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Legal Empowerment and
Customary Law in Rwanda:
Report of a Pilot Project
Concerning Community Level
Dispute Resolution and Women's
Land Rights

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International Development Law Organization
Organisation Internationale de Droit du Développement

LEGAL EMPOWERMENT AND CUSTOMARY LAW IN RWANDA: REPORT OF A PILOT PROJECT CONCERNING COMMUNITY LEVEL DISPUTE RESOLUTION AND WOMEN'S LAND RIGHTS

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This online series showcases research conducted under the IDLO Legal Empowerment and Customary Law Research Grants Program. Through this program, seven bursaries were awarded to scholar-practitioners to evaluate the impact of an empowerment-based initiative involving customary justice. In each case, an outcome mapping methodology, using quantitative data collection methods, was employed to answer the basic question: how have justice outcomes changed as a result of the intervention? This approach reflects a move away from traditional evaluation methodologies that focus on proxy data such as numbers of persons trained or numbers of information resources disseminated, towards a direct examination of behavioral changes and outcomes. The program will culminate in the publication of an edited volume which aims to assist readers develop a better understanding of the relationship between customary justice and the legal empowerment of users and identify possible entry points for engaging with customary justice systems. It features articles on initiatives implemented in Namibia, Rwanda, Somalia, Tanzania, Mozambique, Papua New Guinea, Liberia and Uganda. The series forms part of a broader research program implemented in partnership with the Van Vollenhoven Institute for Law, Governance and Development of Leiden University designed to expand the knowledge base regarding the relationship between the operation of customary justice systems and the legal empowerment of poor and marginalized populations.

PARTNERSHIPS

This program is being implemented by IDLO in partnership with the Van Vollenhoven Institute for Law, Governance and development, Leiden University (<http://www.law.leiden.edu/organization/metajuridica/vvi/>) and the United Nations Development Programme (UNDP), Somalia.

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DONOR SUPPORT

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Legal Empowerment and Customary Law in Rwanda

Report of a pilot project concerning community level dispute resolution and women's land rights

Muriel Veldman and Marco Lankhorst

EXECUTIVE SUMMARY

We present a report on the results of a 10-month pilot project conducted in North-Western Rwanda that aimed to explore fruitful ways to engage with customary law in order to empower rural communities and rural women in particular. The focus is on the effectiveness of land dispute resolution at the community level and the respect for women's formally guaranteed land rights by the institutions involved.

Context

As is common in many developing countries, land is the most valuable resource that rural Rwandans own. The livelihood of over two thirds of the population of this country of 10 million depends on subsistence farming. Pressures on land are intense and increasing. Due to population growth and inheritance practices of customary origin that require family land to be divided among each new generation of sons, the average land holding per family has fallen well below 1 hectare. Unsurprisingly, land disputes occur frequently. In Rwanda there are many institutions involved in land dispute resolution at community level, including the traditional *inyangamugayo* and the state instituted, neo-customary, *abunzi* committees, which function as community courts.

There are three factors that affect the willingness of disputants to accept and abide by the decisions of these institutions: (1) the ease with which a dispute can subsequently be submitted to another arbitrator at community level, which invites forum shopping; (2) the fact that certain community level arbitrators tend to position themselves as judges rather than mediators, even though they lack essential knowledge and skills to properly conduct adversarial hearings; and (3) the fact that the arbitrators seldom explain their reasoning in such a way as to convince disputants to accept more difficult decisions. This means that disputes are often not brought to a definitive end and continue to brew. Very few cases reach the formal court system and about half of those that do are summarily dismissed. Ultimately, this poses a risk to social cohesion in the communities affected.

Women find themselves in an unfavourable position when it comes to claiming access to land. Under customary law women generally exercise limited use rights over land which they acquire through marriage. This is particularly problematic in Rwanda, since the 1994 genocide and civil war left a society in which women considerably outnumber men and many of those women have become heads of household and heads of families. They rely on the land to feed their families but their claims to this land, under customary law, are weak. Primarily for this reason the Rwandan government adopted new legislation giving daughters and wives equal inheritance rights. There are questions, however, as to how well these new laws are known, understood and respected in dispute resolution at community level.

Objectives of the pilot project

The immediate purpose of our pilot project was to enable the communities with which we partnered to autonomously bring a larger share of land disputes to a definitive end (in the sense that both disputants would accept the outcome) and to increase respect for women's formally guaranteed land rights in dispute resolution. To achieve this, community level round tables, workshops and trainings were organized and specific tools were developed. Subsequently, the impact of these activities was monitored over a period of seven months. This results in a number of observations and recommendations that are primarily directed at Rwandan policymakers and development practitioners active in Rwanda. The broader aim of the pilot project was to explore fruitful ways to engage with customary law in order to empower the poor. We therefore conclude with a second set of recommendations concerning the design, implementation and monitoring and evaluation of legal empowerment projects that interact with customary law, which we expect to be of relevance beyond the Rwandan context.

Observations on access to justice in rural Rwanda

The study into community level justice in Rwanda that was made as part of this pilot project suggests that there remain significant problems with access to good quality justice for rural Rwandans. In practice, access to formal state courts is very limited. Roughly one in forty disputes started at village level rises up to the level of the Primary Courts. Moreover, roughly half of the cases that are submitted to state courts are summarily dismissed. At the community level the problem is not with access but with quality. To begin with, institutions at the community level are often unfamiliar with important laws. This is particularly the case with laws regarding women's rights to land. Women involved in marital unions that are not formally recognized appear to suffer most from this situation, since they are poorly protected under customary law. Moreover, institutions at the community level frequently adopt an approach to dispute resolution whereby they judge the dispute (and the disputants), rather than act as facilitators who try to bring them closer together. Due to inexperience or haste, the investigation of disputes is often too brief, leaving disputants insufficient time to express their view on the case. In addition, it must be noted that few institutions at this level have the skills necessary to reason their decisions in such a way as to make a difficult outcome understandable and acceptable to the disputant who is asked or ordered to give in. Finally, the enforcement of decisions, both those of state courts and of lower institutions, is often problematic.

These failings of community level justice are not without consequence. It is easily appreciated that these factors may leave disputants dissatisfied with decisions adopted in community level dispute resolution and they may feed suspicions that the persons that adopted the decision were somehow biased or corrupt. These sentiments find expression in a high level of appeals by disputants from one community level institution to another. In fact, disputants have strong incentives to file such appeals, since barriers to access at this level are very low and the probability of obtaining a different and more favourable outcome is significant. As a result, disputes frequently drag on over extended periods of time and may pass through the pre-judicial and judicial hierarchy several times without leading to a durable solution to the problem. It seems reasonable to expect that an accumulation of such unresolved disputes, particularly where land claims are concerned, has the potential to adversely affect social peace and stability in the long run.

Recommendations primarily directed at the Rwandan context

This pilot project provides strong indications that (1) working with *abunzi* committees and institutions involved in dispute resolution at village level on mediation skills and the reasoning of decisions and (2) stimulating collaboration between heads of *umudugudu*, *inyangamugayo* and representatives of the National Women's Council, can enhance the capacities of these institutions (and, thus, their communities) to bring more disputes to a conclusion, (the outcome accepted by both parties). Arguably, this also contributes to the

government's objective to reduce backlogs in the formal court system. Moreover, the results of the pilot suggest that developing the mediation skills of institutions at this level and drawing in *inyangamugayo* and representatives of the National Women's Council is particularly important for women, since the resulting change in the approach to dispute resolution offers them more scope to demand attention for their legitimate interests. As suggested, this is particularly important for women who are involved in marital unions that are not formally recognized, since formal laws offer only partial protection of their interests in land and customary law even less.

The pilot project also provides strong indications that whilst it is important to inform institutions at the community level and members of the rural population about women's formally guaranteed land rights, it does not appear to be effective to insist on the details of legal provisions contained in statutory law. What is important is that dissemination projects start with a well developed understanding of the customary realities in which the general notions underlying the Inheritance Law, the Land Law and the Gender Based Violence Law must be embedded and that they explicitly explain their implications for existing customary practices with which the local population is familiar.

Finally, whilst assuring universal access to quality justice is one of the primary objectives of Rwanda's Justice, Reconciliation, Law and Order (JRLO) Sector Strategy, many of the problems with access to justice for the rural population in general and for women in particular that were brought to light in this study, go undetected by the JRLO Comprehensive Monitoring and Evaluation Framework. That is to say, few of the indicators that have been designed to track the sector's progress towards realizing universal access to quality justice are sufficiently sensitive to ensure that these problems are identified, regularly monitored and debated by JRLO Sector institutions and their development partners. The upcoming review of the functioning of the JRLO sector and the consultation rounds that will be started to prepare a new JRLO Strategy (2012-15) should be seized upon to make tangible improvements in this regard. This would ensure, also, that policy actions will be prioritized in the new JRLO Strategy that address these problems directly and effectively.

Recommendations relevant beyond the Rwandan context

The lessons to be learned from our pilot project that we expect to be of relevance to other development practitioners who seek to engage with customary law in order to empower the poor relate to the way such projects are planned and prepared, as well as to the way in which they are budgeted, monitored and evaluated. Our experiences in this pilot project suggest that project planning should provide for an intensive preparatory phase of sufficient duration to ensure that the project is based on an accurate and detailed understanding of the realities of customary law which the project intends to influence. We expect that information on these issues will generally not be complete before the start of the project and that considerable time must therefore be allocated in the planning to produce this view before the activities start. This has a number of implications, also, for questions related to project monitoring and evaluation and budgeting.

Desired outcomes and results of the intervention (and the related indicators and targets) may have to be refined or revised during the course of the project, to reflect the information gathered during the preparatory phase. Alternatively, donors will have to accept that outcomes and results (and the associated indicators and targets) are vaguely defined in project proposals. Moreover, funding partners tend to prefer log frames with quantitative indicators that are quality sensitive. Our pilot project suggests, however, that it may be hard to gather reliable data on such quantitative indicators when engaging with customary law. We submit, therefore, that monitoring and evaluation of this type of project will essentially depend on qualitative research techniques. The information that can be gathered by such means are harder to translate into appealing and objectively verifiable indicators of success. Under such circumstances the best available strategy is

to define as clearly as possible during the preparatory phase what change in behaviour or relations the project aims to bring about and to engage in a continuous process throughout the project to evaluate whether the underlying vision is relevant or needs to be updated. This requires flexibility on the side of funding partners. It also requires that monitoring and evaluation receives constant attention by professional and experienced staff and that the project budget allows for this. We expect that the 3percent or 4 percent of the total budget that are normally reserved for monitoring and evaluation in development programming will not be sufficient in legal empowerment projects seeking to engage with customary law.

1. Introduction

We present a report on the results of a 12-month pilot project conducted in North-Western Rwanda that aimed to explore fruitful ways to engage with customary law in order to empower rural communities and rural women in particular. The focus is on the effectiveness of land dispute resolution at community level and the respect for women's formally guaranteed land rights by the institutions involved.

1.1 Context and objectives of the pilot project

As is common in many developing countries, land is the most valuable resource that rural Rwandans dispose of. The livelihood of over two thirds of the population of this small and hilly country of 10 million in the heart of Africa depends on subsistence farming.¹ The majority of subsistence farmers do not have access to off-farm income generating activities.² Pressures on land are intense and increasing. Due to population growth and inheritance practices of customary origin that require family land to be divided among each new generation of sons, the average land holding per family has fallen well below 1 hectare.³

Unsurprisingly, land disputes occur frequently. Being involved in a land dispute is a serious matter for almost any rural Rwandan, since it means holding on to, regaining, acquiring, or losing the ability to sustain and support one's family. In Rwanda there are many institutions involved in land dispute resolution at community level, including the traditional *inyangamugayo* and the state instituted, neo-customary, *abunzi* committees, which function as community courts. Existing research shows that three factors affect the willingness of disputants to accept and abide by the decisions of these institutions;⁴ firstly, the ease with which a dispute can subsequently be submitted to another arbitrator at community level, which invites forum shopping, secondly, the fact that certain community level arbitrators tend to position themselves as judges rather than mediators, even though they lack essential knowledge and skills to properly conduct adversarial hearings and, thirdly, the fact that the arbitrators seldom explain their reasoning in such a way as to convince disputants to accept more difficult decisions. This means that disputes are often not brought to a definitive end and continue to brew. Very few cases reach the formal court system and about half of those that do are summarily dismissed.⁵ Ultimately, this poses a risk to social cohesion in the communities affected.⁶

Women find themselves in an unfavourable position when it comes to claiming access to land. Under customary law women generally exercise limited use rights over land which they acquire through marriage. This is particularly problematic in Rwanda, since the 1994 genocide and civil war left a society in which women considerably outnumber men and many of those women have become heads of household and heads of families.⁷ They rely on land to feed their families but their claims to this land, under customary law, are weak. Primarily for this reason the Rwandan government adopted new legislation giving daughters and wives equal inheritance rights.⁸ The question of women's inheritance

¹ See footnote 25 and accompanying text.

² See footnote 35 and accompanying text.

³ See footnote 37 and accompanying text.

⁴ See M Lankhorst and M Veldman, *La Proximité de la Justice au Rwanda: Rapport socio-juridique sur les modes de gestion de conflits fonciers*, RCN Justice & Démocratie research report, Kigali (2009).

⁵ See footnotes 150 and 151 and accompanying text.

⁶ See, for example, André and Platteau, *Title* (1997) 38, quoted below in Box 2.

⁷ See the footnote 82 and accompanying text.

⁸ The most important laws, in this regard are the *Matrimonial Regimes, Liberalities and Succession Law 1999* (Law no. 22/99 of 12 November 1999), the *Organic Land Law* (Law no. 08/2005 of 14 July 2005) and the *Gender-Based Violence Law* (Law no. 59/2008 of 10 September 2008). All Rwandese laws can be consulted on the website of the Ministry of Justice <http://www.amategeko.net/index.php?Parent_ID=3&Langue_ID=An> at 1 June 2011.

rights is highly relevant in Rwanda, since it constitutes the main possibility for women to gain access to land independently from their husbands. Land markets are underdeveloped in rural Rwanda and, in any case, relatively few women have sufficient resources to be able to purchase land. There are questions, however, as to how well these new laws are known, understood and respected in dispute resolution at the community level.

The more immediate purpose of our pilot project was to enable the communities with which we partnered to autonomously bring a larger share of land disputes to a definitive end (in the sense that both disputants would accept the outcome) and to increase respect for women's formally guaranteed land rights in dispute resolution. To achieve this, community level round tables, workshops and trainings were organized and specific tools were developed. Subsequently, the impact of these activities was monitored over a period of several months. This results in a number of observations and recommendations that are primarily directed at Rwandan policymakers and development practitioners active in Rwanda.

In a more general sense, the aim of the pilot project was to explore fruitful ways to engage with customary law in order to empower the poor. Donors and development scholars increasingly emphasize that empowerment through legally oriented development projects can only be effective and responsive to the needs of the poor when they acknowledge the importance of customary law in the legal reality of the poor and rely on customary law as a basis for development.⁹ Yet whilst there is ample literature on the functioning of customary justice systems, there is a lack of practical knowledge of how these systems can be constructively engaged with in development projects aimed at legal empowerment. At the end of this report a number of recommendations are made as to the design, implementation and monitoring and evaluation of legal empowerment projects that interact with customary law, which we expect to be of relevance beyond the Rwandan context. Before we explain in more detail how the report is structured we first give an example of the type of cases that we dealt with in this pilot project. This serves to familiarize the reader with the context in which we intervene, to illustrate the complexity of the issues at stake, and to underscore the importance of the objectives we have chosen for our pilot project.

Box 1. A typical land dispute¹⁰

Dancille lives together with her children and her mother, Euphrasie, in a village of scattered mudbrick houses set in a patchwork of small vegetable fields and banana groves. Dancille and the father of her five children never got married, according to her because his family claimed that they could not afford to pay 'bride price'. When he passed away, four years ago, his brothers took the land he had received from his father and on which she had worked together with him for years. The brothers claimed that since they were not married, she and her children were not part of the family and had no right to inherit family land. Dancille was forced to move back in with her mother. Soon her oldest son will reach the age of marriage. To find each son a wife and to ensure that they themselves will be taken care of, Dancille and Euphrasie need to provide them with land. Yet Euphrasie's claims to her land are being challenged from two sides.

About a decade after independence, Euphrasie married Ignace according to customary rites. They were well endowed with land. His father gave them two sizable and fairly level parcels (plots 1 and 2), on one of which Ignace built their house (plot 1); her father, to

⁹ For a discussion, see E Wojkowska and J Cunningham, 'Justice reform's new frontier: Engaging with customary systems to legally empower the poor' in S Golub (ed), *Legal Empowerment: Practitioners' Perspectives*, International Development Law Organization (2009).

¹⁰ The case discussed in this text box was dealt with by one of the *abunzi* committees with which we partnered and a number of the persons involved were interviewed by RCN agents. Names and certain specifics of the case have been changed in order to respect the privacy of the persons concerned. Some further details have been altered, in order to make the case easier to understand. The description of this case is included purely for illustrative purposes.

show that he was pleased with his son in law and the brideswealth that had been paid, gave some forest land (plot 3) and a generous uncle gave a fourth plot (plot 4). After several years of marriage Ignace insisted on taking a second wife. Euphrasie was not opposed to the coming of Immaculée, since with four young children to take care of she could no longer manage all the work on the fields on her own. Initially they all lived together in the same house, but after some time Ignace bought a plot of land for Immaculée on the other side of the village and built her a house; to do so he sold most of the plot that had been given by the uncle (plot 4).

Towards the end of the genocide, in the early summer of 1994, they all fled to Zaire, but Euphrasie and her children got separated from Ignace, Immaculée and her two sons. They did not see each other again before 1998, when Euphrasie and her children returned to the village. Ignace and Immaculée had returned first, in 1997. In the meantime Immaculée had worked on all the family's fields, but Euphrasie was quickly allowed to take her fields back and start cultivating. Ignace also bought new iron sheets for the roof of her house, but he did not move back in with her and preferred to stay with Immaculée. He came to visit Euphrasie and her children less and less frequently and according to her this was because Immaculée had taken advantage of their separation to dominate him and exclude her. After some time, not long before he passed away, Ignace formalized his union with Immaculée by concluding a civil marriage.

About a year and a half later Immaculée remarried. According to Euphrasie her new husband is a no-gooder who is after the family's land; if not he would have taken a younger wife. Almost immediately Immaculée started a case against Euphrasie to claim the remaining half of plot 2 (the other half had been divided and given to Euphrasie's two sons when they married). When the local *abunzi* committee ordered her to cede the land, Euphrasie and Dancille decided to bring the case before the primary court. Dancille had to work as a casual labourer on the field of others for about a week to be able to pay for the court fees. Before the court dealt with the case, on a day that Euphrasie's younger son was not in the village, Immaculée, her husband and one of his brothers came to occupy the disputed plot. The primary court decided against Euphrasie and now the case is under appeal. Euphrasie will not accept losing the land; she complains that it evidently belongs to her side of the family and that neither the *abunzi* nor the court explained to her why Immaculée would have any right to it.¹¹ What she remembers, though, is that the judge kept referring to Immaculée as 'the real wife'. Obviously, she did not protest, but she found this very offensive. She does not have a copy of the judgment. Since it was the dry season when the appeal had to be filed, it was difficult for Dancille to find work on the fields of others and the wages were very low. All the money she earned was spent on filing the appeal. When we asked Euphrasie how the relation with Immaculée and her family is, one of Dancille's sons answered: it is very bad.

More recently, during the life of our project, Désirée, the widow of Euphrasie's oldest son Evariste, also filed a case against her. Some years before the genocide, when Evariste prepared to marry Désirée, Ignace had called a family meeting, an *inama y'umuryango*, and had given him his 'inheritance'. He received a part of plot 2 to cultivate on, a substantial portion of plot 3 for wood, which would enable him to build a house, and about a third of the banana grove that covered most of plot 1. Even though we were not able to find out the exact details of the arrangements made, it is clear that it was decided that Evariste and Désirée would not use this third part of his inheritance and that some other solution would be found that would allow them to build a house further away from that of his parents. For economic reasons and, possibly, because the unfolding civil war caused rising tensions, this did not happen and they installed themselves on a part of plot 3 that Evariste had cleared. He died in September of 1994 and things were left as they were. Désirée, who had two children by him and three with her new husband, now claimed Evariste's part of the banana grove.

The *abunzi*, having participated in our capacity building programme, dealt with the case in a different way than the committee that had decided on the first case filed against

¹¹ It is by no means suggested that either the *abunzi* committee or the Primary Court erred in deciding as they did. The purpose here is to draw the reader's attention to the fact that the decisions do not correspond to Euphrasie's sense of justice and fairness, which appears to be primarily influenced by more traditional notions of customary law, and that neither institution helped her to overcome this hurdle by trying to explain and justify their decision.

Euphrasie. They did not only try to find out what had happened in this case and when, but also made considerable efforts to let both Euphrasie and Désirée understand each other's situation and prospects. Eventually, they proposed that Euphrasie would cede a more distant and somewhat smaller part of the banana grove to Désirée. After taking some time to consider and discuss with Dancille, Euphrasie decided to accept and to symbolize their reconciliation and the three shared a gourd of banana wine. When Désirée goes to her part of the grove, these days, they greet each other and talk a little.

1.2 Organization of the report

This report is made up as follows. In section 2 we provide important background information on land, land dispute resolution and women's land rights in Rwanda. This prepares for the discussion in the first part of section 3 of the problem analysis on which our project was based. The following sections deal with the details of the intervention that we designed to address the problems identified and the methodology that was used to study its impact. Next, in section 4, the results of the intervention are presented. Finally, in section 5, we offer some concluding remarks and make a number of recommendations.

The background information provided in section 2 and the problem analysis presented in the first part of section 3 are based on previous research conducted by the authors on behalf of RCN,¹² existing research by other scholars and practitioners and data collected as part of other activities engaged in by RCN; notably our *abunzi* monitoring project. In some places the information drawn from these sources has been complemented by information gathered during the pilot project. The methodology relied on to gather this information is discussed in section 3.3.

2. Background

In this chapter we provide background information that is necessary to understand the objectives of our pilot project. We start (section 2.1) with a brief introduction that discusses the land issue in Rwanda through the perspectives of its geography, demography, socio-economic situation and history. This is followed (section 2.2) by a discussion of Rwanda's general land policy and (section 2.3) of its formal and customary inheritance law, which are at issue in the vast majority of Rwandan land disputes. Finally (section 2.4), we provide an overview of the various institutions involved in land dispute resolution at the local level.

2.1 General information

2.1.1 Geography and socio-economic conditions

Rwanda is a landlocked African country located just below the equator, in between Uganda (to the North), Tanzania (to the East), Burundi (to the South) and the Democratic Republic of Congo (to the West). It has a surface area of 26.338 km² (slightly smaller than Belgium and about a third of the size of the state of New York).¹³ Rwanda is often referred to as the country of a thousand hills, on account of the hilly and mountainous landscape. The whole of the country is situated at more than 1,000 meters above sea level and more than half between 1,500 and 2,000 meters.¹⁴ These are also the more fertile and, thus, the most populated areas of the country.¹⁵ The population

¹² Lankhorst and Veldman, above n 4.

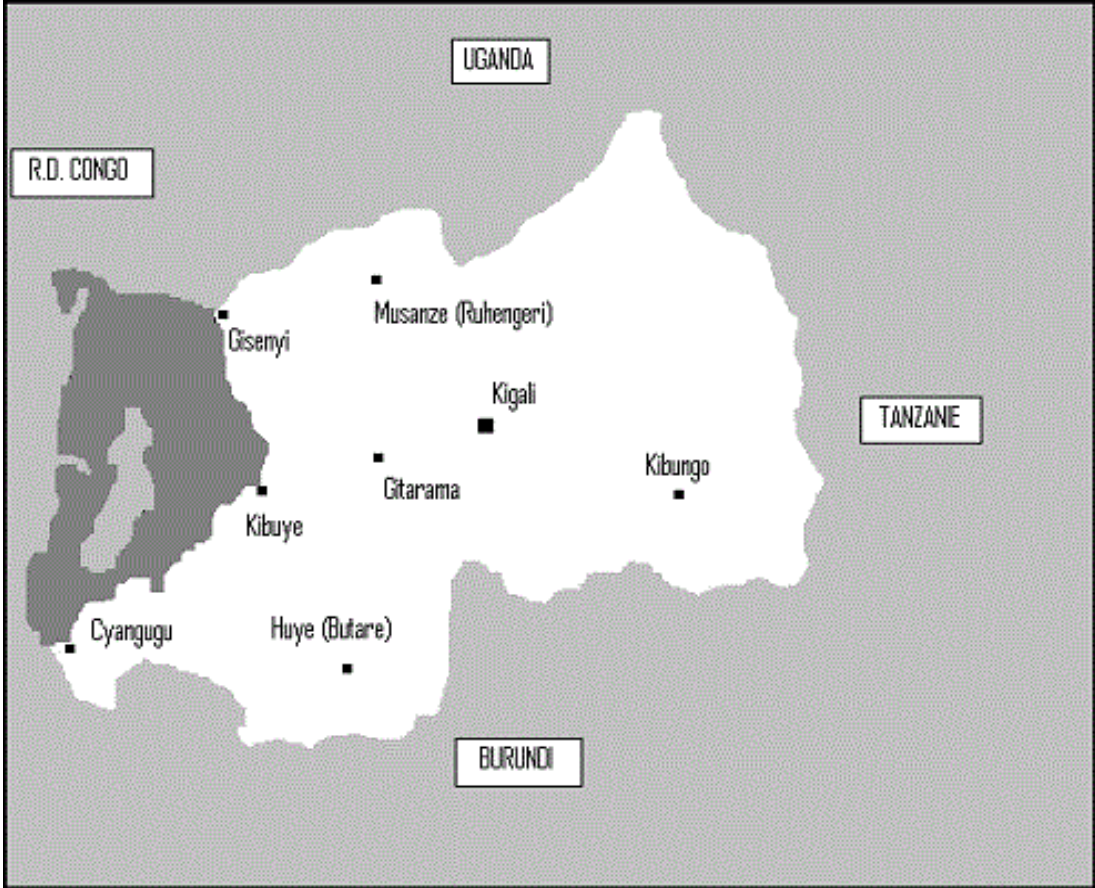
¹³ See F Bart, *Montagnes d'Afrique, Terres Paysannes, Le cas du Rwanda*, Talence Centre d'Etudes de Géographie Tropicale (1993) 1.

¹⁴ Takeuchi and Marara, *Agriculture and Peasants in Rwanda: A Preliminary Report*, Joint Research Series No. 127, Institute of Developing Economies, Japan Trade Organization, Tokyo (2000) 1.

¹⁵ Ibid 2. In fact, about half of the surface area is suitable for cultivation, see National Institute of Statistics Rwanda (NISR), *National Agriculture Survey 2008* (2008) 35, NISR <<http://www.statistics.gov.rw>> at 1 June 2011.

density is very high by African standards. The national institute for statistics estimates that in 2009 there were 10,117,029 inhabitants,¹⁶ which means that there were some 384 Rwandans per km² (up from 202 inhabitants per km² in 1991 and 303 per km² in 2004).¹⁷ It is estimated that in 2020 there will be close to 14 million Rwandans.¹⁸ It should be noted, also, that there are strong regional differences. In some areas in the South there can be as many as 1.000 inhabitants per km²,¹⁹ whereas two large national parks (Akagera in the East and Nyungwe Forest in the South) are virtually uninhabited. In its 2009 Human Development Report,²⁰ the UNDP ranks Rwanda 167th (out of a total of 182 countries) in terms of its Human Development, in league with countries such as Eritrea and Liberia. The Human Development Indicator (reflecting levels of income, life expectancy, health and education) on which this ranking is based stood at 0.46 (for comparison: Norway, which ranks first in the index, has a HDI of 0.97). Despite impressive and sustained GDP growth over the past six years, the majority of the Rwandese population remains very poor. The 2009 per capita GDP was USD 520,²¹ which means that on average Rwandans survive on less that USD 2 per day. In this regard it should be noted that there is considerable income inequality. The richest 10 percent of the population consume 38 percent of GDP,²² which implies that the bulk of the remaining population actually survives on less than USD 1 per day.

