Land Conflicts Litigation and Mitigation in Burundi: an Institutional Framework Overview

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List of acronyms and abbreviations

APDH : Association pour la Paix et les Droits de l'Homme.

APRA : Arusha Peace and Reconciliation Accord for Burundi.

Art. : Article.

CIA : Central Intelligence Agency.

CNTB : Commission Nationale des Terres et autres Biens.

e.g. : Example.

ICG : International Crisis Group.

IDP : Internal Displaced People

ILC : International Land Coalition.

NGO : Non-Government Organization.

PAGE : Programme d'Appui à la Gestion Economique.

RC : Residential Court.

SDC : Swiss Agency for Development and Cooperation.

vs : Versus.

ZERO : Zero Regional Environment Organisation.

Executive summary

Over 90% of the Burundi's population live on subsistence agriculture with very few off-land opportunities. Thus, competition for land access in this small but overpopulated country sparks a lot of land conflicts. These ones have been aggravated by the successive socio-political crises that caused the displacement of hundreds of thousands of people, within and/or outside the country. Land conflicts are predominant in jurisdictional, administrative and community conflict resolution mechanisms, where they amount to above 70%. In a communiqué released by the Government of Burundi in February 2008, they were even identified as part of the main sources of insecurity across the country. This reason was much influential in the land reform process that led to the adoption of a first land policy document in April 2010 and the review of the land law in 2011. An endeavour seeking the containment of land conflicts, be they structural or temporary.

This paper is aimed at sharing the main land conflicts and good practices on existing mechanisms of prevention, resolution and transformation of land conflicts in Burundi. Are documented the main types of land conflicts, common and peculiar ones. Common conflicts comprise neighbourhood related, as well as those manifesting themselves within families and those opposing individuals and the State. Peculiar conflicts have to do with, on the one hand, those following administrative decisions that create situations of injustice and a lot of claims. On the other hand, they concern the reintegration and land recovery by displaced people.

Land conflicts settlement is dealt with by ordinary jurisdictions, alternative (administrative structures, *Bashingantahe* traditional institution, communal land office) and special mechanisms. Alternative mechanisms' decisions are not binding. However, they may be privileged by the conflict parties as they are fair and quick. The communal land service turns out to be the most fit for land conflicts prevention and resolution, as, thanks to inclusive community-based committees, it allows for a careful and participatory examination of the claimed land rights before issuing the land certificate. A great amount of land conflicts (70% on average) are dealt with within ordinary jurisdictions, specifically the residential tribunals. In general, jurisdictional processes take long; in the courts of appeal, reaching a judgement was estimated to 39 months. The situation seems to have positively evolved in the residential tribunals, as celerity has been set as part of the performance evaluation criteria. However, the search for quick judgement process shouldn't shadow the imperative of deep examination of the cases to avoid unfair decisions. Special mechanisms have been put in place to settle conflicts

over land and other goods, birthed by the successive political crises that Burundi endured. The current ones are the *Commission Nationale des Terres et autres Biens* and the *Cour Spéciale des Terres et autres Biens*. The creation of this special court was dictated by the necessity to avoid overlaps between the commission and ordinary jurisdictions. This endeavour might however have a political justification. In effect, the return of refugees was partially forced by promises made by the ruling party to allow entire retrieval of the returnees' goods. And the Commission's decisions were quasi-systematically appealed against before the ordinary jurisdictions. This political aspect also appears in the proceedings of the Commission. It was set up to ensure goods recovery by returnees but with a general aim of peace and reconciliation. That is why was privileged the land-sharing approach for conflicts between returnees and good-faith acquirers. For the time being, full and unconditional restitution approach is applied, at the expense of the dwellers that got the lands pursuing administrative measures.

1. Introduction

The main means of subsistence for Burundians, land, is subject to a great deal of lust and a lot of conflicts. In effect, Burundi is a small East-African country, with a high demographic pressure on only 27,834 km^2 (including waters) and an average density of 385.9 inhab/km^2 in 2015 (CIA, 2015). Over 90% of the Burundian population live on subsistence agriculture and the economic context allows very few off-land opportunities. According to the 2002 estimates, the industrial sector occupies 2.3% of the labour force while the services sector serves 4.1% (CIA, 2015). The Burundi's landscape shows very atomized and overexploited plots. The average area of land per household amounts to less than 0.5 hectare. In some areas, it has become so difficult to share family land that brothers have decided to build twinned houses in order to avoid depleting the rare space. In normal circumstances, Burundi's habitat is scattered and, though in one common compound, brothers prefer to have their house more or less isolated for privacy reasons. Overpopulated areas such as the North and the Central part of Burundi are facing important exodus towards towns or less populated regions such as Eastern provinces to look for more land for subsistence.

The above situation is exacerbated by temporary displacements of people, ensuing socio-political crises. Since the country got its independence in 1962, it successively got into periods of unrest, massacres or civil war: 1965, 1972, 1988, 1991, 1993, 2015. Hundreds of thousands people fled to neighbouring countries. In 2015, more than 200,000 thousand people fled to Tanzania, Rwanda, the Democratic Republic of the Congo and other countries due to the ongoing crisis that followed the President of the Republic's decision to run for a third term in office, which sparked in the first place massive protests and clashes between security forces and demonstrators, before turning into rampant armed violence. The 1993 unrest and civil war also caused massive internal displaced people. The repatriates, especially those of the first trouble waves, seek to get back into their land that has been taken or distributed to other people. The greater the time spent by the secondary occupiers on a piece of land , the more difficult the retrieval of the land. There are specific commissions in place to settle such conflict and find shelter for the returnees.

Land conflicts in Burundi constitute a big issue. According to available statistics in the jurisdictional apparatus, their average amounts to over 70% among civil cases (APDH, 2003; Kohlhagen, 2009). The amount of land conflicts is equal or otherwise bigger in non-jurisdictional conflict resolution mechanisms, such as administrative and community structures. The Government of Burundi considered land conflicts to be a threat for peace and security in a

press communiqué released on February 6th 2008. This statement was repeated by the Land policy letter (*Lettre de politique foncière*) which indicates that the proliferation of land conflicts hinders social climate and security. The competition over land is one of the main sources of conflict and violence and the dislocation of family relationships (République du Burundi, 2010).

