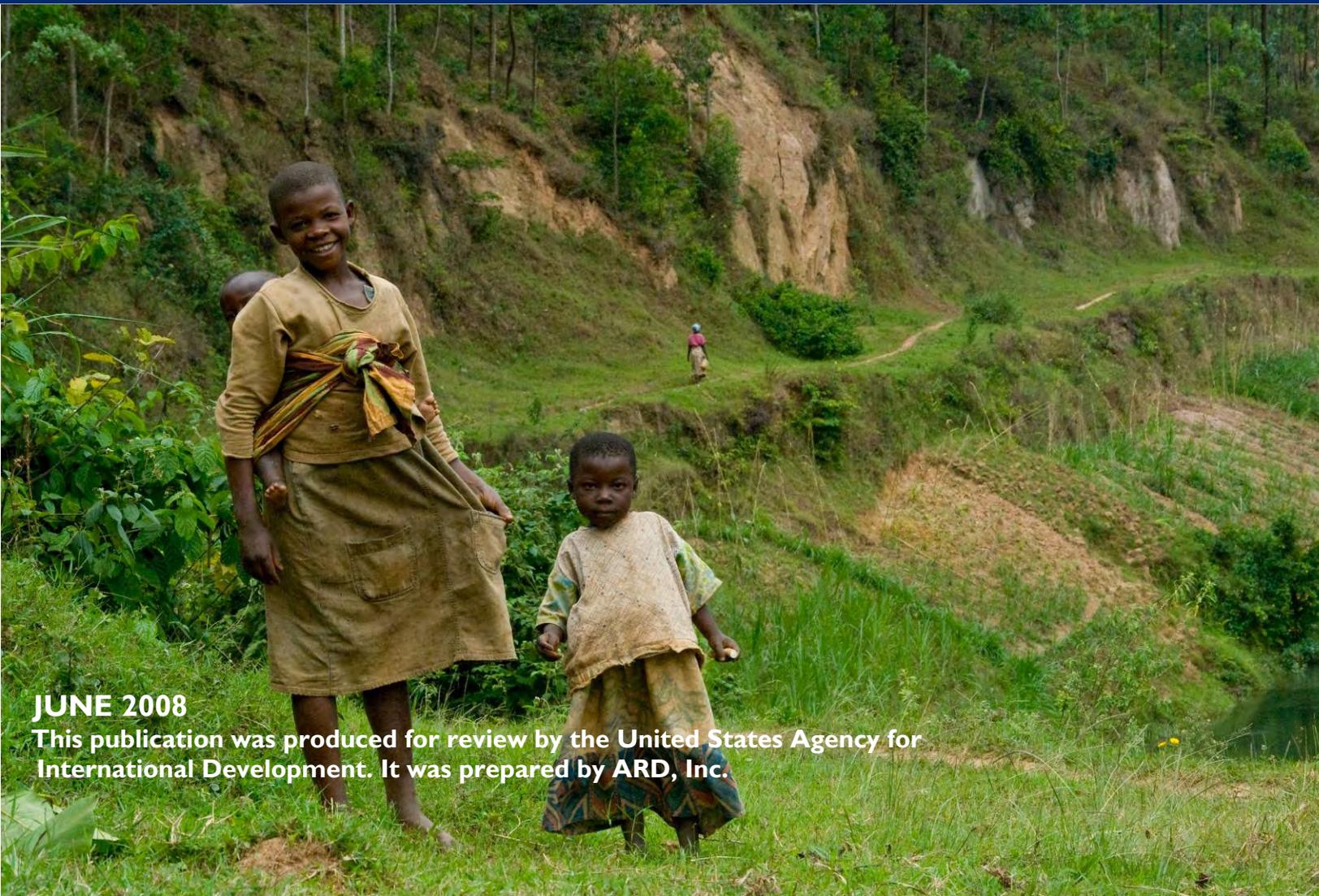




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# AN ASSESSMENT OF LOCAL RESOLUTION OF LAND DISPUTES IN TWO PILOT AREAS: KABUSHINGE AND NYAMUGALI CELLS, RWANDA



**JUNE 2008**

This publication was produced for review by the United States Agency for International Development. It was prepared by ARD, Inc.

