2nd Aegis Euroconference in African Studies, *African Alternatives: Initiative and Creativity Beyond Current Constraints*, Leiden, the Netherlands, 11 -14 July 2007

Land Disputes and Local Conflict Resolution Mechanisms in Burundi

Mathijs van Leeuwen[*]

Introduction

This chapter considers the case of Burundi, where in early 2005 a variety of local and international organizations initiated programmes to strengthen local institutions for dealing with land disputes. At that time, elections in Burundi were approaching, implying the end of a transition period from a 12-years civil war. It was expected that a significant part of the about 400,000 refugees still residing in neighbouring countries, as well as more than 100,000 internally displaced people, might soon return home.[1] Many international and local organizations considered the resolution of the land disputes accompanying their return as decisive for their successful reintegration and the maintenance of the fragile peace. Violent events in 1993 had shown that the reinstallation of refugees and internally displaced people was a politically sensitive issue in Burundi. One of the triggers of the violence and ensuing civil war had been the expected massive return of Hutu refugees and the accompanying land reclamation (Oketch and Polzer 2002; ICG 2003a). Hence, at the time of fieldwork, development organizations and observers alike were concerned that dissatisfaction with the results of the land policy could easily turn into a political '*bombe foncière*' (land bomb) (ICG 2003a).

In the experience of many organizations, the level and scale of the disputes around land posed huge challenges to conflict resolution institutions in Burundi. Legislation on land was inadequate, difficulties arose between the customary and 'official' system to administer land disputes, while the judicial system was not equipped to deal with the task placed upon it. Hence, in the expectation of a massive return of refugees and internally displaced people, international and national civil society organizations perceived a need to strengthen the capacities of local institutions to resolve returnee-related land conflicts. Various organizations thus started programmes to support the formal judicial system and in particular the local Tribunals. Other interventions, reflecting a current international predisposition towards traditional or local dispute resolving mechanisms, intended to enhance the dispute resolution capacities of the customary institution of the *Bashingantahe*, or of other institutions within the communities (such as the Justice & Peace Commissions of the Catholic Church), basically by providing training on current land legislation. Some organizations also established their own conflict resolution structures.

This chapter is a case study of how peacebuilding is not just a policy intervention or strategy, but also a way of framing complex development problems. Framing is a discursive practice to understand our world, and to create coherence out of fragmented ideas, experiences and practices. Various authors have discussed the importance of framing in conflict situations, in particular in war stories, ideologies, and the identification of root-causes of conflict (Lemarchand 1996; Frerks and Klem 2004; Barzegar 2007; Salem 1997, referred to in: Frerks 2007). In those accounts, different framings are at the core of

[*] PhD Candidate, Wageningen Disaster Studies, Department of Rural Development Sociology, Wageningen University, the Netherlands. For comments or suggestions, please contact me at mathijs.vanleeuwen@wur.nl

[1] Between 2002 and 2007, 341,911 Burundians have returned to their home country (Burundi Situation Report: 23 - 29 Apr 2007, United Nations Office for the Coordination of Humanitarian Affairs (OCHA).

how people entrench themselves into opposing positions. Framing, however, is also an ordering practice. It helps to conceptualise reality in such a way that it is understandable and facilitates policy making. In the world of humanitarian assistance, framing practices are vital for being able to operate. So far, not so much attention is being given to the impact of practices of ordering on how peacebuilding policies get shape. This chapter illustrates how framing helps to inform and validate peacebuilding policy, but also directs attention away from other dimensions of a situation (cf. Colebatch 2002).

Current efforts of (international) organizations in Burundi to enhance local dispute resolving capacity to deal with land disputes follow from a framing that sees returnee related land disputes as a central challenge for peace and social justice. The chapter reflects on this rationale, by looking at land disputes and local conflict resolution mechanisms in two particular communities. The case studies highlight that, rather than a temporary problem related to returnees, land disputes are a structural development problem. It is argued that interventions to enhance local dispute resolving capacity can only work when it is recognised that land disputes are part of normality, and not just a temporary problem related to returnees. Moreover, the ultimate objective of peacebuilding is the cultivation of institutions that can manage conflict in a peaceful and legitimate way. The case studies bring out that in the legal void concerning land, local dispute resolving mechanisms only to a limited extent can deal with local land disputes. At the same time, the challenge to those institutions is not so much in balancing customary or state legislation in coming to a verdict, but rather in being effective in consensus building and guaranteeing the protection of vulnerable people.

The ethnographic fieldwork on which this chapter is based was part of a research carried out from February to May 2005 for and with CED-Caritas, the Episcopal development organization of the Catholic Church in Burundi (van Leeuwen and Haartsen 2005), in the context of a project for the reintegration of returnees through dealing with their land problems.[2] The research included field research in four communities, two of which are considered in this chapter. In each community, through a meeting with community representatives, an inventory was made of the most frequent disputes about land in the respective communities, and a series of cases of land disputes was identified. On the basis of these inventories, a total of 55 dispute cases were followed up by interviewing the stakeholders, to explore the diversity of the nature and origins of land disputes, the local efforts and considerations for resolving those, and the sentiments of conflicting parties on the settlements achieved or not. Additional interviews have been conducted with representatives of the *Commissions J&P*, the *Bashingantahe*, communal administrators, representatives of the *Tribunaux de Résidence*, and development organizations working in the communities concerned.

Returnees and land disputes in Burundi

On a resident population of about 6.2 million people, Burundi has a considerable number of refugees and internally displaced people. In 1972, after massacres of the Burundian army on the Hutu elite, about 300,000 people fled, mainly to Tanzania. In 1993, the assassination of President Ndadaye and the massacres that followed resulted in another massive outflow of refugees. In the peak-year 2000, the UNHCR estimated the number of Burundian refugees at about 570,000, of which the majority were living in Tanzania. With the political climate in Burundi becoming more stable, people started to repatriate voluntarily. At the end of 2005, about 400,000 Burundian refugees had still to return, the

[2] The paper further builds on fieldwork in Burundi between September 2004 and September 2005 in the context of a collaborative research program of Cordaid and Wageningen Disaster Studies, 'Beyond Conflict' that aims to investigate views and practices of peacebuilding of Cordaid and its partners. I wish to thank WOTRO (Netherlands Foundation for the Advancement of Tropical Research) for providing funding for my research. I am also grateful to the staff of CED-Caritas and counterparts in the communities. Most of all, I would like to thank those women and men that were willing to share their stories with me.

majority of which were living in several camps in western Tanzania.[3] Violence further resulted in major internal displacement, with about half a million displaced half-way the 1990s. In 1996, displacement reached a peak of almost 900,000,[4] when as a result of a military strategy to regain control in rebel-held territory civilians were forcibly regrouped in villages. Most of those returned home by the end of 1997, but the policy of controlled population movements continued to play a role in displacement since (Dimond 1998: 10). Displacement in Burundi was highly dynamic, with every month new groups of people being displaced due to violence. The majority of displaced households (89%) resided in displaced sites in their own municipality, and continued to cultivate their land.[5] In June 2005, OCHA considered 116,799 people to be displaced.[6]

Many international and local organizations considered the resolution of the land disputes accompanying the return of refugees and displaced as decisive for their successful reintegration and the maintenance of the fragile peace. Research by the Burundian NGO Ligue Iteka indicated that 90 per cent of problems experienced by returning refugees were land-related. Conflicts resulting from the return of refugees included those of people returning home to find their land and properties occupied by others. Other conflicts resulted from the fact that those that found their land occupied searched for land elsewhere. In some regions, the return of refugees led to an increase in land prices.[7] Land disputes associated with displacement concerned properties on which displacement sites had been constructed. Conflicts about land were seen to turn very serious, with people resorting to use witchcraft and physical violence against each other (CARE et al. 2004: 30), and in some cases murder.[8]

The reinstallation of returning refugees and internally displaced people and the restitution of land were considered a highly political issue, with strong ethnical undertones. It would not be the first time if the return of refugees in Burundi and the reclamation of their land would cause serious political problems. After the massive exodus of Hutu in 1972, many of their lands had been massively spoliated (grabbed) or redistributed by the authorities, or occupied by others. In 1977, legislation came in place according to which goods and lands vacated by the refugees should return to them, and a commission was installed to facilitate this, and thereby encourage the return of refugees (Daudelin 2003; CARE et al. 2004). However, the government only took limited measures to recover properties of refugees, while the commission basically served to massively legalize the spoliation (ICG 2003a: 3-4; RCN Justice & Démocratie 2004). New efforts for large scale repatriation started in 1991, as part of the National Reconciliation policy, and a new national commission for the return, reception and reinsertion of returnees was installed (ACORD-Burundi 2002: 22). After the 1993 electoral victory of the FRODEBU, 50,000 refugees of 1972 returned spontaneously to their country. Their arrival was badly managed by the authorities, that needed simultaneously to take care of the reinstallation of refugees and of the frightened reactions of the Tutsi population affected by this reinstallation (ICG 2003a). Though it was considered that every repatriate had right to access to land, in case his property was occupied, the occupant would also be guaranteed a right. This ambiguous principle resulted in a lot of

[3] UNHCR *Statistical Yearbook 2005; Trends in Displacement, Protection and Solutions*, p.277. http://www.unhcr.org/statistics/STATISTICS/464478a72.html

[4] UNHCR *Statistical Yearbook 2005, Trends in Displacement, Protection and Solutions*, p.276.

[5] *Recensement des Personnes Déplacées sur Sites au Burundi, Mars-Avril 2004, Résultats préliminaires*, UN OCHA Burundi.

