their tasks: there is not sufficient land to give all returning refugees a plot equal to the size of the plot they possessed before they left.

¹³ Usufruct is a temporary right that allows its holder to use property belonging to somebody else, while being in charge of its maintenance.

So far, the sub-commission of land issues works on demand: if a governor identifies a difficult land problem in his Province, he might consult CNRS to intervene. Actually, a new programme is being started, for establishing *Commissions d'Accueil et de Reinsertion* in each *commune*. Those commissions, with representatives from repatriates, displaced, returnees, administration, churches, and associations will have a large responsibility regarding land disputes and other problems of *sinistres* ('disaster victims'). The commissions will make inventories of all problems and pass them on to the CNRS regional offices. CNRS then will try to solve those problems amicably. Hence, this approach would not be radically different from that off the juridical clinics (see below). In general, the director of CNRS considers that the solution of many land disputes should not be sought in legal arrangements, but in searching alternative livelihoods for agriculture.¹⁴

Strictly speaking, settling conflicts is the responsibility of the *tribunaux* or the *Bashingantahe* and the communal administration has no authority to solve conflicts. To assure public order and security they may resort to a limited use of force, for example putting somebody in prison. Dexter (2005 draft) observes how in some cases, communal administrators nonetheless may solve civil or penal conflicts. Particularly in cases of disputes around land, *chefs de colline/quartier*, *chefs de zone*, communal administrators and provincial governor interfere. In their decisions they may make reference to both state and customary legislation. Nonetheless, interpretations of both systems vary widely from province to province (Kamungi et al. 2004). In various cases in this study this was also observed. Moreover, often local authorities participated in the councils of the *Bashingantahe*, and even without being invested had a more or less important role in its decision taking. Dexter further observes how in certain locations parallel justice systems have been established by armed movements (Dexter 2005 draft: 30).

Informal conflict resolution

In the communities, 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.

Various NGOs (including Ligue Iteka, ACCORD, and the Association des Femmes Juridiques) have established structures at community level to assist in the resolution of conflicts, in response to the slowness, complexity and costs of juridical procedures in the formal systems. The most prevalent among those is the 'clinique juridique', where paralegals, that have been trained by those NGOs on the land law and on family law, on penal procedures, and juridical competencies may give advise, try to mediate in conflicts, or orient people towards the proper institution. In this research, we have looked in particular at the activities of the Commissions Justice & Paix.

The Commissions Justice & Paix

In 90 of the 132 parishes of Burundi a Commission Justice & Paix has been set up. The aims of those commissions include contributing to peace and reconciliation in their communities by non-violent conflict resolution, consciousness raising about peaceful coexistence, training in non-violent conflict resolution, awareness raising on human rights, alerting on human rights violations, and vulgarization of the different peace agreements.¹⁵ The members are democratically elected among the parishioners. In the communities we visited, the commissions had subdivisions in the various sub-parishes.

¹⁴ Interview with the director of CNRS, April 25 2004

¹⁵ Interview with the *secretaire executive* of the CEJ&P, November 30 2004.

The establishment of those parochial commissions is the result of the work of the Commissions Justice & Paix of the Dioceses, who have initiated them and support them with training, some material assistance and some financial incentives for the presidents of the commissions. The first of those diocesan commissions were established in the Dioceses of Muyinga, Ruyigi, Gitega and Bururi. In July 1999, a national body was set up by the Conference of Catholic Bishops of Burundi (CECAB): the Commission Episcopal Justice & Paix. The establishment of the national body has ensured that now in all Dioceses Commissions J&P have been created. The diocesan bodies remain independent of the national body, and have to take care of their own donors and funding (the parochial commissions depend on the Diocesan commissions to finance the implementation of their activities). The Diocese of Ngozi, for example, works closely together with CARE, and hence members from the commissions J&P from its parishes have participated in several of its trainings.

The Commission Episcopale J&P consists of 2 representatives from each of the 7 Dioceses, and has an executive secretariat of 4 people. In the early years, CEJ&P was funded by CRS and Misereor. Between 2001 and 2004, CRS financed a program for material support and training of the commissions at Diocesan level, on organizational issues, but also on themes as: the concepts of justice and peace, active non-violence, social education, human rights, and development. An action plan was written for the coming years. The program includes the further dissemination of knowledge on Human Rights, and legislation on land, family rights, and inheritance. Training is provided to the Diocesan commissions, which then have to start their own programmes to pass on the information to the parochial commission.¹⁶ Since mid 2005, the CEJ&P is working together with CED-Caritas (another commission of the Catholic church that is in charge of development programmes) for a programme to ‘accompanying the peace process and reinsertion of victims in Burundi through the identification of land properties in dispute’.

¹⁶ Interview with the *secretaire executive* of the CEJ&P, November 30 2004.

The promised palm land...

Land disputes in southern Rumonge, Bururi

This chapter discusses three *collines* in southern Rumonge *commune*: Kanenge, Nyakuguma and Mayengo. Rumonge *commune* is located in Bururi province, and forms part of the Imbo natural region: the fertile lowlands along Lake Tanganyika.

Rumonge (and Nyanza-lac) was in the centre of events in 1972. After attacks by armed groups from Tanzania on villages in the southern provinces, it was here that the military took their principal reprisal operations. Many people fled to Tanzania. Since 2002, 11,056 people have been registered to have returned home to Bururi Province.¹⁷ Early 2004, the province was still expecting the return of about 20,000 refugees.¹⁸ Of those 11,056 returnees, 9,702 people have returned to Rumonge *commune* in particular, an area that was originally predominantly Hutu. Though Bururi Province at large has in the past known impressive figures of displaced,¹⁹ the three hills under consideration in this case study were less affected by displacement. Nonetheless, nowadays people fear staying on their agricultural plots, and most have moved from the valleys to the settlements in the plain.

Disputes about land in southern Rumonge

Disputes about land are numerous in this community.²⁰ According to the *Tribunal de la Résidence* in Rumonge, 85% of civil cases that come to the Tribunal are land related, and concern disputes about the inheritance or sale of land.²¹ Many disputes however never reach the Tribunal: they are the result of the massive spoliation of the land of refugees by individuals, and expropriation by para-statal development organizations. With the expected return of refugees, those problems will be on the rise. ACCORD (African Centre for the Constructive Resolution of Disputes), a South African NGO that recently started working in the *commune* told that in the month of February 2005, of the 65 cases that they had assisted 60 were related to land, and almost all were directly related to repatriation: "Land conflicts are here a larger problem than in other provinces".

When asked for the most frequent types of disputes about land in their community, people invariably point to the diverse expropriations and spoliations, both by the state (as part of development schemes) and by individuals. The *chefs de secteur* of Kanenge, Nyakuguma and Mayengo respectively counted 169, 192 and 153 examples of disputes as a result of spoliation.²² Regarding the frequency of other types of disputes about land the picture is a bit more diffuse: in Nyakuguma, the *chef de colline* counted 50 cases of land disputes related to polygamy, and 30 related to inheritance. In Kanenge and Mayengo, the number of other types of dispute was limited. Overall, the number of the land disputes that were directly related to repatriation was also high: 119 for Kanenge, 125 for Nyakuguma and 123 for Mayengo.

¹⁷ Figure as of April 24 2005, UNHCR, Summary of Burundian Refugees.

¹⁸ Based on map, 'Prefecture of return of the Burundian population in Western Tanzania' of 15 January 2004, published by GIMU / PGDS (*Geographic Information and Mapping Unit; Population and Geographic Data Section*) to be found at the UN-OCHA website. UNHCR is collecting new data on the communities of origin of Burundian refugees staying in Tanzania, which were expected to be published in the summer of 2005.

¹⁹ In 1998, about 106,050 people had left their homes, and in June 2000 a new increase of IDPs led to a figure of almost 100,000. In 2003, a massive return started, and in October 2004 only 3,702 persons were displaced. A map of OCHA Regional Support Office-CEA Nairobi of June 2005 gives a figure of 2,130 displaced for Bururi.

²⁰ The *conseiller affaires sociales* of the *commune* Rumonge suggested that as much as 70% of the population would have one or another conflict about land, Interview March 10 2005.

²¹ Interview with vice-president *Tribunal de Résidence* Rumonge, March 10, 2005.

²² Figures on the frequency of types of landconflicts identified in the pilot of an enquiry by CED-Caritas, 'Identification des Terres à Problèmes', March-July 2005.

In this chapter, cases are presented of disputes resulting from spoliation by individuals and expropriation by state development programmes. In addition, disputes of returning refugees will be discussed. As disputes resulting from polygamous marriages were so frequent, those are also considered. Lastly, an example is given of a dispute about borders, which is the type of dispute the *Bashingantahe* were generally able to resolve.

Conflict resolving mechanisms in southern Rumonge

With their disputes about land, people can address several local institutions. The *Bashingantahe* are organised at the levels of the cellule, *secteur/colline*, and the zone.²³ In this community, the local authorities are integrated into the system of the *Bashingantahe*. The *chef de secteur* functions as the president of the council of *Bashingantahe* of the *colline* (in southern Rumonge referred to as the *Tribunal de la colline*), and although he is not an invested *Bashingantahe*, he participates in the deliberations, presides the sessions, and is witness of its outcome. The *chef de secteur* is responsible for keeping the record of the judgements. If one of the parties does not agree with the outcome he may decide either to continue to the *Bashingantahe* of the zone or to the *Tribunal de Résidence*. The *Tribunal de la zone* includes 15 invested *Bashingantahe* from all over the zone, as well as 8 non-invested assistants, and includes the *chef de zone*. Again, the *chef de zone* is not necessarily invested as *Bashingantahe*. If one of the parties does not agree with the decision of the *Bashingantahe* at zone level, the case needs to proceed to the *Tribunal de Résidence*, which is located in Rumonge, at about 27 km from Kanenge.

In Kigwena parish -which covers among others the three *collines* of Kanenge, Nyakuguma and Mayengo- a Commission Justice & Paix was installed in 1997,²⁴ after a workshop convened by the Bishop of Bururi. Those commissions were seen as a response to the fact that many poor people did not have (financial) access to the *Bashingantahe* or the Tribunal. In each of the 12 *umuwande* (neighbourhoods) of the parish of Kigwena, sub-commission have been installed, whose members were chosen by the people of their neighbourhoods. Each sub-commission has 8 members (2 men, 2 women, and two young persons of either sex). The members meet monthly to pray together and, to discuss developments and conflicts that arise in their neighbourhoods. Some of the members have received a four-day formation, organised by the Diocese, covering themes such as evangelization, and juridical procedures. In case of conflict in one of the *umuwande*, members from other sub-commissions may also be asked to participate in mediation efforts. In contrast to the *Bashingantahe*, the commission Justice & Paix is not acknowledged by law, and can only propose a solution or give an advise, which has no consequences if the case is taken further to higher instances. Hence, if a case cannot be solved by the commission it needs to proceed to the *Bashingantahe* at *secteur* or *zone* level first, before it can be brought forward to the *Tribunal de Résidence*.

The NGOs working in the region and occupied with the land question are Ligue Iteka and ACCORD, both of whom have an office in Rumonge. In 2004, Ligue Iteka has visited the community to investigate cases of expropriation, but so far, there has been no follow-up on this initiative. ACCORD, a South African NGO, is specialized in mediation. In November 2004, it started a programme for juridical assistance in Rumonge. The programme provides mediation services, and if this fails, people are oriented towards the official juridical system. Besides, legal training is given to authorities, including their responsibilities and their limitations of their function. At the time of fieldwork, ACCORD was not yet working in the three *secteurs* featuring in this study, but had informed the community about their presence and activities.

²³ Below the level of the *cellule*, the *Bashingantahe* –though not formally organized- play a role in the resolution of conflicts: within the *conseil de la famille*, and in their neighbourhoods (the level of the *nyumba kumi*).

²⁴ This in contrast to most other provinces: the ‘national’ commission (Commission Episcopale Justice et Paix) was only started in 1999.

Disputes as a result of spoliation by state officials and individuals

Many disputes in the region are related to the flight of people during the events of 1972. Part of the land of those refugees has been spoiled directly by government officials.²⁵ Properties of refugees have been given to private persons by the local authorities without reference to particular criteria. Many of the beneficiaries have come from *communes* higher up the mountains (notably Mugamba, Matana, Vyanda and Bururi) in search of fertile lands in the Imbo plain. As people from those areas included many Tutsi and the original inhabitants of the region were mainly Hutu, this has contributed in that in some disputes resulting from spoliation ethnicity plays a role. In addition, various people have come to interpret spoliation by the local authorities (as well as the later redistribution by the development programmes) as intended at appropriating properties of Hutu to benefit the Tutsi population. In other cases, the land left behind by those that had fled has in the meantime been occupied by their relatives or neighbours. In some instances, land was even occupied of people that had not fled. The occupiers profited from their fear of being accused of participation in the 1972 attacks.

Upon their return, part of the original owners have tried to reclaim the land. Others have never dared to reclaim, after being threatened by the new occupants. In those instances where the land had been spoiled by the authorities, the new occupants had often received land titles. Returning refugees find it difficult to reclaim the land, as they themselves lost or never had any official land titles. The problem is compounded by the fact that in the meantime acquired properties have again been sold and resold. Further, in case an occupant has been cultivating the land for more than 30 years continuously, this gives them a right of ownership. In 1995, about 200 cases of refugees whose land had been given away by the authorities to others were registered with the *Tribunal de Résidence* in Rumonge.²⁶ So far, there has been no follow up to those cases.

Jean-Baptise (Kanenge), a returnee who found his land occupied by his relatives (R1)

Jean-Baptise (who is now 61 years old) was the owner of 3 different plots of land, in total about 5 hectare, located in a valley behind Kigwena Parish. In 1972, when Jean-Baptise was 28 years old, his wife was killed and he fled to Tanzania. His elder brother was also killed, but his widow decided not to flee. At that time, Jean-Baptise was on good terms with the widow of his brother.

In 1983, Jean-Baptise returned to the community to consider if the time was ripe for return. However, the security situation appeared still not very good, and as had health problems, Jean-Baptise decided to return to Tanzania. In January 2004, assisted by UNHCR, Jean-Baptise repatriated with his new wife and 11 children. At that time, his land was being used by the widow of his elder brother and their 4 children, who had their own plot next to the land of Jean-Baptise. They did not let him stay in his own house, but allowed him to live in a little house of theirs on his own land. Later, they decided that he should move into another house of them in the village. As Jean-Baptise was suffering from a serious respiratory disease and needed money for hospitalization, the family came together to discuss his situation. One of his cousins proposed to give him 50,000 FB. Another relative then pointed out to the cousin that "if you would return him his land, he can pay for himself". That was the moment when the conflict started.

The cousins did not want to return the parcel to Jean-Baptiste and tried everything possible to keep him away from it. According to Jean-Baptise, his cousins deliberately rented out part of his land, to make it more difficult for him to return. When Jean-Baptise's children started cultivating a part of the land they were chased away by their cousins. A few weeks before we met Jean-Baptise, his cousins had moved to their house in the village, which is now divided in two parts, and Jean-Baptise was feeling very unhappy to be living in the same house with his adversary. As they did not have any land to cultivate, Jean-Baptise, his wife and their 11 children are now completely dependent on what they get from their neighbours. His cousin started to threaten those neighbours not to help Jean-Baptise's family anymore, accusing them even that if they had not provided the family with manioc and other food in the first place, "they would already have been back in Tanzania".

²⁵ Some government official claimed that the administration had divided the land of those that had fled in order to prevent it from turning into bush again.

²⁶ Interview vice-president *Tribunal de Résidence* of Rumonge, March 10, 2005.

It became clear to Jean-Baptise that he would not get his land back without help. As he was not aware of the different conflict resolving mechanisms, he followed the advice of his neighbours to ask the Commission Justice et Paix. As he did not have any money, he considered it no option to go to the *Bashingantahe* ("they always ask drinks for their services"). The parish priest then tried to invite both parties in the dispute several times, but his cousins never turned up, and the commission Justice & Paix suggested him to go to the *Chef de zone*. The *Chef de Zone* referred him back to the *Chef de secteur*, who also tried several times to invite the cousins. Finally, Jean-Baptise decided to take the case to the council of the *Bashingantahe* at the *colline*. The Sunday before we met Jean-Baptise a meeting was organised by the *Chef de secteur* and the *Bashingantahe*. One of his cousins showed up at Jean-Baptise's place with a hammer and destroyed the door of the house. Jean-Baptise's family thought he had come to kill them, so they fled away in terror. The *chef de secteur* and the *Bashingantahe* called upon the *gardiens de la paix*²⁷ to protect the house at night.

According to the *Chef de secteur*, the widow of Jean-Baptise's elder brother has been called forward 2 times so far by the council of *Bashingantahe* at the *colline*, but never turned up so far. This case took already a long time, also because the *Bashingantahe* did not have time. In case the widow would not turn up at the next convocation, the dispute would be brought to the council of *Bashingantahe* at *zone* level, which has the added advantage that it can call for the imprisonment of the lady, if she does not show up after three convocations.

Jean-Baptise hopes he will get all his land back, as "it is my part of the land of our father". The land his cousins inherited from his elder brother is even larger than the plots of Jean-Baptise. Jean-Baptise himself has no official papers, but he hopes that his neighbours can witness that he is the owner of the plot. His cousins do neither have papers, though they are fairly rich and are trying at the moment to get land titles for the occupied plots.

The *Chef de secteur* says it is unlikely that the 30 years prescription rule will be applied in this case, as the land is occupied by somebody's own relatives. Some of the neighbours have claimed that Jean-Baptise sold 1 of the 3 parcels to his elder brother, but this is unlikely as according to the *Chef de secteur* "everybody in the community knows Jean-Baptise did not sell: otherwise they would have property titles by now".

Though the obvious reason for the hostility of his cousins is to gain property over the land, it was explained to us by other informants that there was also an ethnic dimension to this particular dispute. Most of the families originally cultivating in the valley were Hutu, while the people further uphill and in the mountains were Tutsi. The elder brother of Jean-Baptise (who was killed in 1972) was a Hutu, married to a Tutsi woman. His widow is now occupying the land together with her children. After 1972, Tutsi have been incited to appropriate lands formerly owned by Hutu for 'their community'.

Upon the return of the original occupants, in some cases, the relatives or neighbours return the land to the former owners. In others, occupants have made improvements or rebuild the houses of the original occupants, or build structures next to these and are unwilling to leave. This has resulted in disputes after returnees tried to enter their former houses by force. Some occupants have destroyed the houses of the former occupants, in the hope this would prevent returnees from recognizing or reclaiming their former properties. In one case, the occupants -that are now living elsewhere- pay others to occupy their house to prevent that it will be taken back by the returnees. Claims to return the land to the original occupants appear particularly difficult to hold for orphans whose parents died abroad: often, their claims are not acknowledged. There are also instances in which the illegal second occupant has died in the meantime, and his children are still staying on the plot. It was pointed out to us that these are difficult cases to solve, as it is argued that the children should not become the victim of the fact that their parents appropriated the land illegitimately.

Over the last few years, as several people pointed out, there are several cases of rich people that have come to claim the land of poor people as theirs. Rather than bringing the dispute to the *Bashingantahe* or the *Tribunal de Résidence*, those people immediately take it to the *Tribunal de Grand Instance*. The poor owners have no means to respond, or even to come to court to protest. In the end the original (poor) owners are found guilty of illegally occupying the land and are expropriated.

²⁷ Committees of armed civilians, set up by the community, and given arms by the government.