Figure 1. Map of Rwanda



¹⁶ NISR <<http://www.statistics.gov.rw>> at 12 May 2011. In 2004, Rwanda had a population of 8,128,553.

¹⁷ Government of Rwanda (GoR), *National Land Policy* (2004) 15.

¹⁸ NISR, *Natonal Population Projection 2007-2022*, (2009).

¹⁹ GoR, above n 17, 15.

²⁰ United Nations Development Programme (UNDP), *Human Development Report 2009 – Overcoming barriers: Human mobility and development*, (2010).

²¹ NISR, *GDP annual estimates 2009 based on 2006 benchmark* (2010), NISR <<http://www.statistics.gov.rw>> at 1 June 2011.

²² UNDP, above n 20.

The Rwandese economy depends essentially on the agricultural and services sectors, which account for 34 percent and 46 percent of GDP.²³ It should be realized, however, that the number of people involved in the agricultural sector far exceeds those engaged in all other sectors of the economy, including the services sector. According to the National Institute of Statistics 84 percent of the population works in agriculture and or livestock farming (52 percent of which are women).²⁴ The vast majority of these are subsistence farmers.²⁵ The conditions in which this part of the population lives and works can be described as follows.

2.1.2 Characteristics of the agricultural population

The farming population is relatively young. The average age of heads of farming households is about 44 years (more than 75 percent are less than 54 years old).²⁶ About 27 percent of households are headed by a woman, which can be explained by the fact that the 1994 genocide against the Tutsi left many widows.²⁷ The average household is composed of five members.²⁸ Only 64 percent of people of 15 years and above can read and write, 21 percent of the population aged 6 years and above never frequented school and a significant proportion (53 percent) has attended but not finished primary school.²⁹ Housing generally consists of a mud-brick construction with a roof made of metal sheets and a floor of stamped earth.³⁰ Access to clean drinking water and electricity are very limited.³¹ For the majority, land is the only asset they possess.

These people grow bananas, cereals (sorghum, maize, and rice), tubers (cassava, potatoes, sweet potatoes, and manioc), pulses (beans and peas) and vegetables,³² largely for their own consumption. Agricultural production is generally not mechanized and improved seeds, pesticides or chemical fertilizers are seldom used.³³ Women are responsible for much of the physical labour on the field.³⁴ Few households engage in secondary non-farming activities to supplement their income.³⁵ This means that to buy basic requirements, such as salt, sugar and cooking oil, they depend on the sale of whatever they can spare of their harvest.

Land holdings tend to be small. This is the result of a decades-long and continuing process of fragmentation, driven by population growth.³⁶ The average holding per household currently measures 0.76 ha, divided into four separate blocks.³⁷ About 26

²³ NISR, above n 21. The services sector has rapidly grown over the past decade. In 2004 agriculture represented 43.5 percent of GDP (GoR, above n 17, 8).

²⁴ NISR (2008) 26.

²⁵ Ibid 34. Given that these are the people about whom we were concerned in designing our research pilot, the rest of this section will concentrate on the situation of subsistence farmers. Note, however, that Rwanda also has a nascent commercial agriculture sector. This involves both individual farmers and farming enterprises and considerable numbers of cooperatives and associations. The focus in this sector is mainly on cash crops, such as coffee and tea, and on sugar cane. Commercially-oriented agriculture mainly takes place in river valleys. In this regard, see M Veldman and M Lankhorst, *Socio-Economic Impact of Commercial Exploitation of Rwandese Marshes: A case study of sugar cane production in rural Kigali*, RCN Justice & Démocratie research report (2010).

²⁶ NISR, above n 15, 22.

²⁷ Ibid 20.

²⁸ Ibid 29.

²⁹ Ibid 30.

³⁰ GoR, *Demographic and Health Survey* (2005) 20.

³¹ Ibid 18.

³² Ibid 41.

³³ Ibid 46. This is true, also, for commercially oriented agriculture. The large sugar cane plantations in the marshes around Kigali, for instance, are cultivated almost exclusively by means of manual labour. In this regard, see Veldman and Lankhorst, above n 25.

³⁴ NISR, above n 15, 34.

³⁵ NISR, above n 15, 25.

³⁶ See J Pottier, 'Land reform for peace? Rwanda's 2005 Land Law in context' (2006) 6(4) *Journal of Agrarian Change*; H Musahara and C Huggins, 'Land reform, land scarcity and post-conflict reconstruction: A case study of Rwanda' in C Huggins and J Clover (eds), *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa* (2005) 314; and Government of Rwanda (GoR), *National Land Policy* (2004).

³⁷ Ibid 35.

percent of family land holdings are smaller than 0.20 ha and an additional 30 percent are smaller than 0.50 ha.³⁸ The 2006 Food Security and Vulnerability Assessment showed a strong link between food security and land size (farmers with less than 0.1 ha were twice as likely to be food insecure as those with 0.50 ha).³⁹ Much of the land is situated on hillsides. According to the NISR, 27 percent of land cultivation is undertaken on slopes of more than 20 degrees, 23 percent on slopes between 10 and 20 degrees and 16 percent on slopes between 5 and 10 degrees.⁴⁰ Soil erosion is a serious concern.⁴¹ About 38 percent of land holdings are not protected against erosion.⁴² Walking distances to plots of farmland tend to be relatively short; 73 percent of the plots are situated at less than 15 minutes walk from the house.⁴³

Most land holdings are acquired by traditional means, that is, through inheritance (46 percent) or donation (11 percent).⁴⁴ The acquisition of land by means of purchase is less common (25 percent), but recent research conducted by the Ministry of Lands shows that the land market is rapidly developing. Since 1990 the number of land sales has increased by as much as 500 percent in some areas.⁴⁵ Over the same period land prices have also shot up, especially in peri-urban areas⁴⁶ and in areas where cash crops are successfully grown.⁴⁷ The average price per hectare in rural areas is about RWF 1.2 million (roughly EUR 1.550 or USD 1.950),⁴⁸ which equals about four to five times the average annual income of ordinary Rwandans.

The poorest members of the rural population are the landless and those who have so little land that they are forced to hire themselves out as labourers. We were not able to find recent estimations of the number of landless people. In 2000 the Cyangugu region had the highest number of landless households (13 percent).⁴⁹ In addition, we know that in 2007 about 6 percent of the agricultural population nationally worked on the fields of others in this way.⁵⁰ The wages for such labour are very low, ranging between RWF 600 and 700 per day (EUR 0,80 – 0,90 and USD 1,00 – 1,20).⁵¹ Frequently, these are people that have suffered some form of setback in life. They may be widows who have lost access to their late husband's land, fatherless boys with little chance of getting married

³⁸ Ibid 36. Note that this 2008 data is not in line with the expectations that one can form on the basis of the results of the 2006 Food Security and Vulnerability Assessment (only extracts of this report are to be found on see the NISR website <<http://www.statistics.gov.rw>> at 1 June 2011). There it was found that 61.3% of farms are between 0 and 0.25 ha in size and an additional 32,3% of farms are between 0.26 and 0.50 ha. This would mean that 93.6% of farm units are smaller than 0.50 ha. Similar data was presented in GoR, above n 17, 15.

³⁹ NISR <<http://www.statistics.gov.rw>> at 12 May 2011.

⁴⁰ Ibid.

⁴¹ GoR, above n 17, 16.

⁴² NISR, above n 15, 37.

⁴³ It is often remarked that distances were considerably shorter before the government launched its policy of grouping households together in villages (referred to as *imidugudu* in plural and *umudugudu* in singular). Traditionally, settlements in the countryside were very dispersed and homesteads were frequently located on or very near to one of the family's main plots. For a discussion see Pottier, above n 36; and Musahara and Huggins, above n 36.

⁴⁴ Ibid 37. This corresponds roughly to the findings made by Lankhorst and Veldman, above n 4. As we will see below, it is common in the Rwandese tradition for the father of the groom to give a parcel of land to the bride. Note, however, that there is much regional variation in the relative importance of various means of acquiring land. In this regard, see Takeuchi and Marara, 'Regional differences regarding land tenancy in rural Rwanda, with special reference to sharecropping in a coffee production area' (2007) *African Study Monographs*.

⁴⁵ GoR, 'Results and Analysis of Field Regularisation Field Trials in Four Districts' (2008) 50.

⁴⁶ Ibid 30-49.

⁴⁷ See, for example, Takeuchi and Marara (2007) on developments in land markets in areas of the Southern Province where coffee is grown.

⁴⁸ GoR, above n 45, 30-49.

⁴⁹ See Pottier, above n 36, 517 (quoting the 2001 Household Living Conditions Survey, which we were not able to find in the NISR database).

⁵⁰ NISR, above n 15, 34.

⁵¹ These figures are based on the fieldwork conducted for the present study. See also Veldman and Lankhorst, above n 25, 17; and Lankhorst and Veldman, above n 4, 65. The latter study is based on data collected late 2007 and early 2008.

or claiming an inheritance, or unmarried girls who were not able to obtain part of their family's land.⁵²

The discussion above shows that people living in rural Rwanda are heavily dependent on land, which together with their physical labour constitutes their primary means of survival. It can be appreciated, also, that the combination of high population density, limited and shrinking plot sizes, difficult terrain and erosion result in strong pressures on land and in a high level of land disputes.⁵³ It is important that we see these facts in a dynamic perspective. Continued population growth, the practice of dividing family land among the descendants and Rwanda's limited capacity to generate off-farm work opportunities mean that these pressures are likely to continue to increase in the future. To understand the laws and policies that the Rwandan government has put in place to deal with these problems, it is useful to briefly place them in their historical context.

Box 2. Historic perspective on the land issue

Much has already been written by historians and social scientists about Rwanda's volatile history and the role of land in that history.⁵⁴ We provide an overview in the form of excerpts from a selection of works on these matters.⁵⁵ To allow for an easier reading the references made by these authors have generally been omitted.

Overview of the general history

[...] Rwanda was a centralized kingdom from the fourteenth century until the late 1890s, at which time Germany assumed control of both Rwanda and neighboring Burundi and ruled them as part of German East Africa. Following the German defeat in World War I, the League of Nations mandated control of the two territories to Belgium, which had already colonized neighboring Congo. [...] Rwanda achieved independence in 1962. [...]

Rose (2004) 199

The pre-colonial and colonial-era [...] [had] led to the political dominance of an elite group within the Tutsi community. However, on the eve of independence, the Belgian colonial power essentially switched allegiance to those advocating for 'Hutu majority rule'. The 'social revolution' of 1959 led to most Tutsi in positions of power being forced or voted out [...]. Post-independence governance, despite some positive characteristics, came to be characterized by exclusionary state policies and political networks which functioned through patron-client relations between factions of the state elite, and contributed to poverty and grievances amongst the rural poor.

Musahara and Huggins (2005) 270

Over the years, Rwandans have experienced several outbreaks of violence, beginning with the social revolution in 1959 [...] and more intensely with the start of civil war in 1990 when the Tutsi-dominated Rwandan Patriotic Front (RPF) invaded Rwanda from Uganda. [...] The ongoing hostilities in Rwanda reached a fevered pitch on April 6, 1994 after the plane of the

⁵² It should be noted, however, that unless relations with them are strained, local authorities in Rwanda will generally make considerable efforts to meet the needs of the landless, either by allotting them virgin land (which is extremely scarce and generally infertile) or by asking community members to cede part of their land.

⁵³ In this regard it should be noted that in certain jurisdictions in rural areas land cases make up nearly 70% of the civil case load and that the civil caseload makes up about 55% of the total case load for Primary Courts. This information is based on data collected by RCN in 2007 and 2008 in the context of a project entitled: *Suivi sur la Capacité de Traitement des Tribunaux de Base et des Tribunaux de Grande Instance*.

⁵⁴ See, for example, J Vansina, *Le Rwanda Ancien, Le Royaume Nyiginya*, (2001); M D'Hertefeldt and A Coupepe, *La Royauté Sacrée de l'Ancien Rwanda*, Musée Royale de l'Afrique Centrale, Tervuren (1964); G Prunier, *The Rwanda Crisis, History of a Genocide* (1995); G Prunier and D Luccioni, *Rwanda, 1959-1996: Histoire d'une Génocide*, Editions Dagomo (1997); J Pottier, *Re-imagining Rwanda: Conflict, Survival and Disinformation in the late 20th Century* (2002); G Bensoussan (ed), *Revue d'histoire de la Shoah, Rwanda quinze ans après: Penser et écrire l'histoire du génocide des Tutsi*, EMD S.A.S. (2009); S Straus, *The Order of Genocide* (2006); and L Melvern, *A people betrayed: The Role of the West in Rwanda's Genocide* (2000).

⁵⁵ This overview is meant as an introduction only; it is not an instrumental part of this report. Readers who have questions or concerns about the matters discussed in this box are requested to read the original works, which necessarily provide a more complete picture and to consult the sources referred to in the preceding footnote.

Hutu president, Juvénal Habyarimana, was shot down outside the country's capital, Kigali, killing everyone on board. [...] Within minutes of the crash, ultranationalists, primarily representing the majority Hutu ethnic group, began implementing a plan to systematically eliminate their enemies, including members of the minority Tutsi ethnic group and moderate Hutus who favored a power-sharing arrangement with the Tutsis.

Rose (2004) 199-200

In advance of the death of President Habyarimana, a 30–50 thousand-strong militia was recruited, armed and trained specifically for the task of massacring Tutsi, and Hutu opponents of the extremists. [...] The genocide of 1994 was directed, planned, supported and incited by officials in the armed forces, the police and the civil authorities. Civilians were forced and cajoled into violence through a number of means, including propaganda, bribery, intimidation and fines for criticizing the genocide policy. Over 800,000 people, the vast majority Tutsi, are believed to have been murdered. [...]

Musahara and Huggins (2005) 270-271

In July 1994, the invading RPF forces defeated the Hutu regime and ended the killing, but approximately two million Hutu refugees—many fearing Tutsi retribution—fled to neighboring Burundi, Tanzania, Uganda, Zaire, and elsewhere. Another two million people abandoned their homes and fled to safer areas within the country. By the late 1990s, most of the externally located refugees had returned to Rwanda. [...]

The conflict had resulted in the deaths of hundreds of thousands of people; the internal and external displacement of about half the country's eight million people; and the widespread destruction of public infrastructure such as legal and medical services, buildings, bridges, and roads. The death or displacement of millions of people, as well as the return to Rwanda of earlier "pre-1994" refugees, had severely disrupted land occupancy patterns and had put added pressure on limited land and housing resources: vast numbers of people were occupying other people's homes or living in temporary shelters. Perhaps more damaging than the physical consequences of the conflict was the severe psychological trauma of ordinary Rwandan citizens who had suffered considerable human and material losses. Of all citizens, women, both Tutsi and Hutu, were particularly hard-hit: many had been attacked—often raped; [...] had lost husbands, children, parents, or siblings; or had been forced to abandon their land and property, including their homes, crops, livestock, and personal goods. Importantly, many women had lost both land and the male relatives through whom they could maintain previous landholdings or acquire new land allotments according to the provisions of customary law.

Rose (2004) 200-201

Historical perspective on land use

[...] there were three systems regulating access to land immediately prior to the colonial period. In the Central, Eastern and Southern areas controlled by the central kingdom, the *igikingi* system governed pastoral lands. The *mwami*, the head of state, was the holder of all land rights and granted usufruct rights to land through his local representatives, in return for obligations including fees, payments and labour requirements. The right to use land could be withdrawn by the *mwami* and it seems that access to land was used as a political 'stick' or 'carrot' according to need. In the 1870s some forms of the *igikingi* land grants were altered and became more exploitative.

In the Northwest and the 'Hutu' kingdoms of Bukunzi and Busozo, the *ubukonde* system was dominant. Under this system, the lineage group of the person or household who first cleared a plot of land [...] controlled access to that land. [...] The rights of exploitation of the land were permanently conceded to members of that lineage, or granted to others in exchange for obligations and fees. These typically consisted of banana beer or agricultural implements, and only rarely included provision of free labour. Some clients could, over a period of time, increase their wealth and thus become *abakonde* – a lineage head. However, one problematic aspect of *ubukonde* – at least from the point of view of the clients – was that an *abakonde* could reduce the amount of land available (i.e. to settle members of his extended family) but would still have to pay the same 'tribute'. The situation has of course changed greatly since the pre-colonial period. [...]

In agricultural areas that were under Tutsi control (including those, for example, which came

under the control of the central court during the reign of the expansionist King Rwabugiri in the latter half of the 19th century), the isambu system replaced the ubukonde system – on which isambu seems to have been modelled. Instead of the abakonde, the Tutsi Mwami became the ultimate owner of the land, which he distributed in return for produce and provision of unpaid labour [a practice referred to as 'uburetwa']. This labour requirement was a major difference between the two systems, and it increased the extractive power of the state at the expense of the peasants. The igikingi system, which was also based on access to land being granted by a Tutsi lineage to a client group, was also significant. The spread of this system led to some landed Hutu lineages being transformed in social status in order to become Tutsi, but also relegated the vast majority to a state of inferiority, such that they had to sell their labour to survive.

[...] inequalities and differentiation between Hutu and Tutsi [...] became especially significant during the rule of King Rwabugiri. The colonial regime then exacerbated these differences to a massive degree, by a number of direct or indirect processes, including the dissemination of an explicitly racist ideology. [...] The Belgian authorities, during the first half of the 20th century, assisted the Tutsi in bringing the remaining independent areas under their control, and hence ensured that isambu, with its uburetwa labour requirement for Hutu, was applied to the whole of the territory. They also made several other changes: by codifying it (in 1924) they increased the number of days to be worked; by encouraging the chiefs to become coffee entrepreneurs, they encouraged increased exploitation on the chief's coffee fields; they ensured that ubuhake clients, who were in a cattle-client relationship (usually with a Tutsi) took part in uburetwa in some regions; they made uburetwa the responsibility of all adult males (before it had been rotated between members of a lineage), and by imposing additional labour requirements (for reforestation, road construction, and cultivation of export crops).

Musahara and Huggins (2005) 293-295

With the demise of the Nyiginya kingdom [Tutsi monarchy supported by the Belgians] and the end of colonialism, the pillars of serfdom were removed: the cattle contract (ubuhake) and associated aburetwa prestations were abolished, as was the privileged access to grazing lands (ibikingi) [...] More land thus became available for cultivation. On the other hand, somewhat ironically, clientship itself remained the basis on which land was allocated. Despite the change in political regime, from elite Tutsi to elite Hutu, the country's new leaders pursued clientelistic agendas and showed little interest in alleviating rural poverty.

The land law in operation in Rwanda before May 2005 was the statutory order no. 09/76 of March 1976. Grounded in colonial legislation, this decree gave selected owners – e.g religious orders, scientific associations and prominent individuals – guaranteed rights in land [...] The decree also [specified] that all land sales under customary law required the permission of the Minister in charge of lands, and that plots offered for sale must not fall below 2ha [...] In reality, few who obtained land from those desperate enough to sell ever registered these transactions. The procedure was either too long or too risky, since plots were usually very small [...] Other evidence of the laissez-faire attitude after independence can be found in the fact that legislated reforms in 1967, 1978 and 1991, all pertaining to areas exploited under ubukonde, which had been reinstated, also remained unimplemented [...]

The absence of a proper land law (and inheritance law) gave local administrators extensive power in matters of land allocation. Ever since independence burgomasters (commune heads, bourgmestres) and their counselors (sector heads, conseillers) have had a virtual monopoly in decisions regarding who could cultivate where.

Pottier (2006) 513-515

The land issue and the genocide

Besides the fear of being killed should they refuse to join the killers, ordinary people also killed for economic gain, often for access to a victim's land. In areas where land disputes were rife, as in the densely populated north-west, the killing spree aimed not only at Tutsi but also at Hutu protagonists involved in land disputes [...] More generally, however, Hutu feared that the RPF, if victorious in war, would confiscate arable land for redistribution to those returning from the diaspora. Human Rights Watch [...] has found evidence that certain extremist leaders circulated fake maps detailing which Hutu-owned lands would be expropriated. The fear that land would be confiscated and returned to previously exiled Tutsi ran deep [...]

Pottier (2006) 510

[...] extreme scarcity of land resources and lack of non-agricultural employment opportunities did not (directly) cause the civil war which was triggered off by macro-political forces cynically playing upon ethnic divisions in order to maintain themselves in power.[...] Yet, there can be no doubt that the strained situation engendered by economic scarcities goes a long way towards explaining why violence spread so quickly and so devastatingly throughout the countryside. It is not only at the upper levels of Rwanda's polity that the struggle for the spoils of power gave rise to sharp rivalries, ethnic or otherwise. Also, at the level of each village, the utmost difficulties encountered by a growing number of people to simply earn their daily livelihood produced pervasive tensions and numerous acts of delinquency which could all too easily degenerate into open violence once any incident would be sparked off from without.

André and Platteau (1997) 38

In this regard it should be mentioned that a significant proportion of land disputes in contemporary Rwanda is directly or indirectly linked to the genocide or the turbulent period that immediately followed it. Whilst the likelihood of a return to large-scale violent conflict has gradually receded over the past years, there is evidence that when such genocide-related disputes come out into the open, this can degenerate into ethnic tensions⁵⁶ and may seriously affect social cohesion.⁵⁷

In the next section we will look at the measures the post-genocide government has adopted in order to address and control the land problems caused by economic, demographic and historical factors.

2.2 Land law and policy

In 2004 the Rwandese government issued a national land policy,⁵⁸ followed by a new land law in 2005 (hereafter *Land Law 2005*).⁵⁹ As is noted in the first paragraph of the land policy, Rwanda had never had a comprehensive land policy or law before. Whilst certain elements of these documents present continuity with the way in which land was regulated before, it is clear that on the whole they call for a thorough transformation of life and settlement in Rwanda. The government aims to reverse the process of fragmentation by encouraging land consolidation. It also seeks to reduce the prevalence of land disputes, amongst other ways by increasing tenure security. Together, these measures are meant to create the conditions for a switch to high yielding forms of agricultural production. Ultimately, these changes are intended to contribute to restoring peace and unity and to foster reconciliation amongst the Rwandese people.⁶⁰

2.2.1 Overview of the land reforms

The land reforms, as foreseen in the land law and a number of related laws, involve several interlocking interventions in land access and management. To begin with, the law prohibits division of land into units smaller than 1ha⁶¹ and provides for the initiation of land consolidation schemes.⁶² Land consolidation is a process whereby the holders of small plots located in each other's vicinity are required to cultivate together. The government aims for these forms of collaboration to be registered as cooperatives, but thus far most are informal associations. Whilst they work together as a group, each member continues to hold the right to his part of the land (which can be transferred, for

⁵⁶ See C Gasarasi and H Musahara (2004). *The Land Question in Kibungo*. Centre for Conflict Management, National University of Rwanda, Butare (2004).

⁵⁷ This is based on an unpublished intensive fieldwork study made by University of Antwerp scholar B. Ingelaere, in the context of the evaluation of a project implemented by Radio La Benevolencija Rwanda.

⁵⁸ GoR, above n 17.

⁵⁹ Organic law no. 08/2005 of 14 July 2005.

⁶⁰ GoR, above n 17, 53.

⁶¹ See *Land Law 2005* art 20, para 3. In fact, the interpretation of this provision is not clear. Two readings are possible. The first is that no divisions are allowed that would create plots of less than 1ha. The other interpretation is that plots of less than 1ha may not be subdivided. In light of the objectives of the law it makes more sense to follow the first interpretation, which encompasses the second but also prevents a larger parcel from being split into units of less than 1ha.

⁶² See *Land Law 2005*, art 20, paras 1 and 2.

example) and boundary lines continue to be relevant and visible.⁶³ Complementary to the land consolidation process is a policy whereby the Ministry of Agriculture stimulates and urges farmers to grow specific types of crops, thus creating a regional division of labour that is meant to create scope for intensification. This is supported by government driven projects to build and upgrade terraces that protect steep slopes against erosion.

Similar in effect is the provision in the land law that all marshes and river valleys belong to the Rwandese people and are owned and managed for them by the state.⁶⁴ Even before 2005, marshes and river valleys formally belonged to the state. In practice, however, particularly before 1994, this rule had very little meaning. The local population used these terrains without significant interference from the government. What changed with the 2005 law was that the government started to assert its rights on a large scale and in a more consistent manner.⁶⁵ By leasing these lands out to commercial enterprises or cooperatives, the government wants to stimulate the use of more intensive forms of agriculture or livestock farming that can supply national or international markets. The so-called 'villagesation' programme also works in this direction. In Rwanda, settlements in the countryside were traditionally dispersed and homesteads were frequently located on or very near to one of the family's main plots. Despite the population density, villages were uncommon. As part of the villagesation programme the local authorities in an area will determine a suitable location where the population can be brought together and live in an orderly fashion, thus, again, creating scope for more rational and intensive use of agricultural land. In many areas of rural Rwanda such villages – referred to as imidugudu (*umudugudu* in singular) – have been created, whereas elsewhere more traditional patterns of settlement have remained common.

A final but crucial element of the land reforms that must be mentioned is the nation-wide land registration programme. Under the supervision of the National Land Centre, between 2010 and 2013 every parcel of land in Rwanda – it is estimated that there are some 9 million plots in total – must be registered and titled. Registration consists of marking the boundaries of land parcels (i.e. on the land itself, generally with small numbered poles), indicating them on a map, registering them with a specific code in a database (the cadastre) and issuing certificates to the rights holders. The idea behind it, in a nutshell, is that by defining boundaries there will be fewer land disputes and by issuing certificates legal procedures will be simplified, because there will be documentary evidence available (the parties will not have to rely on witnesses to prove ownership). Crucially, also, this process of registration increases security of tenure for rights holders. This means that they will have more incentive to invest in their land and it may, for example, enable them to take the risky step of switching from subsistence farming to commercial agriculture. This is reinforced by the fact that the certificate can be used as collateral to obtain credit from a bank. And finally, increased security of tenure and more straightforward proof of ownership is also expected to foster the emergence of a land market, which, in turn, should make it easier for more able farmers (who get higher yields) to acquire underutilized land and put it to better use.⁶⁶

⁶³ Land consolidation made an important contribution to the rationalization of agriculture in Northern Europe at the beginning of the 20th century. It should be understood, however, that land consolidation is practiced in quite a different way in present-day Rwanda. In Northern Europe the idea behind land consolidation was that owners of multiple small parcels located in each other's vicinity would be brought together in a government managed and facilitated process of negotiation. The aim of the negotiations would be to redraw plot boundaries in such a way as to let all stakeholders end up with fewer but larger plots that would be easier to cultivate in a mechanized way. It is hard to see how consolidation, as it is practiced in Rwanda, can lead to mechanization, since plot boundaries often take the form of bushes, slightly elevated ridges, stones, etc.

⁶⁴ See art 29 of the *Land Law 2005*, which determines that "swamp land belongs to the state and it shall not definitively be allocated to individuals". See also art 2 s 19 of the same law, which determines that marshes are considered part of the public land that should be particularly protected to conserve environment and culture.

⁶⁵ See Veldman and Lankhorst, above n 25.

⁶⁶ For a more detailed discussion on land registration see, for example, J P Platteau, 'The evolutionary theory of land rights as applied to Sub-Saharan Africa: A critical assessment' in (1996) 27(1) *Development and Change*, 29.

2.2.2 The effect of the reforms on the prevalence of land disputes

A number of Rwandan and foreign commentators have raised concerns about the reform process.⁶⁷ There are concerns about whether the reforms are likely to enable rationalization of land use and intensification of agricultural production and it is also asked whether more vulnerable members of the rural population, with less access to information and fewer resources, will be able to benefit from the reforms (considering also that little trained and badly paid local authority officials are given extensive decision-making powers to implement the reforms).⁶⁸ For the purposes of this report the government's objective to reduce land pressures and land disputes is of particular importance. We believe that there are good reasons to assume that the number of land disputes in Rwanda will not decrease significantly in the short or the medium term. This can be explained as follows.