Land issues in Burundi can be apprehended under two dimensions: as a structural or a temporary problem. Structural problems refers to elements such as "demographic pressure on land, lack of off-land economic activities, power plays and institutional relationships" (Munezero, 2015). Otherwise, when they are triggered by the return of refugees, they are taken as a temporary problem. The land crisis in Burundi has long been analysed under the second dimension. The majority of studies on land issues were focused on the Tanganyika littoral, a region that has faced big numbers of refugees and problems of re-settlement. But of course, land issues manifest themselves even in normal periods, opposing ordinary residents.

This paper will analyse land conflicts under both dimensions. *It is aimed at sharing the main land conflicts and good practices on existing mechanisms of prevention, resolution and transformation of land conflicts in Burundi*. The paper is subdivided in four main parts. This introduction will be followed by a description of existing land conflicts and an analysis of land conflicts management mechanisms. A conclusion will close the reflection.

As for the methodological aspects, the paper draws mainly on the review of existing literature. This literature review has been complemented with primary data collected in three courts and in one communal land service.

2. Land ownership in Burundi

The Burundi land code distinguishes two categories of land: state-owned and private. State-owned lands are those managed by the State itself, the communes and state-owned companies. They belong to the public or private domain in function of their affectation to public use/service or not. Public domain lands are inalienable because they belong to the whole community. Unlike public domain lands, private domain lands are alienable under certain legal restrictions such as competence related. This alienability has usually opened the way for land embezzlements pursuing personal and/or clientelist aims. Private land rights can be owned by individuals or private companies and organisations. According to the Burundian culture, land was accessed either through inheritance or thanks to private acquisition through purchase, donation, exchange, etc. Inherited land used to be non-transferable outside the family to keep family and intergenerational unity constant. But due to societal evolution, demographic

pressure and soar in household needs, there have been shifts in the rigour with which this principle was observed. A lot of lands have nowadays been sold to outsiders, often bringing about conflicts within and/or between families. It is worth highlighting that, according to custom, land is inherited from father to son, women and girls being excluded, except in particular circumstances such as an exclusive feminine progeny.

3. Types of land conflicts in Burundi

There are similarities in land conflicts encountered across the country but with some few regional peculiarities. Following Hilhorst model (as referred to by Bunte & Monnier, 2011), we have classified land conflicts according to parties involved.

3.1. Common land conflicts

3.1.1. Conflicts between neighbours

These are the most pervasive and reside in land border disputes. Owing to generalized land exiguity, neighbouring landowners are regularly tempted to exploit their plots beyond recognized boundaries, or displace them with the intention to get a little bit more space. The displacement of boundaries implies generally strong disagreement with the way land has been divided. But limits land disputes may sometimes derive from a negligible encroachment (some centimetres). Equally, the way land delimitation is realized may cause disputes. This is the case for contiguous land plots separated by a trail or furrow. Studies carried out prior to the establishment of communal land services in 2007 and 2008 showed that this kind of limits can be easily changed due to natural facts or human acts (e.g. SDC, 2008a; SDC, 2008b). When for instance it has rained, people trying to escape wet grass or hedges would prefer to pass within a field with good walking conditions. The repeated passage may displace the limiting trail into this field. Flooding rain water may cause a furrow to change its normal way and pass inside a field. If no durable boundaries have been used to strengthen the above mentioned limits, neighbouring landowners may get into boundary-driven clash.

3.1.2. Conflicts within families

Conflicts within families may be brought about by the disagreement as to land inheritance and the division of land between family members (Bunte & Monnier, 2011). When a son gets married, he will be given part of land to sustain his family. Such pre-sharing distribution of land depends on the discretion of the chief of family. Some boys may get fertile plots while others occupy less fertile ones. Also, no measurement is done and unequal plots may be acquired. This causes misunderstanding and conflicts between brothers. In case of polygamous

unions, half-brothers seek to exclude one another from land inheritance, especially if their father did not take the precaution to install each family in proper land.

Other land issues matching this subdivision may be the cases of land sales by family members without the consent of their relatives. Disputes generally materialize in terms of denouncing such conventions, to the detriment of the purchaser, or forcing vendors to compensate the family loss out of their remaining land.

But the main issue within this category relates to land inheritance for girls and women. In the absence of inheritance law, custom allows them land ownership in exceptional circumstances eg when born alone. In normal conditions, women do not traditionally inherit. They are given a small plot of land that they exploit as a lifetime usufruct, *igiseke*[1]. In Burundi , it is not common for a daughter, to inherit family land without facing challenges from family members (APDH, 2004). Generally daughters are considered not to be successors. Brothers do not often accept to have the same share as their brother with exclusive female children. They may even decide to chase their sister, in need of and claiming land, from their family roof. The problem of women's inheritance extends to widowed wives who are disturbed in the exercise of preserving their children's land rights. Of course, women are gradually trying to claw their way out of this injustice, even though this is still much complicated. In a recent research in 10 Residential Courts (*Tribunaux de Résidence*), APDH (2015) finds that 44.9% women's land-related cases have to do with inheritance, 18.9% with *igiseke* usufruct, while 69% of women's plaints are made against members of their families.

3.1.3. Disputes between individuals or private actors and the state

Such land conflicts originate essentially from expropriations for public utility, when people are ordered to leave their private land without a just and prior and equitable indemnification or when the administration confounds private land rights with state-owned ones.

3.1.3.1. The compensation problem

Indemnifying victims of expropriation for public utility has long been a serious question. With the endeavour to extend urban centres or to build public infrastructure, e.g. schools, health centres, etc, several families are usually obliged to leave all or part of their land. Most of time,

[1] The Kirundi name for "basket". This is culturally used as symbol of unity between a married women and her birth family. In normal circumstances, parents have to maintain relationship with their daughter by visiting her in her family-in-law. They use *igiseke* to carry gifts and in case they fail to acquit this obligation, they replace the *igiseke* by a plot of land exploited as usufruct and not transmissible to children. In some regions, *igiseke* equals one son's inheritance part, collectively used by the daughters regardless how many they are.