[6] *Study of Internally Displaced Populations in Burund 2005*, UN OCHA Burundi. According to a 2004 study, 57 % of Internally displaced people residing in displacement sites expressed a willingness to return home, and related the willingness to return home or to remain or resettle elsewhere to the living conditions in the sites, the duration of their stay in the sites, the wish to reinstall before the return of refugees from Tanzania, and the security situation in their original communities (*Recensement des Personnes Déplacées sur Sites au Burundi, Mars-Avril 2004, Résultats préliminaires*, UN OCHA Burundi, p.5)

[7] In April 2004, agronomists reported a 50 percent increase of land prices in a few months in the province of Ruyigi (Dimond 1998, referring to IRIN, 15 April 2004)

[8] In an enquiry by the Commission Episcopale Justice and Paix conducted in january 2004 it was observed in the Diocese of Bururi that land conflicts could have a deadly result. Similar cases were observed in issues of *Au Couer d'Afrique*, a publication of the Centre de Recherche sur l'Inculturation et le Développement (CRID), Bujumbura.

conflicts, and the chasing away of occupants by returnees (ACORD-Burundi 2002: 22). After the assassination of Ndadaye, many returnees fled again and the illegal occupants returned to the lands they had taken in position earlier (ICG 2003a: 5).

The peace agreements signed in 2000 were precise about the land rights of returnees, pointing out that "all refugees and/or victims should be able to recuperate their properties, especially their land; if recuperation turns out to be impossible, everybody having a right should receive a just compensation and/or indemnification".[9] The agreements asked the government to put in place a National Commission for the Rehabilitation of Disaster Victims (CNRS) which would be in charge of repatriation of refugees and return of victims, and their reinstallation. A sub-commission would take care of evolving land disputes, including disputes about the properties of long-term refugees, and past malversations in land redistribution (ICG 2003a; Gatunange 2004; Kamungi et al. 2004: 10-12). However, at the time of fieldwork, expectations of the commission were low. Since its establishment in February 2003, its activities had been limited to providing short-term assistance to internally displaced people. There was unclarity about the division of responsibilities between CNRS and other entities involved in repatriation (see Kamungi et al. 2004), and the organization had no presence at community level. An important practical problem of the peace agreements' stipulations was that it was unlikely that there was sufficient land available to give returning refugees a plot equal in size to the property they had possessed before their flight. Although the government estimated that there was enough land available for distribution,[10] there had been substantial manipulations of state land properties since (and also as a result of) the inventory made by the government (Oketch and Polzer 2002: 123; ICG 2003a: 2; Kamungi et al. 2004: 2).

Various analysts thus had come to see the land issue as a critical insecurity. According to ICG (ICG 2003a), the restitution of land to returning refugees and internally displaced people might result in political uprisings, both from the side of the Hutu and from the side of the Tutsi. Problems were expected to arise from insufficient or delayed compensation and reparation payments for those expropriated or reinstalled in state domains. Disappointment with the impossibility to recuperate land would form an ideal theme for political mobilisation (Daudelin 2003; ICG 2003a: ii). The association of land disputes with the return of refugees and internally displaced people was common among national and international organizations operating in Burundi. CED-Caritas, the organization with whom this research was implemented, started a program to 'accompany the peace process and reinsertion of victims in Burundi trough the identification of land properties in dispute'. The focus on displaced and refugees in land issues was also shared by the government. The resolution of land disputes had been placed under the responsibility of CNRS, the organization in charge of the reinstallation of displaced and refugees.

The attention for returnee related land disputes in Burundi is not surprising, considering increasing attention worldwide for the property rights and disputes of returning refugees and displaced, in cases as varied as Guatemala, Colombia, Bosnia, and Rwanda.[11] In the case of Burundi, the issue of land is also interpreted to have an ethnical character, thereby conforming to interpretations of past civil violence that highlight ethnicity. This paper, however, is not so much concerned with the coming about of this particular framing of land disputes in Burundi, but explores how it informs the interventions that come about.

[9] "tout réfugié et/ou sinistré doit pouvoir récupérer ses biens, notamment sa terre […] si une récupération s'avère impossible, chaque ayant droit doit recevoir une juste compensation et/ou indemnisation", Accord d'Arusha, protocol IV, article 8, points b and c.

[10] Republique du Burundi (2002) *Rapport definitif sur l'inventaire des terres domaniales au Burundi, Enquete de Mars-Octobre 2001*. Bujumbura. République du Burundi (2004) *Programme National de Réhabilitation des Sinistrés*. Bruxelles. Pag 18-22.

[11] See e.g. the special issue of Forced Migration Review of 7 April 2000, *Going home: land &property issues*, the Refugee Studies Centre in association with the Norwegian Refugee Council/Global IDP Project.

Interventions by (inter)national agencies

Concerned about the expected massive return of refugees and internally displaced people, and the inability of state institutions to adequately deal with the level and scale of disputes around land, a variety of international and national Burundian organizations developed strategies to strengthen local capacities to deal with land disputes. The choice for strengthening local institutions was motivated by the fact that the administration of property of land was still largely taken care of through the customary land administration. Current land legislation in Burundi stems from 1986, when the Land Tenure Code was put into place. The Code stipulated that all land belongs to the government. It acknowledged the legitimacy of customary claims, but required all land to be registered with the state. Nonetheless, the implementation or dissemination of the Land Tenure Code had been very limited, due to a lack of resources and to the civil war, and land holdings remained largely unregistered (less than five per cent) (Kamungi et al. 2004). Further, the judicial system appeared not equipped to deal with the task placed upon it, due to corruption, limited juridical expertise of the magistrates at the tribunals, lack of coordination between government institutes involved in the issue, and incompleteness and contradictions in legislation.[12] Interventions of Burundian and international agencies thus focused on the lower echelons of the judicial system of the state, the customary system of the *Bashingantahe*, as well as on new local dispute resolving structures established by NGOs or churches.

Several organizations were planning or had started programmes to support the formal judicial system and in particular the local courts at *commune level*, the *Tribunaux de Résidence*. Those courts were dealing with both civil and penal cases. Most of the magistrats serving these Tribunals only had limited juridical formation, while what they had learnt appeared insufficient for the variety of issues they had to deal with (CARE et al. 2004: 40; Dexter 2005 draft: 25). Moreover, there were a lot of institutional problems. The *Tribunaux de Résidence* had only limited means to implement their judgments, and for example no money to bring a field visit in case of land disputes. There existed serious irregularities in the procedures being followed, 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). UNHCR, and the Burundian NGOs Ligue Iteka and the Association des Femmes Juristes had given human rights training to juridical staff in the field of human rights, while Ligue Iteka contributed in transport of witnesses to facilitate access to justice. The European Union, PNUD, GTZ, and the Burundian NGO RCN Justice & Démocratie supported the equipment and physical rehabilitation of juridical institutions. Global Rights and OHCDH worked on the harmonization of codes and laws with international standard (Dexter 2005 draft).

Traditionally, disputes around land tenure in Burundi are being mediated by the *Bashingantahe*, that base themselves on customary regulations and conventions. Originally, these 'Councils of Notables'[13] consisted of the most respected community members on a hill. Their traditional roles included the settlement of local disputes, the reconciliation of individual persons and families, the authentication of land transactions, and to represent the local population to the authorities (Ntabona 2002: 24). The origins of the institution date back to foundation of the Burundian monarchy in the 17th century, when it functioned independently of the local chiefs as an intermediary between the state and the population (Reijntjens and Vandeginste 2001; Ntsimbiyabandi and Ntakarutimana 2004: 53ff). Nonetheless, the institution's role gradually eroded in colonial times, in particular with the introduction of customary courts by the Belgian administration, when the *Bashingantahe* lost their independence from the local chiefs and became answerable to the colonial administration (Nindorera 1998; Reijntjens and Vandeginste 2001; Gahama 1999, in: Deslaurier 2003b). After independence, magistrates became the only persons with the authority to dispense justice (Nindorera 1998), while appointment of new *Bashingantahe* was controlled by the UPRONA national party (Deslaurier 2003b: 88). In the late

[12] For details on the problems of the judicial system in Burundi, consult Dexter (2005 draft); Huggins (2004); Kamungi et al. (2004); Oketch and Polzer (2002); and Daudelin (2003).

[13] 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.

1970s, the appointment of *Bashingantahe* became the responsibility of the communal administrators, who tended to invest as *Mushingantahe* individuals within the UPRONA administrative structure (Nindorera 1998; Reijntjens and Vandeginste 2001). Halfway the 1980s the *Bashingantahe* were officially re-established as an auxiliary judicial institution. From then onwards, prior to submitting a case to the *Tribunal de Résidence*, a person needed to submit his case to the *Bashingantahe* first. If a case could not be solved there and would proceed to the Tribunal, the Tribunal would take due notion of the propositions of the *Bashingantahe*, considering that they would be more familiar with the local context of disputes (Holland 2001). The conflict since 1993 further weakened the institution, and several *Bashingantahe* were the direct targets of violence (Ntsimbiyabandi and Ntakarutimana 2004: 54).

Many Burundians, local and international organizations consider the revitalization of the *Bashingantahe* as very important (e.g. ICG 2003a; Huggins 2004). The institution is still widely resorted to in the communities. It serves as an alternative to the costly procedures and corruption of the official courts, while it is considered as a force that may stabilize society and stimulate pluralism (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* ('hill'/community).[14] Hence, various initiatives have been developed to strengthen this customary institution. UNDP financed a program for good governance and the rehabilitation of the *Bashingantahe*, and a survey was conducted together with local and international NGOs, and more than 30,000 traditionally invested *Bashingantahe* were identified (PNUD 2001, in: Holland 2001: 10; ICG 2003a). The Burundian NGO *Centre de Recherche sur l'Inculturation et le Développement* (CRID) was selected as lead agency of a UNDP programme to establish counsels of *Bashingantahe* at Communal and Provincial level, and a new National Council for the *Bashingantahe* was inaugurated. Other NGOs, such as CARE, Africare, Ligue Iteka, and RCN explicitly included *Bashingantahe* as participants in their juridical trainings.