Disputes as a result of expropriation by state development programmes

The SRD programme

The SRD programme in Rumonge *commune* is a famous example of expropriation of private land without indemnification.²⁸ In 1982, the *Société Regionale de Développement Rumonge*, a para-statal development organization, started a programme to modernise and improve the cultivation of oil-palm trees by the farmers in large parts of the fertile Imbo plain (lowland). The *collines* in the study area were also heavily affected by the programme. As part of the programme, the old oil-palm trees were cut down, the area was rearranged, and a new species of oil palm from Ivory Coast was planted. Before the implementation of the programme, SRD had registered the names of the occupants of the land at that time, and the number of palm, banana, and coffee trees, and the other products they cultivated. Owners were promised a compensation for the old palm trees, and the return of their property after the new species had been planted. Nonetheless, at the time the plots were redistributed, many former owners received far less land than they owned before. Large tracks of land were attributed to people from outside the community, like army officers and staff of the SRD.²⁹

Problematic about the programme was further, that it concerned many properties formerly occupied by people in exile at the time of the redistribution (e.g. R10, R13). Farmers that had come from elsewhere and had settled on the lands left by refugees were ‘legalized’ through the scheme. An inhabitant of Kanenge *colline* (who had migrated from another region) told us how he had given the *chef de colline* a box of beer, and since then he was considered a legal occupant of the plot, so eligible for redistribution by the SRD.³⁰

ICG (2003) also discusses the programme and observes how after replacing the palm trees, only the number of palm trees an original occupant possessed before was taken into account in the redistribution, and not the size of their original plot. As before the programme, many farmers also had part of their land cultivated with banana and coffee trees, as well as other crops, the density of newly planted palm trees per hectare was much higher. This resulted in the size of their newly allocated plots being considerably smaller than the plot they owned before. In Kanenge and Mayengo, our informants were not aware whether or not such a principle had been applied. Apparently, in the redistribution many families were simply given one or 2 parcels of 0.5 ha each. The former landowners in this area still await the promised indemnification of the SRD and a solution for the loss of land.

In addition to this dispute about the loss of land and the lack of indemnification, a new dispute has arisen. Those people that received a parcel after 1983 had to sign a contract with the SRD to become the owner of the land. In this contract it states that they have to pay back the new species in 15 years, but no prices are mentioned. In 2003, the *Office d’Huile Palmier* (as SRD is nowadays called) started requesting the whole payment for the costs of buying, transporting and planting the oil palms, to all those who received a parcel from the project.

²⁸ This case of spoliation even features in the Arusha agreement (Oketch and Polzer 2002: 131), and is also described by RCN Justice & Démocratie (2004) and ICG (2003)

²⁹ Some people we spoke to regarded the fact that the land had not returned to the previous owners as justifiable. As a government official told us: “The owner would get back his land only if he used it in a productive way. The people from the Imbo were not used to the amount of physical work required for the new palm species, as the former palms did not produce that much. Hence they lost their lands”.

³⁰ An additional source of conflict resulted from people selling the lands distributed to them, as in the first few years the new palm trees did not produce much. When several years later they found out that eventually the palms were very profitable, they tried to regain the property. Interview with the Vice-president of the *Tribunal de Résidence de Rumonge*, March 10 2005

Donatien (Kanenge), who lost most of his family land as a result of the SRD program (R8)

The father of Donatien (who is now 45 years old) used to have 9 hectares of land in 4 different locations. Most of it was planted with palm trees, coffee, and bananas. The land was originally forested state property, which under the Belgians had been given out to the population. It was registered who had paid a fee to the community. However, the administration of this registration was lost in the crisis of 1972. The family had two houses. Their homestead was located on the largest of their plots, a parcel of 4 hectare, close to the main road from Rumonge to Makamba. The other house was build by his father, who was a civil servant, and who had received a plot in a villagization site (see below), the first of such a project in the area. In 1972, the father of Donatien was killed. Donatien, his mother, and his two brothers decided not to flee. Nonetheless, some Tutsi neighbours tried to chase them from their homestead and land, by threatening that they would kill them if they would not join ‘their brothers in Tanzania’. Donatien then took apart the house (made of bricks and with a roof of corrugated iron), and moved to the house in the villagization site.

In 1983, when the SRD started its programme, Donatien was 23 years old. An agricultural engineer of the SRD came to tell the community members that they would replace the actual palm trees, and that the land needed to be redistributed, in order to facilitate the construction of a drainage system and roads. They were told that they would not have to pay for the new species, on the contrary, they would get an indemnification for the old trees (590 FrB/tree) and production losses during the first years would be compensated by a development programme. The people of the community asked whether they would also get an indemnification for the other crops in their fields, such as fruit trees, coffee, and bananas, which was acknowledged. Staff of SRD indeed came to do an inventory of the number of palm trees, coffee shrubs, and bananas of all the different owners, and also took notes of the vegetables present in the fields. Donatien himself made a copy of the list that was made of the inventory on his land, as he did not receive an official paper of the SRD with the information they collected.

In May 1983, SRD started cutting down the trees, constructing a drainage system, lining out the plots with pickets, and finally planting the new trees in lines. In September of the same year, they redistributed the land (hence, the whole procedure took place during the dry season). Donatien did not await the redistribution of plots, but started cultivating on the plot nearby his homestead. When the people came that had been attributed ‘his’ land by the SRD, he told them: “this is the land of my father, and I will stay here”. The SRD had to attribute him some land anyway, so they chose to give his family the 2 hectares next to the homestead where he had started cultivating already, and gave the others a parcel somewhere else.

Like all families, Donatien was given a loan of 15,000 FrB for each hectare. They had to buy the improved seeds for sorghum, manioc, rice, and maize, to plant under the new palmtrees. Those vegetables would guarantee the farmers with an income for the 3 years period it would take before the trees would start producing. They had to sign a contract that they would sell the harvest at fixed prices fixed to the SRD, to repay the loans. This was the moment Donatien started to complain. As a result of the redistribution, he ended up with 1 hectare for himself and 1 hectare for his mother (apart from the 0.5 hectare where the house was located), while in the past his family had cultivated 9 hectares. He approached the Belgian engineer responsible for the project and asked why they had to pay, while they still had not received an indemnification. This was of no avail.

In 1988, the SRD started issuing contracts to the people that had been attributed land in the scheme. The contract stated that after 30 years the SRD would come back to renew the trees, and that it was impossible to inherit or to sell the land, thereby making it difficult to alienate the land. It stated also, that the farmers had to pay back the new species, which according to the contract had been provided to them on a loan, to be repaid in 15 years, starting from 1990 onwards. Donatien signed the contract, although it did not indicate how much he needed to pay. In the years that followed, he never received a bill. However, in September 2003, he received a letter from the *Office d'Huile de Palme* (the former SRD which in the meantime had changed its name), that he had to pay 325,712 FrB for the one hectare he owned. This payment was for the improved palm trees and all the costs made for planting. He got a similar letter for his mother, who had died in 2000, but whose plot remained registered in her name. So far, he has not paid: “Many natives refuse to pay. The SRD still owns us money: the indemnization we never received, as well as the land they took but never gave back”. He knows of others that have paid. According to him they are the ones that settled in the area after 1972 and spoiled the land of the refugees, as well as the ones that owned no land before, but received land when it was distributed by the SRD. “By paying they hope to secure their status: in case the refugees return, the occupants may claim they have paid for the plot”, he thinks. He is also afraid to pay. He has heard that if he pays, he will receive an updated version of the contract. He is afraid for its contents. It is said to be written in difficult language, and, as he feels that he has been betrayed before, he is afraid to sign anything again.

So far, it remains unclear if the people that lost their land in the SRD distribution will ever get an indemnification. In April 1990, a number of people from Kanenge started a court case at the Administrative Court in Bujumbura. According to one of the plaintiffs, finally, the lawyer of the SRD accepted that the people stood in their rights and had reason to ask for an indemnification to be paid, but that there was no chance that land would be returned. Nonetheless, the Administrative Court never came to a verdict. According to the plaintiffs, the Court told them there was a need to visit the area to take a proper decision. This was objected by the lawyer of the SRD, as in the documentation of SRD, details of the dimensions of all original plots could be found. However, the former plots could no longer be located in the area. This was apparently perceived as an insurmountable obstacle to the Court, and hence the case was closed. The plaintiffs from Kanenge have since then regularly visited the magistrate, but always were replied that the case was closed. The plaintiffs suspect corruption, as the SRD was likely very afraid that if the plaintiffs would win the case many more cases were to follow.

In 2004, Ligue Iteka, a national human rights NGO, with branches all over the country, has come to the area, to do an enquiry. A list has been made of problems about land. They were divided into those that were natives and those people that settled after 1972 in the area. So far, there has been no follow-up on this initiative.

The PIA programme

A similar programme took place in the end of the 1980s, the *Programme d'Intensification Agricole Rumonge Burambi Buyengero* (PIA-Rububu), under responsibility of the Ministry of Agriculture. The objective of the project was to improve the cultivation of *cultures vivrières* such as manioc, rice, maize, beans and sorghum. This programme was implemented mainly in the former *paysannats* (settlement schemes from colonial times), and covered several *collines*. The programme concerned both land owned by people that were in exile, as well as those that had not fled the area. Nonetheless, as many of the original occupants of the land have not yet returned from exile, disputes about this redistribution are said to be limited in comparison to the palm redistribution by SRD.

People expropriated by the PIA in Mayengo (R11)

Inhabitants of Mayengo *secteur* explain to us that the programme started in 1989. According to them, there had never been any consultation with the population or information about what was going to happen. The PIA project took their land by force. As one inhabitant relates, one day they turned up in the community with a lot of people, and started to cut down all the trees, and sending them away from their houses, to destroy them: "We were like wild animals being chased after". The people went immediately to complain with the *Chef de colline*, but he said he did not have any more information. Later, he informed them that they would receive an indemnization.

In 1991, the land was redistributed to repatriates who returned in that year, people that migrated from other parts of the country, as well as people from Rumonge, Bujumbura and Makamba. A villagization site was marked out and the authorities distributed plots (measuring 25 x 40 meters) to the original inhabitants to rebuild their houses. No land for cultivation was being given. They also did not get a land title for this plot, and some people are now trying to get titles, as they are scared that some day even those plots will be taken from them. The original occupants never received any indemnification for their land or the crops lost. A (communal) dossier to claim indemnification awaits treatment by the Court Administrative since two years.

Other examples of disputed expropriation

A limited number of expropriations of land property took place as part of reforestation programmes by the *Institute Nationale pour la Conservation de Nature* in 1981. People were promised an indemnification,³¹ but this promise was never fulfilled, as the project claimed it had no money. Lastly, some people got expropriated by the authorities to make place for diverse villagization schemes, needed for resettling returning refugees and the inhabitants of the areas covered by the SRD and PIA programmes. Those schemes mainly took place halfway the 1980s, and again the individuals affected never received indemnification.

Many people have experienced different types of expropriation, both by the SRD or PIA programmes, as well as by individuals that have occupied their land. A woman (R13) that was expropriated first by SRD, and later lost what was left of her land to the PIA told us that after the PIA programme had started, she had asked the officials to return her some of her land. However, because she already received from the SRD, she could not be given also land from PIA, she was told. The NGO ACCORD has visited Mayengo *secteur*, and made an inventory of all the people affected by expropriation and as a result of which project (SRD, PIA, INCN). However, later the people of Mayengo were informed that ACCORD had not received funding to finish this project, so as for now they could not assist them.

More recently, the case of Gatakwe has been added to the various expropriations in the area.³² This terrain of 160 hectares, located in Kanenge *secteur* at the lake-side, was originally state property and a rather inaccessible swampland, where people had started to cultivate small plots with manioc and rice. The status of the occupants had always remained unclear, because many of them had settled by themselves and the administration had not intervened to stop them. As a result, the occupants had the idea the land was theirs (Suguru 2004). Since 1993, people that had fled from the highlands were also granted the right to cultivate in the Gatakwe area. Then, in 1998, the OHP (formerly SRD) started rearranging the marshland. Drainage was improved and other crops introduced, and Gatakwe was transformed in a very productive area. At the start of the programme, the original occupants thought they were being assisted by OHP, and did not realize that they would be expropriated (Suguru 2004). In 1999, OHP secretly started redistribution of plots in the area (ICG 2003: 7). Under the continuous pressure from original occupants, in the end of 2001, a commission (including high government officials) was set up by the Ministry for Agriculture and Livestock for the proper distribution. It was proposed that the plots of land had to be primarily distributed to those most in need from Kanenge, such as repatriates and widows. However, the commission distributed land amongst its own members as well as to those not deserving it, such as *chefs de zone* and *colline*. Other parts were registered in the names of children and wives of high political, administrative and military people. The original occupants started to reclaim the land, and another commission was appointed, with no avail. Another commission also came up with results which were unacceptable to the exploiters.

The conflict came to an outburst in mid-2003, when the original occupants of the land in Gatakwe were told by the authorities they could no longer cultivate there. The farmers from Gatakwe wrote a letter to the President of the National Assembly and the President of the Republic. In February 2004, more than 150 farmers from Gatakwe assembled in a sit-in in Bujumbura. Participants included both the original occupants of the land as well as returnees that had been granted land in the redistribution. In response, a Presidential Decree was emitted that ordered for a new and fair redistribution of plots, and a new commission was established. Nonetheless, apparently, the original occupants were not satisfied with this solution. 8 people have been accused of ‘destabilizing actions’, when they started removing the pickets placed by government officials to outline the new plots, and were imprisoned. Ligue Iteka, a national human rights organization has taken the case to the Constitutional Court, but got as a response that new legislation was needed to solve the issue.³³

³¹ We were shown a copy of the register, including 65 names of people from Cabara *colline* and 17 names of people from Kanenge *colline*, including details on the trees and coffee bushes growing on them, the dimensions of their land and the amount of money they should get as indemnification afterwards.

³² See ICG (2003: 7) for more details.

³³ Interview Ligue Iteka Rumonge, March 9 2005.

The return of refugees and land disputes

According to the people we spoke to, the conflict in 1993 did not result in many refugees. In general, those that have fled can easily recuperate their properties, because the law is clear (the new occupants have to leave). Even if there are disputes, the local authorities manage to solve most of those amicably.³⁴ Nonetheless, the return of the major part of refugees from 1972 is expected to create serious problems. Though a number of refugees have already returned to southern Rumonge, an even larger number is still expected after successful elections.³⁵

The return to peace and the return of refugees will add on to the tensions about the spoliation and expropriation of land that has been taken place in the area. Apparently, many returnees are still too afraid to reclaim their land from illegal occupants. A refugee that had returned in 1993 (R3) told us that a former *chef de secteur* had built a house on the only part of his land he could possibly reclaim as his (the other parts had been redistributed by SRD or PIA). The occupant was a rich person, and tried to intimidate him to return to Tanzania, particularly after the 1993 events. Ten years after his return from Tanzania, this returnee still thinks the time is not yet ripe to start reclaiming his land: "The peace is still not there. At the moment I am on good terms with the son of man. When peace is there and the situation is secure, I will try to reclaim my land". Cases like this will add on to the number of cases to be solved.

The refugees still expected to return have been away for more than 30 years. In case the current occupant has been cultivating continuously for 30 years on the plots left behind, he is considered the rightful owner. Community members told us that strict application of this rule would be highly unfair and would create tension. "Those people have not left voluntarily", it was argued by someone, "while it are the current occupants that were responsible for their flight". Moreover, the returnees also may have a right to those properties, considering that the legislation of 1977 is applicable,³⁶ that after their return, land and properties of returnees should be returned to them. Hence, a situation exists in which in fact a property is owned by two owners. Legislation to deal with this problem is not yet in place.

The problem is even more complicated for those returnees whose land in the meantime has been redistributed under the SRD and the PIA schemes. In those cases, returnees have no right to recuperate their lands, and the current occupants are now the legal owners. The authorities in Rumonge acknowledge that there is a need for proper indemnification, but as the government has no budget for this, this is very unlikely ever to happen.³⁷ We were told that also the SRD is still studying on what to do with those returnees that found their land redistributed by the project.³⁸

Lastly, apart from the returning refugees there is a considerable number of dispersed people (those that are displaced but are residing with relatives rather than in displacement sites) that need to be resettled. Eventually, a considerable number of people may thus make a claim to be reinstalled. The reinstallation of people so far is already a problem and will become even more serious with the return of the remaining refugees.

So far the authorities of Rumonge have compiled lists with people in need of reinstallation. These lists now await a solution at CNRS. However, according to the inventory of available lands of the government of Burundi, in Rumonge *commune* itself there are no longer lands available for

³⁴ Nonetheless, what happens sometimes is that out of rancour, when occupants hear that the original owner of the property is returning, they cut down the palm trees on the land.

³⁵ Bururi province is still expecting about 20,000 refugees to return home (three quarters of which from Nyarugusu, Muyovosi, and Mtabila refugee camps) (see the map 'Prefecture of return of the Burundian population in Western Tanzania' of 15 January 2004, published by GIMU / PGDS (Geographic Information and Mapping Unit; Population and Geographic Data Section), to be found at the UN-OCHA website).

³⁶ Décret-loi no. 1/21 du 30 Juin 1977 relatif à la réintégration dans leurs droits des personnes ayant quitté le Burundi suite aux événements de 1972 et 1973.

³⁷ Interview conseiller affaires sociales, commune Rumonge, March 10 2005.

³⁸ Interview juge de tribunal de Rumonge, March 18 2005.

distribution.³⁹ “All *terres domaniales* in this *commune* are already in use, in a legal or illegal way”, confirmed the communal authorities to us.⁴⁰ Apparently, the communal authorities are now considering using parcels of land in the former *paysannats* that were not covered by the PIA project, to re-settle returning refugees.⁴¹ Nonetheless, the rumour is that those parcels will never be enough, and that there will be a need to expropriate also land that earlier has been attributed in the PIA scheme.⁴² People in the community pointed out that this might result in cases of double reclamation: by those that lost land through the PIA programme, as well as by those that received land through the scheme and will now lose it as it is needed for the refugees.

CNRS and the authorities have not yet started with the distribution of state owned land to those people, though they started measuring plots in state owned land.⁴³ Some of the people we spoke within the research area had filed their dossiers for gaining a plot at CNRS, but there were also many others who had not yet done so.

³⁹ République du Burundi and Forum des Partenaires au Développement (Janvier 2004) referring to a study from 2001.

⁴⁰ Interview conseilleur affaires sociales, commune Rumonge, March 10 2005.

⁴¹ While some of those lands are occupied, the occupants are not the owners. The land falls in the category of ‘terres concédés’, which is state property. Some complications may occur in cases where those occupants have sold the lands, however, those sales are illegal.

⁴² The Chef de Zone confirmed the likeability of this, conversation March 17, 2005. In 2003, people in Mayengo have observed government officials measuring plots, around the villagization site, on properties redistributed by the PIA. They suspect this was for identifying plots for reinstallation of returnees.

⁴³ Interviews with ACCORD, March 9, 2005, and Ligue Iteka, March 9, 2005.

Disputes about land related to polygamous marriages

An important source of intra-family dispute is polygamy. The *chef de secteur* of Nyakuguma counted 50 cases of land disputes resulting from polygamy. The problem with those cases is that the official law acknowledges one wife only, and hence children of the other wives can only claim rights if acknowledged as his children by their father. Customary law, on the other hand, only acknowledges sons to inherit.⁴⁴ So in case one of the wives only has daughters and the other only sons, the sons tend to take all the land after the death of the family head. Apparently, after the events of 1972, the *administrateur de commune* of Rumonge distributed vacant lands only to those that accepted either to move with their family from the highland communities to the lowland, or to marry a second wife in the plain. As a result, there are a considerable number of polygamous marriages. In those cases, after the death of their father, the land uphill often passes on to the children of the first wife (who lives uphill), while the plots in the lowlands are distributed to the children of the second wife. This is considered unfair by the children in the highlands, as the lands in the lowlands are much more fertile.

Dispute about the inheritance of land as a result of a polygamous marriage (R6)

Louis-Marie and his elder brother Pascal were children from the same father, but had different mothers. The mother of Louis-Marie was the second wife of his father, and had a separate homestead uphill, where she occupied a plot of 1.5 hectares. The mother of Pascal was cultivating in the plain (Imbo).

In the past, their father occupied several plots: 3 plots in the plain of in total 9 ha, and 1.5 ha uphill. The first three plots, down in the plain, were taken by SRD in 1983, and only 1 hectare had been given in return. The 1 hectare was productive, nonetheless. In 1984, the father of Louis-Marie and Pascal decided to divide his land amongst his sons. The elder brother Pascal was given the 1 ha with productive palm trees, and Louis-Marie received the 1.5 ha uphill.

In 2000 their father died. In 2001, his elder brother started claiming that their father had promised *all* the land to him, including the land of Louis-Marie.

As Louis-Marie had observed that it might take a long time to solve a dispute about land by going to the *chef de secteur* or the *chef de zone*, he decided to approach the CJ&P. The first week, the Commission held discussions with the different parties, and the second week they made a field-visit. At the end of those two weeks, a meeting with the two families, relatives and neighbours was organized. The parish priest was invited to hear what both parties had to say, pointed out to them the importance of being good Christians, and finally, he presented the decision of the CJ&P.