In the first place, it is quite obvious – and borne out by experiences elsewhere⁶⁹ – that land registration initially leads to a surge in disputes. The entitlement to every single plot in Rwanda will have to be definitively established before the year 2013 is over. This means that registration units will turn up everywhere in Rwanda to ask the people to whom the different plots in their villages belong. This is likely to lead to opportunistic behaviour, rekindle latent or forgotten animosities, create tensions between neighbours, etc. Officials involved in the registration process currently estimate that in about 1 percent of the cases registration results in a dispute that cannot be resolved on the spot.⁷⁰ With about 9 million parcels to be registered nation-wide, this would mean some 90,000 additional disputes. And there are reasons to expect that the true number will be higher still. The law enables persons who are unable to make a claim on land on the day that a registration unit comes to their area – for example because they reside elsewhere, are ill, or simply unaware of the process – to challenge false or incomplete entries in the claims registry. To do so, however, they must fill out a specific form annexed to the law, which must find its way to the National Land Centre. This procedure is not used very often and our field visits suggest that few rural Rwandans are aware of this procedure. In this regard it is interesting to point out that the monitoring work carried out by RCN (in collaboration with the association Haguruka) shows that such cases, where a party claims that his name should have been listed or that his opponent's name should not have been – are submitted to community courts (so called *abunzi* committees, see Section 2.5) with some frequency.

Even in the longer term, we do not expect the level of disputes to go down significantly. It is easily appreciated how physically marking the boundaries of a land parcel, accurately copying them onto a detailed map, registering the names of the rights holders and issuing them with a title certificate will contribute to reducing the number of boundary disputes.⁷¹ Yet the data on the incidence of various types of land disputes

⁶⁷ See, for example, Musahara and Huggins, above n 36; and Pottier, above n 36; who discuss all the main elements of the reforms. Note that these contributions date from shortly after the comprehensive reform package was adopted. Certain elements of the reform had been practiced before, but nonetheless the analysis in these contributions is not based on substantial amounts of post-reform data. Empirical studies of the post reform period are scarce. An example is found in Veldman and Lankhorst (above n 25) who present an assessment of the impact of commercial exploitation of state-owned marshlands on more vulnerable members of the local population.

⁶⁸ Many of these concerns are echoed in a series of 10 round tables (40 participants each) and 15 workshops (20 participants each) that RCN has organized since 2006 to discuss the implementation of the land reforms with members of the rural population and the local authorities. By way of example, it can also be mentioned that experience with land registration in other parts of Sub-Saharan Africa shows that if the process of attributing certificates and rights is ill-managed or prone to manipulation, vulnerable groups can end up in a worse position than they were in. See in particular Platteau, above n 66.

⁶⁹ See Platteau, above n 66.

⁷⁰ Unpublished information provided by officials from the National Land Centre.

⁷¹ It should be realized, however, that such disputes are unlikely to disappear altogether. One of the authors had the chance of working for the civil chamber of a Dutch appeals court charged with hearing disputes about land ownership. Despite the fact that the Netherlands have a long established and well functioning cadastre, boundary disputes made up a significant portion of those cases.

presented in Table 1 suggests that in Rwanda boundary disputes make up no more than a fraction of all land cases (10 percent at the level of the *abunzi*, see Section 2.4.1, and 1 percent at the level of the Primary Courts). It is much less obvious how registration could contribute to a substantial reduction of succession cases, which make up the bulk of land disputes. The question at issue in such cases is who should be marked as the new title holder if the rights of the registered holder expire. Registration in itself is not likely to reduce the relevance of succession as a means of acquiring land and, in a context of a poor and growing rural population heavily dependent on land, succession-related disputes are unlikely to disappear. If registration would increase the value of the land (because purchasers are provided with more certainty about the rights they acquire), it could be argued that such disputes could even become more frequent.

Table 1. Incidence of various types of land cases⁷²

Link	#	Type	Total Ab.zi	%	Total PC	%
Intra-family	1	Succession	135	54%	125	74%
	1.1	Between brother(s) and / or sister(s) of the same parents	44	18%	29	17%
	1.2	Between half brother(s) and / or half sister(s)	13	5%	8	11%
	1.3	Between a child and his / her parents / grandparents / uncles /cousins / nephews	41	16%	51	30%
	1.4	Between a child and his / her stepmother or one of his / her (grand) father's wives (polygamy) who is not his / her mother	10	4%	10	6%
	1.5	Between a formally married widow and the members of her husband's family or another wife	22	9%	18	11%
	1.6	Between an informally married (customary) widow and the members of her husband's family or another wife	5	2%	9	5%
	2	Marriage	11	4%	9	5%
Inter-family	2.1	Claiming the land from a living (former) spouse (formal and informal)	11	4%	9	5%
	3	Re-claiming land from a 3rd party	67	27%	34	14%
	3.1	Sale of family land without permission (as a rule these are succession cases)	19	8%	3	2%
	3.2	Other claims regarding land in the hands of 3 rd parties (mostly succession-related)	42	17%	25	15%
	3.3	A refugee of '94 or ex-detainee finds his land occupied by 3 rd parties upon his / her return to the country (mostly succession-related)	5	2%	4	2%

⁷² The abbreviation *Ab.zi* refers to a type of community based court called the *abunzi* committee, which will be discussed in detail in Section 2.4.1. 'PC' refers to the Primary Courts. This institution is also discussed in Section 2.4.1. The information presented in this table is based on analysis of 249 *abunzi* decisions involving land claims –collected at the cell level- and 170 judgments in land cases adopted by Primary Courts.

Mixed	3.4	Cases concerning land sharing with 'old case load' refugees ('59 and '73)	1	0%	2	1%
	4	Boundary disputes	25	10%	2	1%
	5	All other types of cases (including administrative)	11	4%	0	0

The purpose of this discussion is not to challenge the registration process, which is also intended to secure other objectives than reducing the number of land disputes. Rather, in light of what was said before about the nature and possible consequences of land disputes in Rwanda, we want to underscore the need, both during the registration process and thereafter, of enabling litigants and their communities to find satisfying and lasting solutions to their disputes. Our pilot study was designed to test ways to help communities empower themselves in this way. Given that they make up the bulk of all land disputes, our pilot centered on communities' capacities to deal with succession-related cases and other intra-family disputes. In the next section we take a closer look at the substantive laws that regulate such disputes.

2.3 Inheritance of land under customary and formal law

Up until the turn of the century, matters related to ownership of land by rural Rwandans were essentially regulated by customary law. Since 1999 legislation has been passed that reduces the scope for customary law.⁷³ According to the Rwandan Constitution and Civil Code, custom may be relied upon by courts as a source of law on matters not regulated by formal law.⁷⁴ Indeed, by reading the Land Policy one gets the impression that Rwandan policymakers view custom with a measure of distrust. The Land Policy characterizes customary law as "widely practiced, but with a tendency to cause insecurity, instability and precariousness of land tenure, in general."⁷⁵ And the Land Law contains a specific provision abolishing the practice of *ubukonde* that was discussed above.⁷⁶ Similarly, in 1999 the government of Rwanda adopted a law that brought inheritance matters under the scope of formal law; the *Matrimonial Regimes, Liberalities and Succession Law 1999* (referred to hereafter as the 'Inheritance Law').⁷⁷ The aim of this law is not just to formalize the way in which inheritance is regulated, it intends to

⁷³ This contrasts with the fact that that in recent years increasing numbers of African nations have given formal legal status to customary law and institutions.

⁷⁴ See article 93 of the *Constitution of Rwanda 2003*; art 3 of Book 1 of the Civil Code (law no. 42/1988 of 27 October 1988); art 6 of the Code of Civil Procedure (law no. 18/2004 of 20 June 2004); and art 21 of the *Abunzi law* (law no. 2/2010 of 9 June 2010).

⁷⁵ See Musahara and Huggins, above n 36, 321.

⁷⁶ See Pottier, above n 36, 515. Instead of the *ubukonde* system the Land Law institutes a system of land tenure that is similar to its historic alternative, *isambu* regime. It does so by determining that the state (previously the Tutsi king, referred to as the *Mwami*) is the ultimate owner of all Rwandan land; individuals are formally holders of use rights (art 3(2) of the *Land Law 2005*). As is common in the African context, however, local realities and perceptions do not neatly follow the provisions of formal law. This can be illustrated by the following example taken from Veldman and Lankhorst (above n 25, 18) which studied the effects on communities of the transfer to a commercial farming enterprise of state-owned marshlands that they had used for generations. They report that "[m]any respondents (48 individuals) said that, at the time, they had been aware that the land at the bottom of the valley was owned by the State but, as an older man pointed out, "We always thought that we were part of the State and since nobody had ever objected to us cultivating this land, we thought we had a right – a real right – to do so". Others (13 respondents) said that they had never heard of the State being the owner of the land they used before the arrival of the Madhvani Group [the incoming investor]; and some still consider that the State has sold their land to the investor. Others again (8 respondents) said that in their area the authorities had always been very clear that, as the land belonged to the State, it could come and reclaim it. Generally speaking, however, because there were no deeds clearly stating that the land was owned by the State, all respondents who discussed this issue (63 in total) indicated that they considered that they had accumulated rights through their presence and their work on it and that, at the time, they considered these rights to be fairly secure."

⁷⁷ Law no. 22/99 of 12 November 1999.

break with important aspects of customary inheritance law, notably by extending inheritance rights to women.⁷⁸

In the rest of this section we will look at some general features of customary inheritance law and at the socio-economic and political changes that led to the adoption of the new Inheritance Law. What will be said on the issue of customary law is a basic sketch of the situation before the genocide of 1994.⁷⁹ Naturally, customary practices evolved considerably as Rwanda moved from the pre-colonial to the colonial and independence periods. This evolutionary path is not reflected in what follows. Moreover, regional and ethnic differences in customs are not discussed, nor are differences between the customs adhered to by richer or poorer families.⁸⁰

2.3.1 Inheritance under customary law

Customary law provided very limited scope for women to own or inherit land. Land was strongly associated with the paternal family line, meaning that land passes from father to son. Girls could be 'given' a specific portion of their father's land to work on, but generally this was a right that would expire when she married or when the land was needed for another purpose. The principle means of accessing land that customary law offered to women was in fact marriage. The husband owned and exercised full authority over the land and together with him or alone the wife would cultivate the land. The husband would be expected to consult his wife if he wanted for example to sell land. However, this was more formality than requirement, since a woman's failure to consent would not prevent a man's action.⁸¹ In wealthy families or if there were no brothers, daughters might receive land as a gift from their father. Even in such cases, however, women would generally not exercise certain rights commonly associated with ownership, such as the right to decide whether or not to alienate the land (which would be exercised by her father, uncles or husband).⁸²

Once a woman was married, she would primarily be seen as part of her husband's family. It was certainly not as if all ties with her paternal family were severed. There was a common practice, for instance, whereby newlyweds would first stay in the house of her parents, so that the young wife could get accustomed to living with her husband in a reassuring environment (a practice known as *gutahira*).⁸³ Custom also tied a woman to her paternal family by providing for a sequence of ceremonial exchanges between the families upon the birth of each child. Still, if a woman would fall ill, her husband and his relatives would be expected to take care of her. If the couple would suffer some form of economic setback, a bad harvest, for example, they would principally rely on his extended family for support.

When the husband passed away, several things might happen depending on whether she had male offspring, her age and her relation with her in-laws. If there were adult sons, the property would pass to them and a portion would generally be reserved where the widow could stay and cultivate. In case the children were minors, she would retain use

⁷⁸ Note, however, that land rights acquired through customary inheritance before the entry into force of the Inheritance Law are recognized. This law came into force in 1999 without transitional provisions. In this regard art 7 of the *Land Law 2005* provides: "This organic law protects equally the rights over the land acquired from custom and the rights acquired from written law. With regard to law, owners of land acquired from custom are all persons who inherited the land from their parents, those who acquired it from competent authorities or those who acquired it through any other means recognized by national custom whether purchase, gift, exchange and sharing."

⁷⁹ The following description is mainly based on P Uwizeza and E Pearson, 'Sustaining women's gains in Rwanda: The influence of indigenous culture and post-genocide politics' (2009) The Institute for Inclusive Security <http://huntalternatives.org/download/1923_sustaining_womens_gains_nocover.pdf> at 1 June 2011; and L Rose, 'Women's land access in post-conflict Rwanda: Bridging the gap between customary law and pending land legislation' (2004) 13 *Texas Journal of Women and the Law*, 197.

⁸⁰ For a discussion on these matters, see Uwizeza and Pearson, above n 79, 8.

⁸¹ *Ibid.*

⁸² Rose, above n 79, 210.

⁸³ Uwizeza and Pearson, above n 79, 10.

rights to her husband's land and would continue to stay in the matrimonial home, holding both in trust for her sons.⁸⁴ If there were no children,⁸⁵ a widow could stay on her husband's land if she was on good terms with his relatives. If she was sufficiently young and appreciated, she might be required to marry a brother of her deceased husband to reinforce the ties with his family.⁸⁶ In other cases a widow would be forced to leave her husband's land and go back to the family in which she was born. This would often not be an easy fate, since she would then have to try to lay a claim on the resources that were reserved for her brothers and their families.

What should also be realized about customary law is that inheritance was – and continues to be – conceptualized in a way that is considerably different from Western interpretations. Crucially, it is a question that is intertwined with the institution of marriage at least as much as it is with the death of the head of the family. Under customary law, each son was entitled to 'inherit' part of his father's land when he reached the age of marriage and found a spouse, which is referred to as the *umunani*. In many cases the father would still be alive at that time. Upon his death, any remaining land would be divided as described above.

Box 3. Customary practices surrounding marriage and inheritance

The following is a brief overview of some customary practices surrounding marriage and inheritance that we frequently come across during our fieldwork in Northern Rwanda. It must be stressed that such practices may be highly different from one *umudugudu*, and even one family, to another. Moreover, the same terminology may be used to indicate different practices. As we will see, this applies particularly to the term *intekeshwa* (which is sometimes also used in its abbreviated form, *inteke*). This noun is derived from the verb *guteka*, which means to cook. Literally translated *intekeshwa* means something like 'that which is given to cook with'. In other words, it is a gift that should help to establish a household. What exactly this gift consists of, who makes it and who can receive it varies a lot from one village to another and from one family to another. It should be realized, also, that even if these practices frequently turn up in land disputes at community level, this does not necessarily mean that they are all still adhered to in the way they are described, since some of the disputes are old or involve family land that was divided many years ago.

When a son reaches the age of adulthood and prepares to get married, he will ask his father for a part of the family's land. This part of the land given to sons is referred to as *umunani* (and at times also with the broader term *intekeshwa*). There appears to be no rule under customary law that all brothers get an equal part. The *umunani* is meant to enable the young man to start in life by building a house for his family and to cultivate to feed his family. In case there are no sons or all sons have passed away, *umunani* will be given to the grandsons. In addition to his *umunani*, a man may receive land from other members of his family or, on occasion, from the family of his wife, either when he marries or, thereafter, for example when a son is born. Frequently, such gifts are referred to as *intekeshwa*.

Despite regional variations in many aspects of customary law, it is clear that *umunani*, as such, is never given to daughters. Daughters can receive land on the occasion of their marriage or in the period thereafter, but the size of the land and the nature of the rights acquired over it are generally very different from what is given in the form of *umunani*. Naturally, much will depend on the family's wealth and the woman's relationship with her family members. It must be noted that other gifts, such as money, cattle or tools to work on the land, can also be given during some of these ceremonies, if insufficient land is available. The access that women may acquire to land in these ways must not be understood as ownership rights, but rather as use rights. Control (selling, giving away, renting, building) will generally continue to be exercised by her father or one of her brothers, if the gift comes from that side of the family, or by the husband. Frequently, also,

⁸⁴ Ibid.

⁸⁵ According to Uwineza and Pearson, a man could acceptably divorce his wife or take a second wife if their first wife bore only daughters. Women who did not produce male children were considered a threat to the continuity and perpetuation of the family (Uwineza and Pearson, above n 79, 11).

⁸⁶ Uwineza and Pearson, above n 79, 10.

the right that a woman acquires over land is symbolic in nature. The land will then be used and controlled by a brother, who incurs an obligation to pay visits to his sister on important occasions, such as the birth of a baby, and to support her in times of need, amongst other things by bringing her part of the harvest in a basket. In principle, the woman's children are not entitled to inherit her claims to such a parcel of land.

When a woman would come home to her parents' house for the first time after the marriage, a ceremony would be organized, called *gucamwirembo*, (the organization of this ceremony appears to have become less common). On this occasion her parents could give her a small plot, named after the traditional Rwandan basket, *igiseke* (or, after the crown she would wear on this occasion, *urugori*). Later when she presented her first born child to her parents, they could also give her a small plot, *iteto* (or, again, *intekeshwa*) if the parents were pleased with the baby. In other places *iteto* indicates a gift to a daughter who is admired by her parents, for her kindness, obedience or as a sign of thankfulness for help or care she has given. In a few places, we were told that the woman's children could inherit *iteto*. Somewhere during the first year after the wedding a special ceremony used to be organized, *gutwikurura*, to symbolize that the couple had come from under the wings of the parents and were now fully independent, (the organization of this ceremony also appears to have become less common). On this occasion the husband's family would generally give some land, frequently referred to as *amasunzu*. In two villages we were told that a girl from a wealthy family who would get married under the best possible circumstances (with a wealthy man and a big dowry) could also receive a small plot in her own name, *intekeshwa* or *igiseke*, from her own parents. Generally, however, in this ceremony the family of the woman would bring food stuffs, household goods and kitchenware.

Women who were either repudiated, not married or had had children out of wedlock, would generally not receive *intekeshwa* from their surviving parents. They would come back to live with them and work on their father's land. We were told that some families reserved a small portion of the land for all daughters in case they ran into difficulties and needed some assistance. This part of the land would be referred to as *igiseke* (or *umurima w'ikibi*).

After the death of both parents, the remaining family land, referred to as *ingarigari* (sometimes also *ingaligali*), would normally be divided amongst the sons. It appears to have been common, though not anymore, for each son to accept responsibility for one of his sisters after the death of the parents. In some places, however, daughters would also be entitled to receive a small portion of the *ingarigari*. They would have to share this plot amongst all sisters, no matter how many. Different from the *ingarigari*, are gifts of land made to a daughter after the death of one or both of her parents to 'dry her tears' (*icyamarira* or *impozamarira*) or for having carried the responsibility of being the first to throw a hand of earth to cover the grave (*inkuracyobo* and also *inkuramwabo* or *inkurashyamba*).⁸⁷

2.3.2 Developments after the genocide

The inheritance law reforms, which were initiated in 1996, were mainly driven by a number of developments related to the genocide and the return of refugees.⁸⁸ Uwineza and Pearson explain that the personal experiences during the exile of many Tutsi had a considerable influence on this change in policy.⁸⁹ The eruptions of violence against the Tutsi that Rwanda had seen notably in 1959 and 1973, primarily targeted men. Their death or flight into exile forced many women to become heads of household.

The genocide of 1994 and its aftermath also had an effect. As had happened in 1959 and 1973, many women lost their husbands and other male relatives in the killings and were forced to become heads of households and take responsibility for entire families. Other groups found themselves in similar situations. One can think of the women, mainly Hutu, who had fled Rwanda towards the end of the genocide, or shortly after, out of fear for

⁸⁷ The first and second roughly translate into 'lifted from the grave', the third term means 'lifted from the forest'.

⁸⁸ The following discussion mainly draws on Rose, above n 79; and Uwineza and Pearson, above n 79.

⁸⁹ Uwineza and Pearson, above n 79, 14

reprisals. Many came back from 1996 onwards without their husbands (for example, because they had lost them along the way, because of disease, because he refused to return to Rwanda or because he had found another partner). Other examples are women who stayed behind when their husbands fled or who had to take care of their families whilst their men spent years in prison.

The preparation and adoption of the Inheritance Law, which came into force in 1999, appears to have been substantially based on the following analysis. Traditionally, women would gain rights to access land through their affiliations with men. Such a system did not meet the needs of the many Rwandan women who were effectively running households on their own, since it did not recognize their claims on the land they cultivated to feed their family or, at least, made them susceptible to attempts by more distant male relatives interested in obtaining extra land rather than in caring for her children.⁹⁰ This was seen as a potential threat to stability and development in a wider sense that had to be countered by providing women with secure access to land.

To achieve this, the Inheritance Law introduced three major changes. Firstly, it granted daughters the right to inherit land from their parents.⁹¹ Like their brothers, therefore, they are entitled to a share of family land when they get married or when their parents pass away. Secondly, it gave wives rights to matrimonial property.⁹² All household property, the land, the house and movable goods, is jointly owned by husband and wife. Thirdly, the Inheritance Law allowed widows to inherit their deceased husbands' property.⁹³

It must be mentioned, however, that the formal scope of this law is not as wide as it might seem. When the Inheritance Law speaks of wives and widows, it means only those who were formally married. Yet, many people living in rural areas marry according to custom and religion, but do not conclude a civil marriage, because of the cost, the bureaucracy, and, probably, because they are not well informed of the legal implications. In certain parts of the country, also, it is not uncommon for a man to be legally married to one wife and, at the same time, to be married in an informal way to one or more others. This means that in practice the Inheritance Law leaves large numbers of women unprotected. In addition, whilst the Inheritance Law states that daughters have an equal right to the land that is left when their parents pass away, it merely provides that they may not be discriminated against when the parents give land to their children during their lifetime (the *umunani*).⁹⁴ In many cases such gifts will involve the bulk of a family's land and not so much will be left to be inherited. The fact that the law uses the term discrimination here is not infrequently interpreted by lawyers to mean that if a girl has acquired access to sufficient land through her marriage, this provides a reason to give her a smaller *umunani* than her brothers receive.

Box 4. Polygamy

While Rwandan law now prohibits polygamy, it remains acceptable in some regions and continues to be wide-spread, particularly in the northern part of the county. Traditionally, only relatively wealthy men could marry a second wife, as Rwandan culture held that two wives

⁹⁰ This view obviously ignores the possibility that customary law might evolve in response to the changes in demographic and socio-economic conditions. For a discussion of such effects on customary law, see Rose, above n 79.

⁹¹ See article 70 of the *Inheritance Law*. It was noted above that reversing the process of fragmentation of land holdings and reducing the incidence of land disputes are two of the most important objectives of the National Land Policy. It can be easily appreciated that customary inheritance law, which gives the right to sons to claim part of their father's land, is one of the driving forces in the process of fragmentation. The Inheritance Law works to accelerate this process, since in addition to sons, daughters are now also entitled to claim part of their father's land.

⁹² See art 2 and 3 of the *Inheritance Law*.

⁹³ See art 70 of the *Inheritance Law*.

⁹⁴ See art 42 and 43 of the *Inheritance Law*.

could not live together without tension and conflicts and particularly in the south, a new wife arrives with expectations that a husband would acquire another plot of land, herds of cattle, and a new home. Women in these well-to-do polygamous marriages tended to have the most independence, controlling the cows, the house, and the land for cultivation. In such households, wives took full control over internal affairs, managing resources, deciding how to make use of the proceeds of farm and livestock, and supervising workers and children.

Modern polygamous practices occur in a context of poverty, often involve wives living together in one household, and frequently are a man's attempt to increase labor and acquire property. Women have a duty to produce food and other commodities in order to sell them for additional property and livestock, while men tend to act as supervisors and regulators of women's labor. Women produce wealth, but have little control over the proceeds. Women's heavy workload and the toll of bearing children often lead men into a second marriage to secure support for the first wife – sometimes at her request. Focus group participants noted that women in wealthier families enjoy more freedom than those in poorer families because they can hire the poor to assist them.

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The new *Gender-Based Violence Law 2009*⁹⁵ appears to partially fill this gap. This law⁹⁶ requires any couple who lives together as husband and wife to conclude a civil marriage and states that, in case either partner has also been living together with another partner, he or she must share in equal proportions the property that they jointly held. For the moment, however, this law remains untested and it is unclear what exactly jointly held property means and whether women can use this provision to compel their husband to formally register their marriage. In addition, it is not so obvious whether many such women, (the first and second wives), would be able to muster the courage and resources to challenge their husband in this way. Similarly, it is not evident that a daughter of an informally wedded first or second wife – even if the *Inheritance Law* gives her equal rights – will be able to lay a claim to part of her father's land. This is because notions of customary law continue to exert a strong influence on the thoughts and behaviour of many rural Rwandans (including women themselves). In the next section we complete the description of the background against which our pilot project must be seen by presenting an overview of the various institutions involved in land dispute resolution.

2.4 Land dispute resolution

In Rwanda, as elsewhere in Africa, the bulk of land disputes are handled at the local level. Only a fraction of these cases move on to enter the formal court system. For a good understanding of our pilot project it is necessary that we present an overview of the many institutions involved in land dispute resolution at the local level and comment briefly on their relationship with the courts.

2.4.1 Overview of the Institutions involved in land dispute resolution

Conventional court system

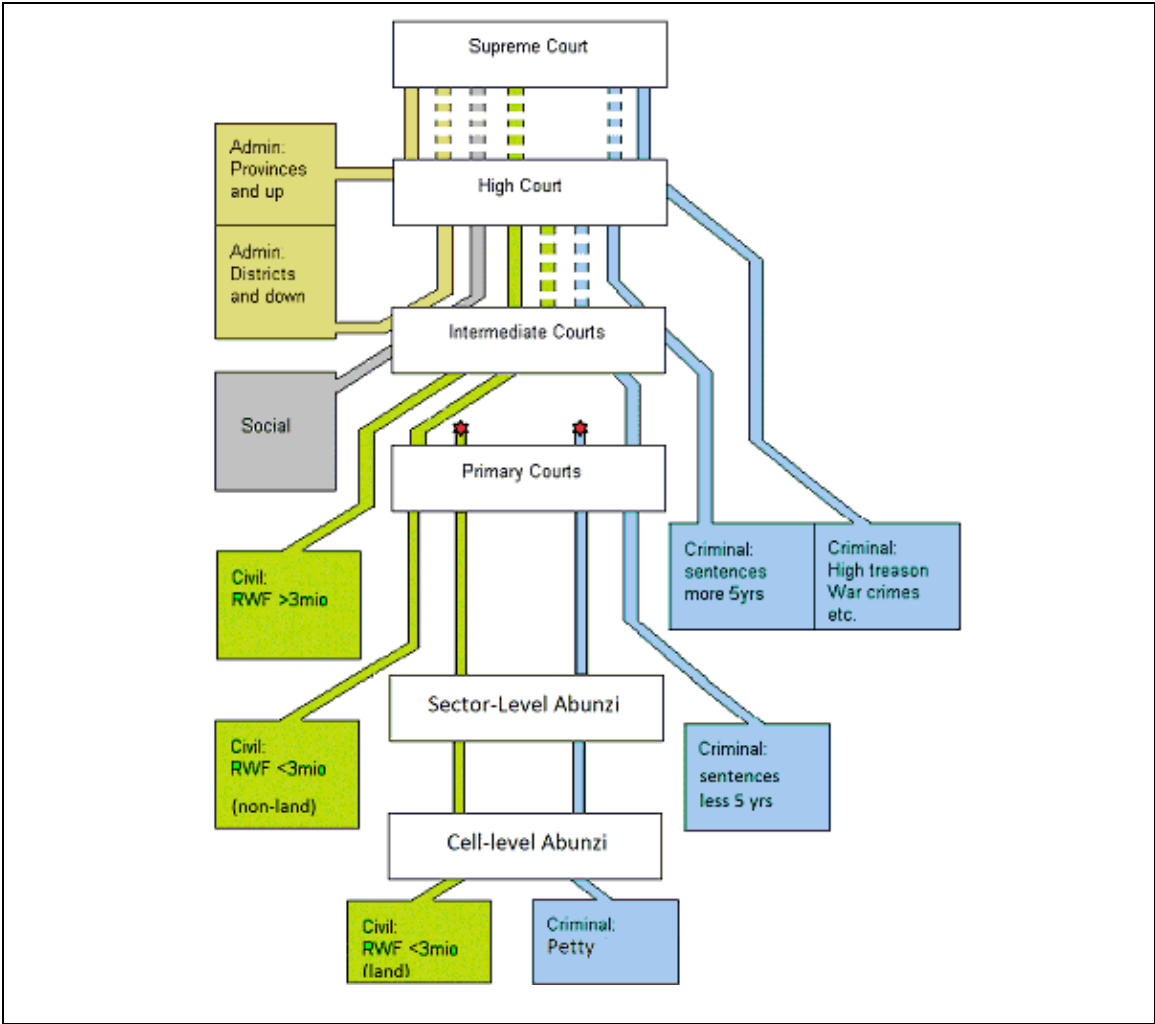
The conventional court system in Rwanda was introduced by the Belgians during the colonial period. It is not surprising, then, that its groundwork follows the patterns of the Belgian legal system.⁹⁷ The system is composed of a Supreme Court, a High Court (one national and three regional chambers), 12 Intermediate courts and 60 Primary Courts. Officially, all three official languages (Kinyarwanda, English and French) can be used in court, but in practice the local language (Kinyarwanda) is almost always used, especially in the lower echelons of the judicial hierarchy.