people are expelled without compensation. And in case it is paid, it always turns out to be insufficient or this is done with an alarming delay. In a study carried out in the province of Ngozi, APDH (2004) identified a family which was yet to receive promised indemnification for an expropriation decision taken and executed more than 10 years ago. By that time, they were threatening to stop any construction and to systematically sell all plots so far without buildings. Similar cases occurred around the town of Bujumbura where several families, chased from their land, launched successive demonstrations before the administration in order to be re-established in their rights, but of course in vain. In 2013, an attempted guide for expropriation for public utility (Sebudandi, quoted by APDH (2014)) notes that, over time, the expropriation strengthens the sentiment of being plundered, as the processes are still and always imbibed with abuses. The reformed land law aimed at fixing this issue by allowing negotiated compensation (République du Burundi, 2011a: art. 424). However, this legal requirement is rarely observed in practice. In 22 cases of expropriation studied in different areas, APDH (2014) noted that the consent of the landowner was given in only 18%. Another issue making people feel abused resides in the fact that public interest does not often matter. The aim of expropriation is diverted and terrains end up shared among rich or powerful people at the expense of the public utility. This was the case in the South-West of the country where 9 ha was cleared with the intention to install a village for returnees. The failure of this project led the administration to decide to return the land to their initial owners who did not get any compensation. But this was partially done as great part of this area was shared among administrative officials, having nothing to do with neither returnees nor initial owners.

Land issues related to the expropriation for public utility remain the majority of the administrative disputes. Analysing 50 cases at the Administrative Chamber of the Court of Appeal of Ngozi, we found 24 land related among which 20 have to do with expropriation (83.3%).

3.1.3.2. The confusion between private and state-owned land

As mentioned above, private land rights may also be confounded with state-owned. Public administration relies on unclear regulations and decides to expel people living or exploiting a given land. In a case documented by APDH (2014), 91 families were forced to leave a tract of land (48 ha) that they said to have been exploiting for over 50 years. The administration decided to attribute this piece of land to a businessman who envisioned starting a tiles project. According to the law, the decision of attribution is taken only after a careful inquiry and conclusion that the terrain is free of any other rights. In this case, the decision was made in entire disrespect for

these families. Noting that their claims were not heard, the latter decided to continue exploiting their land and even removed concrete boundaries that were placed there by public surveyors. A lot of families lose their land rights in similar circumstances, their land being unilaterally qualified state-owned and distributed to, the rich and those in power. Forces imbalance due to different political power relations, victims are unable to stop land grabs (Ansoms and Nyenyezi, 2014).

3.2. Some peculiarities

We refer to land conflicts specific to some regions or periods of time.

3.2.1. The case of the *paysannats*

The advent colonization in Burundi coincided with the upsurge of epidemics (small pox, sleeping sickness) that depopulated some areas, particularly the Imbo plain (West and South-East of Burundi). As this region offered enormous agricultural potential, the colonizers decided to bring the population back from the mountains and grouped them in the *paysannats*. The latter consisted of villages implanted with the intention to modernize agricultural systems, and develop cash crops such as cotton. They comprised a home zone and agricultural plots. In the eyes of the administration, these areas were occupied and exploited in virtue of a long-term lease, never would they be appropriated. Tens of years after their establishment, the reality there has substantively changed and it became complicated and complex to disentangle the overlapping rights. What is clear, land rights passed from hand to hand, families developed over there, and it is not anymore obvious to just refer to the conditions in which the lands were occupied in the first place and pretend to settle the problem. As seen above, conflicts between individuals and the State usually occur in this region in terms of misunderstanding on the status of the *paysannats*. This is the reason why the 2011 land law, in its transitory and final provisions, allows the appropriation of the *paysannats* for those who legally and regularly occupied them (République du Burundi, 2011a: art. 455). Once again, the problem remains on how to determine who is eligible for this appropriation. The National Land Commission which is in charge of settling the disputes that would arise from the application of this provision lacks means to be well operational. And so far, nothing has been done in this regard.

3.2.2. Conflict between returnees and the welcoming community

Such conflicts can be found in any part of the country, since refugees departed from everywhere. However, they are more generalized and impacting areas where many lands were taken by the administration or distributed to people remaining or settling in there. As asserted by ICG (2014),

the most affected region is the Imbo plain, particularly the communes of Rumonge and Nyanza-Lac which faced particular refugee departures. ICG (2014) places land policies and legislations in the centre of these conflicts. After the 1972 crisis, land spoliations were legally legitimized; the War Council not only condemned the alleged rebels but also decided the confiscation of their goods, among them and essentially land. Further, local authorities took advantage of the situation and distributed land belonging to refugees or dead people. Official titles were given to the new occupants, especially in the South-East, and the Government decided to seize the houses belonging to sentenced people in the city of Bujumbura. Last, under the 2nd military Republic, illegal attributions and occupations were backed by juridical texts. This is the case for the adverse possession organised by the 1986, which recognized full ownership for people occupying a piece of land for 30 years and more regardless how they got them (République du Burundi, 1986: art. 29). Nowadays, the work of the *Commission Nationale des Terres et autres Biens*[2] to restore the returnees' rights is particularly questioned by people who possess land obtained in the above circumstances. Note that, generally, the problems arise between acquirers' and refugees' descendants, or secondary occupiers, which further complicate the situation.

3.2.3. Land conflicts related to IDPs

The 1993 socio-political crisis caused a lot of internal displacement of people. This new phenomenon was not expected and, in hurry, the Government installed displaced people on state-owned as well as on private land. Difficulties arise when the private land owners claim their land. In effect, the major part of the IDPs is still in camps which have even been transformed to ensure a more or less better living conditions. IDPs camps look like villages, with people occupying them sharing the same history, fate and hope. They have developed some kind of *ownership conviction* that leads them to not leave the land even if they no longer use it, for instance when they have regained their place of origin. Gatunange (2004) identifies 3 types of land issues related to IDPs: clandestine land sales by neighbours or family members in the villages of origin, boundaries displacement, and, despite their hardship in there, hesitations between returning to the village of origin and staying in the occupied sites.

3.2.4. The case of villagization and coffee plantations

In order to intensify coffee production[3], the Government decided to have it planted along inter-village lanes, especially in the Northern provinces. Plantations were then realized on land

[2] This commission will be dealt with below (3.2.3.1)
[3] Coffee constitutes the main export crop in Burundi.

belonging to other people. As long as these plantations were well maintained, landowners did not claim their rights to land. As days went by, coffee was gradually left down ensuing to decreasing support to coffee-farmers (e.g. for parasite-fighting chemicals), disorder in its commercialization and prices drop. People got more and more unsatisfied by the revenue they perceived from coffee sales and preferred to replace it by other crops such as bananas. Conflicts arise when people with coffee (plantations) on land owned by other people try to remove it; landowners immediately seek to retrieve their land. This is complicated by the fact that there was an administration hand in the distribution of the plots. Coffee-planters believe having acquired also property right on the latter. But of course, as there was no due expropriation, landowners are right to claim it back. Similar decision was taken regarding the construction of housings along village lanes to bring people close to public infrastructure. As no indemnification was paid to people for loss of land, issues occur in a similar way as for the coffee plantations.