Asking why his brother had tried to grab the land, Louis-Marie tells that his father had found his mother in another community. He got several children with her, but the only ones still alive are Louis-Marie and his sister. Only when Louis-Marie was 5 years of age, his father officially acknowledged Louis-Marie as his son, and took him to live with the other family in the plains. The brother of Louis-Marie thought, on instigation by gossiping people in the community, that his father had not officially acknowledged his half-brother.

However, when their father divided the land in 1984, he had organized a party and invited family, friends and members of the *Bashingantahe*. When the CJ&P had to solve the dispute 20 years later, they invited these witnesses to testify. They all told the same story about the decision of the old man: that he divided the land in two. The CJ&P decided that Louis-Marie stood in his right, and his brother accepted the decision. So, in two weeks time, the matter was settled, Louis-Marie got his land back, and since then, they have a good relationship again.

To settle the dispute completely, the CJ&P will write down the arrangement that has been agreed upon, which will be signed by the *Bashingantahe* that were present.

⁴⁴ During the meeting, participants gave the example of such a case, in which the *Bashingantahe* turned down the claim of the girls.

Disputes about the limitations of properties

In the initial meeting, disputes about the limitations between properties were not identified as very frequent. Nonetheless, they are a type of dispute regularly solved by local conflict resolution mechanisms. The following example nicely shows the different roles these local mechanisms may have.

Dispute about the ownership of a hill-slope (R7)

In 1962, a family occupied a plot of land on the bottom of the slope in one of the valleys rising up to the highlands in Kanenge *secteur*. The father of the family was murdered in 1972, leaving 3 children. In 1972 another family settled themselves at the top of the same slope, which by then was still forested, and started cultivating downwards. At that time, land was not yet as scarce in the community as it is now. In 1986, the father of the family uphill also died, leaving 9 children. In response to the events in 1993-94, both families moved to live in the village.

In 2004, the widow and her 3 children of the family down-slope started to claim that, as they had been the first occupant of this hill, all the land on the slope belonged to them. When the children of the family uphill started cultivating their field they were chased away by the widow down the hill. However, the children of the family uphill claimed that they were also born here, that they had inherited the land from their father and had cleared the forest by their own hands. They argued that the deceased father of the family down-hill never had made a problem of them occupying the land. They thus went to the CJ&P. In response, the family down the slope also went to the CJ&P to claim the whole slope for themselves.

The CJ&P came together to discuss the case, but it turned difficult for the CJ&P to find witnesses. A *Mushingantahe* who explained the case to us had the impression that the family down-hill, a family of rich traders, had corrupted the witnesses. Therefore, it was decided to bring a visit to the slope concerned. During this visit it turned out that in 1972 there had already been an argument between the two families about the limits of the different plots. The *Bashingantahe* had interfered and set out the separation between the two plots. After the field visit, the CJ&P argued that the limit pointed out by the *Bashingantahe* in 1972 should be respected, and that the family down-slope should give in. However, the family down-slope then started to denounce the CJ&P. The CJ&P responded that if they did not want to accept the decision they should go to the *Bashingantahe de colline*.

4 weeks before our visit to the area, the case was brought to the *Bashingantahe de la colline*. Nonetheless, an agreement could not be reached. According to one of our informants, the problem was that some of the *Bashingantahe* hesitated to decide as they were pressed by the family down-slope. On the other hand, neighbours of the family uphill declared that the poor family uphill stood in its rights, and that they were going to protest if the *Bashingantahe* judged in their disadvantage. As a result, a final decision was not taken and the case could not be closed. As the *Bashingantahe* were very busy with other cases, it took some weeks before the case was considered again. Finally, the *Bashingantahe* decided that the two families indeed would have to share the slope. Nonetheless, the plot of the family down-slope will be made a little bit larger than the plot of the family uphill, to avoid further conflict. After all, their father had been the first occupant of the hill. The *Bashingantahe* also considered the argument that the father of the family uphill possessed land in the region where he originated. Nonetheless, as his children had been born here and orphaned, they could not possibly reclaim that land. In the week after our visit, the *Bashingantahe* were going to point out the definite border between the plots of the two families.

According to the *chef de secteur*, the CJ&P was not present during the deliberations, but would participate in the establishment of the division between the two plots. As to the reason why the CJ&P failed in what the *Bashingantahe* managed to achieve, the *chef de secteur* suggested that the family down-slope had hoped to get more out of it if the case was brought for the *Bashingantahe*. Now that the *Bashingantahe* had decided in the same way as the CJ&P, he thought it unlikely that the family would continue to proceed.

In the same session of the *Bashingantahe*, another dispute was also settled, involving the same family down-slope. The dispute concerned a plot belonging to their uncle (the brother of the man that started cultivating the slope in 1962). The uncle fled to Tanzania in 1972, after which his land was occupied by another person. The *Bashingantahe* decided that the property needed to be given back to the family down-slope, and that the occupant had to sign a paper stating that he would leave it. It was unknown whether the uncle was still alive. If he would come back the land would return to his hands. If he would have died, the land would stay with the family of his brother, who are his closest relatives. The *Bashingantahe* considered the question whether the current occupant could maybe stay until the fate of the uncle would be known. However, if the property would be returned right now, the family down-slope could start preparing it for the return of their uncle, and ensure that there would be something to eat for him and his family. In case the uncle would turn out to be dead, the land would need to return anyway to his relatives. As the current occupant also owned some land elsewhere, he was considered not completely dependent of the land of the uncle.

Interesting in the first dispute is that it seems as if the fact that the case was dealt with twice with rather similar results satisfied both parties. In addition, as both mechanisms are community-based, this limited the possibilities for corruption, for example of witnesses (which was a problem identified in other case study areas). The case shows the advantage of several conflict resolving mechanisms available in a community.

The resolution of disputes about land in southern Rumonge

In the case of southern Rumonge, a clear distinction exists as to the types of dispute that may be resolved locally and those that require other types of intervention. Local conflict resolving mechanisms merely have a role in such disputes as those about the division of inheritance, the limitations of properties, or the spoliation of the property of refugees by individuals.

The *Bashingantahé*

The *Bashingantahé* in southern Rumonge are organised at the levels of the cellule, the *secteur/colline*, and the zone. In general, the *Bashingantahé* at the cellule level are able to deal with disputes about limits of plots, disagreement about property on the plots, people who are fighting, and petty theft. When a dispute cannot be solved at this level, the opinion of the *Bashingantahé* of the cellule (who are assumed to know the families involved personally) will be taken into account by the *Bashingantahé* of the *colline/secteur*.

In general, the land disputes as described in this case study mostly start at the level of the *Bashingantahé* of the *secteur*. It appeared however, that this level is not very powerful and that many cases about land turn out to difficult to solve at *secteur* level and end up at the council of the *Bashingantahé* at *zone* level. The *Bashingantahé* of the *secteur* cannot force parties to accept their judgement, or to even appear before their council. Some cases need to proceed from the *secteur* to the *zone*, only because of the refusal of one of the parties to turn up. Sometimes the *Bashingantahé* take a decision in the absence of the parties to provoke a response. The council of *Bashingantahé* at *Zone* level has the legal power to force people to show up: they can convoke the parties three times, and after the third time a party does not appear, they can be imprisoned for a day or two. Moreover, a lot of people nowadays want to give their case a second chance and continue to the *Bashingantahé* at *zone* level.

An old *Bashingantahé* told that in the past, the tasks attributed to the *Bashingantahé* were easier. “In those days, we were able to settle inheritance disputes easily. When there was a dispute about land we always settled it to the satisfaction of both parties, as in the past it mainly concerned the limits of the plots. Nowadays, those [land] disputes are much more complex. They concern for example [illegal] occupants, and these disputes are much more difficult to settle.” Another difference is that in the past the *Bashingantahé* were respected widely, they are now only respected during their palavers, and not outside: “While in the past people turned up immediately if they were asked to do so, nowadays, sometimes you have to call them 5 times and they do not even arrive!”

Though the *Bashingantahé* are considered knowledgeable about the situation of property in their communities, the return of refugees and the occupation of their former plots pose problems. According to one of the *Bashingantahé* we spoke, a trainer of the Commission National de *Bashingantahé* had advised them even to leave the resolution of such disputes about land, and to await legislation, and that the most they could do was to calm down the parties. The *Bashingantahé* we spoke to, pointed out that people that fled in 1972 should be given the chance to return to their former properties.⁴⁵ It was explained to us that they try to convince the second occupants to move back to their own land. In theory, in case the second occupant does not have land, the *Bashingantahé* may demand the local authorities for another plot. If no other land is available, occupant and original owner will have to share the land. We did not encounter examples in which this had happened.

According to the *Bashingantahé*, *agatutu*⁴⁶ is no longer asked for when resolving disputes and drinks are voluntarily offered. Nonetheless, the exception is made for the resolution of land disputes and disputes about ownership of houses. Though the *Bashingantahé* we spoke to, told us that if a person is

⁴⁵ Interview, March 16 2005.

⁴⁶ Traditionally a gift in kind (drinks and food) to celebrate reconciliation of the parties.

in dire need he is exempted from paying the *agatutu*, nonetheless poor people in the village explained to us that the payment has been an obstacle for them to consult the *Bashingantahe*.

In this community, the local authorities are integrated into the system of the *Bashingantahe*, with the *chef de secteur* functioning as the president of the council of *Bashingantahe* at *colline* level, and the *chef de zone* being included in the *Bashingantahe* at *zone* level. On Kanenge *colline*, it appears that some people, rather than addressing the *Bashingantahe*, prefer first to approach the *chef de secteur*, who seems to be a trusted and respected community member, with disputes within the family or between neighbours, before bringing the case to the *Bashingantahe*. Moreover, being a representative of the authorities, in case of disputes about plots distributed by the SRD, it seems easy for him to contact the SRD to consult their registration. The presence of the authorities in the *Bashingantahe* enables them also to some extent to enforce their decisions.

The Tribunal de Résidence

According to one of the magistrates of the Tribunal,⁴⁷ most cases about land that appear in front of them involve people that do not have proper papers, and have acquired the land in unjust ways. The *Tribunal de la Résidence* normally asks the *Bashingantahe* to assist them in disputes about land. When a field visit is brought, the *chef de zone* and the *Bashingantahe de la zone* are asked to assist and provide information. At the verdict, a representation of the *Bashingantahe* is present to witness, as well as the *chef de zone*, and the *chef de secteur*. Nonetheless, the *Bashingantahe* we spoke to told of various cases in which the representatives of the Tribunal turned up unexpectedly for field visits without consulting them, suggesting that the Tribunal had been corrupted.

A lot of people cannot afford going to the *Tribunal de Résidence*, not in the last place because it is located in Rumonge, about 27 km away from Kanenge *secteur*. As a member of the CJ&P explained: “You cannot start anything with the *Tribunal de Résidence* without at least 100,000 FrB in your pocket. You need to contact the judge, make up your complaint, and pay them. Then you have to start the convocation, and give the judges something to eat and drink. Afterwards, a visit is brought to your area and you have to pay for transport, and, again, you have to pay for food and drinks. Often, the judges do not accept if you come to pick them up with a taxi: they will come with another car, but you will have to pay for it”.

The Commission Justice & Paix

So far, most cases of dispute appearing before the Commission J&P concern property. Of the two commissions we interviewed, each was able to solve 5 disputes over the last 7 years. The disputes in which they intervened ranged from settling a fight, establishing compensation for crops destroyed by a neighbours’ goat, the precise location of the borders of a parcel, a dispute between two brothers from polygamous marriages about the inheritance of their fathers plot, to disputes about a fraudulent claim of ownership of a parcel.

The commission Justice & Paix works apparently from the same principles as the *Bashingantahe* (e.g. parties need to come voluntarily to ask their advise) and treat the same type of cases. Both exist of people considered to be ‘honourable persons’: strikingly, the people we interviewed referred to the Commission Justice & Paix in Kirundi as *Bashingantahe amahoro* (‘peace’). The difference between them is that the members of the Commission J&P are elected by the Christian population, while the *Bashingantahe* are co-opted.⁴⁸ Nonetheless, the number of cases solved by the Commission J&P is considerably less.

⁴⁷ Interview, March 10 2005.

⁴⁸ A person can be proposed to become *Mushingantahe*, and the *Bashingantahe*, in consultation with the community members, can accept or reject his proposal.

The fact that the Commission J&P is working voluntarily and does not ask any remuneration appears to have resulted in some friction with certain *Bashingantahe*. It is precisely this demand for remuneration that made people we talked to decide to bring their case first to the Commission J&P. However, a member of the CJ&P complained also to us that the work took lot of his time and that it is hard to stay motivated if no remuneration is given for the work. It appears that in several cases the *Bashingantahe* and the Commission J&P worked closely together. Since recently, a number of *Bashingantahe* form part of the Commission J&P.

CNRS

Local conflict resolution mechanisms in southern Rumonge are not capable to deal with the problems of expropriation by development programmes, as well as the need to reinstall returning 1972 refugees. In Mayengo *colline* alone, 79 dossiers on land disputes that could not be concluded by the local institutions have been filed with CNRS and await a solution. In Nyakuguma *colline*, the authorities have decided to leave the land disputes related to expropriation and the reinstallation of refugees for what they are until they have received instructions from CNRS.⁴⁹ At the moment, however, CNRS is not active in the community. They lack the means to reinstall people, and the capacity to visit the communities to discuss and settle cases.⁵⁰

Concerning the expropriation by development programmes, as we have seen, a number of NGOs try to bring the cases to the attention of the government. Regarding the reinstallation of returning 1972 refugees, the communal authorities have made lists of those people considered in dire need of reinstallation, and CNRS has started measuring out parcels on the limited *terres domaniales* still available in some communities in Rumonge. However, implementation of reinstallation is pending, while it is already clear, that the allocation of those lands will only solve the problem of a limited few.

Concluding

An old man in southern Rumonge insisted that we should write in our report that disputes in this region are very numerous. Indeed, talking in quantities, the number of disputes about land in southern Rumonge appears as very high in comparison to the other case-studies. In this chapter we have discussed the expropriation by 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. In addition, in southern Rumonge 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. Moreover, several properties formerly belonging to refugees have been redistributed in the SRD and PIA programs. Nowadays, the fact that upon their return those refugees need land is a source of conflict. More general disputes were identified such as those about the limits of plots and disputes about the inheritance of land in case of polygamy.

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 are dated many years ago, creating a situation in which several people may have legitimate claims to the same property. The reclamation of redistributed 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 types of spoliation and expropriation at the same time. This makes it also a complicated affair for individuals to demand for justice.

⁴⁹ CED-Caritas, ‘Identification des Terres à Problèmes’, March-July 2005.

⁵⁰ Interview conseiller affaires sociales, commune Rumonge, March 10 2005.

Local mechanisms for conflict resolution in southern Rumonge appear as diversified and strong. It seems that for regular disputes about land, people avail of and make use of several alternatives before addressing the *Tribunal de Résidence*. In southern Rumonge, the *Bashingantahe* are still considered as the communal memory for land issues. While many disputes go beyond their capacities, 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 comparison to the other cases, the commissions J&P of southern Rumonge appear as rather strong and capable to take responsibilities in the resolution of land disputes. Nonetheless, they are dependent on the *Bashingantahe* for the confirmation of the resolutions proposed by them. It appears as if 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.

Searching for a solution for land of refugees that is occupied by neighbours or family members starts often at local level. *Sometimes* solutions are found, but, as the *Bashingantahe* at low level has no means to force the people concerned into process or the execution of their verdict, it also *often* fails. Moreover, local conflict resolution mechanisms (CJ&P, *Bashingantahe* at *secteur* level) have no solution for expropriation by the state, so these disputes are always passed on to the *Tribunal de Résidence*, where they can rest for years as state regulation is awaited.

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. Furthermore, the fact that procedures take a long time is an important reason for people to search a faster solution. On community level, cases may often be decided upon in a few weeks time.

The interventions of organizations in the community were limited, and not much can be said about the effectiveness of their interventions. Nonetheless, from the case of southern Rumonge some important observations can be made. In southern Rumonge, also many people that have not fled have suffered from spoliation and expropriation. At the same time, many returnees also suffer from what we could call the more 'regular' disputes about land, those that do not have a direct relation with the crisis, such as disputes about the division of inheritance or the limitations of properties. 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.

While being relatively strong, it appears that local conflict resolution mechanisms in southern Rumonge are not capable to deal with the problems of expropriation by statal development programmes and 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. Considering the size of the problem, there is a need for a political solution and a political will to implement the propositions. 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. Regarding those land problems, the role of national and international NGOs seems to be mainly in lobbying, and drawing the attention of the government to the need to intervene.

More kin than kind

Land disputes in Giteranyi, Muyinga

This chapter discusses the disputes around land in Giteranyi *secteur*. Giteranyi *secteur* is located in the centre of Giteranyi *commune* (Muyinga province), which is in the north-eastern corner of Burundi, bordering Rwanda and Tanzania. Giteranyi *secteur* again consists of three *collines*: Giteranyi, Rugese, and Karugunda. Giteranyi *colline* avails of a small town centre including two market places, and is also the location of the *commune* offices and of the main church of Giteranyi parish. Giteranyi is located in the Bugesera natural region, at an altitude of about 1500 meters.

The land in Muyinga province is fertile and before 1993, the Province was largely self-sufficient in its needs of food. In the region, beans, bananas, maize, manioc, sweet potato, peanuts, peas and potatoes are the main crops.⁵¹ In the 1980s, people started migrating from densely populated regions in Gitega, Ngozi and Kayanza.⁵² In Giteranyi *commune*, more than 60% of people have originally come from Kayanza and Ngozi.⁵³ In 2002, the *commune* had a population of 80,990⁵⁴ (203 inhabitants/km²).⁵⁵

Over the past 12 years, the *commune* of Giteranyi has experienced large scale population movements. The armed confrontations and killings, especially since February 1995 have resulted in the massive flight of people to Tanzania. Since 1996, people have started to return. In 1997 programmes for peaceful cohabitation were started, as well as sensitization in the camps in Tanzania. From 1999 to September 2004, 24,656 people were registered to have returned to Giteranyi *commune*, which is almost half of the total number of returnees to Muyinga Province so far.⁵⁶ During the first months of 2005, 933 people have been registered as returning to the *commune*.⁵⁷ Considering that the *commune* at the moment has about 90,000 inhabitants, this implied that at least one in four people had fled. It is said that most of the people from Giteranyi have now returned.

For Giteranyi *secteur* the figures are even more impressive. The border with Tanzania is about 30 minutes on foot. During the crisis, only about one out of ten people dared to stay.⁵⁸ The *secteur* now counts 7,557 inhabitants.⁵⁹ Those that did not flee moved out of the valleys to settle around town. While many of those now have returned to their original properties, some people prefer to stay close to town.⁶⁰

HCR, ADRA and World Vision have provided assistance to the returnees for reconstructing their houses. CARE has constructed a primary school, and plans to construct waterworks in the community. Nonetheless, many returnees still live in temporary shelters made of sheeting or banana leaves, in particular those staying outside the town centre.

⁵¹ Republique du Burundi and PNUD/UNOPS (décembre 2002)

⁵² MINIPLAN (1986)

⁵³ Interview, Administrator of the commune, March 29 2005; see also Republique du Burundi and PNUD/UNOPS (décembre 2002)

⁵⁴ Republique du Burundi and PNUD/UNOPS (décembre 2002)

⁵⁵ based on a total land area of 398 km², identified in Bergen (1992)

⁵⁶ Interview with the chef de commune, March 29 2005, who was referring to data provided to him by the HCR. From 1999 until September 2004, the total number of repatriates to Muyinga province was 50,960. Overall, Muyinga is the province which received the largest numbers of returnees. Over the years 2002/2003, 32,140 people returned to the province (which represents almost a quarter of the total of 135,605 Burundian refugees).

⁵⁷ Figure as of 24 April 2005, UNHCR, Summary of Burundian Refugees.

⁵⁸ The chef de quartier Giteranyi indicated to us that at the moment, 1,311 people are living in his quartier: during the crisis there were only 110 people.

⁵⁹ Interview with the chef de *secteur*, April 1 2005.