⁹⁵ Law no. 59/2008 of 10 September 2008 Law on Prevention and Punishment of Gender-Based Violence (hereafter, *Gender-Based Violence Law*).

⁹⁶ See art 39 of the *Gender-Based Violence Law*.

⁹⁷ Note the Belgian legal system is based on the French legal system. Since 1994 the Rwandese judiciary has been reformed at several instances, notably in 2004 and 2006. These reforms involved the reduction of the number of Primary Courts from 120 to 60 and a greater reliance on single judges (rather than judges sitting in panels).

Figure 2. Overview of the Rwandan legal system



According to the Law Determining the Organisation, Functioning and Jurisdiction of Courts⁹⁸ land disputes with a value (i.e. the value of the land) of less than RWF 3 million (roughly EUR 3,900 or USD\$5,000) must be submitted to the Primary Court (whereas cases with a value exceeding that amount are dealt with by the Intermediate Court). Recalling that an average rural household in Rwanda owns 0.76 hectares of land,⁹⁹ that the average price per hectare is about RWF 1.2 million,¹⁰⁰ and that the 2009 annual *per capita* income was USD\$520,¹⁰¹ it is easily appreciated that few rural Rwandans will ever be involved in a land dispute that must be submitted to the Intermediate Court. Since our pilot project, and legal empowerment initiatives in general, put emphasis on the poor, this level of the court system and everything above it will not be discussed in this report. It must be noted, also, that except under extraordinary circumstances, judgments on land disputes by the Primary Court cannot be appealed.

Yet, as was suggested already, the Primary Court is not the first institution to consider land disputes. From the perspective of rural litigants, it is the last in a rather long line of formal and informal institutions involved in dispute resolution. It is surprising how little useful literature there is on dispute resolution by local institutions in Rwanda. The following description is therefore mainly based on the research and activities carried out

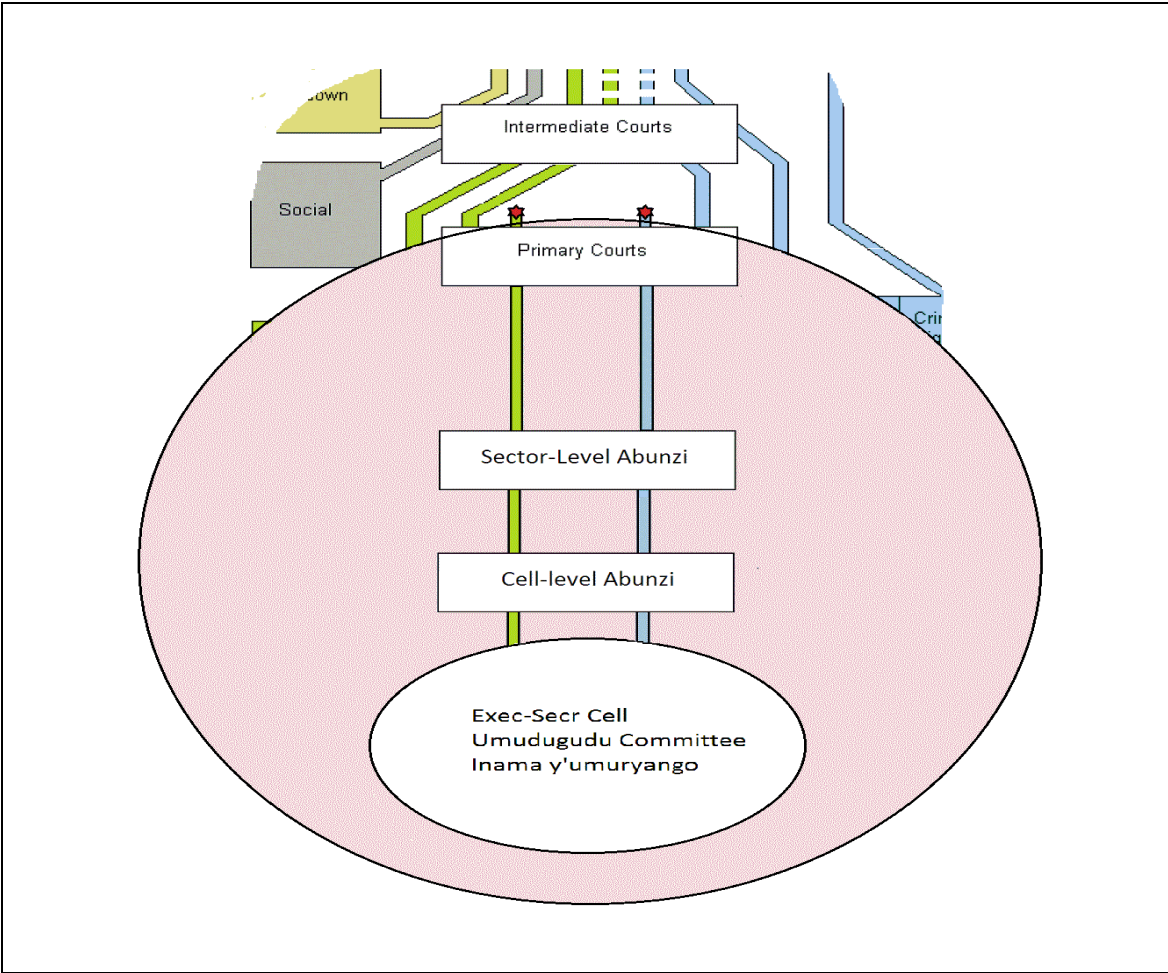
⁹⁸ See art 67 of this Law (law no. 51/2008 of 09/09/2008).
⁹⁹ Above n 25 (and accompanying text).
¹⁰⁰ NISR, above n 39 (and accompanying text).
¹⁰¹ Wojkowska and Cunningham, above n 9 (and accompanying text).

by the authors and RCN Justice & Démocratie. The methodology that was used to gather this information is dealt with in Chapter 3.

The inama y’umuryango

The *inama y’umuryango* (hereafter: *inama*) is often the first institution that disputants call upon to try to resolve a land dispute. The term can be translated as ‘family meeting’ and in this context the word family must be understood in the sense of the extended family. The *inama* is certainly not a tightly regulated institution of customary law. The way in which a family organizes such meetings, the frequency with which this happens and the reasons why a meeting will be called can be very different from the traditions of another family. The need to address a dispute between family members is not the only reason why an *inama* may be convened. The extended family may gather to prepare for a wedding (to organize the ceremonies and festivities, but also to contribute financially and otherwise to the expenses and gifts) or to mourn when a family member passes away.¹⁰² Nor are land disputes the only type of intra-family problem that may be addressed by organizing an *inama*. The family may, for example, also be asked to counsel on unpaid debts between family members or to correct members who display undesirable behaviour.

Figure 3. Reality of dispute resolution for ordinary rural Rwandans



In general, the meeting will be led by the head of the family (*umukuru w’umuryango*), who is generally a man, but the way in which he does this depends from family to family.

¹⁰² Traditionally, also, it was common for families to gather for a ceremony or feast called *umuganura*, when newly harvested sorghum – symbol of fertility – would be consumed in the form of beer and a thick paste.

In some families elders and younger members of the family considered to be trusted, wise and eloquent will be heavily involved in the debates, whereas in other families the *umukuru* acts alone. Similarly, in some families women will take an active part in the debates, whereas in other families the discussion will be very much dominated by men. Finally, there is strong variation also in the methods that families adopt to resolve disputes, which range between pure mediation (reconciling the disputants) on one end and strict adjudication (deciding who is right and who is wrong) on the other.

Local authorities (umudugudu and cell)

An *inama* will not always succeed in putting an end to a dispute and for some disputes, such as those between members of different families, it simply does not provide a suitable forum. In such cases local authorities will generally come into the picture. Disputes are almost always brought before the *umudugudu* council (the village administration)¹⁰³ and – if this is unsuccessful – the executive secretary of the cell;¹⁰⁴ but officials at sector and district level (e.g. the executive secretary, the officer in charge of civil affairs, or the agronomist) may also be called upon.¹⁰⁵ There is no law that provides for and regulates these interventions by local authorities, but in reality the involvement of the *umudugudu* council and of the executive secretary of the cell (as the *abunzi* secretary) is often unavoidable for litigants. This situation, which is considered very normal, must probably be understood in light of the fact that after independence, when customary land management structures were largely dismantled, local authorities acquired extensive and virtually exclusive power in matters of land allocation.¹⁰⁶ We have had reports, also, indicating that in some areas land committees may also be starting to play a role in land dispute resolution. These are committees organized at cell and sector level whose primary role is to facilitate the work of the land registration units.

Inyangamugayo (non-gacaca)

Particularly at the levels of the *inama y'umuryango* and the *umudugudu*, certain individuals from within the community may play an important role in dispute resolution. These persons are traditionally referred to as *inyangamugayo*¹⁰⁷, which means man (or woman) of integrity.¹⁰⁸ The use of this term may lead to confusion. This is because the Rwandan legislator, in an attempt to enhance the legitimacy of the *gacaca* courts created to deal with genocide crimes, chose to give these courts a traditional name (the word literally means 'on the grass', which refers to the place where dispute resolution meetings were traditionally held) and to refer to *gacaca* judges as *inyangamugayo*. Given the importance that this institution has acquired over the past years in Rwandan society – in many areas weekly or bi-weekly *gacaca* trials were organized at the level of the cell over an extended period of time – it is understandable that the term *inyangamugayo* is now most closely associated with the *gacaca* process.

¹⁰³ The *umudugudu* is the smallest administrative unit. It generally comprises between 300 and 1,000 inhabitants. The fact that most disputants submit their dispute to the *umudugudu* at one stage or another is confirmed by the interviews that were held as part of our pilot research. As it is explained in section 3.3, which deals with methodological issues), we interviewed 105 disputants: 80 told us that they had presented their case to the *umudugudu*.

¹⁰⁴ The cell generally comprises between 8 and 15 *imidugudu*. Of the 105 disputants interviewed (see above n 102), 45 mentioned that they had presented their case at the cell (or at least one of its officials). Seven respondents indicated that they had submitted the dispute directly to the cell (i.e. they skipped the village level).

¹⁰⁵ The sector generally comprises between 25 and 30 cells. Only nine of the 105 disputants interviewed (see footnote 102) indicated that they had tried to resolve their case with the help of the sector. Lankhorst and Veldman (above n 4) suggest that the highest ranking local authority, the district, is sometimes also called upon. This will generally happen when a lower ranking local authority is involved in the dispute (as a party). In other cases the fact that one or both of the parties live near the district headquarters appears to play an important role in determining whether the conflict will be brought before the district authorities.

¹⁰⁶ Pottier, above n 36, 515.

¹⁰⁷ Other words used to refer to these *inyangamugayo* include *abashesheakanguhe* (*ushesh'akanguhe* in singular), *inararibonye* or *abuvuga rikajyana*.

¹⁰⁸ Because this is one of the two institutions that is at the heart of our pilot project, a detailed discussion follows in sections 3 and 4. Here, we mention only some of their general characteristics.

What we refer to by the term *inyangamugayo* in this report are community members who contribute to dispute resolution in an informal and unregulated way. They tend to be trusted throughout the community and are considered to distinguish themselves on the basis of their wisdom and eloquence. An *inyangamugayo* in this sense may be invited by the parties or by the head of the *umudugudu* to assist in resolving a dispute, but it may also happen that he gets involved upon his own initiative.¹⁰⁹ Although in the areas where we worked many *inyangomugayo* are village elders, age is not a prerequisite; some are quite young and it is worth mentioning that many (more than half in the area where we worked) are women. It should also be pointed out that their role within their community generally goes beyond resolving disputes: the *inyangomugayo* are also commonly invited by families to play a role in traditional or religious family ceremonies. In the areas where we worked there were about 5 to 10 *inyangomugayo* per village. But it appears that in other areas of the country, notably where the composition of the village population has considerably changed in recent years due to the installation of significant numbers of old caseload refugees, this institution has disappeared or become less effective.¹¹⁰

Abunzi committees

Finally, at the local level, there are the *abunzi* committees. What distinguishes these committees from other local institutions is, above all, the fact that they were purposely created, by a law adopted in 2006,¹¹¹ to deal with all disputes before they can be submitted to the Primary Court. Around this time reforms were undertaken that reduced the number of Primary Courts from 120 to 60 and also substantially reduced the number of magistrates. In this context, policymakers had a dual objective when they instituted the *abunzi* committee. They were meant to guarantee continued and even increased access to justice for all members of the population and especially the poor for whom it is more difficult to bring a case before a formal court. At the same time, the *abunzi* committees were meant to reduce the flow of cases streaming into the formal court system and, thus, to contribute to the elimination of Rwanda's substantial case backlog.

In this sense, the *abunzi* committees are perhaps similar to the *gacaca* courts. In post-genocide Rwanda massive numbers of people were suspected of having committed genocide crimes, the formal courts clearly could not handle the resulting caseload: prisons and detention centres were filled to the brim with people waiting for trial, and there were concerns voiced by survivors and others that justice would not be done. The *gacaca* courts were created at the level of every cell and sector in Rwanda to ensure that justice would be administered swiftly, leaving no genocide crimes unpunished, and, at the same time, to alleviate the pressure on the formal court system. There is a very important difference between the *gacaca* courts and the *abunzi* committees, however, which lies in the approach that they are required to adopt in handling cases. The *gacaca* were not truth and reconciliation committees as have been instituted in certain other post-conflict countries. These courts were basically asked to determine whether persons accused of genocide crimes were guilty or not, that is, they were asked to position themselves as judges. This is not what the law expects of the *abunzi* committees. They are primarily required to mediate between disputants and to assist them in reaching some sort of settlement. The word *abunzi* literally means 'those who reconcile'. It is only if the parties cannot be reconciled, that the *abunzi* are required to apply the law and adopt an adversarial decision. Such an adversarial decision will be binding on the parties,

¹⁰⁹ During our research we observed one case in which an *inyangamugayo* whom we had previously identified and met with played a leading role in resolving a dispute when he was just visiting one of the neighbors of the parties, who were not located in his own district.

¹¹⁰ No specific research was conducted on this question as part of this pilot research. This is an observation that is based on the experiences gathered by the staff of RCN Justice & Démocratie as part of its nation-wide *abunzi* monitoring project and in providing trainings to members of institutions involved in resolving disputes at the local level.

¹¹¹ Law no. 2/2010 of 9 June 2010. Note during most of our project a prior version of the *Abunzi* Law was in force (law no. 31/2006 of 14/08/2006).

unless one of them submits the case to the Primary Court for review. Note that disputants are not allowed to take their case to court before obtaining a decision by the *abunzi*.

Presently, there are *abunzi* committees at the level of the cell and the level of the sector. The sector-level committees receive complaints from disputants who are not satisfied with the decision adopted by the committee at cell level. It is important to mention, however, that the sector-level *abunzi* committees have been instituted as recently as June 2010. This means that these committees did not exist when we conducted our pilot study and decisions by *abunzi* at cell level were directly challenged before the Primary Court. Both committees are composed of a committee of 12 elected community members. Each of the two sides in a dispute will choose one *umunzi* (*abunzi* is plural and *umunzi* singular) and together these *abunzi* choose a third member of the panel that will handle the case. Under the revised *Abunzi Law*, one of the 9 remaining *abunzi* is instructed to act as secretary and take notes. Previously, this was done by the executive secretary of the cell, whose task is now limited to entering new cases into the committee's registry, keeping (i.e. storing) the minutes of the hearings and notifying the decisions to the parties.¹¹² The panel of three leads the debates, but in principle other members of the committee may join in to ask questions or give advice, as can members of the public. In practice, the scope for such interventions varies a lot; some *abunzi* leave more room for debate, others exclude it altogether.

If the parties can be persuaded to reach an agreement, the *abunzi* are not required to adopt a decision confirming this. It is only when the parties cannot be reconciled, that a written decision must be adopted. If one of the disputants is not satisfied with the result at cell level, he has 30 days to file an appeal with the *abunzi* committee at sector level and, likewise, if the decision at sector level is not acceptable, the case must be brought before the Primary Court within 30 days. If no appeal is filed, the party that prevailed may ask the local authorities to help with enforcing the decision. If this means a change in the *status quo* – for example, when the defendant has been ordered to render a parcel of land to the complainant – he must first request the Primary Court to approve the decision by issuing an enforcement order.¹¹³ This procedure does not involve a full review of the case. The Primary Court will only examine whether the decision is not contrary to the public order. The *Abunzi Law* does not allow the committee or the executive secretary to charge fees to the litigants either for the hearing or for issuing a written decision.

2.4.2 Some summary statistics on local land dispute resolution

In this sub-section some summary statistics are presented that may help to appreciate the importance and functioning of the institutions discussed above. Emphasis is put on the trust that members of the population place in these institutions and on the volume and types of cases dealt with at the various levels.

Perceptions of local level dispute resolution

The importance of local institutions in dispute resolution is partly based on the fact that for many Rwandans involved in disputes they are unavoidable. The Primary Court will not hear a case unless it has been properly dealt with by the *abunzi* at cell and sector level. And, in general, the executive secretary of the cell will refuse to enter a case in the *abunzi* register, unless it has first been submitted to the *umudugudu* council and to himself.¹¹⁴ Finally, most heads of *umudugudu* insist that parties first organize an *inama*

¹¹² See art 5 and 22-26 of the *Abunzi Law*.

¹¹³ See art 24 of the *Abunzi Law*.

¹¹⁴ As part of this pilot research we interviewed 105 disputants whose cases had been or were being dealt with by an institution at community level (see footnote 102 and Section 3.3 on methodology, for further information). Thirteen respondents told us that they had immediately presented their case to the *abunzi* (for instance, because family members are local authority officials or the disputants live in different cells). The

before accepting to deal with a case. The ease of access to local institutions also plays a part. Submitting a case to the *abunzi* will generally be much easier than submitting a case to the Primary Court, primarily because courts tend to be located far away and the fees – though not excessive – are high by the standards of most rural Rwandans.¹¹⁵

Yet it would be wrong to consider institutions like the *abunzi* committee as an imperfect substitute to a proper court with which the poor man has to make do. The value of these institutions to members of the rural population is based on more than their accessibility alone. To give an example, in December 2009 RCN Justice & Démocratie conducted a baseline survey on dispute resolution by the *abunzi* committees.¹¹⁶ As part of this exercise a total of 613 members of the rural population were interviewed by means of focus groups and one of the questions they were asked was whether they put more faith in the way in which the *abunzi* handle disputes or in the way in which the Primary Courts operate. The result was as follows: 45 percent of respondents said they put more trust in the *abunzi*, 34 percent preferred the Primary Courts and 21 percent was unable to answer the question. The fact that these institutions are manned by members of their own community who will generally know the parties, the witnesses, the disputed piece of land, and local practices is often seen as a significant advantage.¹¹⁷

Primary Court judges are highly respected, but this respect rests on a very different foundation. Lankhorst and Veldman report that many of their respondents view the formal courts as a complex machine, whose workings they do not expect to be able to understand, let alone influence.¹¹⁸ From the perspective of ordinary disputants, the judge – clad in his black gown, seated behind an imposing desk on an elevated platform – is not a person that they can ask to help solve a problem. He is a person of power and for many court proceedings are somewhat like a lottery. They give answers to the questions and await the result.

Case flows between local institutions and the courts

The significance of local institutions can be appreciated, also, by considering the volume of cases that is dealt with at each level. It must be said at the outset that accurately mapping these case flows becomes increasingly difficult as we move down the ladder from the Primary Courts to the *umudugudu*.¹¹⁹ Therefore, the information provided below is meant to be understood in an indicative way. It does not appear sensible to try to make statements on the number of *inama* that are organized in order to deal with disputes.

Lankhorst and Veldman provide estimations of the proportion of cases that move on from one level to the next.¹²⁰ These are based on interviews with 18 heads of *umudugudu* and

remainder submitted their dispute to another institution at community level before appealing to the *abunzi*. Many different options appear to exist. In addition to the local authorities that were already mentioned, these options include the police, the elected chief of a certain number of households in the village (*nyumbakumi*), the local agronomist and the land committee. Moreover, disputes may be addressed during community meetings after weekly or monthly communal work-sessions, referred to as *inteko* and *umuganda*, respectively.

¹¹⁵ See Lankhorst and Veldman, above n 4, 63-65.

¹¹⁶ The report of this baseline study is forthcoming. In total, 282 litigants (persons having had a dispute dealt with by the *abunzi*) and 613 members of the general population were involved in the study (total sample of 895 persons). The information was collected in 10 different districts spread out evenly over the country. In each district 3 different cells (*abunzi* committees) were visited.

¹¹⁷ See also Lankhorst and Veldman, above n 4, 86-90. It must be pointed out that this closeness can also be a source of significant problems. The fact that the parties know the decision makers and in many cases have some sort of social tie with them, tends to feed fears that unwelcome decisions are the result of prejudice or biases. It is interesting, in this regard, to point out that the 282 persons interviewed during the baseline who had been involved in a dispute handled by the *abunzi* responded quite differently to the same question than other members of the population did: 51% indicated that they preferred the Primary Court, 26% said that they had no preference and only 20% preferred the *abunzi* (a further 3% did or could not respond).

¹¹⁸ Lankhorst and Veldman, above n 4, 89.

¹¹⁹ Section 3.3 provides details on the methodological challenges encountered during the pilot project.

¹²⁰ Lankhorst and Veldman, above n 4, 41.

13 executive secretaries of cells, analysis of the registries of 7 *abunzi* committees (at cell level) and of the 5 Primary Courts in whose jurisdiction these local institutions were situated. They suggest that on average, 40percent of cases dealt with at the *umudugudu* level are subsequently submitted to the executive secretary of the cell, either because one of the parties does not accept the outcome or because the members of the *umudugudu* council decided that the case was too complicated for them to deal with. This is sometimes used as a way to avoid having to take a decision that could strain relations with one of the parties or between members of the *umudugudu* council. About 50percent of the cases that executive secretaries of cells deal with will subsequently be submitted to the *abunzi* committee and some 25 percent of the cases decided on by the *abunzi* find their way to the Primary Courts. As part of our pilot research we found a similar ratio of appeals to Primary Courts. We collected all 256 *abunzi* decisions in land disputes registered between 1 January 2008 and 30 May 2010 in the 9 cells (*abunzi* committees) where we worked and found 68 cases in which an appeal had been filed. This means that about 27 percent of *abunzi* decisions are appealed.¹²¹ This would mean that of every 40 cases that are introduced at the level of the *umudugudu* council only one will reach the Primary Court or, in other words, of every 80 disputants only 2 will ever stand before a judge in a conventional court of law.

3. The pilot study

In this chapter we describe the main features of our pilot study. We start by analyzing the specific problems that we intended to address by means of the pilot (section 3.1) and then we explain what interventions we designed to do so (section 3.2). Finally (section 3.3), we discuss the methodology that was adopted in order to study the effect of the intervention and the problems of data collection and measurement that we encountered during the pilot.

3.1 Problem analysis

The overall objective of our pilot study was to identify and improve ways to allow Rwandan rural communities to enhance their capacities to resolve land disputes in a way that is satisfactory to both parties and, thus, puts an end to the conflict. This objective is directly inspired by the objectives behind the *Abunzi Law*, which, as we saw, are, on the one hand, to guarantee continued access to justice for all members of the population and, especially, the poor for whom it is more difficult to bring a case before a formal court and, on the other hand, to reduce the flow of cases streaming into the formal court system and, thus, to contribute to the elimination of Rwanda's substantial backlog of cases. These objectives are reflected in the Justice Sector Strategy that the Rwandan government and its development partners have established to structure development efforts undertaken in this sector.¹²²

For these reasons, the effectiveness of dispute resolution at local level is understood in terms of the level of satisfaction that disputants derive from decisions and in terms of the proportion of disputes that are subsequently brought before the Primary Courts. On the basis of existing research¹²³ and the fieldwork experience of RCN staff, three specific problems that tend to reduce effectiveness in this sense were identified:

¹²¹ Again, this information should be treated with quite some caution. Firstly, we found at least 8 Primary Court judgments in our sample that did not correspond to an *abunzi* decision that we had collected, which suggests that the *abunzi* committees do not always carefully keep records of all cases they handle. This means that the method we used to calculate the ration tends to overstate the ratio of appeals. On the other hand, it should be noted that we looked at judgments rendered rather than at the number of appeals registered with the Primary Courts. Since there is a significant delay between the act of filing an appeal and a judgment being rendered, this means that our method fails to capture the fact that an appeal is likely to have been filed in part of the most recent *abunzi* decisions in our sample. Therefore, the method used also tends to understate the ratio of appeals.

¹²² GoR, above n 45.

¹²³ Notably Lankhorst and Veldman, above n 4.

- The existence of a large number of easily accessible dispute resolution mechanisms at the local level;
- The tendency by most of the institutions involved to position themselves as judges rather than to try to mediate between the disputants; and
- The difficulties encountered by women in trying to find recognition for their formally guaranteed land rights.
- These three problems are analysed in the following sub-sections.

3.1.1 Multiple fora and consistency

Let us start by briefly summarizing some of what was said above. Land has a high value for rural Rwandans, not just in monetary terms, but also in an economic and emotional sense. For the more than 8 million Rwandan subsistence farmers, land is the only significant productive asset they control (together with their family's labour capacity). We have also seen that land is very scarce in Rwanda. The average holding per household currently measures 0.76 ha, which can be argued to be below the level of economic viability.¹²⁴ A land dispute will be a serious matter for ordinary rural Rwandans, since it means holding on to, regaining, acquiring, or losing the ability to sustain and support their family. It also affects their ability to provide their offspring with an inheritance, which for many is the best way to ensure that they themselves will be taken care of in old age. A land dispute will be seen almost as a question of life and death if it entails the risk of being reduced to landlessness.

Moreover, land disputes often tend to carry a lot of emotional weight for Rwandans. This can be appreciated by considering Table 1 (section 2.2) in which we present an overview of the incidence of various types of land dispute. A full 58 percent of the disputes are fought out by members of the same family (categories 1.1-1.6 and 2.1).¹²⁵ This group includes disputes between children of marginalized first wives and the children of the favoured and officially married second wife, between repudiated wives and brothers who refuse to share their land, between daughters and their stepmothers and between childless widows and the members of their deceased husband's family. Such disputes – about who is truly part of the family and can lay claim on its resources – will often cause enormous stress and touch the core of the disputants' sense of fairness and justice. This is true, also, for disputes involving returned refugees and ex-detainees, since they often force the disputants and their community members to remember and possibly discuss very difficult moments in their lives.¹²⁶

¹²⁴ The United Nations Food and Agricultural Organization, for example, estimates that the minimum viable plot size in Rwanda is 0.9 hectares. See GoR, above n 17, 16.

¹²⁵ Also note that a considerable proportion of the cases against third parties (categories 3.1-3.3 of Table 1, which make up 27% of the total at *abunzi* level) tend to pit different members of one family against each other. In this regard one can think of cases where a member of a family starts a case against a third party on the grounds that the member of the family who sold the land to this third party had no right to do so without the consent of the family.