4. Mechanisms of land conflicts management

Land conflicts management refers to their prevention and their resolution.

4.1. Land conflicts prevention

The prevention of land-related conflicts is primarily done at the family and community levels. Generally, land conflicts go public after attempts to contain them within the family fail. Elders of the family intervene whenever they feel something wrong as regards land management. They can suggest the division of family land to avoid clashes between brothers and/or sisters. In effect, it is believed that individually owned land shares cause less disputes among brothers than collective land, especially long lasting collective ownership. The institution of the *Bashingantahe*, a traditional body of elders of irreproachable morality who presided over the traditional judicial system and acted as check and balance on power holders, and local authorities intervene in this process of land division.

Other mechanisms of land conflicts prevention consist of education and sensitization initiatives within NGO-led projects, such as interventions related to human rights education, and peace-building.

The most relevant mechanism of land conflicts prevention may turn out to be the communal land service. This is a newly established setting to counter the inaccessibility of state land management services. It offers a comparative advantage since it is proximate to the communities and renders relatively less costly services[4]. But the most important thing resides in that the communal land service issues a land certificate after a careful investigation of the pretended land rights. A specific and participatory commission (including local administration officials and community chosen delegates) is indeed put in place at each hill's level, which is in charge of public recognition of land rights before issuing the land certificate to the applicant. The commission takes into account the opinions of the neighbouring land owners and family members, and eventual oppositions (République du Burundi, 2011a: art. 395). A certificate delivered issuing such a process is unlikely to be questioned afterwards as it is the fruit of social consensus. The preventive role of the communal land service manifests itself when the commission for land rights recognition helps re-placing or clarify unclear boundaries. Wherever recognition is being held, contiguous land plots are clearly delimited with durable plants.

[4] The cost of land certificates is fixed by the Communal Council which takes into account the social reality and the purchasing power of the population.

4.2. Land conflicts resolution

Ansoms and Nyenyezi (quoted by Munezero, 2015), distinguish three categories of land conflicts resolution mechanisms: classic jurisdictional, alternative and special mechanisms. In Burundi, many jurisdictional levels intervene in land conflict resolution, especially the Residential Courts. People have recourse to alternative mechanisms to counter difficulties encountered within the jurisdictions. They are normally quicker, fairer and well informed to reconcile conflicting parties. Special mechanisms are put in place for specific matters, such as disputes between returnees and people remained in the welcoming community.

4.2.1. Jurisdictional mechanisms of land conflicts resolution

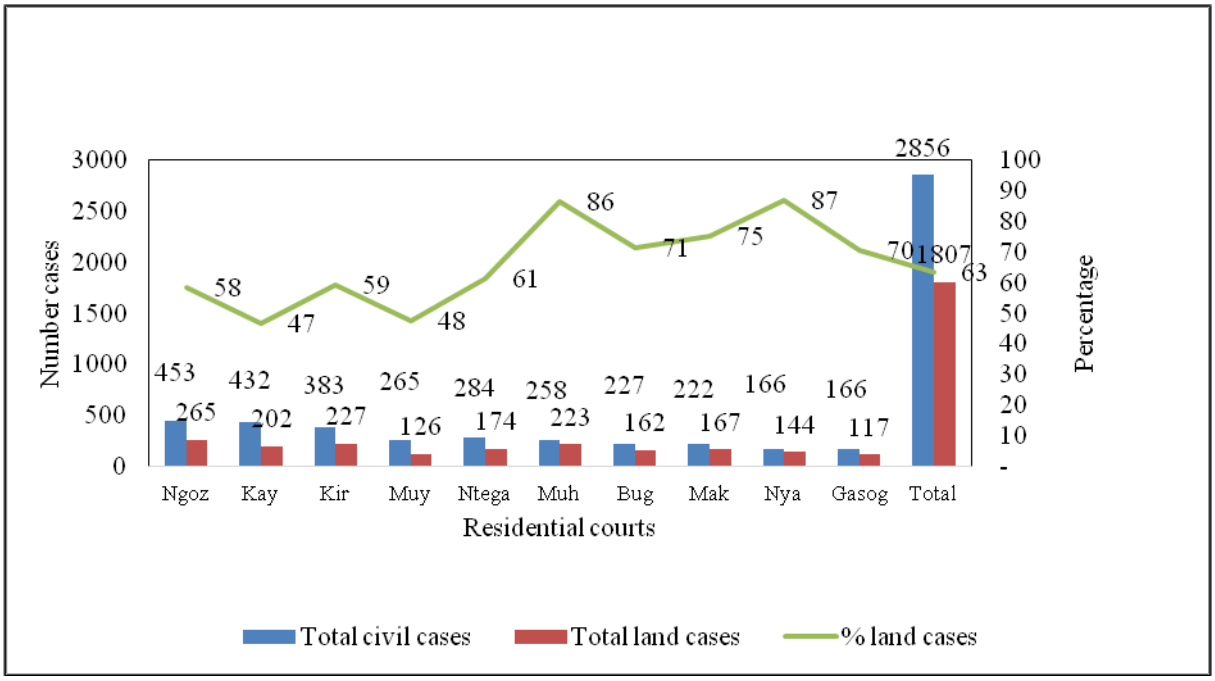
They are part of formal mechanisms of land conflict resolution. As earlier mentioned, the most concerned body is the Residential Court.

4.2.1.1. Land conflicts at the Residential Court level

The Residential Court is implanted at each communal level and knows the quasi-totality of land conflicts, intra- and inter-family ones which are the most common. Higher jurisdictions are resorted to in case of special disputes (e.g. administrative issues) or in appeal.

Land conflicts represent the major part of civil contention. According to judiciary statistics collected from 51 Residential Courts in 2011, land conflicts amounted to an average of 71.9% (Kohlhagen, 2011). In all these courts, except one, land disputes go up to above 50%. They even reach or exceed 80% in 15 tribunals (29.4%). Bigirimana (quoted by APDH, 2015) comes to a similar finding with a land conflicts rate of 73.3% countrywide. The table below gives the proportion of land conflicts as analysed in a study conducted by APDH (2015), in 10 residential courts of the Northern and Centre provinces.