# PREFACE

The purpose of the Rwanda Land Dispute Management Project (LDMP) is to support and strengthen local resolution of land disputes. This effort is particularly appropriate right now because the Government of Rwanda (GoR) is piloting a process for formalizing land rights, with the goal of eventually formalizing land rights nation-wide.

The LDMP is being implemented in two pilot areas with four main activities:

1. Assess land disputes and existing resolution processes in the pilot areas;
2. Develop/refine land-related dispute resolution processes;
3. Build local capacity for land dispute resolution; and
4. Conduct a public information and awareness campaign in the pilot areas on land rights and mechanisms that support peaceful reconciliation of land-related disputes.

This report is the outcome of Activity 1 of the LDMP. It provides a description of land disputes in the two pilot areas including a description of the existing dispute resolution process. This early activity will inform and support the accomplishment of Activities 2, 3, and 4.

The LDMP is implemented by ARD, Inc. of Burlington, Vermont, USA, with support from USAID's Office of Conflict Management and Mitigation in Rwanda, Contract No. 696-A-00-07-00006-00. ARD is working in partnership with the Rwandan Initiative for Sustainable Development (RISD), the Rural Development Institute (RDI), and the Center for Justice and Peace Building (CJP). ARD's implementing partners work hand-in-hand with the Rwanda Ministry of Natural Resources (MINIRENA). The LDMP will come to an end in June 2008.

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Cover Photo: Courtesy of Deborah Espinosa, RDI

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JANUARY 2008

## **DISCLAIMER**

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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# ACRONYMS AND GLOSSARY

<i>ABUNZI</i>	Mediation committee: an elected dispute resolution body at the cell level with mandatory jurisdiction over most local disputes
Cell	Administrative level between <i>Umutugudu</i> and Sector
CJP	Center for Justice and Peace Building
CMM	Conflict Management and Mitigation
DFID	UK Department for International Development
District	Rwanda's key regional administrative unit. There are 30 country-wide. Districts are divided into sectors.
<i>Gacaca</i>	The traditional reconciliatory justice system at the local level, which has been adopted by the GOR to handle some categories of genocide prosecutions.
GoR	Government of Rwanda
<i>Imidugudu</i>	Plural of <i>umudugudu</i>
LDMP	Land Dispute Management Project
MINALOC	Rwandan Ministry of Local Government
MINIRENA	Rwandan Ministry of Natural Resources (formerly MINITERE)
MINIJUST	Rwandan Ministry of Justice
NGO	Non-governmental organization
NWC	National Women's Council
<i>Nyumba Kumi</i>	Before 2006 the <i>nyumba kumi</i> were non-salaried community leaders elected to represent a group of ten households, including their own.
RISD	Rwanda Initiative for Sustainable Development
RDI	Rural Development Institute
Sector	Administrative unit between Cell and District

*Umudugudu*

Village. The boundaries of *umudugudu* have been administratively defined and do not necessarily correspond to “traditional” villages. This is the smallest administrative unit in Rwanda

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# I.0 INTRODUCTION

This Assessment is an activity for the Rwanda Land Dispute Management Project (LDMP), a USAID-supported effort under the Office of Conflict Management and Mitigation. ARD, Inc. is implementing the LDMP in partnership with the Rwanda Ministry of Natural Resources (MINIRENA),<sup>1</sup> the Rwanda Initiative for Sustainable Development (RISD), the Center for Justice and Peace Building at Eastern Mennonite University (CJP), and the Rural Development Institute (RDI).

The LDMP is based on the premise that disputes and conflict are an inherent and legitimate aspect of daily life.<sup>2</sup> Rather than attempt a single definition of “conflict” and “dispute,” this Assessment identifies two broad categories of dispute and conflict as: (1) those that are necessary – even critical – to positive change, and (2) those that end in widespread, deadly violence.<sup>3</sup> The overarching goal of the LDMP is to manage disputes and conflict under the first category, thereby preventing a transformation or escalation into the second category.