¹²⁶ To give an example, in February 2008 the authors spoke with a woman who was involved in a land dispute with her husband's new wife. In 1994 she and her husband had left their village to flee to Zaire. Before they got there, she and her children got separated from her husband. After three years she decided to move to another refugee camp, as we understood it, in the hope of finding her husband. Her middle child fell ill during the journey by foot and she lost him shortly after their arrival. Later, when she had crossed the border and did not find her husband in their village, by necessity, she tried to grow accustomed to the idea of managing without him. She had found her house and the surrounding plot occupied by refugees, but had managed to convince the local authorities to let her have it back. Another small plot, which had been given to her by her father in law when they married, was being cultivated by her widowed sister-in-law and they arranged that they would share it. Their third and larger plot remained out of her reach since the former tenants claimed that they had bought it just before the war and the authorities had advised her to make do with what she had, which was enough for her and her two daughters. About a year and a half later her husband came back to the village, accompanied by a young wife and a baby boy. It was clear that her husband intended to stay with his new wife. He hardly spoke to his first wife or her daughters. Within a month after their return he erected a fence right next to their house that cut the plot into a larger and a smaller part and proceeded to build a new house for himself and his new family on the larger part of the plot where she had grown beans and sorghum. Next, he divided the second plot in three so that his new wife could cultivate roughly a third of it and started a

At the local level there are a great number of institutions that can be persuaded to consider a land dispute and to issue a decision. These institutions are generally easy to access even for poorer members of society. No or comparatively low fees are charged (and there is no obligation to be represented by a lawyer);¹²⁷ most institutions are located in the immediate vicinity, so transport costs are low and bearable for most members of the rural populace; finally, decisions are often taken without significant delays.¹²⁸ Whilst, in principle, these are positive characteristics, the problem is that from the perspective of disputants there is not much consistency in the decisions that these different institutions can be expected to adopt. More specifically, disputants often reckon with a significant probability that the next institution to which they submit their case will decide the matter differently.¹²⁹ And indeed, our fieldwork shows that disputes that all local institutions called upon decide in the same way appear to be in the minority (34 percent).¹³⁰ During our fieldwork for the pilot study we even came across cases on which the same *abunzi* committee or local authority had decided differently before.¹³¹ This lack of consistency can be explained as follows.

To begin with, at the local level dispute resolution is almost invariably approached from a factual angle. The debates will generally revolve around questions of the following nature: ‘was the transfer of land by the father to the nephew intended as a gift or did he simply allow him to cultivate there for some time without transferring ownership?’ or ‘was the land given before or after the daughter married?’ Although important questions of law may be involved, such as whether a girl has the right to claim part of her father’s land under given circumstances, these will generally not come to the surface. To put it differently, there is seldom an open discussion of the normative framework, whether customary or formal, that underlies a decision. Yet, as we will see below, notions on important questions such as women’s inheritance rights seem to differ from one decision maker to the other. And even factual questions regarding the dispute may be framed very differently by different decision makers. All of this is not surprising, since decisions

case in order to get the third and larger plot back. To the woman in question, the thought of losing the parcel that had been given to her personally and of having to make do with the small stretch of land remaining next to her house was simply unbearable and unacceptable. It should be stressed that in the Rwandan context such cases are by no means exceptional.

¹²⁷ As part of this pilot research we interviewed 105 disputants whose cases had been or were dealt with by an institution at community level (see footnote 102 and section 3.3 on methodology, for further information). 16 respondents indicated that they have had to pay something during the course of the proceedings. Most say that in order to obtain the decision they had to pay for the paper or copies (the fees quoted vary from RWF 30 to RWF 60 per page, the average sum for the whole decision amounts to RWF 200). Others mention that they had to pay between RWF 200 and RWF 500 for the summons or drawing up the plan of the land in question. A few mention bribery, for instance a man who was asked to pay RWF 4.000 “so that the *abunzi* would help him to win the case”. Moreover, analysis of 249 *abunzi* decisions (see again section 3.3) shows that it is common – even in civil cases – that the losing party is ordered to pay fines to the other party, or to buy and share a certain number of bottles of beer or wine to show that he accepts the decision. Strictly speaking, there is no basis in the law for such decisions.

¹²⁸ As part of this pilot research we interviewed 105 disputants whose cases had been or were dealt with by an institution at community level (see footnote 102 and Section 3.3 on methodology, for further information). Of the 94 disputants whose cases had been decided by the *abunzi* when we interviewed them, 30 told us that the *abunzi* had taken one month or less to deal with their dispute (30%); 24 mentioned that the *abunzi* had taken between one and three months to deal with their dispute (26%); 12 mentioned that the *abunzi* had taken between three and six months to deal with their dispute (13%); and 11 mentioned that the *abunzi* had taken between six and 12 months to deal with their dispute (12%). The remainder of the disputants (19%) reported that they had to wait for a decision for longer than a year.

¹²⁹ See Lankhorst and Veldman, above n 4, 49.

¹³⁰ This information is based on data collected by the authors as part of the study that resulted in Lankhorst and Veldman, above n 4. A total of 41 cases were followed from the level of the *umudugudu* council to the *abunzi* committee.

¹³¹ It is quite common that disputants submit their case for a second time to the same institution at community level. This may happen, for instance, after some time has passed and new officials have been appointed. It is common, also, to re-submit what is essentially the same case in a somewhat different form, for example by changing some of the parties or the arguments. As part of this pilot research we interviewed 105 disputants whose cases had been or were dealt with by an institution at community level (see above n 102, and section 3.3 on methodology, for further information). Nine respondents indicated that they had appealed to the *abunzi* to help resolve the same dispute more than once.

are mostly not put in writing (except at the level of the *abunzi*) and each institution begins anew without information about what was discussed, claimed or conceded before. The ambiguity of the evidence presented in many cases also plays a role. Conclusive documentary evidence proving ownership or the dates on which transactions took place are seldom produced by disputants. This is because many events simply go unrecorded (this may change with registration) and it appears, also, that during 1994 the registries of certain courts and administrative units were damaged or destroyed.¹³² As a result, evidence is presented mostly in the form of testimonies and, as a rule, each disputant is able to come up with a witness supporting his version of events and denying the other's story.

Two other factors contribute to the seeming randomness of outcomes. Firstly, it should be realized that at the local level decision makers do not generally explain the reasoning behind their decision and, notably, why they consider the arguments presented by one disputant to be more forceful than those of the other. This tends to make it harder for disputants who fail to reach their objective to accept the outcome.¹³³ Finally, most disputants are convinced that the relation one has with a decision maker may have a bearing on the outcome. A disputant confronted with an unwelcome decision issued by a head of *umudugudu* whom he knows is a member of his opponents' extended family will be inclined to think that if he submits his case to the executive secretary of the cell he may get a more neutral and better decision. At the level of the *abunzi*, this problem is accentuated by the fact that the parties do not have the right to refuse their opponent's choice of *abunzi*, even if he has a direct family member on the committee.¹³⁴ In this regard it should be realized that social networks in the countryside are large and complex. People are generally linked to the majority of other village members, through family ties, patron-client relations, commercial dealings, or jointly experienced historic events.¹³⁵

The combination of factors discussed above – the high value attributed to land such that so much is at stake in land disputes, the ease of accessing local institutions and the significant probability that another institution will decide the case differently – has two important implications. The first is that any litigant who is not satisfied with the decision on his case issued by one local institution (e.g. the *umudugudu* council) will have strong incentives to bring the case before another institution (e.g. the executive secretary of the cell). Although the situation is clearly more complex, in economic terms it can be thought of as follows. The value of the land at stake in a case will be enormous in comparison to the investment that must be made to file an appeal and argue one's case. Moreover, for the reasons given above, the disputant will consider that his probability of prevailing is more than negligible. As a consequence, the net potential value of filing is much larger than the net value of accepting defeat. Secondly, this combination of factors appears to undermine a disputant's willingness to find an amicable solution to the dispute. A negotiated settlement will very often entail economically and emotionally costly concessions by at least one of the parties. Refusing the settlement and if necessary filing an appeal at comparatively marginal costs will often be considered the better option. Note, also, that the longer a dispute is allowed to exist the less likely it is that the parties will be reconciled, as they tend to become more and more acrimonious and rigid in their points of view.

3.1.2 The approach to dispute resolution

The law requires the *abunzi* committees to mediate between the disputants. It is only when the parties cannot be persuaded to settle their dispute that they are instructed to adopt a decision as a court of law would. In practice, however, many *abunzi* do not see a

¹³² See Lankhorst and Veldman, above n 4, 52.

¹³³ Ibid 90-94.

¹³⁴ Ibid 89.

¹³⁵ Ibid 86-87.

clear distinction between these two modes of resolving disputes. Most understand their role as very similar to that of a judge, even if they generally refer to this work in terms of mediation. This means, also, that very few committees actually work with a two-stage process. There are strong indications that this affects the willingness of disputants to accept the outcome of proceedings at *abunzi* level and, thus, the number of cases that are submitted for review to the primary courts.¹³⁶

Mediation and adjudication in theory and practice

It is not explained in the *Abunzi* Law what mediation is and how it differs from the procedure that must be followed to adopt a decision if mediation is unsuccessful. For the purposes of this report, we will understand mediation in the sense of restorative justice. Restorative justice is a notion that was developed in the West from the 1970s onwards, mainly in reaction to perceived failings of the criminal justice system. Despite these origins, it is generally recognized that there is a very close link between restorative justice and the type of traditional (or customary) administration of justice known in Sub-Saharan Africa.¹³⁷ It is a good instrument, therefore, with which to structure our discussion of the notion of mediation in Rwandan law and practice. This leads us to distinguish between mediation and its alternative, the adversarial proceeding, in four ways.

Firstly, the *objective* of the two approaches is different, in the sense that mediation (restorative justice) aims at restoring some form of peace between the parties and within their community, whereas the principal aim of an adversarial proceeding is to determine the need for and if necessary order reparation or correction. This implies that the *perspective* adopted in mediation is forward looking (what can or must be done to ensure peaceful coexistence?), whereas adversarial proceedings are primarily backward looking (what acts have been committed and how must they be appraised and responded to). Thirdly, the *role* of the mediator is that of a facilitator. The disputants themselves are the main agents in the process leading to an accord (or its failure). A judge presiding over an adversarial proceeding, on the other hand, has ownership in the sense that, ultimately, he decides for the parties. Finally, the *contributors* to and *beneficiaries* of the process are different. Adversarial proceedings centre almost exclusively on the disputants (and in criminal justice predominantly on the person that is accused). The role of the public is reduced to giving testimony. Mediation, understood in the broader sense of restorative justice, more actively involves community members in decision-making.

Naturally, in the reality of both African and Western jurisdictions the distinctions will never be so clearly cut and no system or procedure will exclusively fall in one category. Restoration of social peace will also be an objective of many forms of judicial proceedings of Western origin; judges will frequently try to negotiate a settlement between the parties; mediators may insist on recognition of fault as a precondition for reconciliation; etc. Similarly, the approach adopted by the bulk of the *abunzi* committees incorporates elements of both adversarial and restorative justice. Nonetheless, the characteristics of adversarial justice tend to feature more prominently in their work. This is a view that is shared by a large number of primary court judges, as well as by other officials who deal with the *abunzi* frequently.

It is indicative, for instance, that out of a total of 105 disputants interviewed as part of our study 43 (41 percent) indicate that the *abunzi* did not make any attempt to try to bring them closer together.¹³⁸ The monitoring work engaged in by RCN agents as part of this study points in the same direction: in 44 percent of the cases no attempt was made

¹³⁶ See also Lankhorst and Veldman, above n 4, 79.

¹³⁷ See Menkel-Meadow, 'Restorative Justice: What is it and does it work?' (2007) 3 *Annual Review of Law and Social Science*, 10.7.

¹³⁸ The monitoring work engaged in by RCN agents as part of this study points in the same direction: in 44% of the cases no attempt was made to mediate between the parties.

to mediate between the parties. This proportion included cases where subsequent interviews with the disputants revealed that mediation would have had a high probability of success. To give an example: in one case a man told us that he recognized that he was under an obligation to provide land to his nephew, because the boy was an orphan and because he (the uncle) now possessed most of his late brother's land. Nonetheless, the *abunzi* did not try to mediate.¹³⁹ What happens in such cases is that after hearing the parties the *abunzi* will immediately withdraw to deliberate on the case and adopt a decision. It is telling, also, that in many cases the *abunzi* refer to their work to resolve disputes as *guca imanza* ("to judge" in Kinyarwanda)¹⁴⁰ and to themselves as *urukiko* ("the court" in Kinyarwanda)¹⁴¹. Moreover, in their decisions they will frequently 'order' disputants to do something or stop doing something.¹⁴²

Box 5. *Abunzi* (control zone) failing to mediate between disputants

Gashirabake claims part of his family's land (3 parcels and two stretches of forest) in the name of his three paternal aunts, who have not received their share of *ingarigari*. He is claiming the land from his uncle, Kalinganire, who, according to Gashirabake, has taken the land. Gashirabake explains that the land was kept by his grandmother for her daughters (his aunts), who were not yet married at that time. Kalinganire, in contrast, claims that he had to sell the land on behalf of his mother (Gashirabake's grandmother) when she fell ill and medical bills had to be paid. Gashirabake denies that the land in question has been sold. He says that instead Kalinganire was temporarily holding the land and that he built a house on it, while Gashirabake left the region for six months. He now wants the land to be divided between all the children: his uncle, his 3 aunts and himself as heir of his deceased father.

During the *abunzi* session monitored by our agents, the disputants were asked to explain the case. Subsequently, the *abunzi* heard witnesses. Gashirabake brought with him his aunts and one of Kalinganire's ex-wives, who all confirmed that Kalinganire never officially received the land, but illegally occupied it. No further clarifications were asked by the *abunzi* (the president of the committee even told a female *umunzi* to keep silent when she wanted to ask questions). Kalinganire on his side had not brought any witnesses and did not seem very interested to defend his rights. When the daughter of Kalinganire, who was amongst the public, timidly asked (she was clearly very scared) whether she could say something, the president of the committee told her that she could go to Court. According to him this case only concerned her father, Kalinganire. A week later the *abunzi* announced that Kalinganire had lost the case for lack of evidence. The *abunzi* decided that he should return the land to the family within 10 days.

When we interviewed Kalinganire's daughter after the session, she explained to us that she was living on the disputed plots with her mother as well as her two young children born out of wedlock. She left the father of her children, who was not willing to provide for them, 5 years ago. Her mother got married to Kalinganire 28 years ago in a customary ceremony and had been repudiated 8 years ago. Mother and daughter have been living together on the disputed plot ever since without interference of their in-laws. Things changed when Kalinganire moved away to another district, where he had bought some land to move in with his younger wife. The daughter is disappointed by the fact that the *abunzi* were not even willing to listen to her, but perhaps her mother (who is defending their interests to continue living on the same plot before the Primary Court in a case against one of the aunts) will be more successful.

¹³⁹ In another case land had been divided upon the death of the head of the family, whilst one of the sons was in exile. When he came back the family agreed to give him his share; a plot was cleared and new boundary markers were planted. The source of acrimony is the returning son's refusal to organize a thanking ceremony and serve banana wine. Here too the *abunzi* made no attempt to reconcile the parties and went straight for a decision.

¹⁴⁰ Or "*guca urubanza*" in plural. In Kinyarwanda the concept of "*guca kunga*" refers to mediation.

¹⁴¹ They frequently do so right from the start, when they invite the disputants for a session of the "*abunzi* court", *urukiko y'abunzi*. It may not be surprising that disputants thus summoned do not expect the *abunzi* to mediate between them. In this regard, see section 3.2.2.

¹⁴² We have even seen cases where a committee imposes a fine on one of the disputants for misbehaving during the hearing.

In the remaining 59 percent of the cases disputants considered that some attempt had been made to mediate. It should be realized, however, that these attempts generally do not amount to mediation in the sense meant above. What appears to be most common is that the *abunzi* underline the importance of living together peacefully and ask the parties to go outside to see whether they can reach a settlement, whilst they (the *abunzi*), the witnesses, the *inyangomugayo* (if they are present) and the public remain inside. If the parties cannot find a solution, the *abunzi* will continue their session and decide the case. One of the disputants we interviewed described this as follows: 'They told us that we are all children of Manase and that nothing should be allowed to separate us. Then they asked us to go outside to see whether we could get closer to each other. Obviously this did not work. We had tried and failed so many times before...' It is not uncommon, also, that the *abunzi* quickly adopt a decision without much consultation and then devote considerable time to try to convince the losing disputant to accept the outcome. Often this will be accompanied by an order for the parties to drink sorghum beer together, which is a traditional act of reconciliation. Alternatively, it may happen that most of the hearing will be spent arguing with one of the disputants in order to get him to admit fault.¹⁴³ None of these options can be compared to actively and constructively helping the parties find common ground. In fact, we have seen mediation in the sense of restorative justice in very few cases only.¹⁴⁴ Of the 9 *abunzi* committees that we worked together with intensively during this study, only one had members who possessed the skills and intuitions to work in this way. Finally, it can be mentioned that in 48 percent of the cases monitored the public was not invited to play any role in resolving the dispute.

Photo 1. Focus group with disputants and other female community members



¹⁴³ Out of 105 respondents interviewed 12% complained of disrespectful behaviour on the side of the *abunzi*. Our monitoring work confirms that they may at times become angry or verbally aggressive with one of the disputants, making him look ridiculous, by laughing at him and sometimes, even, by calling them bad names (we heard an unmarried woman being called a prostitute by an *umunzi*).

¹⁴⁴ It should be noted, however, that in several cells where we worked it happened, on occasion, that before putting a case in the entry registry either an *umunzi* or the executive secretary of the cell would ask the disputants whether they wanted to be reconciled or not. In that case one or two persons would go to speak with them. If these efforts were successful, the case would generally not be entered in the registry. Since no records are kept of such cases and since they are not scheduled for regular hearings, they tend to escape our monitoring work.

3.1.3 Reasons why the *abunzi* adopt an adjudicatory approach

The fact that most *abunzi* do not clearly distinguish between mediation and adjudication in their work as *abunzi* and tend to position themselves more as judges should not be taken to suggest that they are unfamiliar with modes of dispute resolution that resemble restorative justice more closely. In many communities, at least in the areas where we worked, there are *inyangamugayo* in the more traditional sense of the word. Their mode of operation, whilst different from one person to another, is generally more conciliatory and facilitating in nature, which is understandable since they are not vested with any form of formal authority. This is a form of dispute resolution that most *abunzi* and disputants whom we have interviewed know and speak of in positive terms, in some cases with a bit of nostalgia. The explanation must therefore be sought elsewhere.

Part of the explanation appears to lie in the way in which the law is formulated. As said, the *Abunzi Law* does not define mediation or explain in what way it differs from an adversarial hearing. In fact, the term 'mediation procedure' is used throughout the law, both to refer to the mediation stage and the adversarial stage of the proceedings. Section 1 of Chapter IV of the law, for example, is entitled 'Mediation procedure and execution of the mediation decision'. Yet in principle if mediation is successful the issue of execution should not arise. Where execution is necessary, on the other hand, it is clear that mediation must have failed. In fact, the two exclude each other. To be sure, careful reading of the law by professionals should not lead to too much confusion about the intentions of the legislator. Yet it can easily be appreciated that the *abunzi* – mostly subsistence farmers with on average less than 6 years of primary education who receive very little training to prepare them for their task – will develop a different or less nuanced understanding of the law.

More generally, it seems to us that the simple fact that the *abunzi* committees were created by law, are vested with formal decision making powers and are expected to apply state law (if mediation fails), influences their perception of their role *vis-à-vis* the parties. These are factors, also, that inspire them to make comparisons with the way in which formal courts operate. And although we have not studied this matter in detail, it seems plausible to us that the institution of the *gacaca* courts several years before the adoption of the *Abunzi Law* also played a part. As suggested above, the task of the *inyangamugayo* new-style was to adjudicate certain types of genocide crimes in the way a formal criminal court judge would and not, at least not primarily, to bring about reconciliation. Since the *gacaca* trials were organized at the level of almost every cell (as the *abunzi* committees are) and were attended by large portions of the population, their mode of operation may have had a broader impact on the notions of justice and dispute resolution.

Finally, there are indications that elevated levels of inter-personal distrust in post-conflict Rwanda foster the adoption of an adjudicatory approach by the *abunzi*. We saw above that Rwanda's history is marked by insecurity, violence and loss. The 1994 genocide was preceded by decades of recurrent eruptions of violence and followed by nearly a decade of turbulence as the new government secured its power and large numbers of refugees that had left the country in waves, notably in 1959, 1973 and 1994 started coming back. As a result a minority of survivors and returned Tutsi refugees live side by side with released perpetrators, people who were passive bystanders at the time and a mass of easily influenced youngsters. The continued impact of these events and situations on the psyche of individuals and the cohesion in communities cannot be underestimated. Large-scale scientific surveys conducted on behalf of the National Unity and Reconciliation Commission in 2003, 2007 and 2008 show that levels of inter-personal distrust remain high and appear to be increasing.¹⁴⁵

¹⁴⁵ For a discussion, see B Ingelaere, 'Living the transition: A bottom-up perspective on Rwanda's political transition' (2007) *Institute of Development Policy and Management Discussion Paper*.

When we interviewed disputants (at the level of the *abunzi* committee) and asked them whether their dispute had been discussed in an *inama* or whether an *inyangamugayo* in the traditional sense had been called upon in an earlier stage, we were told several times that this was not realistic under current conditions. One woman responded to our question by asking us ‘With all that has happened here and all that we know about the people, how could we find an *inyangamugayo*, someone that I could really trust and who he [her opponent] could trust?’ Other respondents would emphasize the lack of trust between disputants.¹⁴⁶ Since aiming for mediation would often require them to try to create understanding and compassion between the disputants for their respective experiences and points of view,¹⁴⁷ adopting an adjudicatory approach appears to be a safer and more workable approach for the *abunzi*.

3.1.4 Effects on the acceptance of decisions by disputants

The difficulty with this is that the *abunzi* are ill equipped to conduct adversarial hearings. Our research shows that in this regard they face two major capacity deficits. Firstly, they are unfamiliar with (or not respectful of) basic principles of proper procedure.¹⁴⁸ Secondly, they frequently fail to explain the reasons behind their decisions to the disputants. Both factors tend to make it more difficult for disputants to accept the outcome of their case and are responsible, therefore, for an elevated number of appeals. In all, 35 out of the 105 disputants interviewed immediately after the session with the *abunzi* indicated that they felt that their case had not been dealt with correctly.

As regards procedure, disputants often complain that they were not given sufficient opportunity to explain their view on the case (24 out of 105 disputants interviewed). Whilst many of these respondents had lost their case, it does seem that there is a genuine problem here. In 7 out of 64 cases monitored by RCN, for instance, our agents noted on their monitoring form that they could not understand how the *abunzi* were able to take a decision on the basis of the scarce and unequivocal evidence that was presented.¹⁴⁹ As a rule, the committees we observed during their work were somewhat passive in terms of gathering evidence. In 32 cases out of 64 monitored one of the disputants did not bring a witness on the first day. In only 17 of these the case was adjourned so that witnesses could be produced, the rest was decided straight away, mainly on the basis of the statements made by the disputants, even though 12 of the disputants concerned later informed us that they would have wanted and would have been able to bring witnesses if they were given a chance. For various reasons, also, the *abunzi* may refuse to hear witnesses, for example because they consider that the testimony will not be relevant or that the witness will only repeat what other witnesses have already said.¹⁵⁰

As suggested, the lack of legal reasoning also poses a significant problem. To understand this, some more background information on the way in which the *abunzi* generally adopt

¹⁴⁶ See Lankhorst and Veldman, above n 4, 88.

¹⁴⁷ Particularly in land cases closely related to the period of the genocide and its immediate aftermath, this will often be very sensitive and difficult.

¹⁴⁸ See Lankhorst and Veldman, above n 4, 81, 78.

¹⁴⁹ The following are the notes written down by our agents on their forms: [Case 1] *Ce n'est pas clair comment les abunzi ont traité le cas pas de questions posées à la partie présente pour prouver les faits, pas de preuves demandées. ils ont directement pris la décision;* [Case 2] *le cas a été traité à l'absence de la partie défenderesse et on se demande ce que font exactement les abunzi lors du traitement du cas, c'est comme s'ils acceptent directement ce que dit le plaignant sans poser de questions, sans demander des preuves;* [Case 3] *le cas a été tranché à l'absence de la partie défenderesse après l'intervention de 2 témoins du plaignant et on se demande vraiment si les abunzi avaient assez d'informations pour prendre la décision sans avoir même fait une descente sur terrain;* [Case 4] *on se demande sur quoi les abunzi se sont basés pour savoir qui dit la vérité, il y a un seul témoin du plaignant, l'autre partie était très intimidée et n'a pratiquement rien dit;* [Case 5] *ce que disent les deux parties est très différent et on se demande sur quoi les abunzi se sont basés pour prendre la décision;* [Case 6] *la décision n'est pas claire, on n'explique rien et puis il n'y avait pas de témoignages;* [Case 7] *dans la décision les abunzi disent que les mères des deux parties vont se partager les terres et ils ne disent pas ce qui va arriver aux parties. Dans les demandes et prétentions personne n'a parlé des mères.*

¹⁵⁰ In only 18 of the 64 cases monitored all witnesses presented by the parties were actually heard.

decisions is helpful. During hearings an *umunzi* or the executive secretary of the cell (particularly under the old *Abunzi* Law) will take notes of what is said by the disputants and, if applicable, their witnesses (the *procès-verbal*). After the debates the *abunzi* will withdraw to deliberate and announce their decision. This decision may come on the same day or at a later date. The decision is announced to the disputants orally and it is written at the bottom of the *procès-verbal*. The law requires the parties to sign the *procès-verbal*.

It is seldom the case that the *abunzi* explain in announcing their decision why they consider that the arguments advanced by one disputant were more convincing than those advanced by the other. In 52 percent of the cases monitored no reasoning was given at all. In the remainder of the cases the reasoning generally consists of a repetition in summarized form of the arguments of the prevailing disputant. The arguments advanced by the two sides in the dispute are therefore not compared from a neutral third-party perspective. As a result, the losing disputant gets the impression that the *abunzi* sided with his opponent. This effect is compounded by several other factors.

Firstly, in only 23 percent of the cases monitored the *procès verbal* was read out to the disputants after the hearing. There was not a single case, also, in which the *abunzi* tried to check with the disputants before taking a decision whether they had understood their arguments correctly.¹⁵¹ Moreover, in a substantial minority of cases (36percent) the disputants were not asked to give a reaction to the decision or they were not allowed to express what they thought about it. It must be noted, also, that the disputants are generally asked to sign the *procès verbal* after the decision has been added to it and without affording them the time needed to read it. It is easily appreciated that a losing disputant who does not know the contents of the *procès verbal* nor the reasons behind the decision may become angry and suspicious when asked to place his signature.

We suggested in section 2 that the level of proximity at which the *abunzi* operate inspires trust amongst the members of the rural population and therefore constitutes a source of strength. It should be noted, however, that in a situation where procedures appear arbitrary or unfair and decisions are not reasoned nor explained this closeness can easily become a source of serious distrust. In this regard, it is important to mention that the baseline study that was mentioned in section 2 showed that disputants' views of the *abunzi* committees were considerably less positive than those of the members of the general population.¹⁵² The fact that the parties know the decision makers and in many cases have some sort of social tie with them, tends to feed fears that unwelcome decisions are the result of prejudice, bias or bribery. The fact that an *umunzi* is seen in the same cabaret as a disputant is sometimes enough to convince the opponent that something is amiss. The fact that the law allows each disputant to choose one of the *abunzi* on their panel can make things worse. Whilst it may contribute to creating the necessary conditions for mediating between the disputants to let them each choose someone they know or at least trust, in adversarial proceedings it is quite unhelpful. We observed a case, for instance, where a disputant chose an *umunzi* who was his uncle. For his opponent, who lost, this explained everything.

¹⁵¹ The *Abunzi* Law requires the *abunzi* to do so.