Proportion of land disputes within civil cases referred to 10 RC



Source: APDH (2015)

As shows this table, the average rate of land conflicts is 63%. That is near a 10% decrease according to previous findings in 2011 and 2015. A close look at this graph shows however that 5 out of 10 tribunals present a high average (= or > 70%). These ones are rural. The rest are dominated by urban tribunals where land is mainly under the title regime whose disputes are referred to the provincial high court (*Tribunal de Grande Instance*). This is the case for all courts with a land conflicts rate below 60%. Research we made in the Residential Court of Ngozi for all judged civil cases in 2014 show a 69.3% land conflicts rate. Depending on years, the situation of land conflicts may be affected by urban or rural realities. In effect, due to unplanned extension of Burundi's towns, some lands are managed under the urban regime whereas the others are administered under the rural regime. Transactions over the latter are generally free of control from the urban management authority, this being more likely to generate conflicts between neighbours.

According to the above research, also conducted in the Residential Court of Ntega, the great majority of land cases settled at this level of jurisdiction are intra-family and inheritance dominated. Close and distant relatives are involved in the land conflicts on respective averages of 65.78% and 64.64% for Ngozi and Ntega. Other land issues encountered are related to land purchase, and limits to a very less extent. Limits-related land issues seem to be easily settled in alternative conflict resolution mechanisms.

4.2.1.2. Land conflicts at the higher jurisdictional levels

The volume of land conflicts does not necessarily decrease at the higher degree of litigation. According to statistics established by the Minister of Justice, the total number of land cases judged before all provincial high courts in 2012 represents 69.3% of overall civil cases (Ministry of Justice, 2014). Recall only that it was found to be around 50% at the Court of Appeal of Ngozi. On the contrary, as revealed in its 2011-2015 strategy, the number even increases at the Supreme Court level where land cases amount to 80%. This surely justifies the recent decision to downgrade the competency to quash courts' rulings regarding rural land-related disputes to the Court of Appeal. Indeed, such proportions at the highest court were quite alarming and dictated this measure.

4.2.1.3. Celerity of the judicial process

Regarding the speed on which land issues are handled in the judicial apparatus, the processes used to take so long in the Residential Court. Kohlhagen (2011) specified that the main cause of complaint for justice-seekers at that level was the lengthy procedures. More than 60% of interviewed persons affirmed this. Even if large analysis is needed across the country to confirm it, efforts are being made to reduce the time of case treatment. It appears from the study carried out in the Residential Tribunal of Ntega that the duration has significantly decreased. All cases judged in 2014 were introduced in the same year, except just one. It was asserted that this is because the celerity of the ruling is part of the productivity assessment criteria, which lead judges to work hard so as to attain satisfactory results. Such trends are also noticeable to a lesser extent in the Residential Court of Ngozi. Among 304 land cases judged, 202 cases (66.44%) were initiated between 2012 and 2014, of which 138 (68.3%) were processed in one year period. The overall average time to reach a decision in this court is 2.08 years. However, in some instances it takes 4 years or more to judge some cases.

Things get harder within Administrative Courts. The average time to reach a ruling before the Burundi's Administrative Courts was estimated to 39.5 months (3.29 years), this time being computed since the first hearing however (Ministry of Justice, 2014). It happens that a file takes several years before the court to end up rejected. For the 24 land cases analysed at the Court of Appeal of Ngozi, the average time to reach a ruling is 4.125 years. Some cases were judged after 12 years.

In general, the lack of celerity can be explained by numerous factors including the attitude of conflicting parties, especially the absenteeism of the State and other public agents, problems of

witnesses' appearing, complacent judges who do not take any decision when the State or Prosecutors lack diligence, lack of financial and material means for field investigations. We may also mention the many and repetitive postponements of the hearings (3 to 9 months) due to the unavailability of the parties (PAGE, 2009). 10 cases among those analysed at the Court of Appeal of Ngozi were withdrawn in these circumstances.

4.2.2. Alternative mechanisms of land conflicts resolution

As said above, people have recourse to alternative mechanisms to counter difficulties encountered within the jurisdictions. Alternative mechanisms offer a comparative advantage as they operate on the basis of a good knowledge of the disputes and the parties. They may be formal and informal. Formal alternative land conflicts management mechanisms comprise administrative structures, the communal land service and the Ombudsman, informal ones may be represented by the institution of the *Bashingantahe* and other private systems such as the family council and NGO-supported projects. It actually remains not easy to establish a clear separation between formal and informal land conflict management systems.

4.2.2.1. Informal mechanisms

All start with the family council. When a land conflict manifest itself within a family, the first attempt to solve it is initiated by family members, in a kind of ad hoc family council. The latter is in principle organised by the Family Law (art. 371) and is instituted in order to safeguard the interests of each family member. The law determines its composition but in practice families resort to councils organised in compliance with their own convenience and circumstances. The *Bashingantahe* and other neighbours of irreproachable integrity may join and help the family council.

In virtue of the 1987 law on judiciary competencies and organisation, the *Bashingantahe* had recognized role to hear land disputes before they were referred to the first instance tribunal. This role was abrogated by the 2005 law. Despite the lack of any legal and explicit reference to the *Bashingantahe*, an important amount of land conflicts are dealt with by the institution, alone or accompanying/accompanied by other actors. Their living with the conflicting parties, their mastery of the community realities and customary land rules make them indispensable for land conflict management. Their role remains preponderant for harmonious social rapports and the population keep seeking the values they incarnate.

Even NGO-led land conflict resolution systems, as well as hill's councils, rely on this institution for their effectiveness.