⁶⁰ In June 2005, the overall figure of displaced for Muyinga province was 9,116 people (Based on a map prepared by OCHA Regional Support Office-CEA Nairobi)

Disputes about land in Giteranyi

Among the disputes that are brought forward to the *Tribunal de Résidence*, a majority are about land: of the 221 dossiers under consideration in the Tribunal at the moment, 160 concern land. The majority of those cases concern the inheritance of land. Other cases that come to the Tribunal are about the illegal sale of land, about trespassing of limits by neighbours and relatives, disputes as a result of polygamy and divorce, and about inheritance by women.⁶¹ Of 30 cases assisted between October 2004 and January 2005 by the Association des Femmes Juristes in Giteranyi zone, 20 were about land.⁶²

An impression of the type and frequency of disputes around land can also be obtained from the register of the *Bashingantahe* of Gisenyi secteur.⁶³ Since 2002, the *Bashingantahe* in Giteranyi secteur have been able to resolve 66 disputes about land, of which:

- 25 were about the limits between parcels
- 15 concerned the division of inherited land
- 10 were about land that had been sold twice
- 6 were related to polygamous marriages
- 4 were disputes resulting from orphans claiming land of their foster family

When discussing frequent disputes about land in the study area, highlighted are those resulting from polygamy, and disputes that have resulted from the (double) sale of land.⁶⁴

Various interviewees related the many disputes around land in Giteranyi to the high number of returnees in the community. Reference is made to disputes such as the modification of the limits of parcels, the sale of land by family members (or those that claim to be family members) or the double sale of a plot in the absence of the owner, disputes as a result of second (polygamous) marriages in the refugee camps in Tanzania, or the occupation of plots by others.⁶⁵ However, many of such disputes are also experienced by people that have not gone in exile, and according to the *Bashingantahe* of Giteranyi secteur, in general the land disputes of returnees are not very different from the rest of the population. Nonetheless, fluctuations in the number of disputes dealt with appear to be related to fluctuations in the number of returnees.⁶⁶ The disputes that are in particular experienced by returned refugees, such as disputes about the limits of plots or illegal occupation, appear to be rather routinely resolved. Probably as a result of their straightforward resolution, they are often not mentioned as being frequent.

However, with the massive return of people, there are a lot of problems with their installation. In particular this is because a lot of people from other regions have preferred to settle in the *commune*, as it is close to Tanzania. Before the war, the community has grown wealthy from cross-border trade, and settlers hope to start business here. Displaced, as well as the first refugees to return have been installed on plots of state land along the road towards Muyinga town, but this strip of state land is now finished. IDPs have also been installed on plots of people that have not yet returned from Tanzania.⁶⁷ So far,

⁶¹ Interview with the president of the Tribunal de la Residence, Giteranyi, March 29 2005.

⁶² Figures provided by the AFJB

⁶³ An impression, as conflicts are also solved before reaching the Bashingantahe. Moreover, the register appears not very precise about conflicts that could not be solved and had to be forwarded to the *Tribunal de Résidence*. Data provided by one of the Bashingantahe of Giteranyi secteur, April 1 2005.

⁶⁴ Initial meeting, March 29 2005; Interview with the Bashingantahe, March 31 2005; interview with the CJ&P, April 2 2005; The abandonment of families as a result of polygamous marriage, and the illegal sale of land are mentioned as most frequent types of conflict as well in *Republique du Burundi and PNUD/UNOPS* (décembre 2002).

⁶⁵ 19 out of the 30 cases assisted by AFJB concerned repatriates. Nonetheless, within the commune there is some regional variation. According to the president of the Tribunal de la Residence, in the northern, most densely populated part of the commune (Ruso zone) many conflicts that are brought forward to the Tribunal are linked to inheritance and divorce (and hence often also concern land), and not so many to repatriation, as the number of repatriates is considerably less than in the southern Giteranyi and Muyango zones. Interview with the president of the Tribunal de la Residence, Giteranyi, March 29 2005.

⁶⁶ Interview with the Bashingantahe of Giteranyi secteur, March 31 2005.

⁶⁷ Interview chef de secteur, April 1 2005.

this seems not to have resulted in disputes. According to the *administrateur*, in Giteranyi and Mugano zones, there are still some state properties available, but those are forested, which requires the permission from the central authorities before those lands can be distributed to individuals. All non-forested state properties have already been distributed to returnees.⁶⁸

In the following paragraphs, a selection of disputes about land in Giteranyi will be discussed. Cases are presented of disputes related to polygamy and the double sale of land, as those have been identified in the initial meeting as the most frequent disputes. In the initial meeting, and also in other discussions, the lack of land of members of the Batwa community was mentioned as an important problem. The other examples were selected by the researchers, as they illustrate some of the general characteristics of disputes about land and their resolution that came out from the fieldwork in this particular community.

Conflict resolving mechanisms in Giteranyi

In Giteranyi, the *Bashingantahe* are organized at the level of the *colline* and the *secteur*, the latter of which is authorized to give the papers necessary to approach the *Tribunal*. While the *chef de secteur* sometimes participates in meetings of the *Bashingantahe* or accompanies them to visit disputed plots, this is not a procedure and it seems the *Bashingantahe* are able to function rather independently of the authorities. During the meetings of the *Bashingantahe*, the *chef de secteur* may present notes from the *chef de colline* in case the conflict has passed there before being handed over to the *Bashingantahe*, and he may ask questions. He does not participate in the deliberations, and cannot overpower the decision of *Bashingantahe*.

The Commission Justice & Paix has its own office at the main church of Giternyi parish, which liaises with sub-commissions in each of the 14 minor churches of the parish. Those sub-commissions again are composed of representatives from the *communautes de base*. There are 77 *communautes de base* in the whole parish, each of them having selected among themselves a member for the Commission Justice & Paix. The president of the CJ&P sometimes receives training at the Diocese of Muyinga in issues such as mediation, conflict resolution, and family law, and tries to communicate what he learned to the other members of the commission. Together with the president of the *communaute de base* they try to solve disputes in their communities.⁶⁹ In their communities, the members of the Commission Justice & Paix preach reconciliation, and assists in the social reinstallation of returnees, for example by informing them of the current situation of the country, and helping to rebuild their houses.

The Association des Femmes Juristes du Burundi (AFJB) started a project of ‘juricial clinics’ from its office in Muyinga. We did not encounter anyone who had approached AFJB with his or her land problem. Ligue Iteka has an office in Muyinga, from which members sometimes visited Giteranyi. During the interviews we encountered one person who contacted Ligue Iteka with his problem, and upon their advice he transferred the case to the Tribunal de la Grande Instance. Otherwise, the organization is said not to be very present in the community. RCN Justice & Democratie has given juridical training to the communal administrators and magistrates of the *Tribunal de Résidence*.

⁶⁸ Interview with the administrator of the commune, Giteranyi, March 29 2005.

⁶⁹ Interview with 5 representatives of the Commission Justice & Paix, April 2 2005

Disputes about land related to polygamous marriages

According to Burundian law, polygamy is prohibited. Nonetheless, in Giteranyi there are many cases of polygamy. In the past, men that had come from elsewhere and had grown rich invested their money in a second property, where they then installed a second wife. An important reason for the occurrence of polygamy also seems to be that in particular men were killed during the crisis. As a result, women are outnumbering men, and women and their families have been more disposed towards accepting polygamous marriages. In addition, often women and children were the first ones to return home from the refugee camps in Tanzania, even if the situation was still rather insecure. As the risk to be killed appeared to be larger for men, they often stayed behind waiting for more security. Several men have encountered a second wife in the refugee camp. Upon their return, they have to take care of two families. Women can do little to prevent their husbands from marrying a second wife, dependent as many of them are of the land their husbands provide them for cultivation.

The disputes about land related to polygamy we encountered were of a relational nature in the first place. For whatever reason, a husband would divorce one of his wives and send her away. A dispute about land would then arise as a consequence of the divorce: as the husband considered the land as his property, he would not allow access to the woman he had sent away.

Béatrice, a first wife in a polygamous marriage (G1)

Béatrice is a young women (around 30 years of age) and has four children with her husband. The couple fled in 1995 to Tanzania, but after a few months Béatrice returned to Giteranyi, later her husband followed her. In 2002, the husband of Béatrice found a second wife, with whom he had one child. He wanted to live with his new wife in the house in which Béatrice had been living until then, so he chased Béatrice away to go and live with her parents, where she lived for the following year.

The family of the husband and the family of Béatrice tried to solve the dispute, by insisting on that the husband should vacate the house to his first wife and their children. However, the husband did not accept this solution, and the dispute had to be brought forward to the *Bashingantahe* of the *secteur*. Those decided the same as the two families had proposed, but the husband ignored the decision. By then, the second wife also started cultivating the land of the husband, and she and her husband have been trying to chase Béatrice away from the plot.

Luckily for Béatrice, people in her neighbourhood had been closely following the situation. They helped her to bring the case to the *Tribunal de Résidence*, as they considered the fate of Béatrice very incorrect. Rather than just looking at the dispute about the house, the Tribunal also considered the problem about the land of the husband. Finally, in 2004 the Tribunal decided that the house should be given back to Béatrice and the children, and that the land of her husband had to be divided between her and her husband.

Béatrice is happy with the decision, and lives again in her house. However, at the moment she cultivates only the very small plot around the house, as so far the officials of the Tribunal have not yet come to demarcate the limits of her part of the plot to cultivate. This was supposed to have happened this month, but then Preciose had fallen ill and she could not come to the Tribunal. So far, a new date has not yet been set.

Her husband is not happy with the decision, and did not even appear in court to hear the verdict, but Béatrice thinks he will finally accept the judgement. He lives now with his second wife in a new house, which he built on his land. Béatrice takes care of their children, but her husband does not look after them anymore.

The case is a clear example of how a relational problem turned into a dispute about land and livelihood. The *Bashingantahe* consider that the first wife wishing to remain in her house stood in her rights, however, they did not consider the problem about the land, the decision on which was left to the discretion of the husband. It was said that the *Bashingantahe* often could not solve problems resulting from polygamous marriages. Resolution is particularly difficult if the disposed wife is

cultivating a plot that has been bought rather than inherited by her husband, as he claims it is his property, and he can do with it whatever he likes.⁷⁰

People observed that when land disputes resulting from polygamous marriages were brought forward to the Tribunal, the final outcome was unpredictable. As polygamy is not allowed under Burundian law, in case a second wife is sent away, it depends on the circumstances whether a judge will allow her to stay, or decides that her children will be taken care of by the husband. This may make people hesitant to approach the Tribunal with such cases. In one example (G2) a second wife had been chased from her house by the husband to make space for the first wife. When the decision of the *Tribunal* to return her land to her had not been properly implemented, she returned to the *Tribunal*. Allegedly as a result of corruption, this time the Tribunal decided that she was to return to her mother, as she was “occupying the house and land of the legal wife”, and that the children had to go to the husband. Now, rather than trying to reclaim her land, the woman is trying to reclaim her children, and she has forwarded the case to the *Tribunal de Grand Instance*. There, the decision has not yet been taken.

⁷⁰ Observation by a Bashingantahé of the *secteur*, meeting, March 29 2005.

Disputes about the double sale of land

An important type of dispute in Giteranyi evolves from land that has been sold to two different persons. Those disputes are directly related to the flight of people during the crisis. Upon their return the original buyer finds his land occupied by someone else, who has also paid for it and hence claims rights to the land. In some cases, the original owner has not fled and has sold the land a second time while the buyer has gone in exile. In other instances, the second sale took place when the original owner returned from exile before the first buyer.

A second buyer who refuses to leave the land to the first buyer (G5)

Josephine is originally from Kayanza, and the second wife of her husband. She has 6 children. In 1990, her husband bought land in Giteranyi, which she cultivated until she fled to Tanzania in 1993. When she returned in 2002, she found that the land was occupied by someone else. The person that had sold the land to her husband before the crisis had sold the land a second time in 1995. According to Josephine, the second buyer had been aware that the plot had been sold already, but as he was family of the original owner, they made a deal.

To resolve the problem Josephine and her husband started off at the counsel of *Bashingantahe*. They decided that the plot needed to be given back to her and her husband. They had title deeds for the property, while many community members could witness that the land had belonged to Josephine and her husband. However, the second buyer did not respond to the decision of the *Bashingantahe* and continued to occupy the land, so Josephine and her husband decided to go to the *Tribunal de Résidence*.

The Tribunal then proposed that the second buyer would indemnify them by giving the amount of money they paid, back in 1990, for the land (65,000 FB). Josephine's husband did not accept this solution, considering that nowadays, with this money one could only buy a very small plot of land. Before their exile, they had invested in the plot by planting bananas and coffee on the plot, and they estimated its actual value to be around 1,000,000 FB. Josephine suspects the outcome is the result of corruption, particularly because she has title deeds.

Hence, as no agreement could be reached, the *Tribunal de Résidence* transferred the case to the *Tribunal de Grande Instance* in Muyinga. Josephine thinks this happened "to prevent that we show up, as we do not have the money to go up and down to the court in Muyinga". According to her, the second buyer is a very rich man who "brings money with him wherever he goes". The second buyer threatened Josephine by cutting down two avocado trees on the land, telling her that if she would continue complaining, he would cut off her head "just like I did with the trees!"

Her husband lives now with his first wife in Kayanza. Nonetheless, he still assists her in the court case, to help her win back their land. She thinks his interest is that "the land belongs to our children".

During the initial meeting we were told that this type of dispute is frequent and often difficult. Of all cases solved by the *Bashingantahe* from 2002-2005, 15% concerned the double sale of land.⁷¹ The *Bashingantahe* can only solve the resulting disputes if there have been witnesses present at the sale. The land belongs to the party that bought it in public (with witnesses). This was also how in the above case the decision by the *Bashingantahe* came about. If both parties have witnesses, according to the *Bashingantahe* the land has to return to the first buyer. However, such disputes are often difficult to solve, as often the original owner does not want or is unable to refund the money to the second buyer. If there are no witnesses, in Giteranyi such cases need anyway to be passed on to the Tribunal.

This particular case also illustrates a principle that several people explained to us: if the other party is poor, rich people –whether or not through corruption- tend to try to get their case transferred to the *Tribunal de Muyinga*. They speculate that the other party will not have the money to regularly visit Muyinga to follow up the case. As a result, the case will never proceed further.⁷²

⁷¹ Based on data from the register of the *Bashingantahe* of the *secteur*, provided to us by the *Chef de Quartier*: 10 out of 66 cases solved by them were about double sale.

⁷² The occurrence of this practice was also confirmed by the president of the *Tribunal de Résidence*, Interview march 29 2005

Disputes about the denial of previous sales of land

Another type of dispute that shows some similarities to the double sale of land concerns those cases in which people that bought land before the crisis upon their return from exile find the land occupied by the original owner or his children. Some occupants claim that the sale of land never took place. In other instances, they consider that the conditions of the sale were unfair, for instance that the land was sold out of distress.

Joseph vs. a son who does not accept the sale of land by his father (G7)

In 1985, Joseph –now an old man- bought a plot of land from his neighbour. In 2002, the son of the original owner returned from a refugee camp in Tanzania, and started cultivating not only his own plot of land, but also the neighbouring banana plantation of Joseph, which was located on the plot his father had sold to Joseph. He told Joseph that he did not accept the sale of this land by his father.

They took the dispute to the *Bashingantahe*, but on the day of its resolution, Joseph was ill and could not participate. According to Joseph the son then corrupted the *Bashingantahe*, and in the demarcation of the plot the banana plantation was included in the plot of the son of the original owner.

In protest, Joseph continued cultivating in the plantation, so the son approached the *Tribunal de Résidence*. The Tribunal listened to both their stories. Joseph had official papers for the land, but the Tribunal did not even need to ask for them, as even the person who had originally sold the land -the father of the occupant- witnessed in favour of Joseph. The Tribunal decided that the land needed to be given back to Joseph.

However, to solve the matter completely and to get the plot demarcated the Tribunal needs to come down for a field visit. This will cost Joseph a lot of money (the convention being that he will have to offer the judge and his assistants drinks and food), and Joseph has so far not been able to collect the money. In the meantime, the son continues cultivating the plot.

Joseph continues to live in the village, on a plot he received upon his return from Tanzania in 1998. He is afraid to go back to the house on his family property, as he is sure he will be murdered by the son who is said to be a war criminal.

The case shows a common principle that was also observed in other cases. While one party wins before the *Tribunal*, and the other party has to pay all the costs for the procedure, to settle the matter the winning party still needs to incur considerable costs to turn the verdict into a reality. Based on the various quotations we were given, it appears that a field visit by the *Tribunal* may even cost more than a judgment. Hence, a favourable judgment does not automatically imply a favourable outcome, in particular if the winning party does not avail of the money to get it implemented.

The sale of land in the absence of other family members

In Burundi, to sell family land one needs to consult and get permission from the other family members, including the women of the family. Nonetheless, the absence of other family members due to exile has been abused by individuals to make profits from selling family land. The following case shows the problems that arise if land is sold in the absence and without proper consultation of other family members, as well as how difficult it is to solve such disputes.

Jean-Pierre, whose brother sold their family property (G4)

We meet Jean-Pierre at the place where he, his wife, and their 8 children are now living: a hut made of branches and banana-leaves, at the side of the football field, where the administrator allowed him to construct his temporary house. He tells us how he lost his land.

When he was in the refugee camp in Tanzania, he received an alarming letter from the wife of his brother that his brother was going to sell the land of the family. The wife did not agree, but her husband was determined. Jean-Pierre wrote back to his brother that if he was going to sell the land, “you’d better also sell our children, as we have nothing else to live of”. Nonetheless, when Jean-Pierre returned in Giteranyi in April 2004, he found that his brother had indeed sold the two plots of land of the family and that other people were living on it. He started asking what had happened, and found out that one plot had been sold in 1997 to Evariste, at that time the *chef de quartier*, and another plot in 2002 to somebody else, for a total of 100,000 FB.

He went to the *Bashingantahé* to discuss the matter. Evariste did not respond to their call, but the other buyer did, and finally agreed to return the land, if Jean-Pierre would refund the money. However, a few days later this person changed his mind, and refused to return the land to Jean-Pierre. According to Jean-Pierre, Evariste had put the other buyer under pressure not to return the land.

After visiting Evariste to discuss the matter, on his way back Jean-Pierre took out a few shrubs from his land. A few days later, Jean-Pierre was called forward by the *Tribunal de Résidence*, where Evariste accused him of stealing and destroying his crops. Jean-Pierre claims Evariste himself has destroyed his garden to convince the judges. Nonetheless, Jean-Pierre was found guilty and spent 4 days in jail. The Tribunal did not discuss the dispute about the sale of the land.

To solve the land question, the wife of his brother asked a local member of the NGO Ligue Iteka to give advice, and this person suggested they should go to the *Tribunal de Grande Instance* in Muyinga. However, when Jean-Pierre and his sister-in-law consulted the Tribunal in Muyinga, they were told that as two of his brothers and three of his sisters are still living in Tanzania, they had to await the return from exile of the remaining family members, and then start the process again at the *Tribunal de Résidence*.

The brother that sold the land is supposedly living in the military camp close by, but both Jean-Pierre and the wife of his brother have not seen him since he sold the land. At the moment Jean-Pierre works irregularly as a wage-labourer and he “roams the streets for food”, as he has no land left for cultivation. The wife of his brother is living on the tiny plot of family-land that is left, and has almost no land to cultivate.

The case is a clear example of the limited power women often have in decisions about family land. Moreover, while the dispute is born from the unauthorized sale of family land, the major problem is the unwillingness of the buyers to settle the injustice. Even if the *Tribunal de la Résidence* would consider the problem, it will be difficult for Jean-Pierre to convince the Tribunal that the buyer was aware that the land was being sold without proper consultation, let alone to collect the money to repay the land. It is probably for these reasons that the Tribunal in Muyinga suggested Jean-Pierre should await the return of his other family members. Several people we spoke to got a similar advice. Apparently, for the Tribunal, the fact that many people were still residing in Tanzania was seen as an important obstacle for the resolution of land disputes.⁷³

⁷³ this obstacle to the resolution of conflicts at the tribunal is also mentioned in Republique du Burundi and PNUD/UNOPS (décembre 2002)

Land disputes of the Batwa community

In Giteranyi *commune*, there are about 200 households that belong to the Batwa community.⁷⁴ The Batwa are a marginalized community in Burundi, and they are not esteemed very high. In the initial meeting and several of our interviews, landlessness of the Batwa community was pointed out as a serious source of land disputes.

The limited access to land of the Batwa community was explained in different ways. According to the members of the community themselves,⁷⁵ their ancestors were mainly involved in pottery. As they were not cultivating much, they did not worry about securing land property. Their attention for cultivation dates back only recently: during the famine of 2002. As a result of their limited access to land, they are now mainly working for others as day labourers. Many people in Giteranyi, on the other hand, blame the Batwa themselves for their limited access to land. It is said, that even during the famine, they have sold their properties “because they do not cultivate”, and afterwards approached the authorities for claiming new plots.