Various NGOs (including Ligue Iteka and the Association des Femmes Juridiques) have established their own 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 form among those initiatives are the *cliniques juridiques*, comprising of paralegals that may give advise, try to mediate in conflicts, or orient people towards the proper institution. Facilitated by the *Commission Episcopal Justice & Paix*, a national body established in 1999 by the Conference of Catholic Bishops of Burundi (CECAB), in all Dioceses as well as in 90 of the 132 parishes of Burundi, *Commissions Justice & Paix* (J&P) have 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 elected from among the parishioners. Several of the Diocesan Committees work closely together with NGOs, as a result of which members from the *Commissions J&P* have participated in paralegal training. Since mid 2005, the CEJ&P is working together with CED-Caritas for a programme to 'accompany the peace process and reinsertion of victims in Burundi through the identification of land properties in dispute'.

The remainder of this chapter reflects on the ideas underlying such interventions, by exploring actual land disputes and the current practices of local dispute resolution. Two communities are considered, both of which have experienced massive movements of refugees. In southern Rumonge, properties of 1972 refugees have been massively spoliated by community members and local authorities. Spoliation has been followed by expropriation and redistribution of land by state development projects. The case study discusses the complex situation that has emerged and focuses on how it is further complicated

[14] Arusha Peace and Reconciliation Agreement for Burundi, Arusha: 28 August 2000, Protocol 2, ch 1 article 9 paragraph 8, cited in: Nindorera (1998).
[15] Interview with the *secretaire executive* of the *Commission Episcopal J&P*, November 30, 2004.

by the return of refugees and displaced. Land disputes in Rumonge are intensified due to the return of refugees, but are in the first place a problem of past governance. The role local institutions can play regarding the conflicts that emerge is limited. The second community, Giteranyi, experienced massive flight of people in 1993. While many disputes here are related to and inflamed by repatriation, the case highlights the regularity of most of those conflicts, as well as the fact that they are between relatives, rather than strangers or people of another ethnic group. This makes them not less violent in potential, nor less complicated to resolve at the local level. What comes out in particular in this case, is how local dispute resolving institutions deal with official legislation and how local justice comes about.

Southern Rumonge, Bururi province

Southern Rumonge, located in Bururi province on the slopes descending into lake Tanganyika, is a region known for the amount of land disputes. Rumonge *commune* was in the centre of violent events in 1972. After attacks by Hutu rebels based in Tanzania on villages in southern Burundi, the military took their principal reprisal operations in this region, resulting in the massive flight of the Hutu population to Tanzania. While between 2002 and early 2004, 9,702 people returned to Rumonge *commune*, at the time of fieldwork in 2005, many more were still expected.[16] Disputes about land were numerous in this community,[17] with 85% of civil cases coming to the Tribunal being land related.[18] With the expected return of the refugees from 1972, disputes concerning the properties they had left at that time were on the rise, and still more were expected to appear with continued repatriation. In an inventory done by CED-Caritas with *chefs de secteur* of the three communities involved in this research, of 689 disputes, 367 involved returning refugees as one of the parties in dispute.[19] Nonetheless, the relationship between repatriation and land disputes in southern Rumonge were not straightforward, and we need a closer look at what disputes were about. The case of Rumonge further shows the limited extent to which local institutions were able to deal with the complex situation.

Land disputes prevalent in the community

When asked for the most frequent types of disputes about land in their community, people invariably pointed to the diverse expropriations and spoliations, both by the state (as part of development schemes) and by individuals. The *chefs de secteur* counted 514 of such disputes. After the massive flight of people in the 1972 events, properties of refugees had been given to private persons by the local authorities. Many of those that profited from this practice had come from *commune*s higher up the mountains 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 resulted in that some of the disputes resulting from land-spoliation had ethnic dimensions. In addition, various people had 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 contrast, in other cases, the land left behind by those that had fled in the meantime had been occupied by their relatives or neighbours, or by other Hutu that had not fled.

Upon their return, some of the original owners had tried to reclaim the land. This was complicated as new occupants often had made investments in the plot or the house, or had destroyed the original houses on the plots. Claims to return the land to the original occupants appeared particularly difficult

[16] Bururi province is still expecting about 20,000 refugees to return home. See the map 'Prefecture of return of the Burundian population in Western Tanzania' of 15 January 2004, published by GIMU / PGDS, to be found at the UN-OCHA website.

[17] The *conseilleur 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.

[18] Interview with the vice-president of the *Tribunal de Résidence* Rumonge, March 10, 2005.

[19] Figures on the frequency of types of landconflicts identified in the pilot of an enquiry by CED-Caritas, '*Identification des Terres a Problemes*', March-July 2005.

to hold for orphans whose parents had died abroad. At the time of fieldwork, many returnees were still too afraid to reclaim their land from the current occupants. The occupiers profited from the fear of the original owners for being accused of participation in the 1972 attacks by Hutu rebels.

> A 1972-refugee that had returned in 1993 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 being redistributed under the SRD and PIA schemes; see below). 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 this person. When peace is there and the situation is secure, I will try to reclaim my land".

A complication in those instances where the land had been spoliated by the authorities is that the new occupants had often received land titles. Returning refugees found it difficult to reclaim the land, as they themselves lost or never had any official land titles. The problem was further compounded by the fact that acquired properties in the meantime had been sold and resold. Efforts by a group of returning refugees in 1995 to bring the case forward to the *Tribunal de Résidence* in Rumonge,[20] so far have not had results.

Another dimension of land problems in southern Rumonge resulted from large scale development programmes in the 1980s, as part of which privately owned land had been expropriated. A famous program was the one implemented by the para-statal development organization SRD (*Société Regionale de Developpement Rumonge*).[21] In 1982, SRD started a programme to 'modernise' the cultivation of oil-palm trees by private farmers on the fertile slopes descending into Lake Tanganyika. As part of the programme, the old oil-palm trees were cut down, the land levelled and drainage improved, and a new species of oil palm from Ivory Coast was planted. Though owners had been promised compensation for the old palm trees, and had been assured they would return to their properties after the new palms had been planted, when the plots were redistributed, many former owners received far less land than their original properties. Many families were simply attributed one or two parcels of 0.5 hectares, irrespective of what they had owned before. Large tracks of land were given to army officers and staff of the SRD. In addition to this abuse, highly problematic about the program was further that it concerned many properties formerly occupied by people in exile at the time of the redistribution. 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 he occupied, so eligible for redistribution by the SRD. Nowadays, returnees find out that their land had not only been spoliated, but thereupon expropriated. Another agricultural development program (PIA-Rububu), a reforestation program and a villagization scheme for the resettlement of refugees halfway the 1980s have had similar consequences. As a result, various interviewees turned out to have experienced different types of expropriation, both by the state development programmes, as well as by individuals that have occupied their land. In April 1990, a number of people from Kanenge started a court case at the Administrative Court in Bujumbura. Apparently, SRD accepted that an indemnification had to be paid, though there were no chances that land would be returned to original owners, considering also that the former plots could not be identified any longer due to the reconstruction works. The Administrative Court never came to a verdict, and the people still waited for indemnification of the SRD and a solution for the loss of land. So far, the government of Burundi had not pronounced itself on the reclamation of redistributed land, despite various demands from the local community.

The situation increasingly turned problematic with the return of refugees. Though a number of refugees thus had already returned to southern Rumonge, at the time of fieldwork an even larger number was still expected after successful elections. With the occupation of land of refugees followed by the redistribution of land as part of state development programmes, returning refugees entered into

[20] Interview with the vice-president of the *Tribunal de Résidence* of Rumonge, March 10, 2005.

[21] This case of spoliation features in the Arusha agreement, and is also described in RCN Justice & Démocratie (2004) and ICG

an already very complex local situation. As a result of the spoliations in the 1970s, many cases existed in which more than two parties made claims to the same property. While state legislation acknowledged a person as a rightful owner after cultivating a plot for more than 30 years (Kamungi et al. 2004), many community members considered this rule unfair towards the 1972 refugees that were expected to return shortly, and might 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", referring to the fact that many occupants were Tutsi, while most of the 1972 refugees were Hutu, and had fled the reprisals of a majority Tutsi army. Moreover, the returnees also could claim right to those properties on basis of 1977 legislation,[22] which stipulated that after their return, land and properties of refugees should be returned to them. Hence, situations existed in which two parties could make legitimate claims to the same property. Locally, the rights of current occupants were also considered to some extent, for example when the illegal occupier has died in the meantime, and people considered it unjust that the residing children should become victim of the fact that their parents appropriated the land illegitimately. The problem was even more complicated for those returnees whose land in the meantime had been redistributed under the SRD and the PIA schemes. Those returnees could not recuperate their lands, as the current occupants were legal owners.

The case of Rumonge is thus a clear example of a community where the return of refugees would aggravate an already complex situation. Many current disputes resulted from the fact that former properties of 1972 refugees in the meantime had been occupied by other community members, facilitated by the authorities. Such issues often had an ethnic dimension. On the other hand, in the case of southern Rumonge, the problems experienced by refugees were overlaid with another layer of conflict. Expropriation by para-statal development programmes in the 1980s, in which land was taken with no or little compensation, had resulted in demands from local people to address these injustices from the past. The complication was in the fact that several properties formerly belonging to refugees had been redistributed in those programs, resulting in various legitimate claims on the same properties. Moreover, many individuals were affected by various types of spoliation and expropriation at the same time. Indeed, the return of refugees and the repatriation still expected would make this problem even more urgent. Nonetheless, an important dynamic of land problems in southern Rumonge was that while many disputes concern (double) expropriation of properties that were formerly belonging to refugees, *both* returning refugees *and* people that had not fled had experienced spoliation and expropriation on a large scale. Rather than an ethnicitized problem of returning refugees, the problems experienced locally on land are the result of a complicated legal situation evolving from state interventions in the past (which were ethnically coloured to some extent). The resulting disputes are not so much between community members, as between people and the state. A potential violent turn in those disputes will thus result from frustration about the inability of the government to adequately deal with this generally experienced problem.