4.2.2.2. Formal mechanisms

a. Local administration

Since 2005, a council of five members is being elected at the hill level. It is responsible for the overall community management . Normally, land conflicts are referred to this council after failed tentative resolution within the family council, with or without the support of the *Bashingantahe*. In the event of failure to settle these conflicts by the hill's council, the zone or communal authority may intervene. All these administrative mechanisms have no binding force, which remains the incarnation of the jurisdictions. However, they attract a great deal of confidence from justice seekers. In effect, on the one hand, elected local and communal leaders are well known by the community members. On the other hand, these ones need to be kind to the population to keep their electorate under control. But this is also where they miss out because political relationships can bring in privileges and exclusion, leading people to prefer or defy them according to their own penchant.

b. The communal land service

Another formal mechanism of land conflict resolution worth mentioning is the communal land service. We already touched upon its preventative role residing in the way the recognition of land rights is based on community consensus. This approach is also useful for conflict mitigation. Before taking the decision to issue a land certificate, the commission for the recognition of land rights investigates the accuracy of the claims. The commission hears the parties involved in any conflict on the land under recognition and attempts to mitigate it, as this is required by article 395 of the land law. The publicity of the process before, during and after the land rights recognition (lists of certificates applicants are displayed in public places) allows attendant claims to be collected and managed. Amicable arrangements are usually attained. Local administrative leaders have attested that the process of land rights recognition alleviates their burden in land conflicts management (APDH, 2014). This is most remarkable in areas where systematic recognition is carried out, namely in the communes supported by the SDC land programme. Participants to focus groups held by APDH (2014) specified that thanks to the communal land service, particularly the recognition process, hidden conflicts emerge and are generally settled. The end-of-phase report of the SDC-funded land programme give a 70% overall rate of land conflict mitigation with this systematic approach (SDC, 2014). Analysing data recorded in the Ngozi communal land service archives, we randomly chose the hill of Nyaruntana and found out that among 92 land disputes identified, 74 were successfully mitigated (80.4%). It is commonly believed that the process of land rights recognition is

successful in handling simple conflicts, such as boundary-related. In the Nyaruntana case, however, issues regarding inheritance, family land sharing and land purchase contracts were resolved to a satisfactory extent. It is finally worth highlighting that such mitigation can also lead to some cases already referred to courts to be given up. This happened, to name but two, for case N°4661 Louis Ntahobatashitse vs Marcel Sikubwabo, Nyaruntana-Ngozi, withdrawn from the RC of Ngozi and case Michel Miburo vs Violette Ntabakobwa retrieved from the Supreme Court. Unfortunately, the implantation of these services has been to date mostly supported by external partners and only 43 communes are endowed with them. The comparative advantage would be more effective if each commune possessed one.

c. NGO initiated committees

Initiatives by local and international NGOs generally consist of putting in place and strengthening the capacity and accompanying community committees in charge of land conflict mitigation. The formation of these committees generally integrates local informal and formal mechanisms. These structures sometimes lack skills in land management whereas land conflicts constitute a major part of the issues they encounter.

d. The Ombudsman

Initially envisioned in the Arusha Peace and Reconciliation Accord[5], the Ombudsman institution was put in place in 2011 with the main objective to receive and manage conflicts related to the violation of the citizens' rights by public officials and thus play a watchdog role with regard to the right functioning of public administration (APDH, 2014). The institution has received plaints from citizens, about unfair and massive expropriation cases, destructions of citizens' housings, etc. For the quasi-totality of these disputes, the Ombudsman institution contented itself with putting in place ad hoc commissions to analyse the cases. The fact is, no relevant solution was found to put an end to them. The number of cases referred to this institution continued to increase but, beyond declaration of intention, it practically has failed to settle them. We believe that the institution is unlikely to do better as long as the Ombudsman remains someone designated from the ruling party, whose action is obviously limited by political influences.

[5] This accord was signed on 28 August 2000 and allowed to put an end to a ten lasting socio-political crisis that had culminated in a civil war. The Arusha Peace Accord tried to identify the origin of the Burundi's conflict and suggest ways to overcome it, among which the institution of the Ombudsman and the commission for handling land issues related to refugees.

4.2.3. Special mechanisms

The 1993 socio-political crisis doubly affected the resolution of land issues related to the 1972 refugees. It sparked other enormous waves of refugees and forced important numbers of people to internal displacement. These internal displacements were accompanied by the occupation of private land. Data collected and published in May 2009 report 157,167 IDPs whereas 137 IDPs sites were documented in May 2010. On the side of returnees, the National strategy for the socio-economic integration of conflict affected people, reports 500,000 refugees repatriated between 2002 and 2009.

4.2.3.1. The *Commission Nationale des Terres et autres Biens*

a. Origin, mission and structure of the Commission

This is the commission in charge of the management of issues related to crises victims' land and other goods (CNTB). It originates from the Arusha Peace Accord (protocol IV). Its precursor, the National Commission for the Reintegration of war Victims was put in place in 2003 and operated until 2006. As regards land disputes mitigation, the latter is said to have attained mixed results. Niyomwungere (2010) ascertains that this commission amicably solved only 6 conflicts in total. The Law No 1/03 of 16 February 2006 put an end to its mission and the CNTB was created in March 2006.

The CNTB faced several difficulties handling thousands of land conflicts countrywide. But its generalized presence across the country, up to the hill's level, is helpful. The first review of its constituting Law increased the commission members from 23 to 50, instituted the Provincial Delegations in first decision-making instances, charged the National Commission to receive the appeal against the Provincial Delegations and endowed the latter with permanent agents.

b. Methodology and functioning of the Commission

Regarding the methodology and functioning principles, the commission evolved from privileging reconciliation-led approaches to valuing retributive justice.

The functioning of the CNTB precursor was underpinned by principles fixed by the Arusha Peace Accord. According to its 4th protocol, the commission should ensure its actions are founded on equity, transparency and common sense. Instead of defending the sole interest of the repatriates, the commission was required to privilege the line of large-scale pacification, to remain conscious of the fact that the aim is not only the restitution of their goods to the repatriates, but also peace and reconciliation (APRA, Protocol IV, art. 8). These principles were

kept by the texts instituting the CNTB. The 2006 CNTB law (article 10) specifies that the commission's decisions are based on the respect of human rights, the law, equity, reconciliation and social peace. This element is kept as such by all the law reviews (2009 law: art. 10; 2011 law: art.9; 2013 law: art. 11).