Though some Batwa may indeed have sold their land in the past, there now appears to be a strong appreciation of land property among them. Nonetheless, only 2 out of the group of 60 people we talked to have been able to buy some land, and this only because they had been working outside Burundi (Tanzania and Uganda), as they found it very difficult to find jobs in Burundi. Others, rather than selling land, said they nowadays preferred to rent out their land.⁷⁶

Though landlessness appeared as problematic, the stories of different community members indicated that those having land had to deal with similar types of land disputes as other people in Giteranyi, suggesting that assistance to the Batwa focussing on securing land alone would fall short of their needs.

Land disputes of the Batwa community of Giteranyi

One man lost his land due to expropriation by the state for tree planting. He complained several times at the secretariat of the administrator, but to no avail: “This man is always talking about tomorrow. I think to myself: tomorrow never comes”.

Another man told about the problem that his neighbour took his land and refused to give it back. Another found that the land given to him by his family in law had been sold. He arranged to get it back and to repay the current occupant. However, when he handed over the money to the son of the occupant, the son ran away with it. He brought the case to the Tribunal, but was told the case is difficult to solve, as the son is now in Rwanda, and the occupants refuse to call him to appear before the Tribunal. The Tribunal decided to put the case on the back burner.

An old lady tells she is landless, as the relatives of her husband sold her land after he died a long time ago. She is now fed and accommodated by her neighbours.

⁷⁴ Republique du Burundi and PNUD/UNOPS (décembre 2002)

⁷⁵ Meeting with 60 members of the Batwa community, Giteranyi, April 2 2005.

⁷⁶ There has been some campaigning by a Batwa member of parliament in the community to this effect.

Disputes about land involving vulnerable women

During fieldwork in Giteranyi, we encountered several cases of women that got in conflict with people that tried to claim ownership of their land, apparently speculating on the incapacity of those women to resist their claims. The women concerned were invariably widows. While this category of land disputes was not identified as such in the interviews and meetings we had in Giteranyi, it appeared to be rather frequent. Several of the cases we identified with the participants to our initial meeting in fact turned out to be examples of this principle. Hence, we include an example of such a dispute. This particular example was in the initial meeting identified as a dispute about inheritance.

Sophie and Marianne whose land was threatened by neighbours and cousins consecutively (G11)

Sophie and Marianne were married to two brothers, one of which died in 1993, and the other in 1995. During the crisis Marianne fled to Tanzania, and Sophie found shelter in a displaced camp.

When they returned with their children in 1997, they found that, after the death of their husbands, their neighbour had changed the limits of his plot in the village, and as a result almost completely occupied the land of their deceased husbands. Sophie told us “he must have thought that we are widows, and incapable of claiming back the land”. As they did not know what to do, they approached the *Bashingantahe*. The *Bashingantahe* asked them to point out the exact limits, went to confirm their story with the neighbours, and concluded that the limits of the plot had indeed been surpassed and had to be set back. The neighbour accepted the decision, and the women were also happy with the decision, as they had nowhere else to live.

In 1999, the cousins of their husbands showed up. As they considered it still too dangerous to build a house on their land in the valley, Sophie and Marianne offered them a part of their plot in the village, to construct a temporary house. However, after living some time together on the plot, the cousins decided that they did not want to leave anymore, and were fed up by being dependent on the two women. They even told the women to leave ‘their’ plot.

Then, one Sunday when the women went to the church, the cousins had promised a member of the *Bashingantahe* drinks and beers, and they had started placing pickets to mark the limits of ‘their’ plot. The women were furious, and went to see the other *Bashingantahe*. Those, however, told them that they did not want to address the case, as it would be hard to deal with it without their colleague losing face. However, they gave the women the papers they needed to continue with their case to the *Tribunal de Résidence*. There the judge decided that the cousins needed to go back to their own land, as the land belonged to the women. The cousins accepted the decision. According to the women “they had enough land to return to, but they just wanted to see whether they could grab our land as well”.

After the interview Marianne sighs deep and says: “The problems of widows are often not understood. Before, when my husband was still alive, he had the power to prevent all these conflicts about land...”

In some examples, the vulnerable women concerned finally lose their land. A tragic example of such a case was a widow who returned from exile in Tanzania in 1998, and whose neighbour since long aspired to buy her property (G6). Nonetheless, she refused him repetitively, as the plot concerned was her only property. Then, one day, he accused her of stealing bananas from his plot and requested her to give him her land for compensation. The women felt very much threatened by the man, and she gave in and lost her land. Although they were aware of what had happened, the *Bashingantahe* did not intervene, as the woman did not dare to bring the case forward to them.

Landlessness

While strictly speaking landlessness is not a dispute in itself, it may be the outcome of disputes around land, and is also considered a potential source of disputes. Some of the earlier disputes, such as the sale of land in the absence of family members, or the double sale of land resulted in landlessness. Other people lose their land because they have lost or never had property titles, and no witnesses can be found that were present at the sale. We encountered a woman (G8), whose husband had bought land in 1991. During their flight for the crisis, the couple lost their papers. The original owner of the plot got to know about this misfortune, and started claiming that he had never sold the plot to them in the first place. The following is an example of a dispute about land that likely will end in landlessness of one of the parties.

Nadine, who is in dispute with her foster son about their limited property (G9)

Nadine is an unmarried mother of three children. She bought herself a plot of land, as her father did not have the means to give her a part of his land. Nadine had two brothers. Despite the protests by the first brother, the second one had sold his plot of land when his children were still very young. When the wife of the second brother died, Nadine took his three children in her house. Later, their father also died.

When the eldest orphan got 23 years old, he wanted to live independently and thus started constructing his house on the land of Nadine. However, Nadine did not agree: she destroyed the house and told her step-son that he could not inherit of her land. After some struggles, he gave in. However, Nadine expects that in the future the problem will arise again, as her step-children will also need some land to live on in the future. However, her plot of land is not even enough for her own children.

She solved the problem with her step-son herself. She did not even consider informing the *Bashingantahe* about it. She is sure her first brother will not give part of his land to the orphans, as he has already declared that he does not feel any responsibility for the mistake of his brother of selling his land.

She does not know others with the same problems, as “we Burundians do not like to talk about problems, and we try to keep it quiet as long as possible”.

The *Bashingantahe* told us that, finally, the aunt will have to give in and should share her land with the orphans: “If she does not agree with that solution, she can go to the Tribunal”.

In general, it seems very difficult for orphans to make claims to the land of other family members in case their land has been sold by their family members. In some cases, orphans receive land from their stepfathers. Nonetheless, when the stepfather dies, the rights of inheritance of the step-children are often disputed by his natural children.

The resolution of disputes about land in Giteranyi

The Bashingantahe and the Tribunal de Résidence

It is difficult to generalize about which types of disputes are solved by which type of conflict resolution mechanism, as this depends highly on the particularity of the cases. Possibly, the only generalization that can be made is that disputes about the limits of plots are often solved by the *Bashingantahe*.⁷⁷ According to the Mushingantahe that keeps the register of the *Bashingantahe*, only one out of ten of such cases needs to be forwarded to the Tribunal.

Disputes about disputed inheritance rights –e.g. concerning the inheritance by adopted children, or the refusal of the children of a deceased person to acknowledge a gift of land by their father to somebody– can be solved by the *Bashingantahe* in case witnesses can be found that are knowledgeable about the arrangements made in the past by the deceased. The resolution of such cases is merely a matter of properly distributing land, and does not involve the payment of reimbursement. Also the redistribution of the inheritance, for example in the case that one of the brothers feels disadvantaged, can often be taken care of by the *Bashingantahe*. Nonetheless, still the majority of cases that arrive at the *Tribunal de Résidence* concern the inheritance of land.⁷⁸

According to the *Bashingantahe* themselves, difficult cases for them are disputes between members of the same family. Those include cases of the sale of family land by a person without consulting his brothers who were still in exile. The *Bashingantahe* prefer that in those cases the land returns to the original owner. Nonetheless, this requires that reimbursement is paid to the one who bought the land, and often, either the buyer does not want to forfeit the land, or the family has no money for reimbursement. Hence, often those disputes have to be transferred to the Tribunal. In a similar way, cases of the double sale of land are difficult to solve, in particularly when both sales have taken place without witnesses being present. Often neither of the parties wants to accept repayment.⁷⁹

Difficult cases are also those where land titles have been lost in the chaos of exile. It seems that some people are even speculating on other people's lack of papers. In case the *Bashingantahe* or reliable witnesses were not present at the handing over of the land (which seems to have happened often in the past) they are not able to solve such disputes. Further, as the *Bashingantahe* can not enforce a solution –e.g. by imprisoning people or demanding a fine– and they are powerless in cases people do not accept the decision of the *Bashingantahe*. Those include cases such as the attribution of a part of the inheritance to girls, which is not accepted by the male family members.

Apart from disputes about the inheritance of land, which form the majority of cases, many disputes brought forward to the *Tribunal de Résidence* result from the illegal sale of land, trespassing of limits by neighbours and relatives, disputes as a result of polygamy and divorce, and the inheritance by women.⁸⁰

The Commission Justice & Paix

The Commission Justice & Paix is said to assist in many disputes within families and between neighbours. Their role in land disputes seems to be very limited. During our fieldwork, we heard of only one example in which the Commission Justice & Paix had a direct role in the resolution of a land dispute. It concerned a dispute of a man who, in order to get rid of his first wife, sold the land and the roof of the house of his second wife, and installed his second wife in the house of the first. As the first wife had been legally married in the church and before the authorities, she approached the church for

⁷⁷ This is the type of conflict people mentioned when asked after conflicts solved by the *Bashingantahe*. Moreover, of the 66 landconflicts solved by the *Bashingantahe* of Giteranyi *secteur* since 2002, 25 concerned the limits between parcels

⁷⁸ Interview with the president of the *Tribunal de la Residence*, Giteranyi, March 29 2005.

⁷⁹ Interview with the *Bashingantahe* of Giteranyi *secteur*, March 31 2005.

⁸⁰ Interview with the president of the *Tribunal de la Residence*, Giteranyi, March 29 2005.

help. Finally, the CJ&P called together the parish priest and the *Bashingantahe*, who then decided that the husband had to buy back the land he sold and rebuild the house, so that the second wife could rest at her own plot. Hence, it was not directly the CJ&P that solved the dispute, although it played a role in calling the parties together.

It seems most often the Commission has merely a role of ‘watchdog’, alerting others -the *Bashingantahe*, the *chef de colline*- to take action in a dispute. The Commission J&P itself could provide only two examples of disputes solved by them on their own: one about the double sale of land, and another about the limits of a parcel. In the latter case, the dispute could not be solved at higher levels because the different authorities requested money for its resolution, so the conflicting parties turned to the CJ&P.

A few members of the CJ&P are also member of the counsel of the *Bashingantahe*. But while the focus of the CJ&P is on reconciliation, and references are made to good Christian behaviour to convince people to reconcile, the *Bashingantahe* may also take decisions regarding a case brought forward to them and use some pressure on the parties to accept the solution.⁸¹ Further, the CJ&P is in the first place seen as something of the Catholic church and hence for Catholics mainly.

According to the Commission itself, various *chefs de colline* in the parish dislike the Commission J&P, and have advised people in dispute not to ask their council. The members of the commission suggest this dislike stems from the fact that the Commission J&P does not demand beer for their services (in contrast to the *Bashingantahe*, who will consequently share the beer with the *chefs de colline*). The *chef de secteur* of Giteranyi fears the CJ&P are incapable in face of the land problems here: “the people here are very difficult, and can only be brought to a solution by force”.

Concluding

In Giteranyi, it is striking that several particular disputes –notably about the limits of parcels as well as about the division of the inheritance- are often related to repatriation. On the other hand, problems of repatriates are often very similar to those experienced by people that have not left their community. Striking is further that many severe disputes concern relatives rather than strangers or neighbours. Further, in various disputes the resort to severe threats had an important role in withholding people from proceeding their cases.

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 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.

It is interesting to see, that a type of dispute that was mentioned in southern Rumonge -disputes resulting from polygamous marriages- has completely different characteristics in Giteranyi. While in southern Rumonge the dispute emerged among the children of the several wifes, in Giteranyi the dispute was between the wives and their 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. While the disputes related to polygamy in southern Rumonge were disputes about livelihoods, between brothers from different mothers claiming inheritance of the land, in

⁸¹ Interview with the *Bashingantahe* of Giteranyi *secteur*, March 31 2005.

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. Interesting to see was also that after divorce the obligations of a husband towards his children are limited. Considering the character of land disputes resulting from polygamous marriages in Giteranyi, there seems a need to focus on prevention of the complications of such disputes, by making women more sensitive to demand registration of their relationship and children.

Regarding the considerations used in the resolution of land disputes, interesting in the case of Giteranyi is the importance the *Bashingantahe* attach to land titles: the presence of those seems decisive in their judgments. This is striking, considering that conventionally the *Bashingantahe* rely on their memory and custom. However, in Giteranyi this memory is no longer reliable due to the massive displacements that have taken place over the past years. This results in that people, if they have lost their land titles, cannot resort to the *Bashingantahe*. At the same time, others may win disputes resulting from the illegal sale of land, which might have been concluded in a different way if the *Bashingantahe* would not have relied on the official papers.

Customary rights as well as conventions in Giteranyi *secteur* are not in favour of rights of women on land. One of the *Bashingantahe* argued that inheritance rights of women only contributed to the further fragmentation of land. While in the various examples studies the *Bashingantahe* were willing to give women a symbolic portion of the inheritance (*igikemanyi*), they were never awarded an equal share. In the cases of divorce, the *Bashingantahe* honoured the need of women to a house; land was considered only in the second place or not at all. Striking was also the case of a widow taking care of the orphans of her brother (G9), in which case the *Bashingantahe* considered to give the orphans a property bought by the late husband of the woman, rather than considering giving them a part of the plot of her other brother.

About the *Tribunal de Résidence*, it is striking to observe that 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. During the field-work in all the communities, it was observed how people that did not agree with a verdict tended to accuse either the Tribunal or the *Bashingantahe* of corruption. Nonetheless, if we consider only the cases in which the we could more or less confirm the story of the informants, the incidence of disputable conclusions by the *Tribunal de Résidence* in Giteranyi is relatively high. A lot of people were convinced that in the Tribunal rich people will by definition win from poor people. Another tendency that was observed, was how rich people tended to slow down procedures, or continued prosecution at a higher level (eg G5) to exhaust the opposite party.

Further noteworthy about the jurisdiction of the Tribunal is, that 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 (G7), or the winning party does not have the money to get it implemented (G1).

To win a case, you need to have money

Land disputes in Nyagasebeyi, Ngozi

Colline Nyagasebeyi is located in Tangara *commune*, in the south-east of Ngozi province. The *colline* exists of four *sub-collines*: Nyabibuye, Gatwanzi, Nyagasebeyi and Rwgabo. After Kayanza, Ngozi is the province with the highest population density in Burundi (408 inhabitants/km² in 1999).⁸² Tangara *commune* is said to be less densely populated. The *commune* has not had many refugees. Since 2002, 846 people have returned to the *commune*.⁸³

At the moment, the *colline* of Nyagasebeyi counts 1,291 inhabitants. During the crisis, most of the population has been displaced at a time.⁸⁴ The community has witnessed severe reprisal killings by the army, sometimes assisted by civilians. In October 1995, after an armed attack on a bus on Gitaramuka *colline*, around Musenyi Catholic Parish, 140 people were killed in response.⁸⁵ 45 families are now living more or less permanently in a displacement site, so far 13 families have returned home.⁸⁶ A limited number of people (about 14 families) have fled to Tanzania.

Disputes about land in Nyagasebeyi

In the initial meeting, the limited availability of land was identified as a central feature of disputes around land in the community. According to the participants, the exiguity of land made the fair distribution of the inheritance very difficult, and the latter was seen as the most frequent type of dispute. Other types of dispute that were seen as frequent were those resulting from the disputed legitimacy of children (and hence their rights to inherit), the limitations of plots, and the secret sale of land. These observations are more or less corroborated by the *chef de colline* of Nyagasebeyi. Over the last year, 55 disputes about land were brought to his attention. Of those,

- 15 were disputes about the limits of plots
- 10 concerned the secret sale of land
- 9 were about the division of inheritance between brothers

Other frequent disputes were about the disputed legitimacy of children, the inheritance of girls, and the occupation of land by displaced. The *Bashingantahé* of Nyagasebeyi also identified disputes about the limits of plots as most frequent type of land dispute, followed by the division of the inheritance.

According to the President de Tribunal, 98% of disputes that appear before him are about land. He receives between 6 and 10 new cases of land disputes a month. Most of those concern succession (more than half of the disputes), divorce with all its consequences, and disputes about borders of plots. Displaced people tend to have land disputes similar to those that have remained behind.⁸⁷

The return of refugees does not pose serious problems in the community. So far, repatriates easily recuperated their properties.⁸⁸

Interestingly, in Nyagasebeyi, disputes about land are not the most frequent type of dispute that appear before the *Bashingantahé*. More than half of the cases brought forward to them concern theft or the

⁸² Based on a figure of 601,382 inhabitants, and a surface of 147,386 hectares, ISTEEBU, August 2001.

⁸³ Figure as of April 24 2005, UNHCR, Summary of Burundian Refugees.

⁸⁴ In June 2005, the province of Ngozi still counted 12,204 IDPs (map ‘Burundi; affected populations by province, refugees & internally displaced’, prepared by OCHA Regional Support Office-CEA Nairobi).

⁸⁵ Amnesty International (1996) Burundi: Armed groups kill without mercy.

⁸⁶ Figure provided by the *chef de colline*. The communal administrator provided us with a figure of 56 families, which probably does not take account of those families that have returned recently.

⁸⁷ Interview, April 12 2005.

⁸⁸ Observation by the *secrétaire communautaire*, April 12 2005, confirmed in other interviews as well.

destruction of crops by domestic animals. About one in five disputes are about land, and these are mainly about the limitations between parcels or about inheritance.

Conflict resolving mechanisms in Nyagasebeyi

In Nyagasebeyi, the *Bashingantahe* are working closely together with the authorities. Though not invested as *Bashingantahe*, the *chef de colline* takes part in their meetings and deliberations. If conflicting parties do not agree with the decision of the *Bashingantahe*, conflicting parties may consider going to the *chef de zone* (which hears cases assisted by the *Bashingantahe*), the *commune* or the brigade. It is the *chef de colline* that writes the letter to forward the case to the *Tribunal de Résidence*. Several of the *Bashingantahe* have been trained by CARE, and the national commission of *Bashingantahe*, as well as in Ngozi by another organization of which they did not remember the name.

The Commission Justice & Paix of Musenyi Parish was established in 2003. In each of the 11 sub-parishes two members have been elected, that meet monthly together. Apparently, the commission is not yet very active and is still in the process of getting organized. The former president of the commission has since been appointed as administrator of the *commune*. The members of the commission see their role as assisting in improving the relations between people in the community. Rather than mediating in disputes, they sensitize people to resolve their disputes amicably, and ask them to alert the commission in case disputes arise in the community to refer the parties to the appropriate conflict resolving institutions. So far, they are not often approached.

Disputes about the distribution of the inheritance

As mentioned before, Tangara *commune* is said to be less densely populated than the rest of Ngozi. However, the exiguity of land was mentioned as a problem underlying various disputes, in particular those about the division of the family property at inheritance. Disputes can be fierce, and suspicions among community members are that various deaths in the community should be attributed to poisoning, to eliminate possible heirs. In some cases, the family property has become so small, that family members consider it better not to divide, for example if most of the land has been used for the construction of houses occupying parcels larger than those that would result from fair division of the property.

Nonetheless, inheritance problems are not restricted to those families with little land. The cases of disputes about the distribution of the inheritance identified in the initial meeting invariably concerned large properties that had been loosely divided in the past. Current disputes now emerge among the next generation: the grandchildren of the original owner.

Alexandre and the division of the family property (N1)

The grandfather of Alexandre used to have a lot of land on another hill than where Alexandre is actually living. After his death, his three sons did not consider it necessary to precisely define the borders of the parcels they cultivated individually: the land was vast enough and everybody just cultivated as much land as he needed.