At the same time, many returnees also suffered from what we could call the more 'regular' disputes about land, those that did not have a direct relation with the crisis, such as disputes about the division of inheritance or the limitations of properties. When discussing land disputes at communal level, apart from the above problems related to expropriation and spoliation, people also came up with numerous other land disputes. Many of those were of an intra-family character. For example, an important source of intra-family dispute was polygamy.[23] Polygamous marriages were not acknowledged under Burundian law, though were rather frequent. Children of additional wives could only claim rights if they had been formally acknowledged by their father. In southern Rumonge, this resulted in claims of illegitimacy and disputes among children from different mothers.

Several disputes were also related to the fact that customary law only considered sons as legitimate heirs. So in case one wife had few or only daughters and the other only sons, the sons tended to take all the land after the death of the family head (cf. CARE et al. 2004). Local history recounted that after

[22] Décret-loi no. 1/21 du 30 Juin 1977 relatif à la réintégration dans leurs droits des personnes ayant quitte le Burundi suite aux événements de 1972 et 1973.
[23] The *chef de secteur* of Nyakuguma counted 50 cases of land disputes resulting from polygamy.

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 were a considerable number of polygamous marriages involving wives from different regions. This resulted in disputes among children of different wives, in particular about the location of the plots inherited, considering the fertility of the lowlands plots. Interestingly, in particular disputes that had resulted in violence and threats were the result of inheritance issues.

Conflict resolving mechanisms in southern Rumonge

In southern Rumonge, people could address several local institutions to deal with their land disputes. A clear distinction existed as to the types of dispute that could be resolved locally and those that required other types of intervention. The customary system of the *Bashingantahe* was operating at the levels of the cellule, the *secteur*/*colline*, and the *zone*.[24] The *Bashingantahe* at the level of the *secteur* met every week, while at the level of the *zone* meetings were often convened twice a week. Procedures during their meetings had the character of arbitration.[25] Parties in conflict would present their cases, upon which the council would retire to consider its verdict. After this, the council would give its verdict in public, thereby striking the *Intahe* (rod of wisdom and fair judgment) to emphasize the importance of their words. The *Bashingantahe* could respond on their own account to community problems, but could also be called upon to assist in disputes by authorities at *zone* and *commune* level. Most *Bashingantahe* were of considerable age, and few of them could read or write. Women did not participate in the institution. Both Tutsi and Hutu participated in the council, and some *Bashingantahe* had experienced exile themselves. To be nominated as *Mushingantahe*, a person needed to prove his merit by his general behaviour and attitude, his deeds and public statements. Investment to the function was preceded by a period of preparation, training and initiation. Becoming a *Mushingantahe* was for life, and as one of them explained, he had often been consulted in disputes in the refugee camps. Despite those strict accession conventions, in southern Rumonge, the *Bashingantahe* functioned in close cooperation with the local authorities, reflecting the increased influence of the state administration on the institution in many Burundian communities. The *chef de secteur* presided the council of *Bashingantahe* of the *colline*, and although he was not an invested *Bashingantahe*, he participated in the deliberations, and was witness of its outcome. Some people, rather than addressing the *Bashingantahe*, preferred to directly approach the *chef de secteur* -a trusted and respected community member. Being a representative of the authorities, in disputes concerning the limitations and ownership over plots distributed through the SRD program, he could approach the SRD office and consult their registration.

The organizational set-up of the *Bashingantahe* in southern Rumonge allowed for the possibility that when a dispute could not be solved at the level of the *colline*, it could proceed to the *Tribunal de la zone*, including 15 invested *Bashingantahe* from all over the zone. The *Bashingantahe* at the cellule level were able to deal with some disputes about limits of plots, disagreements about property on the plots, fights and petty theft. The *Bashingantahe* at *colline* level played a role in disputes about the division of inheritance, the limitations of properties, or the spoliation of the property of refugees by individuals. In southern Rumonge, the *Bashingantahe* were still considered as the communal memory for land issues. Still, many of such cases proceeded to the council of the *Bashingantahe* at *zone* level. The *Bashingantahe* of the *colline* could not force parties to accept their judgement, or to appear before their council. The council at *zone* level, through the participation of local authorities had some power to force people to appear, by being able to temporarily detain people, and to enforce decisions. Moreover, a lot of people wanted to give their case a second chance anyway and continued to the *Bashingantahe* at *zone* level. The fact that the *Bashingantahe* were organised at both *colline* and *zone* level made them more effective, by providing some sort of a *court d'appel*.

[24] *Bashingantahe* also played a role in the resolution of disputes within family councils or neighbourhoods. In general, land disputes were considered too complicated to deal with at those levels.
[25] At lower levels and outside the meetings of their council, their practices had more the character of mediation.

Cases that could not be solved by the *Bashingantahe* at *zone* level could proceed to the *Tribunal de Résidence*, located in Rumonge, at about 27 km from the hills under consideration in this case study. In practice, only a limited number of people brought cases forward to the *Tribunal de Résidence*, not in the last place because for the fact that it was far away. Moreover, the *Tribunal* was considered an institute for the rich, and was not much trusted by people without much money. Official fees, but in particular bribes to ensure advancement of a case, made the Tribunal simply too expensive. Problematic in this respect were the costs of fieldvisits, and many cases stumbled at this stage, as the complaining party could not afford the transport and facilitation involved in those. Supposedly, the *Tribunal de la Résidence* consulted the *Bashingantahe* to assist them in disputes about land, inviting them to participate in field visits, and asking them to serve as witness at the verdict. 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 by one of the parties. The fact that procedures take a long time was another reason for people to search a faster solution. On community level, cases could often be decided upon in a few weeks time.

Apart from those institutions, to deal with disputes, people could also approach the *Commission J&P*, set up in the parish of Kigwena in 1997, or one of its sub-commissions in the neighbourhoods. Members of this commission were chosen by the people from the community, and some had received a four-day formation, organised by the Diocese, covering themes such as evangelization, and juridical procedures. In contrast to the *Bashingantahe*, the *Commission J&P* was not acknowledged by law, and could only propose solutions or give advice. Hence, if a case could not be solved by the commission it needed to proceed to the *Bashingantahe* at *secteur* or *zone* level first, before being put forward to the *Tribunal the Résidence*. The disputes in which the *Commissions J&P* intervened ranged from settling fights, 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 J&P* worked from the same principles as the *Bashingantahe* (e.g. parties need to come voluntarily to ask their advice) 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 J&P* as *Bashingantahe amahoro* ('peace').

Most people we interviewed spoke with a lot of respect about the *Bashingantahe*. Nonetheless, respect for them had eroded over the years. The *Bashingantahe* for example frequently experienced that people refused to appear in front of them. At the same time, their task has increasingly grown more difficult. In the past their required expertise was mainly in remembering the exact contours of plots, and though the *Bashingantahe* are still 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 *Bashingantahe* we spoke, a trainer of the *Commission National de Bashingantahe* had advised them even to leave the resolution of such disputes about land, and to await state legislation, and that the most they could do was to calm down the parties. Some *Bashingantahe* accounted of their efforts to convince occupants that people that had fled in 1972 should be given the chance to return to their former properties, and to demand the local authorities for land in compensation.[26] Rather than just coming to a verdict on the basis of a set of rules, the *Bashingantahe* in southern Rumonge tried to consider the moral rightness of particular solutions for land disputes. In some cases, as a result they managed to achieve consensus rather than a verdict.

In comparison to the other case study communities, the justice and peace commissions of southern Rumonge appeared as rather strong and capable to take responsibilities regarding land disputes. This had a lot to do with the fact that the parish priest was very much involved in the commission, and frequently called them together. Nonetheless, they were dependent on the *Bashingantahe* for the confirmation or enforcement of the resolutions they convened, while if needed, only the *Bashingantahe* could forward cases to the *Tribunal de Résidence*. In practice, the number of cases solved by the *commission J&P* was considerably less. Still, there was a preference among community

[26] Interview with three *Bashingantahe*, March 16, 2005.

members to first approach the *commission J&P*, as their services were entirely free. Formally, the *Bashingantahe* also worked voluntarily and no longer demanded *agatutu* (the drinks and food traditionally provided for by the parties in dispute to celebrate the reconciliation) for their services, in line with the prescriptions of the national council of *Bashingantahe*. In practice, however, in southern Rumonge an exception was made for the resolution of land disputes and disputes about houses. And while in principle people in dire need would still be exempted, poor people in southern Rumonge pointed out that the payment has been an obstacle for them to consult the *Bashingantahe*. The fact that the *Commission J&P* was working voluntarily and did not ask any remuneration had resulted in friction with certain *Bashingantahe*. At the same time, in several cases the *Bashingantahe* and the *Commission J&P* worked closely together, with a number of *Bashingantahe* having become member of the *Commission J&P*.

What about the possibilities of the local institutions to deal with the land conflicts that had emerged with the return of refugees? In southern Rumonge, the violence of 1993 had not resulted in many refugees and those that had fled could easily recuperate their properties, because the law was clear: the new occupants had to leave. Even if there were disputes, the *Bashingantahe* or the local authorities managed to solve most of those amicably. More difficult were conflicts related to the return of the 1972 refugees. In the case of land of refugees that had been illegitimately occupied by neighbours or family members, *sometimes* solutions were found, and in the absence of clear legislation on how to deal with those complex cases, compromises could be achieved between the different claimants, such as a re-division of property. Nonetheless, as the *Bashingantahe* at *colline* level had no means at their disposal to force the people concerned into process or the execution of their verdict, it also *often* failed. Moreover, local conflict resolution mechanisms (CJ&P, *Bashingantahe* at *secteur* level) had no solution for the expropriation by the state development programmes. Though they could come up with creative solutions (such as the division of properties between claimants), those were considered temporary, waiting for national legislation that would indicate a preferred line of action. Neither could the local authorities in Rumonge deal with those issues. They acknowledged the need for proper indemnification for those cases but availed of no budget for this.[27] Considering the scale of the problem and the fact that in many cases competing claims were legitimate, the communal authorities considered that the only solution would be resettlement of people on other plots. However, reinstallation at the commune level was already problematic and was expected to become more difficult with the increase in returnees and accompanying claims, considering that in Rumonge *commune* no more governmental properties were available for distribution.[28] They had compiled a list of those people in dire need of reinstallation and filed this with CNRS, and CNRS had 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.[29] In addition, the communal authorities were contemplating resettling people on parts of the land that had been rearranged under the PIA scheme, including parts that already had been attributed. People in the community pointed out that this would result in even more 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.