The CNTB practice has though applied this fundamental principle differently. Under the presidency of late Abbé Kana Astère, the solution adopted to preserve the equilibrium between the restitution and reconciliation objectives was to share the conflict land, except when the occupier possessed other plots or did not exploit the conflict terrain. The strategy was to incite conflicting parties to reach an amicable agreement before suggesting any other alternative. Among 20,000 cases registered between 2006 and 2010, 13,000 were sorted, with 70% of them by amicable agreement. As previously specified, the CNTB tackled the issue privileging land-sharing. In the event of impossible sharing, the CNTB envisioned other solutions, for example installing the returnee in a state-owned land instead of expelling a good-faith acquirer. The land-sharing solution's success was not exempt of ambiguities. In fact, it did not always correspond to a perfect consensual choice but often left a non-dissipated sentiment of constraint. Praised by the National Radio and Television, supported by local authorities and practiced by neighbours, this solution could hardly be refused by the people involved (ICG, 2014). Furthermore, during its first years of existence, the CNTB was reluctant to tackle the most complex issues, in particular those related to urban houses which generally are difficultly dividable. Nevertheless, this solution allowed to temporary pacify a situation whose settlement was, in any case, unlikely to satisfy everybody.

As for Mgr BAMBONANIRE Sérapion, he opted for the unconditional and complete restitution strategy, questioning seriously the sharing compromise. Amicable arrangements came down to below 50%. The CNTB delegations were criticised for too quick decisions, often rendered in the absence the parties or on wrong appreciation of the facts. In addition, the commission could henceforth invalidate its (land-sharing) previous decisions, as this is provided by its 2013 law (art. 7: h). The decisions did not anymore take account of the acquisition conditions of the conflict land plot. Whether the occupier is of good faith or not, they have to give up the entirety of the land without any possible compensation.

c. Relationship with the ordinary jurisdictional apparatus

On the rapport between the CNTB and ordinary jurisdictions, it is worth specifying two facts. On the one hand, it was clear from start that the commission was not competent to receive cases pending before the jurisdictions (République du Burundi, 2006b). On the other hand, no legal

provision expressly prohibited issues pending before the commission to be referred to the jurisdictions. This was quite normal as courts and tribunals are constitutionally alone to exercise the jurisdictional power. However, to some point of time, the tutorship ministry gave the tribunals directives to stop receiving cases pending before the commission. This endeavour to sideline ordinary courts regarding land issues related to victims of socio-political crises was concretized by the installation of the Special Court for Land and other Goods in September 2014. But any reference to ordinary courts was already suppressed by the 2013 CNTB Law review (République du Burundi, 2013b).

4.2.3.2. The *Cour Spéciale des Terres et autres Biens*

a. Why a Special Court?

The implantation of the Special Court was aimed at putting in place a judiciary institution adapted to the nature and specificity of the disputes deriving from the socio-political crises to which Burundi was confronted. The endeavour for the returnees to regain their land and other rights was impeded by the resistance of the secondary occupiers to give them back arguing that they became legitimate owners too. The decisions of the CNTB were systematically appealed against before the tribunals and generally fell in cancellation. The Special Court was put in place to definitively do away with overlaps previously observed between the decisions taken by the commission and those of existing courts (République du Burundi, 2013a). The Court is expected to be independent of the executive and legislative powers and common jurisdictions. As earlier specified however, the particularity of this court may have a political justification. The return of refugees was partially forced by promises made by the ruling party to allow entire retrieval of the returnees' goods. Refugees constituted indeed an important pool of electorate for the ex-rebellion which gained a lot of support from the refugee camps, and failing to content them would have been a big loss.

b. The Court's achievements

Since its creation, 346 cases have been referred to the court, among which 116 have already been heard, 40 of them being in the degree of appeal. The tables below shows the distribution of the cases referred to the court according to the object of the conflict and the geographic coverage.

Object of the conflict

Land	Urban land plots	Houses	Cows	Others
210	38	13	2	83
60.6%	10.9%	3.7%	0.5%	23.9%

Source: calculations from data available at the court secretariat

Geographic case distribution

Province	Makamba	Rumonge	Bujumbura City	Bujumbura Rural
Cases	140	39	28	26
%	40.4	11.2	8.09	7.5

Source: calculations from data available at the court secretariat

We note from the above tables that cases related to rural land rights are predominant. This matches well the idea earlier put forward according to which the CNTB's legislation's reform was electorate motivated. In effect, the major part of the ruling party's voters live in rural areas. It also becomes clear that the most concerned region is the West-South belt, from Bujumbura to Makamba. As earlier specified, this region was the most affected by the 1972 crisis, which is bringing about a lot of conflicts due to the great number of refugees and the adverse possession at reason underpinning the secondary dwellers' argumentation.

The first execution of the special court's ruling took place on 29th January 2016, nearly two years after its installation. 4 other rulings were passed on the same date. Despite the young age of this court, a lot is still to be done to ensure the celerity of the proceedings before this court.

5. Conclusion

In a country such as Burundi whose area figures among the smallest of the world but with a high demographic pressure, a high greatness of land conflicts is normal. In effect, land constitutes a source of lust and competition over it engenders conflicts. This justifies also the many institutional mechanisms put in place to handle them. Land conflicts may be intra- and inter-families but can also involve the State or other public actors. They depend on structural factors and, sometimes are sparked by unfortunate events that hit the country. These factors maybe social and or political.

Land conflict management framework in Burundi manifests itself as a melange of informal and formal systems, formed of classic jurisdictions, alternative and special mechanisms. The three categories are more or less operational across the country, some of them benefiting state recognition, others community legitimacy. We have not analysed the relationships between these mechanisms. What we did was talk about the way they are conceived and operate individually, highlighting their success and limitations whenever it was possible.

The main factors sparking or strengthening land conflicts include the inobservance of the law or its political instrumentalization, non well reflected political or administrative measures and malfunctioning institutions. The first factor can be illustrated by land issues related to the expropriation for public utility and attributions regarding state-owned land and confusions between them and private land rights. The second factor manifests itself, amongst others, in the installation of IDPs on private land, the distribution of refugees' land to other people, the distribution of private land for coffee plantations or villages, etc. The third factor may be substantiated by the existence of state bodies incapable of good performance because they lack the necessary means and are politically manipulated. Legal norms and administrative measures should not be partial and politically distorted. This way, they are more likely to create intergenerational problems, cyclically backward.