The eldest brother, the father of Alexandre, got 2 sons and 2 daughters, the younger one 3 sons and 3 daughters, and the youngest one 3 girls. Though the number of cousins was thus relatively limited, over the last years the situation got more difficult, when several cousins started having their own children.

Hence, in 2004 it was decided that the family property needed to be divided and the plots precisely delimited, for which the *Bashingantahe* were asked to assist. They divided the land in three plots of similar dimensions. Alexandre was not living on the plot any more, but had been cultivating coffee and bananas very close to the houses of his three cousins. Hence, this plantation was attributed to the cousins. Those accepted that they would compensate him for the lost banana trees and coffee shrubs. Nonetheless, they never did. As the deal about the compensation was no part of the solution proposed by the *Bashingantahe*, Alexandre will now need to go to the *Tribunal de Résidence* to get the matter solved. As the cousins are profiting from the situation, there is for them no urgent need to get it resolved.

Alexandre also has had similar problems with the children of his late brother. The plot of land on which they are living was bought by their father, and had also never been divided upon his death. When the children of his brother started constructing houses, they began to occupy more and more of the land. The *Bashingantahe* helped them with the distribution and the problem was solved. In this case, both parties were afraid of the possible problems that might emerge from not properly delimitating the plots, and hence willing to come to a solution.

As in the above case, often those profiting from the loose division of the land try everything possible to slow down the resolution of this type of conflict. In one case (N2) for example, the father of 4 surviving sons with different mothers and grandfather of 15 grandchildren, wanted to distribute his land before his death. In the past, as he had had several occupations in town, his land had been loosely distributed by his wives to their sons, particularly at marriage. Due to the differences in age of the grandchildren, the man had no confidence the distribution would be fair after his passing away. Several of the grandchildren are still in Tanzania, and those that are back try to slow down the process. They did not react to the various convocations of the *Bashingantahe*. Finally, the *Bashingantahe* advised the man to approach the *Tribunal de Résidence*, as his grandchildren are getting “more and more complicated”.

Disputed legitimacy of children

Prudence, who tries to secure a part of her late husband's land for their son (N6)

In 1984, when she was still living with her parents, Prudence got a child. The father of Prudence forced the biological father to sign in front of the *Bashingantahe* that the child was his. Nonetheless, the father never registered the child at the *commune*.

Having an illegitimate child live with her parents was difficult, so she pleaded to live together with the biological father. Five difficult years followed. The couple lived in a rented house next to the market, but most of the profit of her small business was used by her husband to take care of his first wife and family. The relationship deteriorated and she asked him to provide her with her own house and a plot of land. The man then gave her a part of his land. Nonetheless, Prudence complained it was the worst part. Her husband told her: "if you do not like the land, give me the child so he can live with me". This then happened and Prudence went back to live with her parents.

However, soon she found out the father treated the child badly and she took it back under her care. Then the first wife of the man died, and he asked her to live with him again, which she refused. Nonetheless, she wanted her husband to acknowledge his child, and make a financial arrangement for its maintenance. She approached the *Chef de secteur*, but on the day her husband would be called forward to the *Bashingantahe*, it appeared that he had gone for a drink with *chef de secteur*. Finally, Prudence decided to inscribe the child on her own name.

Later, she approached the *Tribunal de Résidence*, but as the political wind had changed at that time (it was 1993), her husband refused to appear in court, as he did not want "to be judged by the Frodebu".

Soon after, the crisis broke out and both Prudence and the father of her child fled to Cankuzo province. Later, the man moved to Bujumbura and sometimes provided her with some small money for the maintenance of the child. She still wanted to establish legally that the man was the father of her child, but as her husband was making a lot of money in Bujumbura, she feared he would win the case simply by his financial force.

Then, in 1999, the man died. His relatives invited her for the funeral, and she contributed beer. Although the relatives of the deceased were aware of the fact that he had maintained the child, the eldest of his three sons with his first wife refused to accept the child as a legitimate heir.

As for now, Prudence has not enough money to open a court case. She is living in a house in the displaced site which she built with assistance of the NGO CARE. Anyway, her mother is sure that "if today at the process you do not have money, you will also not win". The *Bashingantahe* are also no option for her, as she fears the expenses she will have to make. She has decided to invest her money in the education of her son, "so that when he is educated, he will make money, and can start the case himself".

From the different interviews, it appears that a child not being acknowledged by the father runs a high risk of becoming landless, considering the limited possibilities of women to inherit part of the family property. The burden of taking care of illegitimate children often falls upon the mother. One desperate woman in the IDP site reportedly dropped her child in a latrine after birth, to be saved the shame and burden of an illegitimate child. The child was saved, but the father never acknowledged the child, and refused to accept the decision of the *Tribunal de Résidence* to take care of it. The case is still pending before the *Tribunal de Grand Instance*.

The *Bashingantahe* explained to us, that as a result of the training they received from CARE, they accord a child growing up illegally in the family of his mother the same rights as the other children. We could not confirm this in practice. In all the examples we heard of (N6, N8, N9, N7) women were asked to declare who was the father of the child. In case this person did not accept to acknowledge his child, the women had no other option than to go to the *Tribunal*, as the *Bashingantahe* could do nothing with their claims. Examples of inheritance by non-acknowledged children concerned those in which their mother had also inherited part of the family property. In all those examples, women had received a small portion only of the family property (N5, N9, N10), which they could only securely pass on to sons. This appeared for example in a case (N11) of an unmarried mother who had divided the family property with her sisters, but feared her sisters would take the land away from her daughters after her decease.

Disputes about the limitations of parcels

Pierre-Claver, and the endless procedure with a neighbouring family about limitations (N12)

In 1970, a family settled itself next to Pierre-Claver's family. Pierre-Claver was 15 years old by then, had no brothers, and his father had died. The neighbours consequently started cultivating and constructing a house on a part of the land formerly owned by Pierre-Claver's father. The mother of Pierre-Claver brought the case before the *Bashingantahe*, who honoured her claim.

Nonetheless, the occupants appealed at the *Tribunal de Résidence* (and lost), consequently at the *Tribunal de Grand Instance* (and lost); and finally, in 1986, at the *Court d'Appel* in Bujumbura (and lost). The final decision in Bujumbura was taken in 1990. The procedure took a long time, because every time the case was brought forward to the different courts, the occupants or their witnesses failed to present themselves, and the case needed to be postponed.

Nowadays, the occupants are still there. As a result of the dispute, Pierre-Claver did not take action for almost ten years. In 2004, he started reclaiming again. It took so long before he started reclaiming, because back in 1990, the *Tribunal de Grande Instance* had brought a field-visit to the community. Expecting the *Tribunal* would like another fieldvisit, it had taken Pierre-Claver a considerable time to get money together (for petrol, food and drinks). However, it turned out, a field-visit was not necessary. He handed a copy of the 1990 verdict to the *Tribunal de Grand Instance*, and they gave him a letter for the *Tribunal de Résidence*, instructing them that they could now use force to remove the occupants. Early April 2005 the *Tribunal de Résidence* gave the occupants an ultimatum of two months. The occupants have declared publicly that even if soldiers will come they will remain on the land. Moreover, an earlier ultimatum of 3 months has never resulted in action from the *Tribunal*.

The case is a little extreme in the duration of the process, but various of its characteristics not uncommon: the efforts of the occupants to delay justice, in the meantime profiting from their continued occupation; the attempts of the occupants to drain the resources of the original owner by continuously appealing; their speculation on the vulnerability of orphans; the threats of the occupants to resort to use violence; and the limited efforts of the diverse *Tribunals* to enforce their decision.

Various examples of disputes about limitations in the community concern families that have been displaced, and parts of whose property have been nibbled of by neighbours in their absence. Nonetheless, this type of dispute is very generalized and not limited to displaced. According to the *Bashingantahe* it has also become the most difficult dispute to solve, as a result of the increasing pressure on the land.

While registration of land may provide proof of the original dimensions of the plot, in addition, people consider it necessary to put clear limitations of the plot in the field. The collective memory of the *Bashingantahe* may have served its purpose in the community, people are worried that in front of the *Tribunal* (in case of dispute about the land) or for getting a loan from the bank there may be a need for hard evidence of the dimensions of the plot in the form of border pickets.

The secretive sale of land

Gilbert, who would like to redeem the land of his cousins (N10)

In 1996, when Gilbert was in the third class of secondary school, his elder brother died. It then turned out, that short before his death he had sold his two plots of land, which were planted with coffee shrubs. The other members of Gilbert's family were not aware of the sale. The sale had taken place before the Tribunal, and had been witnessed by a couple of friends of the brother.

The brother left 4 sons, the elder of which was 8 at the decease of his father. Gilbert wondered what would come of him and decided to take care of him, and teach him. Gilbert is considering further steps to reclaim the property. Nonetheless, he himself has recently married and still needs to pay off debts to his parents for his schooling. It would be unwise to approach the buyer and create complications before he has secured enough money to redeem the land.

Moreover, directly approaching the buyer would be unwise. Considering that the buyer never undertook efforts to contact the family (to assure he was entering a fair deal and to be sure that the land had not already been sold, for example), Gilbert doubts his good intentions. And as the buyer is now profiting from the land, he will likely go for a bargain at the disadvantage of Gilbert. He considers the *Bashingantahe* incapable of making a fair deal, and thinks the case needs to be brought forward to the Tribunal. Even if he would try to settle the matter amicably, he would ask a representative of the authorities or one of the *Bashingantahe* to approach the buyer, to inform carefully what would be possible.

Apparently, in the above case the Tribunal had failed to verify through reliable witnesses whether the sale of land was agreed upon by the other family members. This was said to be not exceptional. While in the above example the wife was aware of the sale, often family property is being sold without consultation of the wife.

Reclaiming illegally sold land is particularly difficult. As the case shows, approaching the seller for settlement is a sensitive issue, in particular if he has been aware of the illegality of the affair. In one example explained to us by the *Bashingantahe*,⁸⁹ they could finally negotiate that the children whose parents sold part of the land in secret were given the remainder of the profit, after they failed in convincing the buyer to accept restitution. Even in a case (N3) of a person who sold his land out of distress, and who made with help of the *Bashingantahe* an arrangement for later restitution of the property and reimbursement, the original owner was very afraid the case would finally end up in the Tribunal.

⁸⁹ Interview with several *Bashingantahe* of Nyagasebeyi commune, April 14 2005.

The occupation of land by displaced

One of the displacement sites in the *commune*, Kamira, is located at Nyagasebyi *colline*. The site is partially constructed on land of the government, partially on land of the catholic church and partially on land of individual people.

Bernadette, whose property was occupied by displaced (N15)

The husband of Bernadette died 30 years ago. The family property of her late husband is on a hill slope close to the communal offices and brigade. In 1994, Bernadette and her children fled the crisis to a neighbouring *commune*, after some of the children had been killed.

When Bernadette returned, it turned out that 18 families of displaced had settled themselves on the land of her late husband, had taken possession of all the crops that were on the property, and had started constructing their houses. A plot she had bought herself was occupied by 5 other families. A piece of land close to the house was still unoccupied, and her son managed to send away some people intending to settle there.

Two months ago, two occupying families left, but after their departure two boys started constructing their houses on the plots left empty. When she asked the *chef de subcolline*, she was told that those boys needed houses, so they had permission to build them. Later, she came to know that the boys had bought the plots from the former occupants, she suspects in complicity with the authorities, as they did nothing to prevent them from settling on the plots.

So far, she never dared reclaiming with the authorities. The authorities have not told her anything about their intentions with the displaced. Her son, who lives in Bujumbura, has told her that he will follow up the case, but for the time being she should remain quiet, await the departure of the remaining occupants and try to prevent that new people settle on the vacated plots.

Difficult about this type of dispute, is that the status of the occupation by the displaced remains unclear. After 10 years living on this plot, many displaced are not willing to return to their former plots, content as they are to be living close to the centre of the *commune*, the church, the market. Some would like to buy the plots on which they are living, but so far do not have the money. Examples were also given of people that returned to their communities, but left their sons living with their wives in the displaced site (N14). Other displaced do not have the means to reconstruct their house again on their former plots.

The administration attributed the land without consulting the original owners, and so far they have not indicated to have any policy on the matter. In response to the sale of plots by a couple of occupying families, some affected owners have approached the displaced and their *nyumba kumi* to complain and to point out the need to return the land to the original owners, after the return of the occupants to their communities. In response, some displaced have gone to complain with the administration, saying that as the administration has given them the land, they will not depart without indemnification.

The matter is complicated in that several (though not all!) of the original owners are Hutu, while the displaced are mostly Tutsi (some displaced are Hutu, and were members of UPRONA), and are playing on the sensitivity of ethnicity. One of the lower government officials in the area (a Hutu) is careful not to comment on the occupation, as the occupants will reproach them: "so now you also want to chase us away from here, after having chased us away from the hills".

The resolution of disputes about land in Nyagasebeyi

The Bashingantahe

The disputes about land brought forward to the *Bashingantahe* are mainly about the limitations between parcels and about the division of the inheritance. The former have become particularly difficult to solve with the increase in population and scarcity of land.⁹⁰ From the different examples, it appears difficult for the *Bashingantahe* to enforce retribution or demand compensation in land disputes, and cases involving this often need to proceed. Cases of double sale can only be solved in case witnesses were present of one of the sales, otherwise they need to proceed.⁹¹ Though the *Bashingantahe* say they do not experience difficulties with dealing with disputes about the marshlands (saying that the law is very clear: the marshlands belong to the state and hence nobody can make permanent claims on them), however, the Tribunal observes that most disputes about the marshlands end up at their desk, just because of the confusion about the legislation.

From the examples studied, regarding women the *Bashingantahe* base themselves mainly on traditional conventions. As various people mentioned explicitly, when a woman inherits, the land will be lost to her family. Some people even argued that women tend to sell their land, and that it is hence of no avail to let them inherit. There is thus reluctance among the *Bashingantahe* towards letting them inherit land. In case they inherit, their part is always considerably smaller. This is also the experience of the *Tribunal de Résidence*. After divorce, often women are sent away by their husbands without leaving them anything. If such cases appear before the *Tribunal*, the *Bashingantahe* hardly bother to be present to be present at the *Tribunal* (this in contrast to other cases).⁹²

Several of the *Bashingantahe* have been trained by CARE, and the national commission of *Bashingantahe*, as well as in Ngozi by another organization (of which they did not remember the name). According to the *Bashingantahe*, the several trainings have clarified to them which cases fall under their jurisdiction and which need to be sent through to the Tribunal. The *Bashingantahe* we spoke to consider themselves to be judging more neutral than before, and no longer use roughness or fines to enforce their solutions. While in the past, procedures before them tended to take a long time and several reunions, they now try to solve disputes in the short term. While they have one specified day for meetings, often they try to deal with cases they encounter the very same day. As the number of reunions necessary per dispute has reduced, the costs for the conflicting parties have also diminished. The convention is that people bring beer and some food to the *Bashingantahe* for their assistance.

The Commission Justice & Paix

The members of the commission indicate that membership to the commission is based on comportment, similarly to the *Bashingantahe*. Two members of the CJ&P of the parish are also *Bashingantahe*. The commission sees its task as different, however: while the *Bashingantahe* are dealing with material conflicts, the CJ&P aims at conflicts of a more social character, such as relational problems between wife and husband, and between brothers. So far, these intentions have not been translated in a programme of specific activities, as for its programme the commission depends heavily on the Diocese. A series of reconciliation meetings planned by the Diocese has not been implemented. The president of the CJ&P has been trained at the Diocese by CARE. Supposedly he passes on his knowledge to the other members of the commission. Several members of the commission, through the Diocese, also participated in a training of CARE on peaceful conflict resolution, especially at the family level.⁹³

Several community members pointed out that the Commission J&P is anyway unable to deal with land disputes. The commission until now has been addressing people of the parish only, rather than the

⁹⁰ Interview with several *Bashingantahe* of Nyagasebeyi commune, April 14 2005.

⁹¹ Ibid.

⁹² Interview with the President of the *Tribunal de Résidence*, April 12 2005.

⁹³ Interview with several members of the Commission Justice & Paix, Musenyi Parish, April 19 2005.

community at large. So far, the Commission J&P has not been approached by people for assisting in their disputes. More in general, the experience of the NGO CARE in Ngozi is that disputes identified within the parish seem to be solved rather by the *communautes de base*, an older structure established within the parishes, than by the Commissions J&P.⁹⁴

Concluding

Particular about the case study of Nyagasebeyi were the disputes about the distribution of the inheritance, which appeared severe as a result of the high pressure on the land. In some cases, it was 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 the other case studies, such disputes were commonly solved by this institution.

Discussing the resolution of land disputes in Nyagasebeyi, it was remarkable how many people pointed out, that having money at ones disposal was very decisive in disputes about land (hence the title of this chapter). As observed in several of the above examples of land disputes, people speculated on the financial possibilities of their adversaries in their decisions to continue litigation. As a woman (N6), whose daughter was not acknowledged by the sons of her late husband, explained: "If you do not have money, the other party will continue until you are bankrupt. There is a moment you decide to stop proceeding: it is when you realize you could use your money in a more profitable way". In other cases, people were expected to lose, but having the financial possibilities to continue proceeding, profited as long as possible from the status quo –a practice against which the diverse Tribunaux seem powerless. In addition, several people believed money made the difference to get your right, in particular at the *Tribunaux*. Apparently some (rich) people are also able to proceed immediately to the *Tribunal de Résidence* without first consulting the *Bashingantahe*.

On the other hand, the progress of litigation depends very much on the financial means available to people. Most disputes appear before the *Tribunal de Résidence* during the dry season: after the harvest of coffee, people again have the money to proceed their cases.⁹⁵ Hence, the title of this case study: 'to win a case, you need money'.

Various people also commented on the practice of the *Bashingantahe* to be paid for their services in the form of drinks and food, in particular in case of disputes about land. Also in this case study, there were strong indications that some people did not approach the *Bashingantahe* because they did not have the financial means to provide for the *agatutu*. Further, while the *Bashingantahe* are considered to have limited means to compel a solution, in Nyagasebeyi it was also deplored that the *Tribunal de Résidence* is not very strong in enforcing their verdicts.

Striking about the conflict resolution mechanisms in Nyagasebeyi was further the fact that people may chose as to which institution they proceed (the Tribunal, the gendarmerie, the *administrateur de commune*) after consulting the *Bashingantahe*.

The problem of displaced people in Nyagasebeyi occupying the land of others is a sensitive issue. 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 community and to reconstruct their homesteads.

⁹⁴ CARE Ngozi has started a program to strengthen the capacities of 9 local partners, including the commission Diocesaine Justice & Paix. Interview CARE, Ngozi, April 12 2005.

⁹⁵ Interview with the President of the Tribunal de *Résidence*, April 12 2005.

Enemies by inheritance

Land disputes in Muriza, Ruyigi

This chapter concerns land disputes around Muriza (*secteurs* Nyarurambi and Muriza), in the southwest of Ruyigi Province. Muriza is located in Butaganzwa *commune*, and is the location of the communal offices and the main church of Muriza parish.

In 1990, Ruyigi was one of the provinces with the lowest population densities of Burundi (102 inhabitants/km²).⁹⁶ Nonetheless, over the last 10 years there has been some migration from heavier populated regions. Butaganzwa *commune* now has a population of 52,779 people.⁹⁷ According to the national inventory of available lands by the government of Burundi in 2001, the amount of lands still available is limited (355 hectare).⁹⁸

Ruyigi has been a strong-hold of the CNDD-FDD, and Muriza parish has experienced several killings and reprisal killings.⁹⁹ Livestock in the area has drastically reduced during the conflict. Butaganzwa has experienced a limited number of returnees only (2,464 over the years 2002-2005).¹⁰⁰ Overall, the province of Ruyigi has had limited numbers of displaced.¹⁰¹

Disputes about land in Muriza

According to the participants to the initial meeting in Muriza, a large number of disputes are about inheritance. Among those, in particular the division of the inheritance between children from different mothers is seen as frequent. An important number of inheritance disputes results further from women inheriting or claiming a part of the family property. In addition, a large number of disputes result from the limitations between plots. Another type of dispute identified in the meeting was '*injustices familiales*': parents selling the land of their children without consulting them, or orphans losing their land through the manipulations of relatives.