The existence of several councils of *Bashingantahe* at different levels, as well as the presence of a relatively strong *Commission J&P* provided local people a variety of alternatives before addressing the *Tribunal de Résidence*. In comparison to the other cases studies, those institutions were able to deal adequately with a variety of 'regular' land disputes. However, they were powerless regarding the complex situation that had emerged from the policies of the authorities and state agencies in the past, and could do little against the complications occurring regarding those with the return of refugees and displaced.

[27] Interview with the *conseilleur des affaires sociales*, commune Rumonge, March 10, 2005.
[28] Interview with the *conseilleur des affaires sociales*, commune Rumonge, March 10, 2005. See also République du Burundi and Forum des Partenaires au Développement (Janvier 2004).
[29] Interview with the *conseilleur des affaires sociales*, commune Rumonge, March 10, 2005.

Giteranyi *secteur*, Muyinga province

Giteranyi *secteur* is located in the centre of Giteranyi commune (Muyinga province), close to the borders of Rwanda and Tanzania. 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 sensibilization in the camps in Tanzania. From 1999 to September 2004, 24,656 people were registered to have returned to Giteranyi commune, which was almost half of the total number of returnees to Muyinga Province so far.[30] Considering that the commune had about 90,000 inhabitants, this implied that at least one in four people had been in refuge. In Giteranyi *secteur* even only about one in ten people had dared to stay during the crisis.[31] Those that had not fled had moved out of the valleys to settle around town. While many of those had returned at the time of fieldwork, several people had preferred to stay close to town. Despite the assistance to returnees to reconstruct their houses by UNHCR, ADRA and World Vision, at the time of fieldwork (early 2005), many returnees were still residing in temporary shelters made of sheeting or banana leaves.

Again, there were numerous disputes about land in Giteranyi. Of 221 dossiers under consideration at the *Tribunal de résidence* in early 2005, 160 concern land. Of 30 cases assisted between October 2004 and January 2005 by the Association des Femmes Juristes in Giteranyi *zone*, 20 were about land.[32] A variety of cases can be observed: the majority of cases in the *Tribunal* files concerned inheritance of land. Other cases were 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.[33] Of the 66 cases noted in the register of the *Bashingantahe* of Gisenyi *secteur* for the period 2002-early 2005, 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, and 4 were disputes resulting from orphans claiming land of their foster family. Disputes identified as frequent by community members are those resulting from polygamy, and disputes that have resulted from the double or illegal sale of (family) land.[34]

Land disputes prevalent in the community

Since the 1980s, a lot of people from densely populated regions in Gitega, Ngozi and Kayanza settled in the community, and nowadays, 60% of people originate from outside.[35] Community members explained that migrants that had grown rich invested their money in a second property, where they then installed a second wife. Later, as a result of violence, women were outnumbering men, and women and their families became more disposed towards accepting polygamous marriages. Polygamy

[30] 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.

[31] Interview with the *chef de quartier Giteranyi*, April 1, 2005.

[32] Figures provided by the Association des Femmes Juristes.

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

[34] Meeting with community representatives of Giteranyi secteur, March 29, 2005; Interview with the *Bashingantahe* of Giteranyi secteur, March 31, 2005; interview with the *Commission J&P* of Gitarnyi secteur, 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).

[35] Interview with the *administrateur de commune*, March 29, 2005; see also Republique du Burundi and PNUD/UNOPS (décembre 2002)

was also related to histories of exile in the refugee camps. Often women and children were the first to return home from the refugee camps in Tanzania, even if the situation was still rather insecure, while men stayed behind, as the risk to be killed appeared to be larger for men. Consequently, in the meantime several men had taken a second wife in the refugee camps. Upon their return, they had to take care of two families. Women could do little to prevent their husbands from marrying a second wife, dependent as many of them were of the land their husbands provided them for cultivation. While in southern Rumonge disputes resulting from polygamous marriages emerged among brothers of different mothers claiming inheritance rights, in Giteranyi the disputes were rather of a relational nature: between a man and an abandoned wife. 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 the woman to leave with part of it.

An important type of dispute in Giteranyi evolved from land that had been sold twice to different persons. Those disputes were directly related to the flight of people during the crisis. In some cases, upon return the original buyer would find his land occupied by someone else, which had also paid for it and hence claimed rights to the land. In other cases, a person who had sold his land before going in exile would return before the buyer and sell the land again. A related type of disputes concerned those cases in which people that bought land before the crisis, upon their return from exile found the land taken back by the original owner or his children. Some occupants claimed that the sale of land never had taken place. In other instances, they considered that the conditions of sale had been unfair, for instance, because they had had to sell out of distress.

Striking in those cases was that many of those concerned were relatives rather than strangers. Many severe disputes had resulted from the sale of family property in the absence of relatives. The convention in Giteranyi was that to sell family land one needed to consult and get permission from the other family members, including the women of the family. Nonetheless, in the absence of other family members due to exile, some people had negated this custom. Upon the return of the remainder of the family, disputes evolved with the new buyer, who could be considered the legitimate owner, but was often accused of having been aware of the cunningness of the procedure. Particularly vulnerable to such manipulations of family land were orphans. It turned out very difficult for orphans to make claims to family land in case their father's land had been sold by relatives. They would sometimes temporarily receive land from their stepfathers, but this implied that they often ended up landless, considering that upon the death of the stepfather inheritance of step-children were often disputed by his natural children.

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 inability of those women to resist their claims. The women concerned were invariably widows. This practice appeared to occur rather frequent. For example, a dispute identified by community members as being about the division of inheritance among two widows and their two cousins, turned out to be an example in which those cousins had abused the hospitality of those women and refused to leave a plot temporarily given to them. In some examples, the women concerned finally lost their land, which shows the particular vulnerability of women. In several of those disputes, severe threats made women refrain from bringing their cases forward to be dealt with by conflict resolving institutions.

> A tragic example of such a case was a widow who returned from exile in Tanzania in 1998, and who's neighbour since long aspired to buy her property. 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 woman 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.

More in general, women had a weak position in making claims to land. According to custom, women get access to the land of her husband through marriage. Upon the death of the husband, brothers in law sometimes reclaimed the land, leaving a woman landless. And while according to state law single

women could inherit from their father in the same way as male heirs, these rights were often not acknowledged locally.

While landlessness was not a dispute in itself, in Giteranyi it was considered a potential source of continuing conflict. Some of the earlier disputes, such as the sale of properties in the absence of family members, or the double sale of land resulted in that one of the parties involved ended up landlessness. Again, in particular vulnerable and poor people turned out to be at the losing end, while losing land in itself implied a loss of opportunities for making a living and thereby marginalized people. Several people lost their land because they had lost or never had owned property titles, and no witnesses could be found that had been present at the sale.

> We encountered a woman whose husband had bought land in 1991. During their flight from 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 the couple in the first place. In this, he succeeded.

Landlessness was also a mayor problem among the about 200 households living in Giteranyi that belong to the Batwa community, a marginalized community in Burundi. The Batwa had very limited access to land, having traditionally been more involved in pottery and only having turned to cultivation since the area was hit by bad harvests and a famine in 2002.[36] Several people in Giteranyi blamed the Batwa themselves for their limited access to land, having opportunistically sold their properties, even during the famine. In the interviews, members of this community showed a strong appreciation of landed property, but found it difficult to buy land, as it was almost impossible for them to find paid jobs, due to the stigma attached to their group.

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.[37] The continued return of people was expected to lead to further problems with their installation. At the same time, many of the land disputes of returnees are also experienced by people that had not gone in exile. According to the *Bashingantahe* of Giteranyi *secteur*, in general the land disputes of returnees were not very different from the rest of the population. Fluctuations in the number of disputes dealt with appeared to be related to fluctuations in the number of returnees.[38] Nonetheless, the disputes experienced in particular by returning refugees, such as disputes about the limits of plots or illegal occupation, appeared to be rather routinely resolved. Probably as a result of their straightforward resolution, they were often not mentioned as being frequent.

However, with the large numbers of people returning from Tanzania, there were a lot of problems with their re-installation. As most of those people had left Giteranyi in 1994 and 1995, disputes about the occupation of their land by others were much less frequent than in southern Rumonge, considering that to most people it was clear that possible occupiers could hold no rights and had to leave. However, the return of refugees was problematic as a result of the fact that many people originating from other regions in the province upon return had settled in Giteranyi. Before the war, the community had grown wealthy from cross-border trade with Tanzania, and new settlers hoped to start business here. Displaced, as well as the first refugees that had returned were installed on plots of state land along the road towards Muyinga town, but at the time of fieldwork, this strip of state land was fully occupied. internally displaced people had also been installed on plots of people that had not yet returned from

[36] Meeting with 60 members of the Batwa community, Giteranyi, April 2, 2005.
[37] 19 out of the 30 cases assisted by AFJB concerned repatriates. Nonetheless, within the commune there was 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 were brought forward to the *Tribunal* were linked to inheritance and divorce (and hence often also concern land), and not so many to repatriation, as the number of repatriates was considerably less than in the southern Giteranyi and Muyango *zone*s. Interview with the president of the *Tribunal de la Residence*, Giteranyi, March 29 2005.
[38] Interview with the *Bashingantahe* of Giteranyi *secteur*, March 31, 2005.