More specifically, the LDMP is intended to support and strengthen local mechanisms for resolving land disputes in two pilot areas, following the potentially divisive process of formalizing land rights. Land rights have been formalized in four cells as part of a pilot project to test implementation of the Organic Land Law. Those pilots were undertaken through the DFID-supported National Land Tenure Reform Project. At MINIRENA’s request, ARD and its partners are implementing the LDMP in two of the National Land Tenure Reform Program’s four pilot areas: (1) Musanze District, Rwaza Sector, Kabushinge Cell; and (2) Gasabo District, Gatsata Sector, Nyamugali Cell.

The LDMP focuses on *local* mechanisms, which for purposes of the LDMP, refer to institutions resolving land disputes at the cell level and below, i.e., *below the level of the courts*.<sup>4</sup> Those institutions include the *abunzi*, cell committee, *umudugudu* leaders, and other community leaders at the cell level and below. (Each of these institutions is discussed below.) Although the newly-established cell land committees have no formal role in resolving land disputes, the LDMP has included them within the scope of the project given their anticipated role and influence in land matters. Local mechanisms for resolving disputes are discussed in this Assessment. Please see Appendix A for a description of the formal institutions that resolve land disputes.

Following this Assessment, ARD and its partners will share the Assessment findings with MINIRENA and the local authorities in each cell as well as provide training and support to those institutions engaged in resolution of land disputes in Kabushinge and Nyamugali.

## I.1 BACKGROUND

Between March and December 2007, MINIRENA piloted a land rights formalization process in four areas, including in Kabushinge and Nyamugali cells, with support from the UK Department for International Development (DFID).<sup>5</sup> Given that the formalization process necessarily involves inviting individuals to come forward with competing land claims, MINIRENA wanted to ensure that the local dispute resolution mechanisms would be able to manage those disputes fairly and effectively.

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<sup>1</sup> MINIRENA is formerly known as the Ministry for Land, Environment, Forestry, Water, and Mines (MINITERE).

<sup>2</sup> USAID, Office of Conflict Management and Mitigation, *Conducting a Conflict Assessment: A Framework for Strategy and Program Development* at 11 (April 2005) (hereinafter, “CMM Framework”).

<sup>3</sup> *Id.*

<sup>4</sup> The Government of Rwanda’s administrative structure consists of the following levels: province, district, sector, cell, and *umudugudu*.

<sup>5</sup> Beginning in 2009, MINIRENA plans to systematically formalize land rights across Rwanda.

Kabushinge cell is a rural area located in Rwaza Sector, Musanze District, in north-west Rwanda. Kabushinge is home to 1,118 households, cultivating 7,432 parcels on 584 hectares. There are eight *imudugudu* in Kabushinge. The majority of the population is Catholic and there are only a few Muslim families. Polygamy is still present but not to the extent as other areas in Musanze District.<sup>6</sup>

Nyamugali is an urban/peri-urban area located near the City of Kigali in Gatsata Sector, Gasabo District. Nyamugali is home to 1,200 households in a 66-hectare area. There are twelve *imudugudu* in Nyamugali. The majority of couples are legally married, though there are also some polygamous relationships. The majority of the population is Catholic or born-again Christian. There are only a few Muslim families.

## I.2 OBJECTIVES

The main objectives of the Assessment in Kabushinge and Nyamugali are to:

- Assess the nature and severity of land-related disputes;
- Identify the process for resolving a land-related dispute within the two pilot areas;
- Assess local capacity for and constraints to resolving these disputes, including training needs;
- Assess women and vulnerable groups' awareness of and perceptions regarding available land dispute resolution mechanisms;
- Assess the extent and quality of each group's access to these mechanisms, including identifying barriers that may prevent women and vulnerable groups from fully accessing the process;
- Identify measures that the LDMP may implement to improve local capacity for resolving disputes and to improve women and vulnerable groups' access; and
- Recommend longer-term measures that MINIRENA, MINIJUST, and/or MINALOC may implement to improve local capacity for resolving land disputes fairly and effectively and to improve women and vulnerable groups' access.