Though the number of returnees in the community is not very large, disputes resulting from the occupation of parcels that started in the absence of the owners are considered an important dispute. Nonetheless, it appears that many of these disputes have been solved already, and the participants of the initial meeting could not come up with recent examples.¹⁰² In the community, several disputes concerned those between the authorities and individuals: sometimes plots of individuals have been attributed to development programmes; in other instances individuals have occupied *terres domaniales*. Those disputes were not considered very frequent. One case of dispute involved people exploiting land in the marshlands for acquiring clay, which resulted in a problem with the authorities who consider that the marshlands should only be used for cultivation. The *Bashingantahé* further observed, that there are still various disputes about the limitations of parcels that result from the abolition of the *ugurerwa* contract in 1977.¹⁰³

⁹⁶ Bergen (1992)

⁹⁷ Data provided by the communal office, Butaganzwa, May 11 2005.

⁹⁸ Figures from République du Burundi and Forum des Partenaires au Développement (Janvier 2004)

⁹⁹ see for example on the events of early 2000: Human Rights Watch (2000) 'Recent Insurgent attacks on civilians and humanitarian agencies'.

¹⁰⁰ Figure as of April 24 2005, UNHCR, Summary of Burundian Refugees.

¹⁰¹ A map prepared by OCHA Regional Support Office - CEA Nairobi in June 2005 gives a figure of 3,239 IDPs; see also MRRDR (2000) 'IDPs 1997-2000'.

¹⁰² This was confirmed by the Président du Tribunal de Résidence, May 11 2005.

¹⁰³ Interview with three Bashingantahé from different *collines* in Muriza, 7 May 2005.

Conflict resolving mechanisms in Muriza

In Muriza, the *Bashingantahe* basically convene at the level of the *colline* only, though incidentally they are called upon by authorities at higher levels (this happened more often in the past). They do not have a fixed day for their meetings, but work on demand. If somebody on a *colline* has a dispute, (s)he will first approach the *chef de colline*, who proposes a day and calls together the *Bashingantahe*. Unless invested as *Mushingantahe*, the *chef de colline* does not participate in their counsil. He will be present nonetheless and should guarantee that none of the *Bashingantahe* is predisposed towards one of the disputing parties.

The NGO Search for Common Ground has established a structure of *conseils des leaders*. Members of those conseils have been selected by the NGO, and basically function as some sort of local ‘cliniques juridiques’. Apparently, many of them are youngsters. Members have been trained in various legislations as well as in mediation. In case of dispute, community members may approach them for consultation/mediation, as an alternative to the *Bashingantahe* (which has resulted in some opposition from the latter). Nonetheless, according to the people we spoke to, in general disputes about land are considered to difficult for the *conseils des leaders*. Their basic advice in such cases is to proceed to the Tribunal, as this is cheaper than the *Bashingantahe*.

The same goes for the Commission Justice & Paix. The CJ&P in Muriza started in 1999. In total, the commission has 156 members. At parochial level the CJ&P has 12 members, while there are also 12 *communautés de base* in Muriza Parish, each having a sub-Commission J&P of 12 members. They meet once in three months, after trainings organized by the Diocesan Commission J&P. The CJ&P are able to address small conflicts without asking a reward, and direct people where to go with their disputes. In case the local Commission J&P is unable to give advise, the diocesan CJ&P may be addressed, who avails of some facilities, for example to transport people to the Tribunal in Bujumbura.

Since 1988, Action Aid has been focussing its activities in Ruyigi. Since 1996 a progeamme was started for peace and reconciliation, mainly through the establishment of communal development programmes. After research by CRID, the University of Burundi and Action Aid, a programme was started to strengthen the *Bashingantahe*, including training them on the Code Foncier. Tribunal Judges were trained as trainers, to educate the *Bashingantahe*.

Disputes about the division of the inheritance

Among disputes about the division of the inheritance, in particular the division between children from different mothers is seen as frequent. In many cases, those concern returnees who have married a second wife in exile. In case the husband chases away one of the women, her children have many difficulties claiming their part of the inheritance. Other disputes concern disputes between brothers, between children born from earlier marriages/relations by the mother which have to inherit from their biological father, or adopted children.

In fact, the various disputes about inheritance identified concerned the illegitimate sale of part of the family property by one of the relatives. In the past, land was not scarce and after the decease of the father of the family, his sons often did not bother to precisely delimit their inheritances. Over the last ten years, as a result of migration from other regions, prices of land have increased considerably. It appears that people now try to profit from the absence of precise limitations by assuming authority over all the original family property and selling land without consulting other family members.

Benoît, whose brother started selling the undivided family property (M3)

Benoît and his younger brother both used parcels of the family property. After the death of their father the property had not been divided by the *Bashingantahe*, as this would have cost a lot of money. Benoît cultivated a larger part than his brother, which had already resulted in some envy. Two years ago, he came to know that his brother, who has a sickly child and spent a lot of money for paying a traditional doctor, tried to sell part of the land. Benoît went to the *Tribunal de Résidence*, but in vain, because the sale had already been concluded and was considered legitimate (for the latter reason Benoît suggests the Tribunal might have received something from his brother). Benoît explained that it was common practice in this community for people to sell their land in the absence of witnesses. Benoît thus went to the *Chef de colline*, who pressured the brother to discuss the case in front of the *Bashingantahe*, who finally came to delimitate the properties. In the delimitation, the *Bashingantahe* considered the part the brother had sold already. Benoît proposed that they would also outline a part as a kind of reserve, considering that in the future one of their two sisters may reclaim part of the property, but the *Bashingantahe* considered this premature. Since the delimitation, the relationship between Benoît and his brother was icy: they no longer allowed each other's children to pass over their land.

Since then, his brother had already sold some parts of his property. Benoît was very afraid that when his brother's land would be finished, he would proceed selling parts of the land of Benoît. His experience was that decisions of the *Bashingantahe* had limited value, and that there was no guarantee that they would be accepted by the children of his brother. Benoît felt threatened, in particular because he had heard of other cases of land disputes like his which had resulted in murder. In desperation, Benoît was now thinking of buying land somewhere else, to be sure that his brother would never be able to sell his private property, and to guarantee he would be able to leave at least some property to his children.

Similar to the above case, in several of the examples identified (eg M2, M3), the lack of permission of other family members, though present in the community and available to witness at the time of sale, posed no major problems to sell land. In many cases, neither the *Bashingantahe* nor the Tribunal are informed of sale taking place. In other instances (eg M1), the *Bashingantahe* are aware, but cannot prevent illegal sale. In the case of Benoît, the Tribunal even legitimized the sale. It could be argued that the above case is thus rather an example of selling family property in the absence of or without consulting other family members (as observed for example in Giteranyi). However, like similar cases in Muriza, the problem underlying the dispute is the fact that the family property has never been properly divided and demarcated.

In other cases, the absence of division and demarcation in the past now results in fierce conflicts, in particular because when brothers have very unequal number of offspring. This was for example the case in a dispute between two lineages of a family (M8). The conflict started as a dispute about the exact limitations between the properties of two cousins, but now is compounded by the fact that one of them has many children and the other only a few.

Disputes about the limitations of plots

Again, as in the other case study areas, disputes about limitations may be initiated by the occupation of a part of property along the border in the absence of the owner, for example during exile. In addition, a practice that is said to be common in Muriza is that people are not happy with the division between different plots. Rather than starting to reclaim, they awaited the death of the head of the family of their opponent or other possible witnesses, before occupying the land of the children, who find it hard to negate their claim.

In fact, the disputes about limits followed up in Muriza appeared as closely related to disputes about inheritance. They concerned relatives cultivating next to each other. Limitations of plots were not honoured, because one of the neighbours did not agree with the initial division of the inheritance.

Lambert, whose uncle claimed part of a coffee plantation (M5)

When Lambert' father was still very young, the mother of his half-brother had moved to live somewhere else. After many years, somewhere in the 1960s, the half-brother returned, and reclaimed his part of the family property. The father of Lambert, who had not known his half-brother, accepted the claim and allowed him to install himself on the plot where his mother used to be living in the past, a claim which was also acknowledged by the *Bashingantahe*. The precise limitations of the plots were not identified.

Nonetheless, in the meantime, the father of Lambert had sold a plantation of coffee shrubs, located on the land later to be returned to the uncle. For this reason, the uncle would not agree with this outcome, and demanded compensation: he was in particular interested in another plantation of coffee, located on the land of his half-brother. In 1999, the dispute was brought before the *Bashingantahe*, who put limitations between the two plots, following the natural borders of the different parcels cultivated by each of them, and giving the uncle a little bit extra in compensation for the lost coffee plantation.

However, the uncle was not happy with this division as he still claimed a part of the more profitable coffee plantation of his half-brother. In 2003 –his half-brother had died in the meantime- he destructed the border pickets and surpassed the limits of his land. Then the father of Lambert went to the Tribunal. The Tribunal decided that the division that had been made by the *Bashingantahe* was not justifiable, and decided to make a field visit to reconsider the division. The Tribunal put a straight line to divide the two plots and decided that the plot of coffee located on the part of Lambert needed to be shared between him and his uncle. Lambert accepted the solution, considering that if his father had not sold the plantation on the plot of his uncle it would have been gone to the uncle anyway.

With the same uncle, Lambert also had a dispute about the limitations of plots, which started in September 2004: his uncle planted fodder on the border, and distributed also some seeds on the bordering land of Lambert. Afterwards, he sold the harvest. Moreover, he had planted an avocado tree on the border that gave a lot of shadow. Lambert demanded the *conseil de famille* for advice. They advised that the avocado tree be removed, or that the harvest should be equally divided. The uncle did not listen to this advice and sold the fodder crops for himself. Then Lambert went to the Tribunal, who took 4 months before taking a decision in favour of Lambert. As the uncle did not ask for transfer of the case to the Tribunal de Grande Instance, Lambert considers the case as resolved. The uncle cut off some of the branches of the tree, but has so far given no money for the fodder.

In two instances (M6, M7) the disputes about limitations could be solved within the family. Nonetheless, it was considered necessary to ask the *Bashingantahe* to come and formalize the division.

Inheritance by women

While in the past, women exclusively got access to land through marriage, nowadays women in Muriza increasingly are reclaiming their part of the inheritance. However, the enthusiasm for allowing women inherit part of the family property is limited. In the vision of some *Bashingantahe* allowing women to inherit would contribute to problems between woman and sisters in law, as well as between children from brothers and sisters. In addition, the amount of land a woman would bring into a marriage would become important for their husbands. The *Bashingantahe* see inheritance by woman as something that does not belong to tradition, so they do not have the competence to divide land between sons and daughters. Nonetheless, in case such disputes appear before them, they advise that some land is given in the form of *igikemanyi*.

Salvator, who left land to a cousin and a sister (M15)

The father of Salvator had two sons (including Salvator) and a daughter with his first wife. With his second wife he got another son. After the death of the parents, the land was equally divided between the three sons. When the son of the second wife died, he left a daughter, who grew up in the family of the first wife, as a younger sister to Salvator. At a certain moment in 1996, the woman came to ask Salvator and his brother for a plot of land, referring to the fact that her father had died and would have inherited part of the family property. Salvator and his brother asked their sister/cousin to bring some beer and organized a small ceremony, in which she was given a plot of land. The explanation for giving her some land was that after her wedding, there were no financial possibilities to regularly honour the woman with traditional visits and gifts (*igikemanyi*). Hence, in compensation, she was given a piece of land. Gahundu Salvator himself is a *Mushingantahe*. At about that time, the NGO Action Aid had distributed leaflets on the Code Familiale, and Salvator realized, that if the woman would propose her demand before the *Tribunal de Résidence*, they would positively respond to it.

In 1999, also his direct sister came to ask Salvator for a part of the land. As her family had received a dowry at the time of her marriage, she also had a right to the visits and gifts, and when Salvator and his brother could not properly fulfil this social obligation they decided to give her some land. As their family property had already been divided, it was decided that the sister would get a parcel of the land formerly exploited by the parents. Still, the sister got a smaller part of this parcel than her brothers, but was satisfied with it.

'Injustices familiales'

In the initial meeting, a type of dispute identified was '*injustices familiales*'. It was explained as those cases were parents sold the land of their children without consulting them, or orphans that lost their land through the manipulations of relatives. It was described as a wide variety of disputes, which basically resulted from the vulnerability of particular relatives. According to participants to the initial meeting, such disputes are often highly complex and are never solved by the *Bashingantahe*.

Révocate, whose property was threatened by her relatives (M9)

The parents of Révocate (a young woman who is partially paralyzed), and her younger sister and half-brother died during the 1993 tragedy. They have different disputes about various plots they inherited from their parents. Two among those are examples of what was called '*injustices familiales*' in Muriza.

In 1980s the government tended to install landless people on plots considered vacant. The paternal uncle of Révocate was afraid that his land would be given away to somebody else, and therefore asked his brother to settle on a part that was not yet under cultivation. However, the brothers refrained from delimitating their parcels, considering that there was no need for this, as they were on good terms. The *Bashingantahe* were informed of the gift of land. Nowadays, the ownership of this property is disputed. The youngest brother of her father, who is still alive, always objected to the settlement of the first brother on the land of the second. According to Révocate, the third brother probably objected because he had always cultivated a small part only, and now saw the land being freely given away by his brother. Hence, the third brother –the only possible witness- is not willing to witness on what happened. As Révocate and her half-brother and sister have not yet started cultivating, it has not yet burst out.

A second dispute of the type of '*injustices familiales*' concerns a dispute with a paternal cousin. This cousin claimed that the half-brother is illegitimate, as he is the child of a woman for whom no dowry has been paid. Hence, he would not have rights to the land of his father, and the amount of land Révocate and her sister and half-brother now occupy should thus be diminished at the advantage of the other cousins. The cousin went to the Tribunal, which decided to demarcate the limits, at the advantage of Révocate *cum suis*, considering that her sister and half-brother had always cultivated it. Recently, the cousin married and asked Révocate for a plot in the form of *igikemanyi*. Révocate's sister refused, telling her that if she wanted an *igikemanyi* plot, she should approach her own maternal family.

Another dispute Révocate and her brother and sister had concerned a property presumably bought by their father, from a neighbour who also died. The property titles have been lost in the crisis. When the children of the neighbours started claiming that the land was theirs, the case was brought to the *Bashingantahe*, who supported the claims of ownership of Révocate.

The resolution of disputes about land in Muriza

Several of the cases identified in Muriza were first discussed within the family. Despite some exceptions, the general opinion is that disputes about land are difficult to solve amicably, let alone within the family. Disputes that may be solved in such a way are those about limitations of plots. But even if family members succeed in solving disputes about land, there remains the need for informing and confirming (eg through delimitation) by the *Bashingantahe* (M6, M7). Many disputes about limitations easily end up at the *Tribunaux* anyway.

The *Bashingantahe* and the *Tribunal de Résidence*

The most frequent disputes brought before the *Bashingantahe* are about inheritance. Many of these disputes concern women that have married and then claim land from the family property. In those cases, the *Bashingantahe* advise the brothers to give their sisters a small parcel.¹⁰⁴ Nonetheless, according to the *Bashingantahe*, they have often difficulties with solving disputes about the inheritance by women, as well as about inheritance in general, the illegal sale of land, and the ‘*injustices familiales*’ towards orphans.

It seems that the *Bashingantahe* in Muriza are less frequently consulted than those in the other case study communities (only about one or two disputes being referred to their councils at *colline* level a month). From the various interviews, it appears that the confidence people have in the institution for the resolution of land disputes is limited. “The *Bashingantahe* have no authority here”, one informant observed. A major reason for the lack of confidence in the institution appears to be, that while land disputes may be solved by the *Bashingantahe*, the solution proposed by them is not seen as definite (eg M8). Several people observed how the *Bashingantahe* are incapable of enforcing their decisions. If a person is determined to proceed with a case, they cannot force him to accept a solution. In several of the examples studied, people were afraid, that even if the opinion of the *Bashingantahe* is respected by parties in dispute, there is no guarantee that their children will do the same (eg M3, M5).

Again, the costs of the institution appear as a major obstacle for people to approach the *Bashingantahe* with their disputes about land. Few people asked them to delimitate their plots because of the costs of this. The costs of bringing a dispute before the *Bashingantahe* are not fixed. Rather than a specific tariff they represent a social obligation. The *Bashingantahe* will not ask a specific payment, but for example in the course of their considerations they propose that there is a need to have a drink, to which parties respond with providing drinks and food. In particular in case of disputes about land, the expectations are much higher than in other cases.

Although the *Bashingantahe* are expected to equally consider poor and wealthy people, people in the community explained that this system turns out to be unfair towards poorer people. A wealthier person may respond to the invitation of the *Bashingantahe* to bring forward some drinks by offering a large amount of beer and food. In case the other party does not respond in the same measure, this is seen as insult of the institution, and the case will be decided to its disadvantage. Other people accused the *Bashingantahe* of being biased towards richer parties, speculating that the poorer party would not have the means to approach the Tribunal. They saw this practice confirmed by the fact that when such cases nonetheless were brought forward to the *Tribunal*, decisions were often different.

More in general, people pointed out that in several instances the decision of the *Bashingantahe* differed from that of the Tribunal (eg M12, M2), which did not contribute to their confidence in the institution.

¹⁰⁴ Interview with three *Bashingantahe* from different *collines* in Muriza, 7 May 2005.

Virginie, the *Bashingantahe*, and the *Tribunaux* (M12)

20 years ago, the brothers A and B disputed the division of the inheritance. The case was brought before the *Tribunal de Résidence* and the *Tribunal de Grande Instance*, and in both cases A won. Nonetheless, after the deaths of A and B, the dispute emerged again in 2005, between one of the many sons of B and the sister of A, Virginie, who had inherited all his property. The dispute started when the son of B started cultivating in the plot of Virginie. Virginie thus asked that the case be discussed before the *Bashingantahe*. She had expected they would respect the earlier decision of the Tribunal and reprimand the son of B. However, the *Bashingantahe* decided that a part of her property needed to be given to the sons of B, considering them the nearest male relatives of A, and also taking account of the fact that B had many sons.

The sister of A does not agree: according to her, the case has been judged already by the Tribunals, and now it is started again, with the *Bashingantahe* taking a completely different decision! She thus went to complain with the Tribunal, but there she was told the case will only be considered if she pays again the inscription fee. This she refuses because she considers it unfair to pay twice for the same case. Problematic about the case is that the *Tribunal de Résidence* cannot recover the verdict of the *Tribunal de Grande Instance* in its administration. So, in case she will start to complain before them, without proof of the original verdict, the *Tribunal de Résidence* might take notice of the verdict of the *Bashingantahe* instead, which would be to her disadvantage.

Some people say the only reason Virginie is trying to reclaim the property is for selling it, considering the large amount of land she has inherited.

It is probably for such reasons, that many people (eg in the cases M2, M9, M11) do not consult the *Bashingantahe* before addressing the *Tribunal de Résidence*. Apparently, in Muriza there is no necessity to approach the *Bashingantahe* before proceeding to the *Tribunal*. Only in case a dispute has been brought before the *Bashingantahe* previously, the *Tribunal de Résidence* asks people to show a paper with the conclusions of the *Bashingantahe*. Again, the costs of the *Bashingantahe* appear to play a role, with the inscription fee for the *Tribunal* of about 2,400 FB, but the costs of the *Bashingantahe* unpredictable. As somebody explained: “there are many institutions here to solve your conflict, but they all want beer: the *nyumba kumi*, the *chef de colline*, the *Bashingantahe*, the *chef de secteur*. If you follow this road, you are continuously paying drinks. In the end, you get exhausted and stop proceeding.”

The general impression is that people are rather content with the *Tribunal*: at least we did not encounter negative qualifications as in the other communities. People commented that the *Tribunal* in Muriza worked sometimes fast, and its decisions were often considered fair. Nonetheless, the *Tribunal* is often also seen as not able to implement its decisions (eg M13). Again, in various cases one of the conflicting parties continued proceeding, despite negative decisions by *Bashingantahe*, and *Tribunal de Résidence* (eg M4)

The Commission Justice & Paix

According to the CJ&P at diocesan level, the parochial commissions can also mediate in land disputes.¹⁰⁵ In Muriza this could not be confirmed. According to the participants to the initial meeting, no land disputes are being resolved by the Commission Justice & Paix. Their role is rather in directing people to the proper channels for getting their disputes resolved, including persuading them not to persecute and to resolve their disputes amicably (eg in case M6).

¹⁰⁵ Interview, May 11 2005

Concluding

Many disputes in Muriza are about inheritance, often concerning children from different mothers, or 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 stems 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.