We also noted some good practices deserving particular attention. First of all, communal land services play a great role as to land conflicts prevention and resolution. This is due to a greater attention given to community consensus and the participation of all stakeholders. The most relevant approach as regards land conflict management appears to be the systematic recognition of land rights. This one seems very expensive and could not be taken in charge by the communes. But, given its great interest in terms of land conflict reduction, the State should invest in this approach and make sure all land conflicts are screened. CSOs should play a complementary role in fund raising and community mobilisation. Second, the land-sharing

strategy between returnees and people occupying the land they left behind turns out to be more appropriate for peace and reconciliation. In effect, good-faith acquisitions need to be given due attention in order to avoid doing more harm than good. Instead of reviewing decisions taken following this approach, its achievements should be backed and, given the continuity principle, the State should take the necessary measures to indemnify people for losses deriving from its decisions. Last, Residential Courts are doing great job in terms of the celerity of the proceedings. This was possible because the speed on which decisions are rendered by the jurisdictions is part of the evaluation criteria. In other words, hierarchical control is making it possible to improve the work done at the residential court's level.

Recommendations

- So as to be more efficient, land conflicts resolution mechanisms have to take account of the informal system. As a matter of fact, land conflicts have customary roots and implications usually out of the control of official law and norms. Integrating the Burundian community realities (interests in presence, involvement of the vulnerable and powerless people,...) in the formal mechanisms of land conflicts management and legally valuing the decisions taken by local structures would be beneficial to the society.
- Substantially support and reinforce formal mechanisms of land (conflicts) management in order for them to be better tooled to receive and efficiently deal with cases referred to them. This requires that these institutions be endowed with human, financial and material resources, and that they be decentralized for better accessibility.
- The Government is usually unable to deploy the necessary means to strengthen its institutions. Thus, recourse could be made to commissions that intervene when needed, as this is the case for the CNTB.
- Ensure formal land conflict resolution mechanisms are accountable to the hierarchy and the beneficiary communities. This would allow for more responsibility and push the agents to be more productive and respectful for justice seekers.
- Document land disputes managed by informal mechanisms and local formal structures. This is likely to highlight their role in land conflicts management and thus help efficiently formulate policies searching their integration in the formal mechanisms.
- Scale up and generalize the communal land services in order to allow land conflict prevention countrywide through: a permanent community debate on land management, a participatory land rights recognition and the issuance of socially legitimized land certificates.
- In order to minimize the parallel recourse to land conflict management mechanisms, CSOs should help organize community training and sensitization. Thus, service seekers would be well informed and able to make the right choice taking into account the functioning and tasks of institutions which their cases are due to be referred to.

References

1. Ansoms, A. and Nyenyezi, A. (2014) “Land Grabbing & Power Relations in Burundi. Practical Norms & Real Governance”, in: Ansoms, A. and Hilhorst, T. (eds.) *Losing your Land. Dispossession in the Great Lakes*, James Curry, 125-140.
2. APDH (2004), "Enquête qualitative sur la situation des conflits fonciers dans province de Ngozi", Care International Burundi, Global Rights Burundi, Ngozi.
3. APDH (2015), APDH (2015), “Droits fonciers des femmes au Burundi. Le temps de l'action”, Rapport alternatif sur la mise en œuvre du Pacte international relatif aux droits économiques, sociaux et culturels, Bujumbura.
4. Arusha Peace and Reconciliation for Burundi, 28 August 2000.
5. Gatunange, G. (2004), “Etude sur les pratiques foncières au Burundi. Essai d’harmonisation”, Enquêtes menées dans 10 provinces du Burundi en février – mars 2004, Bujumbura, RCN Justice & Démocratie.
6. ICG (2014), "Les terres de la discorde (II): restitution et réconciliation au Burundi", Rapport Afrique n°214.
7. Kohlhagen, D. (2009), "Statistiques judiciaires burundaises. Rendement, délais et typologie des litiges dans les tribunaux de résidence", RCN Justice & Démocratie, Bujumbura.
8. Kohlhagen, D. (2011), "Les défis de la justice de proximité au Burundi. Synthèse de la réflexion nationale de 2011", République du Burundi, Bujumbura.
9. Ministry of Justice (2014), "Annuaire Statistique de la Justice au Burundi 2013", Bujumbura, SOMA Editions S.A.
10. Munezero, C. (2015), "Challenges of land access and conflict management in a plural normative context. The case of Burundi", University of Antwerp, IOB.
11. Niyomwungere (2010), "L’administration de mission en droit burundais : cas de la Commission nationale des terres et autres biens (CNTB)", Mémoire, University of Burundi, Faculty of Law, Bujumbura.
12. PAGE (2009), "Etude diagnostique du système juridique et judiciaire du Burundi", final report.
13. République du Burundi (1986), Loi No 1/008 du 1er septembre 1986 portant code foncier du Burundi.
14. République du Burundi (1993), Décret-Loi No 1/024 du 28 avril 1993 portant réforme du code des personnes et de la famille.

15. République du Burundi (2006a), Loi No 1/18 du 4 mai 2006 portant mission, composition, organisation et fonctionnement de la Commission Nationale des Terres et autres Biens.
16. République du Burundi (2006b), Décret No 100/205 portant application de la Loi No 1/18 du 4 mai 2006 portant mission, composition, organisation et fonctionnement de la Commission Nationale des Terres et autres Biens.
17. République du Burundi (2009), Loi No 1/17 du 4 septembre 2009 portant révision de la Loi No 1/18 du 4 mai 2006 portant mission, composition, organisation et fonctionnement de la Commission Nationale des Terres et autres Biens.
18. République du Burundi (2010), "Lettre de politique foncière", MEEATU, Bujumbura.
19. République du Burundi (2011a), Loi No 1/13 du 9 août 2011 portant révision du code foncier du Burundi.
20. République du Burundi (2011b), Loi No 1/01 du 4 janvier 2011 portant révision de la Loi No 1/17 du 4 septembre 2009 portant mission, composition, organisation et fonctionnement de la Commission Nationale des Terres et autres Biens.
21. République du Burundi (2013a), Exposé des motifs pour la révision de la Loi No 1/01 du 4 janvier 2011 portant mission, composition, organisation et fonctionnement de la Commission Nationale des Terres et autres Biens.
22. République du Burundi (2013b), Loi No 1/31 du 31 décembre 2013 portant révision de la Loi No 1/01 du 4 janvier 2011 portant mission, composition, organisation et fonctionnement de la Commission Nationale des Terres et autres Biens.
23. SDC (2008a), “Diagnostic socio-foncier dans la commune de Marangara”, Ngozi-Burundi.
24. SDC (2008b), “Diagnostic socio-foncier dans la commune de Ruhororo”, Ngozi-Burundi.