## I.3 METHODOLOGY

With assistance from RISD, CJP and RDI conducted several rounds of qualitative field research in both pilot areas between October 2007 and January 2008. The teams used Rapid Rural Appraisal techniques, focus groups, and key informant interviews, totaling approximately 150 people.<sup>7</sup> Interviewees and focus group participants included men, women, and youth who reside in the two pilot areas; *umudugudu*, cell, sector, and district officials from the two areas; local representatives of the National Women's Council; MINIRENA, MINIJUST, and MINALOC representatives at the local and national levels; presidents and members of the *abunzi*, local lawyers; widows; orphans; genocide survivors; those infected by HIV/AIDS; and representatives from local and national NGOs with a focus on land issues, vulnerable groups, and/or land-related disputes.

Among the women residents, the team interviewed the elderly, mid-life and young, married with and without children (both legal and informal), unmarried with and without children, widowed with and without children, and women from the spectrum of socio-economic classes.

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<sup>6</sup> The form of polygamy present in Rwanda typically includes one male spouse supporting more than one wife in separate households.

<sup>7</sup> The team did not base this assessment on the CMM Framework because that Framework is designed for a country-wide assessment of conflicts, which is outside the scope needed here. The CMM Framework is intended to help Missions: "1) identify and prioritize the causes and consequences of violence and instability that are most important in a given country context; 2) understand how existing development programs interact with these factors; and 3) determine where development and humanitarian assistance can most effectively support local efforts to manage conflict and build peace." See CMM Framework at 8. To the extent such concepts and terms apply, however, the team utilized them. The team also relied on CMM toolkits. See <[http://www.usaid.gov/our\\_work/cross-cutting\\_programs/conflict/](http://www.usaid.gov/our_work/cross-cutting_programs/conflict/)> (listing hyperlinks to CMM toolkits including those on Land and Conflict, Youth and Conflict, and Women and Conflict).

At the outset of the Assessment, the following groups were considered “vulnerable” in terms of their access to land dispute resolution in Kabushinge and Nyamugali: widows, orphans, and genocide survivors.<sup>8</sup> The team reserved the option to modify these groups if the findings suggested a more inclusive or exclusive set. For example, early on, the team determined that few religious minorities reside in the pilot areas and, therefore, no special effort was needed to ensure their inclusion in the interviews.

Before beginning the Assessment, the team conducted a desk study of relevant materials. In particular, the team reviewed the following: (1) National Land Tenure Reform Program, MINITERE, *Results of Preparatory Field Consultations in Four Trial Districts; March-October 2006*; and (2) African Rights field findings on implementation of the Inheritance Law in the four MINIRENA/DFID pilot areas. These two studies are highlighted here because they include field research in Kabushinge and Nyamugali.

## **I.4 SUMMARY OF FINDINGS**

In both cells, the most common land-related disputes are *inheritance disputes*. Examples of inheritance disputes include those between:

- siblings due to inequitable allocation of an inheritance;
- brothers and sisters due to unequal allocation of an inheritance based on sex;
- legal wives and informal second and third wives (etc.) upon the death of a husband; and
- children of legal wives and informal second and third wives where they have the same father.

The second and third most common types of dispute in Kabushinge cell are *boundary disputes* followed by disputes related to *land transactions*. In Nyamugali cell they are disputes related to *absentee owners* and then *boundary disputes*.

The primary factors that contribute to these disputes are land scarcity, overpopulation, land fragmentation, polygamy, discrimination against women, and poverty. Another contributing factor to these disputes is a general lack of awareness among the population regarding the laws governing land rights.