We further discussed '*injustices familiales*'. It is interesting to see, that community members refer to those disputes as such. Rather than characterising this kind of disputes in legal terms (eg 'disputed legitimacy of orphans'), the term refers to how people feel about and includes a condemnation of those practices. In fact, the examples mentioned and discussed in the initial meeting refer to cases, where one conflict party is trying to exploit the justice system for its own benefit, rather than having a different understanding with another party about whom has a right or not to a property. Several disputes in the community concern people who -rather than being interested in a just outcome- are being interested in getting what they want. Various community members observed how people that can afford it, continue litigation until they beat their opponent, no matter what the costs. The notion of '*injustices familiales*' seems to fit to perceptions of justice at community level. The term might be useful for facilitating reflections on how people themselves believe a state of justice could be strengthened in their community, rather than starting from abstract juridical terms.

Interesting about the case of Muriza is further to see how the confidence in the system of the *Bashingantahe* is not only dependent on their power of enforcement, but appears also related to the credibility of their advice. Further, the costs of addressing the institution as well as the perceived bias towards richer people make people prefer other institutions. The fact that the Tribunal does not demand strict observance of the necessity to consult the *Bashingantahe* before proceeding to the Tribunal contributes to that people prefer starting immediately at the latter institution.

Discussion and conclusion

This study set out to explore a series of examples of land disputes. Its objective was to explore the diversity of land disputes in Burundi, and the experiences of the people concerned with various conflict resolving mechanisms. In the following, we will try to arrive at some general observations. On the basis of this discussion, it is tried to draw some lessons for the assistance of NGOs and churches on strengthening local and ‘official’ conflict resolution mechanisms.

On the nature and origins of land disputes

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

- In **southern Rumonge**, overall there were very many disputes related to land. Among those, many resulted from the spoliation by individuals and government officials, for a large part concerning land vacated by 1972 refugees. The situation is particularly complex due to expropriation and redistribution of land (often again affecting land formerly owned by 1972 refugees) as part of large scale state development programmes. With the return of refugees, many disputes have arisen, and still more are expected with continued repatriation. Other disputes 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, often concerning the properties of refugees. The continued return of people is expected to lead to further problems with their installation.
- 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.
- In **Muriza**, many disputes about land result from the fact that in the past land was seldom delimitated. With an increasing population and rising land prices, relatives are now in conflict about the precise limitations parcels, as well as on the sale of parts of the family property by other family members

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 expropriation. At the same time, many returnees also suffer from conflicts such as those resulting from the division of inheritance or the limitations of properties that 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. Nonetheless, in general land disputes of returnees are not very different from those of people that did not flee.

The four 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.

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.

While the typologies of dispute 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 dispute was between the wives and their husband. And while the former 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. Local characterisations of land disputes (such as the typology 'injustices familiales' as used in Muriza) may be particularly helpful to discuss disputes with community members.

On the functioning of conflict resolution mechanisms in the communities

There is some variety 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 worked together with the *Bashingantahe*, and sometimes there was an overlap in membership to the 2 institutions. 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. 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 several alternatives for appeal before going to the *Tribunal de Résidence*, which was considered expensive, slow, and far away. In Muriza, people often approached the Tribunal directly, as they had limited confidence in the *Bashingantahe*.

On 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, 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. While in southern Rumonge the *Bashingantahe* appeared able to deal with various inheritance conflicts, in Giteranyi, many such disputes 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.

As mentioned above, the role of other institutions introduced by churches and NGOs was limited in the case study communities. In southern Rumonge, some of the cases addressed by the Commission J&P were similar to those that could also be solved by the *Bashingantahe* at *cellule* and even *colline* level. 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 (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 CNRS, who in theory would have responsibilities for such disputes. In southern Rumonge, many dossiers had been filed about land disputes and for acquiring land, but so far no response has been received.

On 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 did 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, reflecting the Burundian practice of *Igikemanyi* (a traditional gift of land daughters to express the concern of her parents for her). Nonetheless, in several of the examples encountered the status of the land given to women remains 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.

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 are more focused 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 of cases of land dispute are important, in most of the examples of land disputes considered, it seems that considerations appear as second-rate only when it comes to the acceptance or not of a judgment. In several examples, parties in conflict seemed stubborn and are more concerned with winning the case than on fairness or not of the judgment. Even in case they were aware that they would not win, they would continue to prosecute even after having lost, 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.

On 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 are not able to enforce solutions, only 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 for example 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 is rich, people feel 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 their 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 of 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 judgements of the *Bashingantahe* 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 as a concept, 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.

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.

On the appreciation of conflict resolving mechanisms

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*. While various *Bashingantahe* mentioned the obligation within their tradition to address any justice they observed 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.

A feeling among many people we spoke to is that money plays an important role in the resolution of land disputes. Apart from corrupting institutions, people with money are able to continue prosecuting, speculating on the impossibility of their adversaries to appear before court, 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*. And it was for the costs of procedures in other institutions, that people in general had a positive opinion of the Commissions Justice & Paix.

It is difficult to generalize about corrupt practices in the resolution of land disputes. The tendency of people was observed to talk about ‘corruption’ in 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. Nonetheless, this highlights the need for more transparency and understandable language from both the *Bashingantahe* and the *Tribunal*.

In the case-studies we have been tried to be careful not to take over indiscriminately accusations of corruption. However, various irregularities were observed, 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 other cases 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 *Bashingantahe* being sent away for corruption.

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 level. 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 an approach that aims to understand and address the local dynamics of land disputes 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 several 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.¹⁰⁶

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 (for example the Commissions Justice & Paix) 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

¹⁰⁶ 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.

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 cases of vulnerable people that themselves are hesitant 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 or by *Bashingantahe* fulfilling the role of assessors in the Tribunals. 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 out into 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 regarding 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. 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 inform 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*.

Annex – Overview of dispute cases

The following overview includes all the examples that have been studied during the research.

- Cases that have been identified during the initial meetings are in straight letter type; cases identified by the researchers are in *italics* letter type.¹⁰⁷
- Cases that are described in detail in the report are highlighted in **bold** letter type.
- During their follow-up, some disputes appeared to be better characterized by another dispute type than that identified in the initial meeting. In those cases, the characterization given in the initial meeting is added between brackets.
- Please notice that for the dispute cases featuring in the report all names have been replaced by pseudonyms.

Southern Rumonge				
Case	Type of dispute	Details	Initiatives to solve the dispute	Actual status
R1 - <i>'Jean Baptiste'</i>	Spoliation land of 1973 refugees by relatives	After return from exile, widow and children of deceased brother tries to (violently) chase away former owner of plot	CJ&P – tried but failed to call forward the defendant Bash - Called forward defendant several times without success so far	Not solved
R2	Spoliation land of 1973 refugees by neighbours	1972 refugee, widowed, returns in 2004 to find land that was not spoiled by SRD and PIA programmes occupied by neighbour	Bash - Managed to reclaim one hectare, occupied by neighbour	SRD / PIA expropriation not solved; spoliation by neighbour solved
R3	"	1972 refugee returns in 1976, 1977 and 1991, to be intimidated so much by occupant that he fled again; in 1993 returned to community. Part of land taken by PIA	Parish priest intervened in 1977 but failed	Not solved; original owner awaits improved security before proceeding
R4	"	<i>Occupied land of neighbours that fled in 1972; upon their return they reclaimed land</i>	Bash - Set borders between plots, occupant claims now he has lost part of his land	<i>Not solved</i>
R5	"	Orphan whose family occupied land of 1972 refugees, but now shares land with returnees During crisis since 1993 land of orphan spoiled by other family	amicable Bash - Possibly corrupted Trib Res - Possibly corrupted	Returnees await solution by CNRS
R6 – <i>'Louis Marie & Pascal'</i>	Inheritance / polygamy	Claim by son of second wife negated by son of first wife, claiming father had not attributed him land	CJ&P - Solved the dispute by calling upon witnesses Bash - Have to confirm settlement	solved
R7 – <i>Two families living on hill</i>	Border dispute between two families	Claims on part of hill slope by poor family living uphill negated by rich family cultivating lower part of the slope	CJ&P - Could not find witnesses; denounced by family downhill Bash - proposed to put anew the borders	Borders need to be fixed; otherwise solved

¹⁰⁷ For details on the selection of examples of disputes, see the methodology section.

	Occupation land of 1972 refugee	Land of uncle of family down slope occupied	Bash - land for the moment given to family downslope, awaiting return or confirmation death uncle	solved
R8 - 'Donatien'	Expropriation as part of SRD / PIA programmes	Though threatened, family did not flee; in SRD programme, out of 9 hectares only 2 were returned to the former owner; refuses to pay receipt of SRD	No possibilities for local conflict resolution mechanisms	Included in inventory Ligue Iteka; not solved
R9	"	Lost land to both SRD and PIA programmes, of 13 hectares only 2 left	"	Among those that brought the cases towards Court Administrative in 1990; not solved
R10	"	Three brothers that fled in 1972 to found all their land (about 20 hectare in total) redistributed or occupied; occupied part partially reclaimed	"	Not solved
R11 – Inhabitants of Mayengo	Expropriation as part of PIA programme	Community that was chased away from its land as part of PIA programme; no indemnization paid, only plots for housing	"	Awaits trial by Court Administrative
R12	<i>Somebody who profited from SRD programme</i>	<i>Paid the local administrator to be registered as owner of plot left by 1972 refugees and hence received land through redistributed by SRD</i>	-	-
R13	<i>villagization programme</i>	<i>Widow who lost 2 hectares to villagization programme without indemnification; she also lost land to SRD and PIA programmes; has no papers for the land</i>	"	<i>Complained with chef de colline; No further action taken</i>

Giteranyi				
Case	Type of dispute	Details	Initiatives to solve the dispute	Actual status
G1 – 'Béatrice'	Polygamous marriage / divorce	Husband sends first wife away from her home and plot after finding a second wife	Bash - Decision that husband should leave her the house ignored by husband Trib de R - Land to be distributed between man and woman	Not yet implemented
G2	Polygamous marriage / divorce	Second wife chased away by husband living in Tanzania with first wife	Bash - Could not solve; alleged corruption in setting the borders Trib de R - Decided that women had to return to family and leave her kids to the husband; Alleged corruption	Not solved; pending trial in Muyinga
G3	Polygamous marriage / divorce Sale by relative in absence owner	First wife claimed land after her husband left her for second wife Land of orphans sold by paternal uncle	Trib de R - Decided land needed to be distributed between woman and man	Solved Not followed up
G4 – 'Jean-Pierre'	Sale by relative in absence owner	1993 returnee sells land while brother still in refuge; upon his return one buyer refused to undo the sale	Bash - Managed to convince one buyer to return land; other refused Trib de R - Prosecuted returnee for stealing and destroying crops	Not solved

G5 – 'Josephine'	Double sale of land	After return from refuge, original owner turns out to have resold land to a rich relative	Bash - Decision that plot needed to return to first buyer not followed Trib de R - Decision that second buyer should indemnify first buyer; Alleged corruption	Not solved, case awaits reconsideration in Tribunal de Grande Instance
G6	'Theft punished by taking a part of property of the thief' / Loss of land	Widow returns from Tanzania without relatives of her husband; neighbour who wanted to buy her land upon her refusal accuses her child of stealing crops and requires her plot as compensation	Bash - State that woman needs to approach them; otherwise case cannot be solved	No further follow up as woman is very afraid for her neighbour
G7 – 'Joseph'	Sale not acknowledged	Son of returnee does not acknowledge sale of plot by his father	Bash - Alleged corruption: demarcation not correct Trib de R - Decision that land needs to return to buyer	Decision Tribunal not implemented, buyer no money for paying fieldvisit judges
G8	Sale not acknowledged	Couple loses papers in 1993 crisis. Original owner reclaims land; husband dies before case is solved	Bash - Original owner went straight to Tribunal without consulting Bashingantahe Trib de R - Decision that land needed to return to original owner; alleged corruption	Widow has to leave land
G9 - 'Nadine'	Loss of land ('orphans claiming land of aunt')	Widow gets in dispute with one of the orphans left by her brother who claims part of her land as his father sold all his property; other brother negates any responsibility for orphans	Amicable	Solved for the time being, but likely to reappear
G10	Loss of land ('Inheritance')	Brothers sell part of family property out of distress during famine; upon return of sisters those reclaim their part; buyers do not accept repayment of original (low) price but demand land	Bash - Agree with sisters that they have rights on their part of original inheritance; no solution for refusal of buyers to be compensated	Inheritance dispute resolved ; distress sale not case currently at the Tribunal
G11 – 'Sophie & Marianne'	Spoliation by neighbours ('Inheritance') Spoliation by relatives	Neighbours occupied plots returnee widows (formerly married to two brothers) Displaced cousins constructed temporary lodging on land widows; afterwards refuse to vacate land	Bash - Put back original limits; decision accepted by occupants Bash - Alleged corruption of one mushingantahe Decided that cousins needed to return land	Solved Solved

Nyagasebeyi				
Case	Type of dispute	Details	Initiatives to solve the dispute	Actual status
N1 – 'Alexandre'	Division of inheritance	Dispute about limitations; compromise between man and the children of his dead brother to divide Dispute about limitations with children of paternal uncle, as land had not been distributed upon death of grandfather	Bash – divided the property Bash – divided the property; failed to enforce compensation for loss of banana plantation	solved Trib de res – considering the case
N2	Division of inheritance	Before his death, man wants to divide his inheritance; children of several wives oppose the process which will imply redistribution of what they already cultivate	Family members – failed Bash – children refused to appear Trib de R – decision to divide	No money for fieldvisit of Trib de R

N3	Distress sale (‘Division of inheritance’) (‘Sale in secret’)	All family property sold to pay visits to unjustly imprisoned son, and to prevent revenge killing	- Bash – have discussed possibility of redemption	- Redemption seems difficult
N4	Dispute about limitations (‘Division of inheritance’)	Former lord refused former <i>ugurerwa</i> rightful share; after delimitation by Tribunal, son of <i>ugurerwa</i> claims more than his share	In '90 : Bash – did not regard <i>ugurerwa</i> as legitimate heir of former lord Trib de R – reproached father for not acknowledging rights <i>ugurerwa</i> ; decided upon delimitation of plot In '05 : Trib de R allegedly corrupt (not respecting delay for appeal)	Not solved
N5	Division of inheritance	Daughter in law claims land that had not been properly divided; after division by bash she claims compensation for lost banana plantation	Trib de R – took decision to divide property; claim about compensation referred to Bash	Daughter in law left community; unsolved
N6 – ‘Prudence’	legality of children	Child of second wife not acknowledged to inherit	Conseiller – allegedly corrupted Bash – allegedly corrupted	not followed up
N7	Legality of children	Property never divided because of its small size; daughter of foster child claims part of the land	Bash – did not regard her as legal heir Trib de r – confirmed this opinion	Not solved
N8	Legality of children	Illegitimate child/ acknowledged by his father; father failed to show him location of family property before his death		Mother of the child does not know in which <i>commune</i> she should bring the case forward
N9	Division of inheritance (‘Sale in secret’)	Woman gets daughter with her father in law after death of husband; mother in law regards child as her granddaughter rather than daughter of her late husband	Shame to address Bash, who are nonetheless aware Chef de Sub <i>Colline</i> – assisted her, in exchange for relationship; failed to acknowledge child	Not solved
N10 – ‘Gilbert’	Sale in secret	To help his cousins, man would like to reclaim land illegally sold by his late brother	Through middle men (<i>chef de zone</i>) trying to come to agreement with buyer	Not solved
N11	Division of inheritance / legality of children (‘Conflict about limitations’)	Sister with legitimate children claims larger part of the family property than sister with illegitimate children	Bash – allowed woman to stay on her part	Not solved
N12 – ‘Pierre-Claver’	Dispute about limitations	Neighbour occupies part of land orphan	Bash – acknowledged rights orphan Trib de R, trib de GI, Trib de Buja – decided in favour of orphan; never enforced their ruling; procedure heavily delayed by dispute	Trib de R has now set a limit for forceful removal of occupant
N13	Dispute about limitations Displaced occupying land of individuals	Father frightened that his children will not equally divide the inheritance 3 hectare of his land occupied by displacement site	Bash – failed to solve Trib de R – supported division <i>Administrateur de commune</i> – told him to wait	Not solved

N14	Displaced occupying land of individuals	Part of his land occupied by displacement site; one plot sold by returnee	Afraid to take action	Not solved
N15 – ‘Bernadette’	Displaced occupying land of individuals	Land occupied by 18 houses; 2 families secretly sold plot upon departure	Chef de SC – permitted buyers to construct house; woman afraid to complain	Not solved

Muriza				
Case	Type of dispute	Details	Initiatives to solve the dispute	Actual status
M1	Division of inheritance	woman allowed her brother to cultivate a plot given to her by her mother; after death of the brother, sister in law sells the land	Bash – proposed restitution of other plot	Case awaits judgment in Trib de R
M2	Division of inheritance	Family property never delimitated; mentally handicapped brother sells land cultivated by other brother fourth brother sells land of brother in exile	Bash – accepted the sale Trib – demands restitution, as buyer did not act in good faith	Third brother pays indemnification; is afraid for conflict if brother fails to return the money Case awaits judgment in Trib de R
M3 – ‘Benoît’	Division of inheritance	Family property never delimitated; brother sells part of the land	Trib – allowed sale without consent family Bash – proposed delimitation considering part already sold	solved
M4	Limitations	After sale of land dispute about precise limitations Land expropriated with indemnification for construction of a road; administration sold part of this land to another person Dispute about limits with neighbours to plot of his son	Trib – set limits and allowed sale Complaint presented to governor Neighbours + <i>chef de colline</i> proposed division	Awaits return of daughter to assist in further litigation Not resolved Not resolved
M5 – ‘Lambert’	Limitations	Uncle and father in dispute about limitations Uncle demanded compensation for plot of coffee on his land sold by father Uncle cultivated over limits	Bash – delimited land Trib – declared division invalid Trib – decided that other plot of coffee of father had to be divided with uncle Family – asked uncle to respect limitations Trib de R – told uncle to respect limitations	Resolved Resolved Resolved
M6	Limitations	Displaced returning before her sister-in-law surpassed limits	Conseil fam – agreed but did not want to decide in absence of brothers still in exile Comm de base – same advise Bash will be asked for delimitation	resolved, not implemented yet
M7	Limitations	Sister-in-law replaced border pickets Bought a plot of Rwandese refugee; neighbour constructed over border	Conseil fam – solved the dispute Trib de R – did not accept (unofficial) papers	resolved Awaits trial at Trib de GI

M8	Limitations	As part of villagization program family I moved to road-side; family II claims the house is built on their plot	Bash – told family I to leave Trib de R – asked family I to leave and family II to pay compensation Trib GI - confirmed decision	Family II still complaining
M9 – ‘Révocate’	Occupation of land refugees	Land occupied by possible perpetrator of massacres Cousins negate claim that land has been sold to her father; papers lost Dispute with cousin about limitations of plot	Neighbours tried to mediate -	Threat to go to Tribunal made him flee No follow up solved
M10	Occupation of land refugees	Recently returned refugee finds land occupied by former seller; earlier efforts to reclaim by wife and daughter failed	Bash – in favour of refugee family Trib – decided in favour of refugee; but outcome unclear	Refugee awaits reintegration in the community before proceeding
M11	<i>Injustices familiales</i>	Family property never delimitated; cousin claims part of it was bought by his father	Trib – agrees with cousin	Pending at Trib de GI
M12 – ‘Virginie’	<i>Injustices familiales</i>	In the past, two brothers had dispute about division of inheritance; son of second brother continues using land	In the past Trib de R + Trib de GI – decided in farour of first brother Bash – part of land of daughter first brother given to son of second Trib de R – cannot find papers first judgment	Not resolved
M13	<i>Injustices familiales</i>	Sisters in law try to claim inheritance of a widow	Conseil fam – favoured claim widow Trib de R – favoured claim widow Trib de GI – sons widow allocated to sisters in law	Judgment Trib de GI never implemented
M14	Heritage des filles	By will father leaves daughters land; papers lost; half-brothers negate this claim	Bash + Trib de R + Trib de GI – do not acknowledge claim	Solved
M15 – ‘Salvator’	Heritage des filles	Daughter of half-brother demanded part of family property Sister demanded part of family property	Amicably solved Amicably solved	
M16	Heritage des filles	Sister demanded part of family property	Amicably solved	

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