Tanzania.[39] At the time of fieldwork, this had not yet resulted in disputes. According to the *administrateur*, in some *zone*s, there were still some state properties available, but those were forested, which required the permission from the central authorities before those lands could be distributed to individuals. All non-forested state properties had already been distributed to returnees.[40] In Giteranyi, the return of refugees thus precipitated land problems, but resulted not in the first place from the fact that returnees could not reclaim their original properties, but rather from the migration of people in search of better economic opportunities.

Conflict resolving mechanisms in Giteranyi

Again, in Giteranyi people could approach several local institutions before proceeding to the *tribunal*s. Giteranyi had a *Commission J&P*, which had its office at the main church of Giternyi parish, which liaises with sub-commissions in each of the 14 minor churches of the parish. The president of the CJ&P sometimes received training at the Diocese of Muyinga in issues such as mediation, conflict resolution, and family law, and tried to communicate what he learned to the other members of the commission. Responsibility for the resolution of disputes was primarily with the commission at parish level. In the sub-commissions, members of the *Commission J&P* preached reconciliation, and assisted in the social reinstallation of returnees, for example by informing them of the current situation of the country, and helping to rebuild their houses.[41] A few members of the CJ&P participated in the council of the *Bashingantahe*. But while the focus of the CJ&P was on advising and reconciliation, and references were made to good Christian behaviour to convince people to reconcile, the *Bashingantahe* could also decide on cases and put social pressure on the parties to accept the solution.[42] Further, the CJ&P was in the first place seen as something of the Catholic Church and hence for Catholics mainly. The *Commission J&P* was said to assist in many disputes within families and between neighbours, but their role in land disputes seemed to be very limited, and 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. Often, their role in land disputes was rather in calling the parties together. The commission had merely a role of 'watchdog', alerting others -the *Bashingantahe*, the *chef de colline*- to take action if a dispute occurred.

In Giteranyi, the *Bashingantahe* were organized at the level of the *colline* and the *secteur*, the latter of which was authorized to give the papers necessary to approach the *Tribunal*. While the *chef de secteur* sometimes participated in meetings of the *Bashingantahe* or accompanied them to visit disputed plots, this was not standard procedure. He could not participate in the deliberations, nor overpower the decisions of the *Bashingantahe*. Consequently, the *Bashingantahe* functioned rather independently of the authorities. In general, the *Bashingantahe* were able to bring disputes about the limits of plots to a solution acceptable to both parties. According to the *Mushingantahe* keeping the register of the *Bashingantahe*, only one out of ten of such cases needed be forwarded to the *Tribunal*. Disputes about 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- could be solved by the *Bashingantahe* in case witnesses of those arrangements could be found. The resolution of such cases was merely a matter of properly distributing land, and did not involve the payment of reimbursement. Also the redistribution of the inheritance, for example when one relative felt disadvantaged, could often be taken care of by the *Bashingantahe*. In fact, all those cases were the *Bashingantahe* were successful were examples or extensions of the traditional responsibilities of the *Bashingantahe*.

According to the *Bashingantahe* themselves, difficult cases for them were disputes between members of the same family. Those included cases of the sale of family land while some of the relatives were still in exile. The *Bashingantahe* preferred that in those cases the land returned to the original owner. Nonetheless, this required that reimbursement was paid to the buyer of the land, who often did not

[39] Interview *chef de secteur*, April 1 2005.
[40] Interview with the administrator of the commune, Giteranyi, March 29 2005.
[41] Interview with 5 representatives of the Justice & Peace Commission, April 2 2005
[42] Interview with the *Bashingantahe* of Giteranyi *secteur*, March 31 2005.

want to forfeit the land, while in other cases the family had no money for reimbursement. It was often difficult to prove in how far the second buyer had been aware that the rest of the family had not been consulted in the sale. In a similar way, cases of the double sale of land were difficult to solve by the *Bashingantahe*, in particularly when both sales had taken place without witnesses being present. Often neither of the parties wanted or was able to accept repayment. Difficult were also cases related to inheritance matters, in particular involving the claims by women. Many disputes resulting from the illegal sale of land, and related to polygamy, divorce, and the inheritance by women thus ended up at the Tribunal.

Despite the impossibility of the *Bashingantahe* to deal with such conflicts, people still preferred to approach them, as in the *Tribunal* the outcomes of cases were very unpredictable, or cases were not concluded. People observed for example that when land disputes resulting from polygamous marriages were brought forward to the *Tribunal*, the outcome was not sure. Polygamous marriages are not acknowledged under Burundian law, and it depended a lot on the circumstances taken into consideration by the judge whether claims of additional wives would be taken into consideration. This made people hesitant to approach the *Tribunal* with such cases.

> In one case, a second wife had been chased from her house by the husband to make space for his first wife. When the verdict of the *Tribunal* to return the land to her had not been properly implemented, she approached the *Tribunal* anew. 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. At the time of fieldwork, rather than trying to reclaim her land, the woman was now trying to reclaim her children.

Even if a person knew he was in his right, this guaranteed no success at the Tribunal. Even though the winning party wais not charged for the procedure in court, he often needed to incur considerable costs to turn the verdict into a reality. Based on the various quotations we were given, it turned out that a field visit by the *Tribunal* could easily cost more than the judgment. A favourable judgment would not automatically imply a favourable outcome, if the winning party could not finance the fieldvisit of the judges. Further, community members observed a practice in Giteranyi of rich people tried to slow down procedures (whether or not through corruption), or continued litigation at the *Tribunal* in the provincial capital. They speculated on the impossibility of their adversaries to appear before court and to continue litigation, and as a result, it would never proceed any further.[43] In other cases, they were forcing the other party to make large expenses, delay the final outcome of a dispute tremendously, in the meantime profiting from the status quo. Finally, in almost half of the examples examined in detail that had proceeded to the *Tribunal de résidence*, people suspected or alleged that corruption had played a decisive role. People tended to talk of corruption in case they did not agree with a verdict either by the *Tribunal* or the *Bashingantahe*. However, only considering the cases in which we could more or less confirm the story of the informants, the incidence of disputable conclusions by the *Tribunal de résidence* in Giteranyi was relatively high.

In several cases, the *Bashingantahe* thus served as a first instance, before approaching the Tribunal. Nonetheless, like in southern Rumonge, people experienced that its authority had eroded. Community members experienced that especially rich parties in disputes felt no moral obligations to follow the decision of the *Bashingantahe*: they were not interested in the fairness of the judgment of the *Bashingantahe*, but rather in winning the case. Cases involving such people invariably proceeded to the tribunal. Moreover, the *Bashingantahe* seemed gradually to have had lost part of the knowledge base needed for properly fulfilling their function. Their memory was no longer reliable due to the massive displacements that had taken place over the past years. As a consequence, in the cases of double or illegitimate sale of land, the *Bashingantahe* had come to attach a lot of importance to official land titles, and the presence of those seemed often decisive in their judgments. This resulted in that people which had never had land titles in the first place, or had lost their land titles in the chaos of exile, could no longer resort to the *Bashingantahe*. It turned out that some people even speculated on other people's lack of papers. By producing land titles, people could win disputes resulting from the

[43] The occurrence of this practice was also confirmed by the president of the *Tribunal de résidence*, Interview march 29 2005

illegal sale of land, which might have been concluded in a different way if the *Bashingantahe* would not have relied on the official papers. Rather than a local institution that had an advantage in availing of local specific knowledge to deal with land disputes, the *Bashingantahe* increasingly turned into a formal institute that based its judgement on state regulation. This often turned out to be at the disadvantage of people vulnerable to the machinations of others. At the same time, the *Bashingantahe* were neither able to function fully as an alternative for the Tribunals, as their authority was not acknowledged by law, and they were unable to enforce their decisions. In the experience of several people, gradually, rather than a local alternative to the state judicial system, the institution transformed into an extra and costly step, prolonging the way to justice, at the disadvantage of those having limited means.

In particular women experienced that they had little to win through the *Bashingantahe*. Customary rights as well as conventions in Giteranyi *secteur* were 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. Though the *Bashingantahe* had received training from their national body and an NGO on such issues, they often found it difficult to divert from conventions.

> In a case of a separation of a husband and his first wife, the *Bashingantahe* accepted the claim of the wife to the house, but did not consider her claims to part of the land, the decision on which was left to the discretion of the husband.

While in the various examples of inheritance disputes studied the *Bashingantahe* were willing to give women a symbolic portion of the inheritance (in the form of *igikemanyi*, a traditional gift of land to daughters to express affection), they were never awarded an equal share. Striking was also the case of a widow taking care of the orphans of her brother, 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. In case the *Bashingantahe*, for example, accepted a claim by a woman to part of the inheritance, they could not enforce solutions if those were refused by her male relatives.[44]

Discussion

The case studies of southern Rumonge and Giteranyi presented some of the dimensions of local land disputes and actual efforts of local institutions to deal with those. Various organizations have started programmes to enhance local dispute resolving capacities, motivated by a sense of urgency, resulting from the expected massive return of refugees, and the consequent rise in disputes about land. The findings in southern Rumonge and Giteranyi pose some questions regarding this rationale.

The continuity of land disputes

What the case studies make clear, is that it is difficult to generalize about the nature and origins of current land disputes in Burundi, as well as about the nature of conflicts related to the return of refugees and displaced. Each community studied had its own particularities in the types and characteristics of disputes that were frequent, and each community used its own classifications of existing disputes. Nonetheless, in both cases it was clear that land problems are not just a temporary problem related to returnees, but form part of normality.