¹⁵² See footnotes 115 and 116 and the accompanying text. As we said there, members of the population and disputants were asked whether they put more faith in the way in which the *abunzi* handle disputes or in the way in which the Primary Courts operate. The result for members of the population was as follows: 45% of respondents said they put more trust in the *abunzi*, 34% preferred the Primary Courts and 21% was unable to answer the question. The 282 persons interviewed during the baseline who had been involved in a dispute handled by the *abunzi* responded quite differently to the same question than other members of the population did: 51% indicated that they preferred the Primary Court, 26% said that they had no preference and only 20% preferred the *abunzi* (a further 3% did or could not respond). In addition, of the 105 disputants who were interviewed as part of the present study 35 (33%) indicated to us that they felt that their case had not been dealt with correctly. The complaints we heard most frequently were that the *abunzi* were not neutral, that the parties were not treated equally, that the *umunzi* chosen by the disputant in question was not allowed to speak by the president, that the *abunzi* did not really try to understand the dispute and, finally, that their decision was not reasoned.

Procedural deficiencies and lack of reasoning combined with suspicions of partiality are the factors that generally push disputants to submit their case for review to the primary court. As we saw above, roughly a quarter of *abunzi* decisions are appealed.¹⁵³ This requires considerable investments which demand big sacrifices from the bulk of rural Rwandans and place the courts out of reach for the poorest of the poor. It is important, however, from the perspective of access to justice, to underscore that those who do bring their case before the primary court have no guarantee of getting a better deal than they got at *abunzi* level. As part of this study we analysed 170 judgments and found that 88 cases (48percent) were summarily dismissed because the court considered that the plaintiff lacked standing. In the majority of these cases the problem was that family land was at stake and the disputants did not come with the proper authorizations from all family members concerned. As far as we have been able to verify, the courts generally do not allow the disputants to repair this mistake, which will almost always mean that the right to get the decision reviewed is lost. In 46 of the cases so dismissed the court also annulled the underlying *abunzi* decision, without any form of reasoning, whereas in the remainder it was not explained what the implications for this decision were. And as regards the other half of the cases where the court did examine the case on the merits, it should be noted that the resulting judgments were often as unintelligible for rural Rwandans as *abunzi* decisions are.¹⁵⁴ Judgements tend to be written in technical legal language, with many references to laws and articles and dates on which procedural events took place and the part where the decision is reasoned tends to be comprised of no more than three or four phrases.

3.1.3 Respect for women's land rights

The third problem with *abunzi* justice to be addressed by our pilot project concerns respect for women's formally guaranteed land rights. We saw above that in 1999 the government of Rwanda adopted an act that brought inheritance matters under the scope of the formal law. This Inheritance Law grants female children and adult women inheritance rights on an equal basis to men. It is recalled that the question of women's inheritance rights is highly relevant in Rwanda, since it constitutes the primary means for women to gain access to land independently from their husbands. Land markets are underdeveloped in rural areas and, in any case, relatively few women have sufficient resources to be able to purchase land. In this regard it was mentioned, also, that the 1994 genocide and civil war have left a society in which women greatly outnumber men and many of those women have become heads of household and heads of families. Because of this, their access to land has become all the more important, even for the economy as a whole.

Before the adoption of this law the question of inheritance was exclusively regulated by customary law. Two features of customary law that are particularly relevant for this project were mentioned above. Firstly, it provides very limited scope for women to own or inherit land. Women generally exercise limited use rights over land which they acquire through marriage with their husbands who own and exercise full authority over the land. Widows without male children depend to a considerable extent on the benevolence of their late husband's family. Secondly, under customary law the transfer of family land from one generation to the next primarily takes place when the sons get ready to marry. The land that a man's family contributes to a marriage is, in fact, but one element of a very complex set of arrangements and transactions between the two families. Other equally important elements are the bridewealth, the dowry and the organization of the related ceremonies. These institutions continue to be highly relevant in Rwanda.

It should not come as a surprise, then, that not all women in contemporary Rwanda inherit land on an equal basis with men. Whilst there is a basic awareness amongst both

¹⁵³ See section 2.4.2.

¹⁵⁴ See Lankhorst and Veldman, above n 4, 90.

men and women that the law has changed in favour of women, in practice, customary law has a very strong influence on the way in which the little that is known about the Inheritance Law is interpreted. Frequently, a daughter is granted a temporary right to use family land, i.e. only until her marriage or until her brothers or sons reach adulthood. In other cases women are able to claim family land, but end up with relatively small, infertile or unfavourably located plots. Women's access to land is also limited in other ways. It is not exceptional that brothers or in-laws successfully claim that a female family member has a right of usufructus only. This means that the woman in question cannot dispose of her parcel as she deems fit and prevents her from selling, construction or growing certain crops. Sometimes women are said not to have obtained property rights, because they had omitted to organize the appropriate customary ceremony to thank their fathers following the family reunion when they were given the land. In general, it can be said that the continued importance of customary law means that women's ability to claim formal inheritance rights depend considerably on the willingness of their male relatives to share "their" land with them.

Photo 2. Marking boundaries in the presence of an *inyangamugayo*



There are several direct obstacles to the respect of women's inheritance rights. The first is that land is seen to belong to a family and, of course, land constitutes the primary asset of any family in rural Rwanda. Yet when a girl marries, she is considered to become part of her husband's family. As a consequence, respecting the law of 1999 by allowing women to claim their part means that family land must be alienated and given to another family. This is considered very problematic by many in the Rwandan countryside.¹⁵⁵ Secondly, if their sisters are to share in the inheritance, brothers and, particularly,

¹⁵⁵ In part this can be explained by the fact that the couple has an obligation towards the man's family to support other family members if their harvest fails or if they are otherwise in need, which is not met by an equal obligation towards the family of the woman.

younger brothers who have not yet reached the age of marriage see the share of the land that will come at their disposal shrink, which may also affect their attractiveness as a marriage candidate.¹⁵⁶ Finally, whilst the prospect of owning more land via their wife is interesting for men and exerts a compensatory effect, a woman that contributes considerable assets to a marriage is thought to behave more independently and with less respect for her husband, since if she would have to divorce she could take her land and would not be dependent on the support provided by her father or brothers.

In addition, it is clear both from our study and other similar studies that women risk being socially excluded by both male and female community members when they try to enforce their legally guaranteed inheritance rights.¹⁵⁷ Finally, for the purposes of our pilot study it is important to note that most dispute resolution mechanisms at the local level to which these women can realistically appeal, are manned by fellow community members. Naturally, their notions on gender relations and women's rights to land generally tend not be much more progressive than those of their fellow community members and the decisions adopted by these institutions continue to be guided to a considerable extent by notions of customary law.

3.2 The Project

We designed our intervention to address the three problems described above:

- (1) The fact that there is a large number of fairly easily accessible institutions involved in dispute resolution at community level, whose decisions show a low degree of consistency;
- (2) The tendency of *abunzi* committees to position themselves as judges, even though they are ill equipped to properly conduct adversarial hearings; and
- (3) The continued and limiting influence of notions of customary law on the way women's formally guaranteed land rights are construed at community level.

Each of these problems affects disputants' willingness to accept the outcome of the decisions taken at community level and, thus, the volume of cases flowing to the formal court system. The immediate aim of the intervention was to increase disputant's satisfaction with the decisions adopted at community level. The aim of the study (which is described in the next section) was to assess to what extent the intervention allowed us to achieve that objective. Ultimately, the purpose of the pilot project was to identify ways to enable rural communities and disputants in these communities to legally empower themselves;¹⁵⁸ firstly, by enabling community level institutions involved in dispute resolution to bring more disputes to an end that is acceptable to both parties, so that disputes are not drawn out and social peace can be restored; and, secondly, by giving individual disputants more control over the way in which their dispute is resolved.

It follows from the problem analysis that our project intervenes in a situation where customary practices are of significant importance. There is growing interest in the donor community and among development scholars to learn more about the role that customary law can play in legal empowerment of the poor. The idea behind this is that customary law is known and owned by poorer communities and their members in developing countries and potentially provides a well adapted and legitimate framework

¹⁵⁶ In this regard, recall what was said in Chapter 2 about land fragmentation and average plot sizes falling below the minimum economically viable level.

¹⁵⁷ See Lankhorst and Veldman, above n 4; Haguruka, *Etude sur l'application et l'impact de la loi no 22/99 relative aux régimes matrimoniaux, libéralités et successions sur les droits de la femme au Rwanda* (2005); Rose, above n 79; and J Burnet, 'Culture, Practice and Law: Women's Access to Land in Rwanda' in *Women and Land in Africa: Culture, Religion, and Realizing Women's Rights* (2003).

¹⁵⁸ For a discussion on the meaning of the term 'legal empowerment', see S Golub, 'What is legal empowerment? An introduction,' in S Golub (ed), *Legal Empowerment: Practitioners' Perspectives*, International Development Law Organization (2010) 13.

for securely regulating interactions and transactions between the poor. Legal empowerment projects should therefore be designed so as to strengthen customary law and to stimulate its evolution in a way that can help to realize this potential. This is, in fact, the main theme of the broader research programme initiated by the International Development Law Organisation to which this report is meant to contribute. It is important, therefore, that we explain how the term customary law is understood for the purposes of this report and in what way our intervention interacts with customary law.

The part of our project that concerns women's inheritance rights interacts with what we refer to as substantive norms of customary law. These are commonly adhered to practices that structure social interaction. As was suggested above, such practices can be very different from one place to another. During our study, for example, we found that a practice referred to as *intekeshwa* has a very different meaning for the members of two villages located within the same district. In one area this referred to a gift of land to the bride by her father, whereas elsewhere we were told that men were the sole recipients of *intekeshwa*. Moreover, even between community members, between generations and between the sexes views can differ. Such practices are also continuously evolving, in response to changing socio-economic conditions and changes in formal law. André and Platteau describe, for instance, how increased pressure on land resulted in the loss of flexibility in the interpretation of certain customary practices regarding access to land in North-Western Rwanda.¹⁵⁹ And, as will be explained in Chapter 4, the adoption of the Inheritance Law appears to have led to modest improvements in women's ability to acquire and control land in the areas in the North where we conducted our study. This means that, for the purposes of this report, even practices of recent origin that marry certain aspects of traditional and formal law are considered as customary or community law. Similarly, we adopt a notion of customary dispute resolution mechanisms that includes not only the *inama* and the *inyangamugayo* (non-*gacaca*) in their modern manifestations, but also the state instituted *abunzi* committees.

These types of arrangements function in relative autonomy *vis-à-vis* the formal legal system. The *abunzi* committees may have been instituted by formal law, but as we have seen important parts of this law describing the principles and procedures to be followed are not known or insufficiently understood. The same applies to the laws on women's rights to land. It must be understood, also, that there are few links between justice at community level and the formal legal system. The *abunzi* committees (and other institutions at community level) generally get very little training on the state laws that they are expected to apply if mediation fails. And crucially, there are no repercussions for *abunzi* committees that consistently decide a certain type of case, for example on women's inheritance rights, in a way that does not accord with formal law. As we saw, only a fraction of the cases that emerge at the community level find their way to the courts and about half the cases that do reach the courts are summarily dismissed. Finally, when a case is reviewed on the merits, the *abunzi* committee in question will seldom be informed of the result and the reasoning behind the courts' judgment. This means that, despite being influenced by formal law, these forms of community level justice are to a considerable extent owned by the communities in which they function.

In what follows we describe in what way our project interacted with these neo-customary arrangements to enable the selected communities and their members to legally empower themselves. The project consisted of two main elements, one targeting institutions at the closest level of proximity and another focusing on the *abunzi* committees.¹⁶⁰

3.2.1 Intervention at the closest level of proximity

¹⁵⁹ André and Platteau, above n 6, 32.

¹⁶⁰ The pilot project was implemented by a team of 8 RCN agents, 6 of whom had been working for RCN since 2007 and had acquired experience with land and inheritance matters by contributing to previous research on this matter, which resulted in Lankhorst and Veldman, above n 4. Four team members were also involved in RCN's *abunzi* monitoring project. The team members were actively involved in project design.

The existence of multiple easily accessible institutions whose decisions do not show a high degree of consistency tends to reduce disputants' willingness to accept difficult but necessary decisions. Our first aim was to try to increase consistency by stimulating cooperation between different institutions involved in dispute resolution. We therefore proposed to the heads of *umudugudu* and *inyangamugayo* to work together in resolving disputes. The inspiration for this part of the intervention came from similar forms of cooperation at village level that we had occasionally witnessed during previous fieldwork experiences.

This part of the project targeted 32 participants from all 6 villages of one administrative cell (Shengampuri) in the Rulindo district in the North West of the country, where the importance of customary law is generally thought to be stronger. The group of participants included 20 women (6 members of the *umudugudu* council, 8 *inyangamugayo*, 5 representatives of the National Women's Council, and a sector official charged with civil affairs) and 12 men (6 *inyangamugayo*, 5 heads of *umudugudu* and the executive secretary of the cell).¹⁶¹ At the start of the programme preparatory field visits were made to learn more about how dispute resolution was structured at the level of each village and to obtain more detailed information concerning the main types of land dispute. After an explanatory workshop, the decision on which persons would participate was made at village level.

In a second phase a roundtable was organized to discuss ways to coordinate and concentrate efforts to solve disputes in order to ensure greater consistency in decision making. Certain proposals were made by our agents, but the participants were explicitly invited to give their own analysis and proposals. The first proposal that was adopted was to increase the involvement of the heads of *umudugudu* in the *inama y'umuryango*, in the sense that he or she would try to assist the family members to find their own solution and would then publicly endorse the solution found. This would give the solution more weight, given the respect for the head of *umudugudu*, and signal to the disputants that at *umudugudu* level the outcome was likely to be the same. The second proposal that was adopted was to organize such meetings as much as possible, but only insofar the family would agree, with the participation and support of extended family members, neighbors, *inyangamugayo* and village level representatives of the National Women Council. This would ensure that all possible stakeholders would be present right from the start,¹⁶² allow the disputants to benefit from the mediation skills and legitimacy of the *inyangamugayo* and ensure that women's interests would be better respected. In particular, it was said that the presence of persons who are more used to managing discussions and looking for just solutions (the head of the *umudugudu* and the *inyangomugayo*) could reduce distrust between disputants, which was pointed out as one of the main obstacles to having an open discussion about a dispute.¹⁶³ To ensure that all relevant interests and views would be taken into account in dispute resolution and, ultimately, that the outcome of the process would be considered fair by both disputants, a discussion was held on what mediation meant to the participants and some basic mediation techniques were discussed.

Subsequently, a workshop was organized in which the participants were divided into 6 groups (one per village) and were asked to describe a land dispute they had recently dealt with to the other participants and to explain how they had helped to resolve it. These cases were then used to explain and exchange views on important principles regarding land rights and women's inheritance rights embodied in statutory law.

¹⁶¹ Targeting per vilage approximately 2 members of the village authorities (*umuyobozi wumudugudu*, the village chief, and the person charged with women and social affairs); 1 local representative of the national women council; 3 *inyangamugayo*.

¹⁶² Which is important since the *abunzi* and Primary Courts often overturn lower ranking decisions because not all the affected parties have been included in the process.

¹⁶³ In particular land and inheritance disputes were qualified amongst the most difficult to resolve: most people would be afraid to speak with such an important interest at stake.

Reference to these principles by the various institutions concerned in dispute resolution would enhance consistency and should therefore discourage forum shopping. In addition, these examples were used to deepen the discussion on techniques for resolving disputes. In addition, a tool in the form of a dispute registry book was introduced and discussed. The participants considered that such a registry could help them to remember what was said and agreed upon; enable them to follow-up on cases and avoid them dealing with the same case more than once.

In the months following the roundtable and workshop a total of 12 coaching field visits were organized (2 per village). These visits to the villages on days where our partners would deal with disputes served as on-site follow-up trainings. We agreed with them that we would passively observe the process and that only afterwards we would exchange views with them on what had happened and give guidance. Generally, these sessions would take place on or in the very close vicinity of the disputed land or, in case of marital disputes, in front of the couple's house.

3.2.2 Intervention at the level of the *abunzi* committees

By means of the intervention at the level of the *abunzi* we sought to achieve three results: firstly, to contribute to improved consistency in and quality of decisions adopted at community level, notably by increasing respect for women's formally guaranteed land rights; secondly, to make the *abunzi* conscious of the differences between mediation and adversarial proceedings and to strengthen their capacities to engage in mediation; and thirdly, to make the *abunzi* conscious of the importance of explaining their decisions to the disputants and to strengthening their capacities to do so.

Photo 3. Participants in a workshop at the level of the *abunzi*



This part of the project targeted all 55 members (including 25 women) of 4 selected *abunzi* committees in the district of Rulindo and the 4 executive secretaries of the cells in which we worked. At the start of the programme an explanatory meeting was organized and preparatory field visits were made to learn more about the functioning of each committee and to obtain more detailed information concerning the main types of land dispute. Next, we organized two participative trainings (each one targeting the members of two committees) and in the period following the training two coaching field visits were

made to each of the four committees. During these visits our agents first passively monitored the work of the *abunzi* committee (generally speaking, the *abunzi* deal with an average of 3 cases per session). Afterwards, on the basis of their notes, they would discuss the way in which the cases had been handled and provide guidance. In addition, three workshops were organised between representatives of the committees and the primary court judge in whose jurisdiction the targeted cells are situated.

The first part of the participative training focused on approaches to dispute resolution. The training session started with a series of sketches performed by the trainers that were intended to highlight the differences between the two forms of procedures. These sketches were based on typical cases observed during earlier monitoring visits to the targeted committees. After each sketch there would be an exchange with the *abunzi* concerning their appreciation of the sketch. With regard to adversarial hearings, we insisted on basic procedural principles, such as the right of the disputants to be treated equally in terms of presenting arguments and evidence, and the importance of informing the disputants of the procedure that would be followed (also for submitting the case to court). The second day the *abunzi* themselves were asked to reenact a land dispute involving inheritance matters that they had dealt with as a committee. This provided a concrete basis for a dialogue on some important principles regarding women's rights to land that are enshrined in formal law.¹⁶⁴ The use of theatre techniques was chosen to enable the *abunzi* to develop new perspectives on their work and to acquire new information in an applied and practical way. Sketches performed by our agents and role plays performed by the participants were often used to present one situation in two different ways (for example, the same disputants being mediated or subjected to an adversarial hearing). During the trainings we also practiced the use of the tools that had been developed.

The tools were designed to help the *abunzi* overcome a number of the problems referred to above. Firstly, we distributed a standard decision form (see Annex 2). The general purpose of the form is to guide the *abunzi* through all stages of a mediation session or adversarial hearing and to avoid that they skip significant elements. Importantly, it requires the *abunzi* to make real effort to understand the dispute, for example, by asking about the relationship between the parties, the facts on which they agree and points on which they disagree. Our monitoring visits had shown that committees often reached a decision without clarifying these issues. The form is also intended to contribute to procedural fairness by making sure that certain procedural principles are not neglected. It points to the need to first explore the scope for mediation, reminds the *abunzi* to check whether they have understood the disputants' arguments well before withdrawing to adopt a decision, and includes important information to be read aloud to the parties (for example on how to submit the case to the primary court). Finally, the form helps the *abunzi* to reason their decision by forcing them to explain why they consider the arguments of the prevailing disputant to be more convincing than those of the one that has to give in. Other tools included a standard registry (Annex 4); a standard form to be used for summoning disputants that explains to the disputant in question that he or she is requested to come to the office of the cell for a mediation session and that he or she has to bring witnesses and proofs (Annex 1); and a standard form for informing disputants that a decision has been taken, that can be used when (one of) the disputants is absent, which is crucial to avoid the situation where the disputant in question is too late to submit the case to the primary court on appeal (Annex 3).

¹⁶⁴ We chose to emphasize principles rather than the details of legislative texts for a number of reasons. Firstly, the *abunzi* are not professionals and are not used to reading and interpreting technical and complex pieces of legislation. We feared that providing too much information would increase the likelihood that the information would not be understood or remembered (correctly). Secondly, underlining the importance for *abunzi* to know every single provision (with all its sub-provisions) of the law entails the risk of strengthening the tendency of the *abunzi* to position themselves as judges, whereas their main task should be to mediate between the parties.

Photo 4. *Abunzi* practicing role plays



Finally we tried to strengthen the *abunzi*'s capacities in terms of procedures and women's land rights by organizing workshops with primary court judges in whose jurisdiction the targeted committees fall.¹⁶⁵ At the same time, these workshops were intended to foster consistency and quality in decision making. The idea behind these workshops is that there is no line of communication between the courts and the *abunzi*. If the court annuls an *abunzi* decision because basic procedural principles were not respected or because it infringes the material rights of one of the parties, the *abunzi* committee in question will generally never be informed. As a consequence, when they are called upon to deal with a similar case they are likely to make the same mistakes again. In fact, judges frequently tell us that there are certain types of disputes or procedural requirements with which the *abunzi* always have difficulties. The workshops allowed the court to give feedback to the *abunzi*. The *abunzi* could use the lessons learned to signal to the parties that, although they are free to file an appeal, this is their understanding of the law as applied by the courts.¹⁶⁶

¹⁶⁵ These workshops are part of a larger programme funded by the Belgian Federal Ministry for Development Cooperation, which started in February 2010 and will continue at least until November 2012. From February to June 2010 a total of 19 workshops were organized all over the country, targeting 14 Primary Courts; 348 *abunzi* committees; 976 *abunzi* (of whom 304 female) and 283 executive secretaries. This includes three workshops in the areas targeted by the pilot project described in this report (two workshops in the Primary Court of Kinihira, involving *abunzi* from the Marembo, Cyohoha, Gitare, and Rwamahwa cells and one in the Primary Court of Mbogo, involving the *abunzi* from the Shengampuri cell).

¹⁶⁶ The idea for this project was born in several interviews and exchanges that we have had with Primary Court judges. In some places exchanges between judges and *abunzi* already exist.

Photo 5. Participants in Primary Court- Abunzi workshop



Each workshop would bring together the primary court judge and the law clerk, 2 representatives of each *abunzi* committee plus the executive secretary of the cells concerned. The workshops were prepared in cooperation with the judge and the clerk. Preparation consisted of collecting a number of judgments concerning decisions adopted by the targeted committees and making an analysis of the difficulties encountered by the *abunzi* as they were reflected in these judgments. On the basis of this analysis, we would have several preparatory meetings with the judge and law clerk to fine-tune the topics to be addressed during the workshop. This approach allowed for a constructive exchange between the court and the *abunzi* on the basis of concrete examples of their own work.

3.3 The study

In this section we discuss the methodology used in order to examine the effects of our intervention. Whilst the project was implemented more or less as originally foreseen, we were forced to make substantial changes to the design of the study during the course of the pilot. This affected both the set up of the study and the type of data collected.

3.3.1 The set up of the study and necessary changes

The set up that was originally chosen for the study of both elements of the project (*inyangamugayo* and *abunzi*) was to select two zones: one zone where we would undertake the intervention and another zone that would be left free of intervention and that would serve as a control group. The idea was that evolutions in the intervention zone could be contrasted to the situation in the control zone. In addition, we wanted to make evolution visible, if there was any, by conducting a baseline study. This would allow for a comparison of the before and after situation in the intervention zone.

Accordingly, at the start of the pilot project we selected intervention and control zones for both elements of the study and started to make preparatory field visits to collect baseline information. The zones were situated in two districts (Rulindo and Gakenke) in the Northern province, which is the part of Rwanda where customary traditions are generally regarded to be the strongest. The intervention zone for the *inyangamugayo*

study¹⁶⁷ consisted of 6 villages located in the same cell, whereas the control zone included 5 villages (*imidugudu*) spread out over 2 cells located in the vicinity. The intervention zone for the *abunzi* study consisted of 4 cells (coinciding with the 'jurisdiction' of 4 *abunzi* committees), whereas the control zone included 5 cells located in the vicinity. Details are provided in Table 4 and Table 5.

Table 2. Study zones *inyangamugayo* study

District	Sector	Cell	Umudugudu
Intervention zone			
Rulindo	Masoro	Shengampuri	Umutagata
			Umubuga
			Agasharu
			Amataba
			Nyabinyana
Rusine			
Control zone			
Gakenke	Ruli	Ruli	Gataba
			Gahondo
		Rwesero	Gisizi
			Nyarunyinya
			Gatare

Table 3. Study zones *abunzi* study

District	Sector	Cell	Primary Court
Intervention zone			
Rulindo	Base	Gitare	Kinihira
		Cyohoha	
		Rwamahwa	
	Kinihira	Marembo	
Control zone			
Gakenke	Gakenke	Kagoma	Gakenke
		Nganzo	
	Ruli	Ruli	Rushashi
		Rwesero	
Rulindo	Masoro	Shengampuri	Kinihira

During our preparatory field visits it soon became clear that it would not be possible to draw strong conclusions about the impact of our project by comparing the evolution of events in the intervention and control zones. This type of study presumes that the starting point situation in the target group and the control group is the same more or less the same.¹⁶⁸ This was not the case. In the situation before the intervention, despite their vicinity, there were significant differences between the institutions operating in intervention zones and those active in the control zones. One *abunzi* committee in the control zone, for example, was very successful in terms of mediation (and none of the committees in the intervention zone managed to attain their level of competence). There

¹⁶⁷ In the following we will refer to the study of the impact of the intervention at the closest level of proximity in this way, even though the intervention targeted more institutions than the *inyangamugayo* alone. As we have seen, the primary aim of this part of the intervention was to stimulate cooperation.

¹⁶⁸ Particularly, since the number of cells in the *abunzi* study and the number of *imidugudu* in the *inyangamugayo* study are relatively small. If these numbers had been higher, the differences might have been less of a concern.

were significant differences between the institutions operating within each area and sometimes we even found stark contrast between the way in which one *abunzi* committee, on the same day, would deal with different cases, depending on which of the 12 *abunzi* the disputants would select. The personalities, motivation, skills, education, professional experiences and age of the persons in these institutions all appear to contribute to these differences.

The differences between the institutions in the various zones forced us to concentrate on the before-and-after comparison and, crucially, to make this comparison, not across the board, but per committee or per village. Given the increased importance of this element of the study, some more time than originally foreseen was taken to study the *ex ante* situation (that is, the intervention started later). Still, since sufficient time was also needed to study the *ex post* situation, we decided to continue to observe the institutions in the control zone throughout the project, in order to continue to enrich our general understanding of the problems with community justice. In this regard it should also be mentioned that charting the *ex ante* situation was more time consuming than expected, since there were significant differences in the way in which records were kept. Some *abunzi* committees, for example, kept rather detailed records of the proceedings in all cases, others only registered cases which had to be decided upon because mediation had failed, whereas others still kept no registry at all and only had a folder in which they kept copies of decisions. For the purposes of the *inyangamugayo* study, almost no written information was available.

3.3.2 Impact indicators and data collection

The study was originally designed to assess the impact of the project on the basis of a combination of qualitative research methods and, especially as regards the *abunzi* study, some simple quantitative research techniques.¹⁶⁹ Thus, we had thought that we would be able to learn whether the intervention at the level of the *abunzi* resulted in more satisfaction on the side of disputants with the decisions adopted, by, on the one hand, conducting interviews and organizing focus groups with disputants and *abunzi*, and, on the other, checking in the primary court registries whether the number of 'appeals' of *abunzi* decisions went down in the intervention zone. Similarly, in terms of the quality of the *abunzi* decisions, we intended to examine whether the rate of annulment by the primary court of such decisions would go down. For a number of reasons, it was not feasible to collect good data that would allow us to use these quantitative indicators. Two obstacles stood in the way of quantitative analysis.

¹⁶⁹ We did not expect that data would be available in the context of the *inyangamugayo* study that would allow us to engage in quantitative analysis.