The case of southern Rumonge brings out that returnee related conflicts cannot easily be separated from regular land disputes. Part of the land problem in southern Rumonge is a problem between returnees and those people that have stayed on and occupied their lands. At the same time, part of the land problem is the result of state policies in the past that have affected properties of both returnees and on-staying population. And while some conflicts may indeed have an ethnic dimension, many of

[44] Interview with the *Bashingantahe* of Giteranyi *secteur*, March 31 2005.

the disputes I studied rather involved relatives or community peers as contesting parties. While in Giteranyi the return of refugees was related to the prevalence of land disputes, non-returnee related disputes were destabilizing people's livelihoods and community relations as well. Many disputes were primarily of an intra-family character. Problems with the reinstallation of returnees in Giteranyi were the result of migration rather than being related to their return.

The return of refugees thus contributes to the occurrence of disputes about land in Burundi, or intensifies land disputes. Nonetheless, in many cases histories of exile and return are a factor rather than the determinants of dispute. Often, land problems have a much more structural character. Interventions to enhance local dispute resolving capacity can only work when it is recognised that land disputes are part of normality, and not just a temporary problem related to returnees. The massive return of refugees may justify a focus on returnee related conflicts. However, as land-spoliation and expropriation have been experienced not only by those that had been in refuge but by both ethnic groups, programmes focussing on returnees only may come to be perceived as predisposed and even ethnically biased. This might consequently obstruct the legitimacy of dispute resolving institutions one aims to achieve. Focussing on returnees will imply that many victims of land disputes will not be addressed. It would thus be more appropriate to prioritize people that have most difficulties in getting their problems solved, rather than on a population of returnees that is highly diverse in its opportunities and capacities, to deal with the disputes they encounter.

Also, considering the structural character of problems around land, the question is valid whether it is enough to focus on the resolution of individual land disputes. The structural character of land disputes points to a number of underlying problems, including land shortage and lack of alternative livelihood options. Burundi has extremely high population densities (Dimond 1998; Gatunange 2004), and over 80% of rural households have less than 1,5 hectares of land (Leisz 1998: 149; Huggins 2004: 3; Kamungi et al. 2004: 1), while 15% of the population is landless (Nkurunziza 2002, in: Jackson 2003: 8). Nonetheless, the majority of the population is still depending on agriculture for making a living (Sabimbona 1998: 3; Oketch and Polzer 2002: 120; Kamungi et al. 2004: 1). Various studies directly relate the occurrence of land disputes to land scarcity and the degradation of cultivable land. Land scarcity contributes to competing claims on land between livestock farmers and cultivators, or between farmers and the state. Regional migration of landless farmers in search of arable land has resulted in increasing prices of land, and encroachment on forest zones. New arrivals may get in fierce competition for land with the original inhabitants (Oketch and Polzer 2002: 123-130). But land scarcity is not just a migrational or inter-community issue: more regularly it is an issue within families (see e.g. CARE et al. 2004: 30/31). In one of the communities where we did fieldwork, disputes about the inheritance and the limitations of plots were locally understood as directly related to the decreasing availability of land. In several families, the equal division of the family property was no longer possible as this would result in unrealistically small plots.

Many community members observed that land disputes were seldom solved in an amicable way, due to the importance of land for making a living. Land is such a basic asset in Burundi, that compromising has become very difficult. In several of the cases we studied, parties were often not much interested in whether justice was being done or not, but rather in continuing their case until they had won access to land. The final outcome of those cases thus depended more on the financial capacities to proceed or to slow down a case, than on the local or judicial legitimacy of their claim. Hence, a real structural solution to land disputes requires more than a functioning judiciary (in all its forms) to deal with the disputes that inevitably come up. It requires a good and working land and economic policy, providing livelihoods outside agriculture, thereby reducing the dependency on land for making a living, and thus decreasing the potential of land disputes to occur.

The responsibilities of local institutions and the state

The case studies further point out that local conflict resolution mechanisms were only to a limited extend able to deal with returnee-related land conflicts in their communities. In southern Rumonge, to some of the returnee related conflicts, (temporary) local solutions could be found. In particular the

long-drawn and highly politicized disputes involving those that had fled in the 1970s surpassed the capacities of the local institutions, including the *Tribunaux*. Those disputes have become particularly intractable through state policies in the past and failure of the present government to pronounce itself on the issue. Various studies note other and more recent cases of state seizure of land, where land taken for reasons of 'public interest' ended up in the hands of high government officials and prominent businessmen (Oketch and Polzer 2002; ICG 2003a). "Land is one of the currencies of patronage" (Huggins 2004: 3), and high positions and power do open the way for land spoliation by individuals. A study by a series of NGOs in Ngozi province (CARE et al. 2004) identifies a whole series of manipulations of land at community level resulting in disputes. Those included cases where private land was expropriated for the construction of community services without the promised indemnification being paid. In some cases the project for which the land was taken was not executed and the land was given to members of the administration. People have also been expropriated without indemnification, to make place for others as part of villagization programmes in the 1970s and 1980s. Many controversies involved the attribution or sale of state lands. In cases where displaced had been settled on state lands, the status of those lands remained unclear, and displaced started selling such lands.

Many conflicts involving returnees are thus not so much a local affair among returnees and on-staying populations, but rather between community members and the state, that has been ineffective to address land problems in the past. It is the question whether at all it should be the responsibility of local institutions to deal with the resulting disputes. In the case of southern Rumonge, it was clear that the *Bashingantahe* were unable to deal with the double legitimate claims of returnees and occupants to particular plots, the injustice done to those who lost land through expropriation, and the reinstallation of returnees. In some cases that different claimants were willing to come to a compromise, they were able to realize something, but in most cases their power was limited. Rather than enhancing the conflict resolution capacities of local institutions, in those cases there was a need for political solutions at national level. 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 resulting in complete compensation and 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 endorsement. 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 in this.

Peacebuilding as protection

In Burundi, there is quite some discussion on the role of local conflict resolution mechanisms in land disputes, in particular on the strengthening of the institution of the *Bashingantahe*. Some criticize the limited accessibility of the institution to women, youth, Batwa (a marginalized community in Burundi), and poorer segments of the population. Others doubt their abilities to deal with the current scope of conflicts which may go beyond their capacities, or wonder in how far they are able to take their place alongside authorities until they have literate skills as well as an understanding of modern laws and governance. There is also discussion whether the institution still has legitimacy. It has been pointed out that at community level, the institution has not been able to remain immune to the ethnicitization and regionalism tearing the country apart, and *Bashingantahe* have for example justified the army repercussion of 1972, 1988 and 1993, or failed to condemn exclusion (Ntsimbiyabandi and Ntakarutimana 2004: 57-58). Doubts are expressed in particular about the establishment of a National Council of *Bashingantahe*, which risks that the *Bashingantahe* become part and parcel of the political debate, being portrayed as a reaffirmation of the social domination of the Tutsi and the wealthy, or being related to particular political parties. At the same time, rehabilitation might reinforce its traditional elitist character in the communities (Deslaurier 2003a; Deslaurier 2003b). On the other hand, it is argued, that the institution is indispensable, considering the incapacities of the state judicial system to deal with local land disputes, considering also that those

institutions are adapted to local particularities of conflict, and take due account of local conventions and considerations of justice and rightness.

The case studies presented in this paper show that the validity of those arguments is case- and context specific. The *Bashingantahe* in southern Rumonge and Giteranyi were still functioning as local land administration. Whether we like it or not, formal registration of land is becoming increasingly important in Burundi, in national policy discourse and at the local level. The process of land registration can be expected to be a historical event with long-lasting consequences in terms of equality and the division of wealth, and the possibilities to make a living in rural areas. The increasing importance of this process will only further contribute to already existing land disputes. As in many communities the *Bashingantahe* constitute the only form of administration of land, any policy concerning land will have to consider their role, the formalization of the institution, and the extent to which their testimonies on landed property could serve as a basis for land titling. Regarding their role in the resolution of disputes concerning land, a significant finding was that particular groups of people (widows and orphans) were especially vulnerable to machinations of people trying to appropriate their land. Often those vulnerable people were the victims of their own relatives. The case studies pointed out that the protection of those people could not be guaranteed by the *Bashingantahe*.

In southern Rumonge and Giteranyi, the system of the *Bashingantahe* had lost a lot of its authority. According to state law, the *Bashingantahe* had to be consulted before dispute cases could be forwarded to the Tribunals. Nonetheless, the *Bashingantahe* could not enforce solutions, and only could give advice to conflicting parties. This resulted in that the outcomes proposed by them could be easily circumvented by parties in the conflict that did not respect their authority. In particular rich people easily surpassed the institution at the disadvantage of poor people. In other cases, individual Mushingantahe turned out to be corruptible and were predisposed towards richer people. In many cases, the institution was not accessible due to the costs this would imply for the parties in conflict. A case in point was the traditional gifts donated to the *Bashingantahe* (the *agatutu*). Though often not regarded as a prescript, in effect it is a social obligation, a traditional part of the ceremony of reconciliation. In some cases the *Bashingantahe* themselves explicitly demanded a payment for their assistance in land disputes. Otherwise, wealthy people eagerly responded 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 did not respond in the same measure, this was seen as an insult of the institution, having consequences for the outcome. This put poorer parties at a disadvantage. Though ideally the *Bashingantahe* had to respond to any injustice they observed in their community, in practice they often only came into action when formally asked. Again this was often at the disadvantage of vulnerable people.

Complicated disputes at the local level include those involving women, which often are related to the limited possibilities within the customary tenure systems for women to inherit land on their own (see also Sabimbona 1998; CARE et al. 2004; Kamungi et al. 2004). While state law acknowledges the rights of women to inherit under certain conditions, in the communities, this is often not accepted. Regarding cases involving the rights of women, in several of the cases studied it was clear that many *Bashingantahe* had a sense of official regulations that protect the rights of women, but often could not reconcile themselves with those. They considered that it was not of their concern to apply official legislation, and referred women to the state system. This put women at a serious disadvantage when their cases were being brought forward to the *Bashingantahe*.