Photo 6. Focus group with disputants and other male community members



Firstly, we could not gather good quality data on the *ex ante* situation. This effectively prevented us from charting the rate of appeals to the primary court. As suggested, there was no consistency in the way the various *abunzi* committees that we worked with recorded information about the cases they dealt with. It happened frequently that we would be unable to find the case of disputants that we had interviewed in the relevant *abunzi* registry or that we found primary court judgments that made reference to *abunzi* decisions that were nowhere to be found at the level of the cell. It quickly proved impossible to try to reconstruct what had happened to create a complete registry. For the cases dealt with during the project, this problem was remedied by means of the standard registry (which was handed out both in the intervention and control zones), but still, this did not allow us to make a good comparison over time. Similarly, it happened, be it much less often, that we would talk to disputants who indicated that their case had entered the formal court system, but that we were unable to find a trace of such cases in the court registry. It should also be mentioned that as soon as it became clear, during the month of May, that new elections for the *abunzi* committees would be scheduled for the month of June, a number of committees started postponing new cases.

Secondly, the duration of the pilot project was too short for the primary court to review and decide on any case decided by the targeted *abunzi* committees after the training or workshop. This means that we were also unable to see whether there were any changes in the rates of annulment or dismissal. As a consequence, the analysis of the results of our project, both in the context of the intervention at the closest level of proximity and the intervention at the level of the *abunzi*, is mainly based on the use of qualitative research techniques. In the remainder of this section we provide an overview of how data collection was spread out over the project period and discuss precisely what data was collected.

3.3.3 Collected data and time lines

Data for both parts of the study was collected in a 10-month period stretching from October 2009 to August 2010, as indicated in Table 4 and Table 6. For the *inama* study preparatory field visits, including a focus group in each area, started in December and the workshop was provided in March. Monitoring of dispute resolution sessions was an on-going activity that started in January. These visits were used to interview both disputants and heads of *umudugudu*, *inyangamugayo* and NWC representatives. The notes of the observations made by our agents were recorded on a purposely designed monitoring form (Annex 7) and coaching form (Annex 8). Towards the end of the project in-depth interviews were held with disputants and focus group meetings were organized

in the 11 targeted *imidugudu*. Table 5 provides an overview of the data gathered as part of the study made at the closest level of proximity.

A number of practical difficulties were encountered in monitoring at the closest level of proximity. We depended on the head of *umudugudu*, for instance, to inform us regarding any *inama y'umuryango* that would be held and to ask the family concerned whether they would accept our presence. Naturally, heads of *umudugudu* do not control such meetings; this is primarily an affair of the family. This means that the head of *umudugudu* was not always aware of the fact that a meeting was being organized, or that he or she found out about such a meeting only very late, leaving us insufficient time to come and attend. Another reason why our agents were not always able to attend was that many such meetings were held in the evening hours or during the weekend. It should also be mentioned that the discussion of problems in a family meeting is not necessarily an occasion on which outsiders are welcome. It is possible that the difficulties that we encountered in directly monitoring such meetings must be partly attributed to such factors.

Table 4. Timeline of the study at the closest level of proximity

Activities	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Preparatory field visits										
Preparation of tools and materials										
Training of trainers										
Workshop and training										
Monitoring										
Coaching field visits										
Interviews and focus groups										

Table 5. Overview of data gathered as part of the study at the closest level of proximity

Description	Quantity
Monitoring of the handling of disputes by the 11 clusters of <i>inama-inyangamugayo-umudugudu</i>	23 disputes monitored
Interviews with disputants involved in a case handled by the targeted clusters	17 disputants in a semi-structured interview
Interviews with representatives of the targeted clusters	65 representatives in open interviews in the preparatory and monitoring phase of the project
Decisions issued by the clusters	48 decisions collected (21 of which somehow related to land or succession)
Focus group meetings with representatives of the clusters	4 meetings held with representatives of different clusters (2 at the beginning and 2 at the end of the project)

The *abunzi* study started in October with preparatory visits, including 3 focus groups with representatives of *abunzi* committees and open interviews with cell and sector officials in both areas. The participative training was given in February, as were the first two workshops with the primary courts. A third workshop (in the intervention zone) was organized in June. Monitoring of the *abunzi* committees both in the intervention and control zone was an ongoing activity that started in November. The agents used a standard monitoring form (Annex 5) to evaluate, amongst other things, whether basic procedural principles and women’s inheritance rights are respected. In addition a

standard questionnaire was used to conduct a fully structured interview with both the complainant and his opponent after each session monitored (Annex 6). Towards the end of the project more in-depth, semi-structured, interviews were held with disputants and focus groups with the 9 targeted *abunzi* committees were organized. Table 7 provides an overview of the data gathered as part of the *abunzi* study.

Table 6. Timeline *abunzi* study

Activities	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Preparatory field visits										
Preparation of tools and materials										
Training of trainers										
Training of <i>abunzi</i>										
Workshop with primary court judges										
Monitoring										
Coaching field visits										
Interviews and focus groups										

Table 7. Overview of data gathered as part of the *abunzi* study

Description	Quantity
Monitoring of the handling of disputes by the 9 <i>abunzi</i> committees targeted	64 disputes monitored
Interviews with disputants involved in a case handled by the targeted <i>abunzi</i> committees	120 disputants interviewed (105 in a structured interview and 15 in a semi-structured interview)
<i>Abunzi</i> decisions	403 decisions collected (249 at cell level and 154 in court registries)
Primary court judgments	170 judgments collected
Focus group meetings with representatives of the targeted <i>abunzi</i> committees	7 meetings held with representatives of different committees (3 at the beginning and 4 at the end of the project)
Interviews with executive secretaries of the targeted cells	9 secretaries interviewed at the beginning, half-way and the end of the project
Interviews with primary court judges	3 judges interviewed at the beginning, half-way and the end of the project

4. Result analysis

In this chapter we discuss the impact of our pilot project on the targeted communities in terms of their capacity to autonomously bring disputes to an end that is acceptable to both parties and respectful of women’s formally guaranteed land rights. The chapter proceeds as follows: for each of the three problems that were intended to be addressed by the intervention – regarding consistency in lower level decision making (section 4.1), mediation (section 4.2) and respect for women’s land rights (section 4.3) – we discuss the results that were achieved at the closest level of proximity and at the level of the *abunzi*.

Photo 7. Focus group to evaluate the programme's impact



As explained in the previous chapter, the analysis is essentially based on observations of the functioning of the targeted institutions and on interviews and focus group sessions both with members of these institutions and disputants. In addition, decisions issued by these institutions were analysed, although at the closest level of proximity dispute resolution is mostly an oral process.¹⁷⁰ Where possible, we looked at the effects of the intervention on the volume of cases flowing to the next institution in the hierarchy (a decrease could signal increased satisfaction with the decisions at the lower level). We rely mainly on comparisons made between the *ex ante* and *ex post* situation in the intervention zone. At some place comparisons are made between the situation in the intervention and the control zones.

4.1 Multiple *fora* and consistency

As said, the first objective of the intervention at the closest level of proximity was to increase the consistency between the solutions that are proposed by the different institutions operating at the closest level of proximity.¹⁷¹ This was to be achieved by

¹⁷⁰ The only notes that are sometimes made can be found in the so-called family notebooks. Given that 1) these are kept by the families themselves; 2) the information contained therein is generally very brief and 3) notes are not taken consistently on the same subject matters in different villages or by different families; it was not feasible to include them in our analysis. The decisions analysed concerned those that were issued after the intervention on papers we specifically distributed so that participants could make some notes as to their meetings and the conclusions reached, whether they were adopted by the parties or not. During our monitoring visits and while interviewing representatives we found however that not everything that was being done found its way onto a piece of paper.

¹⁷¹ As was noted in section 3.1.1, consistency is not only a concern at the closest level of proximity. There is a need, also, particularly as regards respect for women's land rights, to ensure that the *abunzi* are aware of basic elements of the law as applied by Primary Courts. This is an issue that was addressed by means of workshops that brought together Primary Court judges with representatives of the *abunzi* in their jurisdiction. Whilst reactions from both *abunzi* and judges to these workshops are generally very positive, it was not possible, as part of this study, to check to what extent these workshops actually contributed to increased consistency. The reasons were mentioned in section 3: it was difficult to obtain accurate baseline data concerning the proportion of cases in which the courts annulled *abunzi* decisions and hardly any *abunzi* decision adopted during the time span of the project had been subjected to review on the merits before data collection came to an end. Nonetheless, during our monitoring work we were able to observe at several instances that the *abunzi* justified a decision by explaining to the parties that this was a matter on which they had received guidance and instructions from the Primary Court.

making separately functioning institutions collaborate. We targeted heads of *umudugudu*, as well as *inyangamugayo* and representatives of the National Women's Council that were already active in the intervention zone. In this section we look at the extent to which these institutions effectively started to collaborate. The implications in terms of mediation and respect for women's rights are discussed in the next section.

4.1.1 Proximate institutions working separately (ex ante and control zone)

Heads of *umudugudu* (either alone or together with the other members of the *umudugudu* council)¹⁷² play an important role in the dispute resolution process. Both the baseline study conducted in the intervention zone and our general observations in the control zone showed that many disputants prefer to present their disputes, even the most minor, to the head of the *umudugudu* rather than organizing an *inama y'umuryango*.¹⁷³ Nonetheless, the heads of *umudugudu* in both areas almost always require disputants to first see whether they can work out their problem themselves in an *inama y'umuryango*.¹⁷⁴ Although some village heads may offer to be present during this *inama y'umuryango* as an advisor of the family and to assist in managing the discussions, most do not and such meetings are considered an internal family affair.¹⁷⁵

We saw above that *inyangamugayo* may get involved in dispute resolution in different manners and at different moments. Sometimes they work together with heads of *umudugudu* in dispute resolution sessions as part of a more or less regular form of cooperation. Mostly, however, their presence in such sessions is more occasional in nature. They may be there because they are affected as a neighbour or as a family member of one or both of the disputants. In any case, in more than half of the dispute resolution sessions at *umudugudu* level that we observed in the control zone no *inyangamugayo* was present and, in those cases where they were present, there would seldom be more than one *inyangamugayo*. It is more common that they are involved in the resolution of a dispute at an earlier stage. They may participate in the *inama y'umuryango* or intervene after the family meeting but before the head *umudugudu* deals with the dispute. They may get involved on their own initiative, or because they are requested to give advice by the disputants, the family or neighbours. It should also be noted that in the control zone members of the National Women's Council were generally not involved in dispute resolution, with the exception of a woman who was also a member of the *umudugudu* council. Where they were, this involvement was limited to disputes where conjugal problems were at issue (i.e. not including inheritance cases).

Our preparatory field visits in the intervention zone and general observations in the control zone made clear that even though heads of *umudugudu* will require that efforts are made to resolve the dispute before they intervene, they will often not be informed in much detail of what has happened during the *inama y'umuryango* or the intervention of the *inyangamugayo*, which arguments were raised and why no solution was found.

¹⁷² The head of *umudugudu* decides who will take part in the dispute resolution session, depending on the type of case at hand. The representative of social affairs will typically be invited to take part in sessions in which disputes between husbands and wives are at issue, other representatives include the committee members charged with security and development.

¹⁷³ Analysis of interviews and focus groups in both zones suggests that this preference exists for historic and practical reasons. It was frequently mentioned, in some way or another, that the genocide had damaged many social ties that supported and facilitated informal intra and inter family dispute resolution. In addition, the fact that family members often no longer live in close vicinity also make dispute resolution through an *inama y'umuryango* more difficult. Finally, it is quite obvious that because many members of the rural population completely depend on their agricultural activities they are therefore not easily convinced to render part of the land they possess, at least not without pressure from the authorities to do so.

¹⁷⁴ For instance, we found that a confirmation by the *nyumbakumi* (an administrative unit of 10 houses that has officially been abolished) that an *inama y'umuryango* had been held was required by the head of *umudugudu* in some of the villages in the control area before he accepted to hear the dispute.

¹⁷⁵ In 2 villages in the control area the head of *umudugudu* sometimes offers to participate as an advisor in such a meeting, while the head of another *umudugudu* sometimes gives a disputant the advice to find and bring other advisors (e.g. *inyangamugayo*) to the meeting. In the remaining 2 villages the head of *umudugudu* generally does not give guidance or instructions as regards the organization of the *inama y'umuryango*.

Again, the head of *umudugudu* himself will often not have been present and no paper trail will exist. In this regard it should also be noted that, for reasons that we have not been able to fully fathom, it seems that disputants and witnesses sometimes consider that it is better for them, tactically, not to discuss these earlier stages in detail. Several respondents pointed out to us that especially in disputes over land, where there are such big interests at stake, everybody may be afraid to speak for fear of saying something that will make them or a community member lose the case.

4.1.2 Ex post collaboration between proximate institutions

Whilst we were able to observe this only twice, the reports from heads of *umudugudu* and *inyangamugayo* in interviews suggest that after the training they became more open to requests by families to take part in their *inama y'umuryango*. And, crucially, after the intervention the *inyangamugayo* in all the targeted *imidugudu* acquired an established role in dispute resolution next to the head of *umudugudu*. On average, three *inyangamugayo* would be present at such sessions. Similarly, in cases involving women's inheritance rights, one or two representatives of the National Women's Council were found to be present. As will be explained in more detail in the following section, this had an impact on the way in which disputes were resolved at this level, which became more open.¹⁷⁶ The *inyangamugayo*, in particular, also became more pro-active. They would go to speak to disputants before the session and afterwards, in order to try to overcome the obstacles that kept disputants from accepting the proposed solutions. And it happened that shortly before a session would be held, they would go around urging neighbours and other affected community members to assist in the meeting.

After the various *inyangamugayo* of the targeted cell had come to know each other during the workshop, or came to know each other better, they continued to meet on a regular basis in order to exchange on their experiences.¹⁷⁷ On several occasions we saw that an *inyangamugayo* was asked to assist one of his colleagues from another village. In addition, a practice emerged whereby *inyangamugayo* assist the executive secretary of the cell in the execution of decisions. Most of the *inyangamugayo* informed us, also, that they now try to be present during the discussion of disputes that are not resolved and move on to the cell or the *abunzi*, indicating that they feel more comfortable to contribute to discussions at that level.¹⁷⁸ If they are unable to go, they either ask another *inyangamugayo* to whom they explain the case to participate or prepare a report so that there is some continuity.

It should be emphasized that in large part these practices emerged spontaneously after the intervention, in the sense that they were the fruit of the imagination and energy of the *inyangamugayo* and heads of *umudugudu* themselves. During the workshop the discussions on collaboration never entered into this level of detail. The direct contribution of the project was to bring them together and discuss the possible advantages of working together. In interviews and focus group meetings held towards the end of the project the *inyangamugayo* and representatives of the National Women's Council explained to us that they had gained confidence in the usefulness of their role in dispute resolution both by the training and the recognition and support of the heads of *umudugudu*. They, in turn, told us that they were satisfied with the collaboration as it lessened their workload,

¹⁷⁶ In particular, our agents observed that the sessions became more open, both in the sense that more clarifying questions were asked to the disputants and informed or affected members of the public were encouraged to participate. And it seemed that possible solutions to the problem were presented at a somewhat later stage in the discussion and not, as we often saw in the control zone, practically at the start of the debates.

¹⁷⁷ We learned of several meetings by *inyangamugayo* from neighbouring *imidugudu* and of at least two meetings at cell level of all the *inyangamugayo* that had been trained. These were not official meetings, for instance with heads of *umudugudu*, but they would just meet casually to discuss and be together. During our field visits we bumped into such groups at several occasions, as they were sitting on benches on a porch talking to each other.

¹⁷⁸ A number of *inyangamugayo* indicated that they used to feel intimidated by the authorities and unsure about themselves and that the workshop helped them to feel more confident and made them realize the importance of their contribution to dispute resolution.

allowed them to share responsibility for difficult decisions and, as is further explained in the next section, made dispute resolution more effective.

4.2 The approach to dispute resolution

The *abunzi* committees have primarily been instituted in order to mediate between disputants and they are asked to adopt what we might call an adversarial decision only in the event that mediation fails. In practice, however, many *abunzi* position themselves as judges from the beginning of the process. Rather than trying to bring the parties together, their efforts are directed at finding out what has happened and which party's claim should consequently be accepted. Somewhat similarly, we have seen it happen on several occasions in the control zone that a head of *umudugudu* spent more time convincing disputants to accept a solution to their problem that he or she had come up with almost immediately after the beginning of the mediation session, rather than in trying to find out what reasons the parties had for opposing each other and what obstacles stood between them. Recall, also, that the lack of reasoning of decisions is a serious problem at both levels that makes it harder for disputants to accept difficult outcomes and leads to extra appeals.¹⁷⁹

To address these problems we organized workshops aimed at making the participants conscious of the differences between mediation and adjudication and trainings on mediation techniques. The workshops and trainings were complemented by a series of coaching visits. The purpose of this part of the intervention was to enable the targeted institutions to bring more disputes to an end acceptable to both parties, so that disputes are not drawn out and social peace can be restored. This was to be achieved, amongst other ways, by giving individual disputants more control over the way in which their dispute was resolved. In order to assess the impact of this intervention we first looked at whether there was an effect on the volume of cases flowing to the next institution in the hierarchy. If after the intervention the number of cases that are appealed drops, this may be an indication that the targeted institution is having more success in durably resolving disputes. The best indications for a decrease in volume were found at the closest level of proximity.

In an interview during the final stage of the study the executive secretary of the cell in which the targeted *imidugudu* were located, to whom cases are generally submitted if resolution at *umudugudu* level is unsuccessful, informed us that during the course of the project he had seen the number of disputes he received from the villages decrease and that the number of inheritance disputes had fallen markedly; during the final month of August, for example, he received what he described as 'only 13 cases' and not one of these involved inheritance issues, whereas normally he would get at least five or six such cases. We were informed by one of the *inyangamugayo*, also, that during a meeting of the council of the cell he (and through him the other *inyangamugayo* that had participated in the project) had been praised and congratulated on the success in stemming the flow of unresolved disputes. It is true that in the absence of detailed records we had not been able to establish a baseline at the beginning of the project that allows us to actually measure these effects and express them in quantitative terms. Nonetheless, when put next to the *ex post* observations made by our team and the results of the interviews and focus group meetings, which are discussed below, we consider that there are fairly good indications that the intervention had enabled the institutions at the closest level of proximity to bring more disputes to an end acceptable to both parties.

At the level of the *abunzi* a slightly more intensive workshop and training on mediation techniques and motivating decisions was organized. As explained in Chapter 3, however, it was not possible to verify the impact of the training on the functioning of the *abunzi* by

¹⁷⁹ See section 3.1.2 and the case cited in Text Box 1 (Section 1.1.).

looking at or inquiring about the case influx at the level of the Primary Courts. A baseline could not be established, since before the start of the project and the distribution of standard registries cases were not regularly recorded in a consistent fashion. In particular, during our exploratory field visits we found out that in the majority of the cells in the intervention and control zones cases in which mediation had succeeded were not or not always recorded. We also found out that disputants may attempt to submit a case to the Primary Court well after the prescribed 30-day period has passed. Even if such cases will not be heard by the Primary Court, they are indicative of dissatisfaction with the decision of the *abunzi*. Given the relatively short period of time available for the study after the intervention, analysis of entries in the court registry could not be expected to provide very reliable data. And, more importantly, under the new *abunzi* law, which came into effect in the fourth month after the intervention, disputants no longer 'appeal' to the Primary Court but to the *abunzi* committees at the sector level. Since these committees were only partially operational during the final months of the study, and part of the cases had to be retrieved from the courts, it proved impossible to obtain good data on the number of cases that had been appealed.

Still during field visits made after the intervention our agents noted a number of improvements in the functioning of the targeted institutions. The changes observed were largely the same at the level of the *abunzi* and the village (closest level of proximity). Concretely, in a substantial number of cases we saw signs of greater openness in dispute resolution, in the sense that more time was taken by the members of the targeted institutions to understand the arguments, situations and interests of both disputants and to reflect this understanding in the attempts to reach a solution; disputants were more often encouraged to propose solutions to their problem themselves; and more effort was made to explain the reasoning behind the solutions found, particularly to disputants who were asked to make concessions.¹⁸⁰ Examples of cases in which these effects were seen are given in Text Box 6 (this section), Text Box 8 (next section) and Text Box 1 (Section 1.1).

Moreover, at the level of the *abunzi* we saw that the standard decision form (see Annex 2) that had been distributed to the committees made a significant contribution to these developments. This form had been designed to help the *abunzi* to describe the solution found, both where mediation was successful and where an adversarial decision had to be adopted, and in the latter case to explain their decisions. In practice, we found that the *abunzi* used this form as a script to guide them through the procedure. For example, we saw that the fact that the form required them to describe the points of view of both parties and to explain why they give more credence to the claims of one of them, forced them also to make more effort to understand the arguments of both parties before starting to work on a solution.

Box 6. Example of successful mediation¹⁸¹

Mugayanduri has two surviving brothers Gasherebuka and Bavarie. She would like to restore to herself a parcel of land given to her by her father in the form of *igiseke*. She has asked her younger brother, Gasherebuka, to help her with this.

¹⁸⁰ Our observations were confirmed in many of the interviews and focus groups sessions with participants that were held towards the end of the study. For example, an older *inyangamugayo* indicated that the training made him realize the importance of listening and analysing without trying to judge the disputants or their behaviour. An *umunzi* told us: "it made me see [the training] that we were sometimes unfair towards disputants, because we would hardly listen to them". She continued to say that she now realized that both disputants have the 'right' to explain their view on the case and that they have a 'right' to hear why the *abunzi* think the case should be decided in a certain way. Another *umunzi* reacted as follows, when asked whether there had been any changes in the work of his committee after the intervention: "The parties are no longer afraid of us. We explain that we are there to mediate, to help them find a solution and not to judge them. Before we used to be very authoritative, also in how we used to talk to the disputants. We just wanted to apply the laws."

¹⁸¹ The names and certain specifics of the case described in this text box have been changed in order to respect the privacy of the persons concerned. Some further details have been altered in order to make the case easier to understand. The description of this case is included purely for illustrative purposes.

He prefers not to offend Bavarie, the head of family, who is using the parcel of land with his second wife. Their eldest brother, Eleazar fled the country many years ago and it is not sure whether he will return. Gasherebuka decides to claim a piece of land exploited by Nayigiziki, the son of their deceased sister Aloysie. He does so (before our intervention and) in the name of Bavarie. The village head and the executive secretary of the cell find the case complicated and refer Gasherebuka to the *abunzi*, where he loses. It is not clear to the *abunzi* why Gasherebuka claims land donated by the family to his orphan-nephew. Nobody has mentioned the fact that in reality it is Mugayanduri who needs some land. Apparently, many family members were reluctant to appear or testify in front of the *abunzi*: Mugayanduri was afraid of what her brothers and the neighbors would think of her; Bavarie did not come to the meeting, because he had other things to do and he also feared that he might be condemned to give up part of his land; and Nayigiziki pretended that he had lost the document that could prove that the family had donated him the land.

Mugayanduri is not satisfied with the result and the fact that she was not invited to speak. She considers that she stands little chance to restore her *igiseke*, because it had been given to her in the understanding that Bavarie would keep it for her when she got married. Since she is willing to accept another plot in return and knows that not all land has officially been divided, she now asks Nayigiziki to allow her to cultivate part of the land he uses. With the help of two *inyangamugayo* who have participated in the workshop, she organizes an *inama y'umuryango* in a banana grove belonging to the family. At this meeting she feels confident enough to advance her needs to have some land of her own. Both brothers, Nayigiziki, their wives, as well as some of their direct neighbors who are well informed of the family history, participate in the meeting. The *inyangamugayo* together with the chef of the *umudugudu* facilitate the, at times agitated, discussions. They, nevertheless, find a solution (that has been proposed by Bavarie) and decide that it has to be discussed in public to avoid new conflicts, especially in case Eleazar returns or when more children reach adulthood. During a community meeting in which the *inyangamugayo* intervene in Mugayanduri's favour and other family members and neighbors testify, Nayigiziki admits that the land was not really donated to him but that he was allowed to use the land until Eleazar's return. He publicly accepts that Mugayanduri will be entitled to use part of it too. Soon after the meeting, all family members go down to the fields and, in the presence of the *inyangamugayo* and some neighbors, agree which part will be used by her exactly. They also agree to share some banana beer a week later when they will all go back there to put up the boundary markers.

Clearly, however, the *abunzi* and village level actors involved in our project were not able to resolve all disputes – submitted to them after the intervention – by means of mediation. In a substantial number of cases observed, it was more or less clear that one of the disputants remained opposed to the final solution or decision and, thus, likely to submit the case to a higher institution or to relaunch it at the same level at a later stage.¹⁸² In this regard, the following considerations should be taken into account. Firstly, as has been mentioned several times in this report, land is very scarce in Rwanda and the vast majority of rural Rwandans depend on very small land holdings for their survival. Consequently, losing a land dispute, whether justly or unjustly, can simply be unacceptable for many disputants. Secondly, the status that a disputant has within his community and the power that comes with it can certainly have an impact on dispute resolution, whether at the closest level of proximity or at the level of the *abunzi*. When,

¹⁸² Frequently, this could not be verified with certainty. We found that disputants seldom indicate clearly during a mediation session that they understand, accept and agree and that the dispute is now over. Generally, the final decision not to pursue the case further and to cooperate with the execution of the decision is taken later, at home, after consultation with trusted persons.

for example, such an important person ensures that he is accompanied by a large number of community members (say 10 or even 20) during a dispute resolution session, this is generally not without consequence. Thirdly, mediation requires that both disputants have some rights and interests that have the potential to be enforced. In practice, unmarried or unofficially married women in particular find themselves in such a weak legal position that they sometimes simply have nothing to bargain with convincingly. Finally, it should be realized that disputants who submit their case to the *abunzi* generally have come a long way. Institutions at the closest level of proximity normally do not cooperate in the way they did in this project.¹⁸³ Consequently, the disputants will have gone through several fruitless attempts at mediation and/or adjudication before they reach the *abunzi*. At that stage, it can happen that disputants are simply fed up and unwilling to accept mediation. We found that each of these factors can reduce the effectiveness of mediation efforts.

4.3 Respect for women's rights

Enhancing respect for women's land rights in community-level dispute resolution was arguably the most challenging element of the pilot project. We found clear signs that after the intervention the targeted institutions were more confident in dealing with disputes involving women's inheritance rights and fairly good indications, also, that they were more inclined to support such claims. Nonetheless, the results achieved were different than expected, in several important respects.

Often, disputes relating to succession of rights to land are simply not dealt with at the closest level of proximity. This observation was made both in the control zone and, *ex ante*, in the intervention zone. The head of *umudugudu* will insist that the family organizes an *inama y'umuryango* to discuss the matter, but, if this is unsuccessful, the dispute is generally transferred to the cell or, in some cases, directly to the *abunzi* committee. The interviews we held with actors at this level, notably heads of *umudugudu*, revealed that such cases are frequently regarded to be too complex. This does not only relate to the factual questions that such disputes tend to raise. Respondents also indicated that they were uncertain about what the law says in such cases. In addition, there appears sometimes to be reluctance, on the side of family members at the level of the *inama y'umuryango* or heads of *umudugudu*, to get involved in these sensitive disputes for fear of upsetting relations.

There is a downside to this practice of referring disputes involving inheritance claims. The further away from the family and the village dispute resolution takes place, the more difficult it becomes for rural women to successfully navigate the dispute resolution process. This is, of course, particularly the case at the level of the primary courts. That procedures are hard to understand was argued above already, where it was said that 48 percent of requests submitted to Primary Courts to review an *abunzi* decision are summarily dismissed for procedural reasons.¹⁸⁴ This is mainly due to incomprehension of rules about standing and representation, which are issues that are particularly important in inheritance cases. We have also seen that as dispute resolution moves away from family and village the scope for successful mediation narrows (and at the level of the Primary Court it is simply not the objective of the proceedings). The longer a dispute takes to resolve, the less likely it becomes that the disputants will be ready to make concessions on their claims. Moreover, the further away they get from the village, the less likely it becomes that family members, neighbours and other community members who can help to bring the disputants closer together will be present. The example in the text box below serves to illustrate these arguments.

¹⁸³ Note that the intervention at the closest level of proximity was not undertaken in the same area where the intervention targeting the *abunzi* was undertaken, that is, the two intervention zones were separate. In this regard, see section 3.3 (Tables 2 and 3).

¹⁸⁴ See section 3.1.2.

Box 7. Example of a case involving women's land rights¹⁸⁵

Spéciose is a widow with four daughters and a son. She was never officially married with her late husband Evode; when they met, he was already married to Phylomène. Now her own children are fighting over their land, which makes her very sad. About two years ago, at a moment when she was very ill, she decided to share her land – that is, the land left to her side of the family by Evode – amongst them, precisely because she wanted to avoid such problems. Her son, Evariste, now claims that the part he received was smaller than what his sisters got (the division of the land was made in his absence).

Spéciose therefore convened a family meeting to try to find an agreement on the partitioning of the land. This failed, partly because one of her brothers-in-law, Protogène (Evode's youngest brother), claims that he had not received his share of their father's inheritance. When Spéciose brings the case before the head of the *umudugudu*, she is told to redo the *inama y'umuryango*, since she has not come with a signed statement from the *nyumbakumi* that a genuine attempt was made to reconcile her children. The second family meeting, however, does not help to solve the problem and several members are irritated that they have to come a second time.

When Spéciose presents the statement of the *nyumbakumi* to the head of the *umudugudu*, the latter tells her to bring the case before the executive secretary of the cell. After *inteko* (a practice whereby adult community members engage on a regular basis in works of general interest, mostly of an infrastructural nature) the case is discussed within their community, but, again, no arrangement is found that suits all. After two sessions with the *abunzi*, it is decided that her daughters have to accept that the land must be equally shared amongst the 5 children, to which they all agree.

Yet Spéciose is forced to bring the case to the Primary Court because Protogène does not accept the *abunzi* decision. She showed our agents a Primary Court judgment, which dismissed her claim and, at the same time, annulled the *abunzi* decision. The judgment said that as an unofficially married wife, she is not entitled to lay any claim on her husband's land or to claim anything on behalf of her children without an explicit authorisation to represent them. In addition, it is pointed out that Protogène is not even mentioned as a party or as an affected third-party in the *abunzi* decision.

Spéciose understands that the *abunzi* decision is no longer valid, but she is at a loss as to what she should do now. It appears to her that after seven difficult months of tensions within her family, she has not advanced a single step. On the contrary, when asked she says that she thinks the prospects of finding a solution that will suit all have considerably deteriorated.

In the intervention zone, after the workshop, a change was witnessed in the sense that all inheritance disputes that emerged have been dealt with by the heads of *umudugudu* in collaboration with the *inyangamugayo* and representatives of the National Women's Council, rather than being forwarded to the next level on account of their complexity. The change in behaviour of the representatives of the National Women's Council is particularly noteworthy. Before, we found that they intervened almost exclusively in conjugal disputes and that their approach was far from rights-based. Generally, they would advise women with marital problems on how to behave as a good wife, on how to

¹⁸⁵ The names and certain specifics of the case described in this text box have been changed in order to respect the privacy of the persons concerned. Some further details have been altered in order to make the case easier to understand. The description of this case is included purely for illustrative purposes.

avoid clashes with their husbands and on how to restore ties once a clash had occurred (this, by showing modesty, acceptance and forgiveness). Women's rights to matrimonial property and the right to participate in decision making on important family affairs, for example, were seldom the topic of their advice. After the intervention we saw that the representatives of the National Women's Council actively took part in the efforts undertaken by heads of *umudugudu* and *inyangamugayo* to resolve disputes and frequently took the lead in demanding attention for the interests of the women involved in the dispute.

Both effects of the intervention, the fact that disputes involving inheritance rights are now dealt with at the closest level of proximity and the fact that the representatives of the National Women's Council actively participated, suggest that the capacities of the targeted communities to deal with such disputes were strengthened. Naturally, the next step in the inquiry must be to consider whether this has also led to increased respect for women's formally guaranteed land rights. This is a question that must be asked, not only with respect to the solutions found to disputes at the closest level of proximity, but also with respect to the decisions adopted by the *abunzi* after the intervention. There are two ways in which this question can be answered. Firstly, by looking at the disputes dealt with by the targeted institutions after the intervention and comparing them to cases dealt with in the control zone or before the workshop in the intervention zone. This question can also be answered more indirectly by looking at changes in the behaviour or perceptions of the members of the targeted institutions.

Determining whether respect for women's rights has increased by analyzing and comparing the outcomes reached in cases contained in our database is very difficult. It should be realized that all cases dealt with by the targeted institutions after the intervention that we may compare to cases dealt with in the control zone or to decisions adopted before the workshop in the intervention zone, are different. They involve different disputants, different facts and, at least as far as the comparison between intervention and control zone is concerned, different persons resolving the dispute. The information that can be gleaned from the fact that a panel of three *abunzi* in the intervention zone decided in favour of a woman in an inheritance dispute, whilst a different panel of three *abunzi* in the control zone did not in a somewhat similar case, is fairly limited. Even if the facts are more or less the same, much depends on what exactly the disputants ask for, which is not always identical, and how this affects others involved in or affected by the dispute, which adds another layer of complexity and makes comparison much more difficult. And as was suggested, it matters a lot whether the opponent is a more or less ordinary community member or someone with considerable power and influence. Moreover, even if there are a number of cases (*ex post*, intervention zone) in our database that – despite all of this – we would be inclined to hold up as examples of dispute resolution that is more favourable to women than before the intervention, it also contains positive examples found in the control zone and in the intervention zone before the workshop, as well as unfortunate decisions adopted in the intervention zone after the workshop. Thus, the image that emerges from analyzing and comparing the outcomes reached in cases is confusing.

We submit that looking for possible changes in participants' perceptions of or behaviour adopted in response to women's claims to land offers a more objective and illuminating approach to answer this question, even if it represents only an indirect indicator of empowerment of the women involved in these disputes. In this regard, the first observation to be made is that the change in behaviour and perceptions that we observed in almost all *imidugudu* (closest level of proximity) and amongst a number of *abunzi* active in the four cells in the intervention zone of the *abunzi* study was only partially the effect of our training on women's land rights. The interviews and focus group meetings that were held towards the end of the study revealed that participants had internalized but few of the details about formal law that had been insisted upon during the training. The main effect of this training appears to have been to make them realize,

in a very general sense, that the law (or the state) demands acceptance of fair claims by women to be able to access, if necessary, a portion of their own family's land in order to provide for them and their descendants. In fact, what appears to us to have been at least as important in terms of increasing respect for women's land rights was the training on mediation and inclusive resolution of disputes. It was described above that this part of the training contributed to more openness in dispute resolution, in the sense that more time was taken by the members of the targeted institutions to understand the arguments, situations and interests of both parties and to reflect this understanding in the attempts to reach a solution. As is illustrated by the examples in the text box, it appeared to us that women, in particular, were able to benefit from this situation.

Box 8. Examples of the handling of women's land claims¹⁸⁶

Control zone, closest level of proximity:

Pascasie and Marianne are sisters. Marianne has recently lost her husband and her access to his land, so she and her children now live with Pascasie and her husband. Together they accuse one of their brothers, Claver, to have registered a plot and a parcel of eucalyptus forest in his name, which they considered to have been reserved specifically for the daughters and minors (the so-called *ingarigari*, which is intended to be divided amongst them only when both parents are deceased). The sisters claim that they have not received land when they married (often referred to as *intekeshwa*, or, particularly in relation to men, *umunani*). All that they were given, in the form of *iteto* (in most cases a gift made when the couple comes to present their first born child to her parents), was a small portion of a larger plot already given to their brothers as part of their *umunani*. Given that daughters would often marry into a family located some distance away from the fields of her paternal family, this land would generally continue to be exploited by male relatives, who came under the obligation to support the sister in question in times of need and, in such situations, could decide to let her share in the harvest.

To resolve the issue an *inama y'umuryango* was organized. This meeting was attended by 23 persons, including the parties, family members, the head of the *umudugudu* and neighbours; in all there were 17 men and 6 women. During the meeting considerable pressure was put on Pascasie and Marianne to accept the status quo. Even their aunt and some sisters in law (one of whom declared that she had received a gift of land from her family in the form of *intekeshwa*) insisted that the sisters had already received some land, whereas Claver, who was the youngest of the family, had not received his *umunani*. Marimpaka, a 74-year old neighbor who is one of the *inyangamugayo* that was active in the control zone, insisted that it is primarily Pascasie's obligation, as her sister, to take care of Marianne and that the latter's misfortune should not handicap Claver. The head of *umudugudu* who is managing the session does not intervene. Finally Claver agrees to give his sisters a portion of his plot, which he refers to as *umuringoto* (a subdivision of a larger plot). He insists that it's just a symbolic act, but that he thinks that they have no right to claim anything. The sisters, discouraged by their environment, resign and accept. Nothing is said about whether this part of the plot will be registered in their name, whether they can do with it as they please, to sell or let it. Nothing is said either, about whether the family still reserves an *ingarigari* for them. It is decided, however, that the sisters will have to offer a gourd of banana wine to Claver so that he will show them their plot. A month and a half later, the sisters have not done so and appear to have decided to let things be.

¹⁸⁶ The names and certain specifics of the cases described in this text box have been changed in order to respect the privacy of the persons concerned. Some further details have been altered in order to make the case easier to understand. The descriptions of these cases are included purely for illustrative purposes.

Intervention zone, *ex post*, closest level of proximity:

The father of Drocella, Anastasie and Alexandre has recently married for the third time when their step-mother passed away. Drocella, the eldest sister, agreed with her father that she would take over care of her siblings (orphans of his second wife). The two sisters have since married, whilst Alexandre has remained in the family house and cultivated the land. Since the sisters do not succeed in convincing their father and brother that they should also be able to use some of this land, right before our intervention, they contact the head of *umudugudu* to ask him to help them solve their dispute. The village head organizes a meeting inviting the family and some of the neighbors. Very quickly he adopts the position of the brother who claims simply that all the land he uses was given to him by his father as *umunani*, which their father confirms. During the meeting Alexandre suggests that the sisters can demand part of the *ingarigari* once the father passes away and so it is decided.

After the workshop, two *inyangamugayo* who were aware of the case decided to visit Alexandre. They have asked another man of the same age as Alexandre, Dusabimana, to join them, since the latter has recently accepted to give his sister a portion of the *ingarigari* left by their parents. When the head of *umudugudu* addresses the issue again two weeks later after *umuganda*, he is supported by four *inyangamugayo*. They all agree that the sisters, since they are married, should not and do not ask to receive land in the form of *intekeshwa*. The head of the *umudugudu* and the *inyangamugayo* argue, however, that they should be able to use at least the small plots, *igiseke*, that were given to them when they married (and their family received the brideswealth), as well as a portion of the *ingarigari*. Why should they wait for the death of their father, it was asked. Their father has split his land in two: one set of plots for the children of his first and second wife and another set of plots for his new family. The *inyangamugayo* insist that since Alexandre already has of his part of the family land, so should the sisters. After all, Drocella is taking care of her siblings and they will not get any new brothers or sisters on their side of the family. Alexandre, be it with some reserve, accepts that his sisters will start using their *igiseke* and their portion of the *ingarigari* after he will have harvested the beans and sweet potatoes that he has already planted.

Intervention zone, *ex post*, *abunzi*:

Mukandoli was the second wife of Habimana, who passed away in 1994. When she returned from exile with her three children, with the consent of Habimana's brothers she was able to reclaim one of the two parcels of land that she had lived and worked on before the genocide. But this plot is small and does not provide for all the needs of her family. She is often forced to hire herself out as a labourer to work on the fields of others. In 2007 Mukandoli asked her eldest brother, Ildephonse, to give her *ingarigari* (undivided land left after the death of her parents). This request was prompted by the fact that Ildephonse had given most of the *ingarigari* to Samuel, the youngest son of his father's brother. The case went up to the level of the *abunzi*, who, in 2008 (well before the start of our project), decided that Mukandoli was entitled to a part of the *ingarigari*.¹⁸⁷ Yet nothing had happened since then. She had gone to Ildephonse's house to ask him to allow her to access the land, but he was always out in the fields or visiting relatives in another village.

In late 2010 Mukandoli decides to ask another brother, Rudasingwa, for some

¹⁸⁷ We were unable to find written records of this decision dating from 2008.

land and again the case moves up to the level of the *abunzi*. After listening to Mukandoli and Rudasingwa, the president of the *abunzi* committee adjourns the meeting and tells them that all three of Mukandoli's brothers and Samuel must come to the next meeting. During this second meeting one of the *abunzi* on the panel demands the brothers' attention for Mukandoli's situation. A solution is found whereby Mukandoli and Samuel, who as the youngest of five brothers received only very little land from his father, share the portion of the *ingarigari* that Ildephonse had previously given to Samuel. And, crucially, one of the *abunzi* who lives in Mukandoli's village agrees that he will attend the ceremony whereby the land will be handed over to her in order to be sure that this time she will actually get it.

The second observation to be made, which is also illustrated by the last example, is that rather than contributing to increased respect in community-level dispute resolution for the provisions regarding women's rights to land in formal statutory law, as such, the intervention appeared to contribute to increasing the scope for respect of women's rights within customary law. That is to say, it seems that the effect of the training was to make the majority of the participants (but not all) more inclined to accept claims that were possible under customary law though not guaranteed with success. To give an example, we have seen a substantial number of *ex post* cases in the intervention zone, both at the closest level of proximity and at the level of the *abunzi*, where a woman was enabled to access her portion of the *ingarigari* before the death of her parents or to make real use of traditionally more symbolic gifts such as *igiseke*.

In contrast, cases in which women ask for *umunani* or *intekeshwa* are very few and, except for a few ambiguous examples in our sample of 256 *abunzi* decisions collected at cell level, unsuccessful. These are cases in which a daughter or sister asks for a substantial part of family land when she marries and cases in which she makes such a claim later, on the basis of the argument that, like her brothers, she is entitled to receive a share. This, it should be reminded, is one of the principal changes that the Inheritance Law is intended to bring about, even if it does not go so far as to guarantee women a right to receive a share that is equal (in the sense of value, size and quality) to what their brothers receive. Our training certainly did not have the result of changing our participants' perceptions on these matters. In this regard the observation made by the *inyangamugayo* in the second example is telling: all will agree that they do not and *should not* ask for *intekeshwa*. As is discussed in the next chapter, this is partly due to the fact that the problem analysis that was made at the beginning of the project, despite the considerable efforts that went into this, was insufficiently detailed.

5. Discussion and recommendations

In this final chapter we offer some concluding remarks and make a number of recommendations. We start (section 5.1) with a number of recommendations concerning the design, implementation and monitoring and evaluation of legal empowerment projects that interact with customary law, which we expect to be of relevance beyond the Rwandan context. Next (section 5.2), we make some observations and recommendations that are primarily directed at Rwandan policymakers and development practitioners active in Rwanda.

5.1 General lessons learned

The lessons to be learned from our pilot project that we expect to be of relevance to other development practitioners who seek to engage with customary law in order to empower the poor relate to the way such projects are planned and prepared, as well as to the way in which they are budgeted, monitored and evaluated. Our experiences in this pilot project suggest that project planning should provide for an intensive preparatory

phase of sufficient duration to ensure that the project is based on an accurate and detailed understanding of the realities of customary law which the project intends to influence. More specifically, this phase must produce a well adapted problem analysis and a carefully thought through intervention, designed to achieve relevant (to the target group) and realistic objectives. This lesson is based on the efforts that were made to enhance respect for women's formally guaranteed land rights. We therefore expect that it will be relevant particularly in the context of projects with similar objectives, that is, in situations where a prevailing aspect of customary law is considered to be an obstacle to empowerment.

Customary law is a large and complex system, which has a certain logic and coherence, even if outsiders, with different points of reference, may not particularly appreciate the distributional effects of this logic. In the areas of Rwanda where we worked, customary law has a strong influence on notions of justice and fairness, particularly as regards family relations and rights to land. Moreover, the position of women and the limitation of their rights to land appear to be deeply anchored in customary law. It is not just a question of who the land goes to when children reach the age of marriage and it would be too simple to think that the land used to be given to sons only, but that we can now ask families to include girls in the process. The position and rights of women are imbedded in a larger framework of perceptions (on the role of women and daughters in general and their relations to their own and their husband's family), practices (the many ceremonies surrounding marriage that unite and link the two families) and rights and obligations of a reciprocal nature (notably in the form of various highly symbolic financial exchanges between the families, including the brideswealth and the dowry), from which they cannot easily be severed.

When we started the pilot project we had a fairly well developed view on the obstacles that stand in the way of women exercising their formally guaranteed land rights.¹⁸⁸ These included, notably, the fact that it went against the interests of men and younger brothers, in particular, as well as the fact that women were largely dependent on community level dispute resolution if they wanted to claim their rights, even though the institutions concerned were mainly guided by customary law. Still, as suggested in Chapter 4, we underestimated the extent to which customary law, in its modern manifestation, influenced the structure of our beneficiaries' thoughts and notions about law. We thought in terms of a competition for supremacy between customary and formal law and consequently assumed that if we concentrated efforts on removing or reducing the obstacles we saw in customary law, the supported principle of formal law (equal inheritance rights for women) could fully replace the customary norm that limited such rights to men.

The reality turned out to be different; it was rather a question of trying to integrate a principle of formal law in the overarching customary framework of land rights and family relations that dominate the minds of our beneficiaries. And it is important to emphasize that in the process of integration the principle itself was somewhat transformed. In this regard, remember that we found that the effect of the training on Inheritance Law was twofold: firstly, to strengthen claims already recognized by customary law and, secondly, to create some more room for the exercise of land rights by women in discrete areas of customary law, without overthrowing its general structure or upsetting the system of practices and surrounding marriage and access to land.¹⁸⁹

¹⁸⁸ In the form of Lankhorst and Veldman (above n 4) we had recourse to a very detailed study on land dispute resolution at community level in Rwanda that provided information directly tailored to the needs of the pilot project. Arguably, this means that we started off much better prepared than is ordinarily the case in development projects.

¹⁸⁹ Cases in which a daughter or sister goes well beyond the limits of customary law by asking for a substantial part of family land when she marries on the basis of the argument that, like her brothers, she is entitled to receive a share, were found to be few and unsuccessful, even though this is arguably the the principal change that the Inheritance Law was intended to bring about.

It is essential, therefore, that empowerment projects engaging with customary law work on the basis of a clear and sufficiently detailed view both of the discrete areas of customary law where advances can realistically be made. This view should expose any relevant regional variation, as well as the fault lines that keep generations or the sexes divided on these matters. We expect that information on these issues will generally not be complete before the start of the project and that considerable time must therefore be allocated in the planning to produce this view before the activities start. This has a number of implications, also, for questions related to project monitoring and evaluation and budgeting.

Desired outcomes and results of the intervention (and the related indicators and targets) may have to be refined or revised during the course of the project, to reflect the information gathered during the preparatory phase. Alternatively, donors will have to accept that outcomes and results (and the associated indicators and targets) are vaguely defined in project proposals. In our experience, however, the trend is a different one; the most clearly defined and ambitious proposals win competitions and procedures for amending projects are often cumbersome and time consuming. Few funding partners will view a request for an amendment of a project as a sign of success.

It is our experience, also, that funding partners prefer log frames with quantitative indicators that are quality sensitive, such as change in the rate of annulment of *abunzi* decisions by primary courts to measure the quality of their work or the increase in funds reserved in the budget of a targeted state organ for specific gender policies as an indicator of the success of advocacy activities. Our pilot project suggests, however, that it may be hard to gather reliable data on such quantitative indicators when engaging with customary law. In the *abunzi* study we found significant differences in how the targeted committees kept records and in the *inyangamugayo* study there were basically no records at all before the project started. We submit, therefore, that monitoring and evaluation of this type of project will essentially depend on qualitative research techniques. As the discussion in the analytical part of this report (Chapter 4) clearly shows, the information that can be gathered by such means are harder to translate into appealing and objectively verifiable indicators of success. The best strategy that we can think of is to define as clearly as possible during the preparatory phase what change in behaviour or relations the project aims to bring about and to engage in a continuous process throughout the project to evaluate whether the underlying vision is relevant or needs to be updated.

Once again, this requires flexibility on the side of funding partners. It also requires that monitoring and evaluation receives constant attention by professional and experienced staff and that the project budget allows for this. The bulk of the operational costs of our pilot project were allocated to its research component, not the intervention. Naturally, in ordinary projects this will not be necessary (or acceptable) and it will be possible to work with data samples collected in selected parts of the target areas to monitor results and outcomes. Still, we expect that the 3percent or 4percent of the total budget that is normally reserved for monitoring and evaluation in development programming will not be sufficient in legal empowerment projects seeking to engage with customary law. As a consequence, it appears important to us also that funding partners, accept that monitoring and evaluation costs are included in the operational part of the budget. If, as the formats used by funding partners often do, monitoring and evaluation costs are considered as overhead costs (or indirect project costs), this puts the effectiveness and relevance of the project at risk, since funding partners and implementing partners are always under pressure to keep this part of the budget as small as possible.

5.2 Recommendations for community level justice in Rwanda

The study into community level justice in Rwanda that was made as part of this pilot project suggests that there remain significant problems with access to good quality

justice for rural Rwandans. In what follows we discuss these problems with access to justice and the lessons that can be drawn from our pilot project that may help to overcome them. The fact that emphasis is put on certain failings of the system is not meant to suggest that significant results have not already been achieved in terms of improving access to good quality justice by the Rwandese government and its development partners.

5.2.1 Problems with access to justice

In practice, access to formal state courts is very limited. Roughly one in forty disputes started at village level rises up to the level of the Primary Courts. Moreover, roughly half of the cases that are submitted to state courts are summarily dismissed and the proceedings and judgments in those cases that are reviewed on the merits are very difficult to comprehend for ordinary Rwandans. In contrast, at community level access is not a problem, but the quality of justice rendered by *abunzi* committees and local authorities is a major concern. To begin with, institutions at community level are often unfamiliar with important laws. This is particularly the case with laws regarding women's rights to land. As a consequence, there continues to be a large gap between formal law and the legal reality faced by rural Rwandans. Women involved in marital unions that are not formally recognized appear to suffer most from this situation, since they are poorly protected under customary law.

Moreover, institutions at community level frequently adopt an approach to dispute resolution whereby they judge the disputants, rather than act as facilitators who try to bring them closer together. Due to inexperience or haste, the investigation of disputes is often too brief, leaving disputants insufficient time to express their view on the case. In addition, it must be noted that few institutions at this level have the skills necessary to reason their decisions in such a way as to make a difficult outcome understandable and acceptable to the disputant who is asked or ordered to give in. Finally, the enforcement of decisions, both those of state courts and of lower institutions, is often problematic. The *dicta* contained in court judgments are often so unspecific, for example as to what parcel of land must be transferred or how an existing parcel must be divided or shared, that they cannot directly be executed by local authorities. And resistance against unappealed decisions by lower level institutions is quite common and effective.¹⁹⁰

These failings of community level justice are not without consequence. It is easily appreciated that these factors may leave disputants, particularly those who fail to get or retain what they want, dissatisfied with decisions adopted in community level dispute resolution. In many cases, also, it will feed suspicions that the persons that adopted the decision were somehow biased or corrupt (even if in reality this was not the case). These sentiments find expression in a high level of appeals by disputants from one community level institution to another. In fact, disputants have strong incentives to file such appeals, since barriers to access at this level are very low and the probability of obtaining a different and more favourable outcome are significant (inconsistency). As a result, disputes frequently drag on over extended periods of time and may pass through the pre-judicial and judicial hierarchy several times without leading to a durable solution to the problem. In this regard it should be realized that the fact that a case is not submitted to the Primary Court does not mean that it has been satisfactorily resolved, since the reason not to pursue the case in that direction may be due to financial concerns, social pressures, or simply incomprehension of the relevant procedures.

Whilst this has not been the object of our study, it seems reasonable to expect that an accumulation of such unresolved disputes, particularly where land claims are concerned, has the potential to adversely affect social peace and stability in the long run. In this

¹⁹⁰ An RCN report on problems with execution of decisions adopted by the *abunzi* committees and Primary Courts will be published in 2011.

regard it should be reminded that land is extremely scarce in Rwanda and that the vast majority of rural Rwandans depend on relatively small land holdings for their economic survival. In addition, it must be emphasized that a significant minority of land disputes continue to have a direct or indirect link to the 1994 genocide against the Tutsi or to the chaos that ensued in its immediate aftermath. Research shows that such disputes, when they come to the surface in the form of legal claims, can generate strong tensions and anxiety within communities.¹⁹¹ Disputes related to sharing of land between incumbents and returning refugees that fled Rwanda before 1994 can provoke similar effects.

5.2.2 Recommendations

This pilot project provides strong indications that (1) working with *abunzi* committees and institutions involved in dispute resolution at village level on mediation skills and justification of decisions and (2) stimulating collaboration between heads of *umudugudu*, *inyangamugayo* and representatives of the National Women's Council, can enhance the capacities of these institutions (and, thus, their communities) to bring more disputes to a conclusion (the outcome accepted by both parties). Arguably, this also contributes to the government's objective to reduce backlogs in the formal court system. Moreover, the results of the pilot suggest that developing the mediation skills of institutions at this level and drawing in *inyangamugayo* and representatives of the National Women's Council is particularly important for women, since the resulting change in the approach to dispute resolution offers them more scope to demand attention for their legitimate interests. As suggested, this is particularly important for women who are involved in marital unions that are not formally recognized, since formal laws offer only partial protection of their interests in land and customary law even less.

The pilot project also provides strong indications that whilst it is important to inform institutions at community level and members of the rural population about women's formally guaranteed land rights, it does not appear to be effective to insist on the details of legal provisions contained in statutory law. What is important is that dissemination projects start with a well developed understanding of the customary realities in which the general notions underlying the Inheritance Law, the Land Law and the Gender Based Violence Law must be embedded and that they explicitly explain their implications for existing customary practices with which the local population is familiar. This prompts two further remarks. Firstly, views about these exact implications for existing customary practices are not yet fully developed, which is understandable given the novelty of these laws and the complexity of the legal and cultural issues at stake. Secondly, it is nonetheless quite clear that these laws aim to strengthen and expand women's rights to land and to break down the exclusive control over land by men, which explains part of the resistance to the implementation of these laws.

Yet in many ways the implementation of these laws does depend on men's cooperation. With other types of legal reforms, sanctions such as fines or imprisonment and public enforcement, may deter non-compliance. But these instruments are largely absent in the field of property law. Compliance with these new laws, then, is largely dependent on processes that are internal to the local population. This means that spreading information about these laws and explaining how customary practices are affected is unlikely to produce radical and positive change. This is because men control most of the land, the process of dividing family estates and many institutions involved in dispute resolution at the local level. In addition, customary law – which protects men's interests – continues to carry considerable moral weight, even with women. Therefore, to ensure wider respect for formally guaranteed rights for women to inherit land, the possibilities should be explored to transform related customary practices in a way that meets men's interests. We submit that the best way to do this would be to organize an inclusive reflection and debate in communities spread throughout the country on (1) what prevailing practices surrounding marriage and inheritance are, (2) where the friction between these practices

¹⁹¹ See footnotes 56 and 57.

and formal law resides, and (3) what possible solutions exist to align the two. The results of this dialogue process should then be fed into a policy debate at national level on the implementation of these laws.

Finally, whilst assuring universal access to quality justice is one of the primary objectives of Rwanda's Justice, Reconciliation, Law and Order (JRLO) Sector Strategy, many of the problems with access to justice for the rural population in general and for women in particular that were brought to light in this study and in other studies,¹⁹² go undetected by the JRLO Comprehensive Monitoring and Evaluation Framework. That is to say, few of the indicators that have been designed to track the sector's progress towards realizing universal access to quality justice are sufficiently sensitive to ensure that these problems are identified, regularly monitored and debated by JRLO Sector institutions and their development partners. The upcoming review of the functioning of the JRLO sector and the consultation rounds that will be started to prepare a new JRLO Strategy (2012-15) should be seized upon to make tangible improvements in this regard. This would ensure, also, that policy actions will be prioritized in the new JRLO Strategy that address these problems directly and effectively.

¹⁹² Notably, Lankhorst and Veldman, above n 4.