Current efforts to strengthen the *Bashingantahe* at the community level focus on strengthening their basic knowledge of state law, the advantages of land titles, and the rights of women. Juridical knowledge implies juridical authority, it was assumed. In case the *Bashingantahe* are well aware of the official state legislation, this will contribute to people addressing them, because they will know that their judgment will be similar to, but faster, cheaper and fairer than those of the *Tribunal*. The question arises in how far such interventions manage to make the *Bashingantahe* more legitimate in the eyes of the parties in dispute. Effective institutionalisation of the *Bashingantahe* requires also acknowledgement by the state of the status of their verdicts. Paradoxically, interventions to further

formalize the system may in effect move justice away from the community, by transforming locally carried institutions into externally driven/regulated agencies that are less accountable and responsible towards local people. In several of the cases studied, *Bashingantahe* explicitly referred to official state legislation rather than custom. In Giteranyi, the *Bashingantahe* had come to attach high importance to land titles in their judgments. This contributed to the confidence in the *Bashingantahe*, functioning as a first juridical instance to which people could address themselves. On the other hand, it represented a move away from the original function of the *Bashingantahe* of solving disputes from their intimate knowledge of the local community and local considerations of justice. People started anticipating on this in southern Rumonge. Though the *Bashingantahe* there were relatively strong, people attached a high importance to obtaining land titles, considering their importance in official law. In other cases, the *Bashingantahe* were more concerned with the legitimacy of a child/orphan/woman and hence its/her rights to inherit, rather than on the question of what they considered a just solution in the given situation.

The challenge to those institutions is thus not so much in becoming effective in applying legislation, but rather in becoming effective in consensus building. The chapter thus concludes that rather than enabling local dispute resolving mechanisms to deal with current challenges through fortifying their knowledge base, or further formalizing the institution, there is a need to focus on how the protection function of those institutions can be enhanced. In this, there might be a role for other local institutions. As was observed in southern Rumonge and Giteranyi, the justice and peace commissions had only a limited role in dealing with land conflicts. Nonetheless, they represented a counter point to the formal conflict resolution mechanisms of *Bashingantahe* and *Tribunaux*, being considered as more neutral and less demanding. Their strength was in drawing the attention of the *Bashingantahe* to cases of vulnerable people that were afraid to take action. Moreover, they could serve as a venue for spreading more knowledge among the general public on legal rights and limitations on the one hand, and on the other hand for initiating discussion and consensus at the local level on what ordinary people considered as right and just.

Conclusion

Peacebuilding is not just a policy intervention or strategy, but also a way of framing complex development problems. Framing helps to conceptualise reality in such a way that it is understandable and facilitates policy making by legitimizing particular courses of action. At the same time, framing directs attention away from other dimensions of a situation. Current efforts of (international) organizations in Burundi to enhance local dispute resolving capacity to deal with land disputes follow from a framing that sees returnee related land disputes as a central challenge for peacebuilding. However, the research highlighted that land disputes are not just a temporary problem related to returnees, but underlined the continuity between conflict-related and regular land disputes in Burundi. Land disputes in Burundi are here to stay. The challenge to Burundian and international organizations alike is in finding answers to the structural character of land conflicts. Enhancing local dispute resolving mechanisms only makes sense when recognizing this structural character of the land problem. To contribute to peace, such interventions should focus on assuring that those institutions contribute to local feelings of justice and protection of vulnerable people rather than to the formalisation of those institutions.

ACORD-Burundi (2002). Monographie sur la Problématique des Réfugiés et des Déplacés Burundais; Traitement de Données Secondaires du Projet "Recheche Transfrontalière sur les Réfugiés et les Déplacés Burundais". Rapport Provisoire. Bujumbura, ACORD-Burundi.

Barzegar, K. (2007). New Terrorism and Human Security in the Middle East: Diverging Perceptions. Human Security and International Insecurity. G. Frerks and B. K. Goldewijk. Wageningen, Wageningen Academic Publishers.

CARE, APDH, et al. (2004). Enquete qualitative sur la situation des conflits fonciers dans la province de Ngozi Burundi. Ngozi, CARE International au Burundi, APDH, Global Rights.

Colebatch, H. K. (2002). Policy; Second Edition. Buckingham/Philadelphia, Open University Press.

Daudelin, J. (2003). Land and Violence in Post-Conflict Situations, Report prepared for The North-South Institute and The World Bank. The Norman Paterson School of International Affairs. Ottawa, Carleton University**:** 34.

Deslaurier, C. (2003a). Le *Bushingantahe* au Burundi; De l'Institution Locale au Patrimoine Institutionnel National. Le Retour des Rois. Les Autorités Traditionelles et l'État en Afrique Contemporaine. F.-X. Fauvelle and C.-H. Perrot. Paris, Karthala**:** 401-418.

Deslaurier, C. (2003b). "Le 'Bushingantahe' peut-il réconcilier le Burundi?" Politique Africaine **Justice et Réconciliation; Ambiguïtés et Impensés**(92): 76-96.

Dexter, T. (2005 draft). Le Rôle de Système Informel de la Justice dans la Restauration d'un Etat de Droit en Situation Post-Conflit; Le Cas du Burundi. Bujumbura, Centre pour le Dialogue Humanitaire.

Dimond, M. (1998). Choosing Hope: The Case for Constructive Engagement in Burundi. Bujumbura, United Nations Resident Coordinator System in Burundi.

Frerks, G. (2007). Conflict, Development and Discourse. Human Security and International Insecurity. G. Frerks and B. K. Goldewijk. Wageningen, Wageningen Academic Publishers.

Frerks, G. and B. Klem (2004). Sri Lankan Discourses on Peace and Conflict. Dealing with Diversity; Sri Lankan Discourses on Peace and Conflict. G. Frerks and B. Klem. The Hague, Netherlands Institute of International Relations 'Clingendael'.

Gatunange, G. (2004). La Problematique Fonciere dans la Perspective du Rapatriement et de la Reinsertion des Sinistres; rapport provisoire. Bujumbura, Observatoire de l'Action Gouvernementale.

Holland, D. (2001). Religious Organizations and Indigenous Social Institutions in Conflict Resolution and Peacebuilding in Burundi. Development Studies Centre, Kimmage Manor. Dublin.

Huggins, C. (2004). "Preventing conflict through improved policies on land tenure, natural resource rights, and migration in the Great Lakes Region; an applied research, networking and advocacy project." African Centre for Technology Studies, Eco-conflicts **3**(1).

ICG (2003a). Réfugiés et Déplacés au Burundi: Désamorcer la Bombe Foncière. ICG Rapport Afrique N°70. Nairobi/Bruxelles.

Jackson, D. (2003). Twa women, Twa rights in the great lakes region of Africa. M. R. G. I. (MRG).

Kamungi, P. M., J. S. Oketch, et al. (2004). "Land Access and Refugee Repatriation, The Case of Burundi." African Centre for Technology Studies, Eco-conflicts **3**(2).

Leisz, S. (1998). Burundi Country Profile. Country Profiles of Land Tenure: Africa, 1996. Research paper 130. J. W. Bruce.

Lemarchand, R. (1996). Burundi: Ethnic Conflict and Genocide. New York, Woodrow Wilson Center and Cambridge University Press [check!].

Nindorera, L.-M. (1998). "Keepers of the Peace: Reviving the Tradition of Bashingantahe in Burundi." Online Journal of Peace and Conflict Resolution, www.trinstitute.org/ojpcr **1**(4).

Ntabona, A. (2002). l'Institution des Bashingantahe et la Modernité: Brochure produite dans le cadre du Projet BDI/02/B01. Bujumbura, Centre de Recherches pour l'Inculturation et le Développement (CRID).

Ntsimbiyabandi, L. and E. Ntakarutimana, O.P. (2004). Le Phenomene de la Societe Civile au Burundi. Bujumbura, Centre Ubuntu.

Oketch, J. S. and T. Polzer (2002). Conflict and coffee in Burundi. Scarcity and Surfeit: The Ecology of Africa's Conflicts. J. Lind and K. Sturman. Pretoria, ACTS Press, Nairobi/ Institute for Security Studies.

Oketch, J. S. and T. Polzer (2002). Conflict and Coffee in Burundi. Scarcity and Surfeit; The Ecology of Africa's Conflicts. Jeremy Lind and K. Sturman. Pretoria, ACTS Press, Nairobi/ Institute for Security Studies.

RCN Justice & Démocratie (2004). Etude sur les Pratiques Foncières au Burundi: Essai d'Harmonisation. Bujumbura, RCN Justice & Démocratie.

Reijntjens, F. and S. Vandeginste (2001). Traditional Approaches to Negotiation and Mediation: Examples from Africa - Burundi, Rwanda and Congo. Peacebuilding: A Field Guide. L. Reychler and T. Paffenholz. Boulder, London, Lynne Rienner Publishers.

République du Burundi and Forum des Partenaires au Développement (Janvier 2004). Programme National de Réhabilitation des Sinistrés. Bruxelles.

République du Burundi and PNUD/UNOPS (décembre 2002). Province de Muyinga : Plans Communaux de Developpement Socio-Economique (2002-2005). Projet d'Appui a la Planification locale et au Renforcement des Communautes. Bujumbura.

Sabimbona, S. (1998). The problems of displaced and returnee women faced with current land tenure policies in Burundi. Paper presented at the Inter-regional Consultation in Kigali, february 1998. Women's land and Property Rights in Situations of Conflict and Reconstruction. UNIFEM.

van Leeuwen, M. and L. Haartsen (2005). Land Disputes and Local Conflict Resolution Mechanisms in Burundi. Bujumbura/Wageningen, CED-CARITAS.