Parties in Kabushinge and Nyamugali consult the following institutions in this order for help in resolving land disputes:

- 1 Family – Family Council;
- 2 *Nyumba kumi* (Kabushinge only);
- 3 *Umuugudu* leader/executive committee (if all available);
- 4 Cell executive committee;
- 5 *Abunzi*.

Each of these bodies is discussed in detail in the body of the Assessment.

Local capacity to resolve land disputes is bolstered by the fact that the local institutions and individuals are committed to fair resolution. In addition, residents expressed strong community support as well as a demand community-based resolution of disputes. Significant technical constraints to fair and effective dispute resolution remain, however. The local institutions and individuals lack the skills and knowledge to resolve disputes consistent with the law and institutional support is limited to non-existent.

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<sup>8</sup> Much effort was expended in determining which sub-groups ought to be included as “vulnerable” in terms of access to dispute resolution in the two pilot areas. In the existing literature, there appears to be no accepted or even suggested methodology for identifying such sub-groups. There also is no clear picture as to which sub-groups in Rwanda are “vulnerable,” generally. Some sources suggest that all sub-groups are vulnerable. In addition, a sub-group may be disadvantaged in one context and not in another.

## 2.0 LAND DISPUTES IN KABUSHINGE AND NYAMUGALI CELLS

This Assessment discusses the severity of land disputes along a spectrum between the two categories discussed above: those that are legitimate and necessary for positive change and those that end in widespread violence.

### 2.1 KABUSHINGE

According to field consultations, the three most common land-related disputes in Kabushinge cell are: (1) inheritance disputes; (2) boundary disputes; and (3) disputes related to land transactions.<sup>9</sup> The primary factors that contribute to these disputes are land scarcity, overpopulation, land fragmentation, polygamy, discrimination against women, and poverty. Other factors include a general lack of awareness among the population regarding the laws governing land rights. It was reported that during MINIRENA's land formalization pilots, residents often were able to reconcile their different positions once they were informed of the applicable law.

***Inheritance disputes.*** Among the above disputes, those related to inheritance appear to have the most potential to escalate towards violence among those involved because they are the most complicated and tend to challenge existing social structures. Examples of such disputes include those between:

- siblings due to inequitable allocation of an inheritance (in terms of size and/or quality of land);
- brothers and sisters due to unequal allocation of an inheritance based on sex;
- legal wives and informal second and third wives upon the death of a husband; and
- children of legal wives and second and third wives where they have the same father.

One *abunzi* mediator indicated that “inheritance cases are among the more difficult and are increasing because families are violating the rights of women and girls.”<sup>10</sup>

The fact that these disputes tend to be intra-family is problematic. As discussed below, parties to a dispute will first attempt to resolve the dispute within the family. The population's general lack of awareness of each person's specific rights only aggravates the dispute. Only a significant public education campaign on the law governing land rights can alleviate this problem. Absent such a campaign, families will struggle to resolve their disputes – sometimes with serious implications for the most vulnerable.

But even assuming public awareness of the existing laws, other factors will continue to exacerbate the likelihood and gravity of inheritance disputes. As the population continues to grow, land – the primary source of the population's livelihood – will become increasingly scarce and parcels increasingly fragmented.

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<sup>9</sup> The most common non-land related dispute is breach of contract either based on a loan default or failure to pay for services rendered.

<sup>10</sup> All quotations in this Assessment are from the LDMP team's field consultations in Nyamugali and Kabushinge.

**Boundary disputes.** Boundary disputes are common but tend to be resolved before escalating. MINIRENA's recent pilot formalizing land rights, during which each parcel was demarcated and the owner(s) registered, has decreased the frequency of such disputes. The communities anticipate that future boundary disputes (i.e., those that arise after formalization) will be discouraged because each parcel is now formally demarcated and documented.

**Disputes related to land transactions.** Disputes related to land transactions are also common. These disputes include land sales without the consent of a wife or family members or where a seller attempts to sell a parcel to two willing buyers. Like boundary disputes, this type of dispute should decrease with land tenure formalization, provided parties to a sale are aware that the sale needs to be registered, authorities require the registration of sales, and the requisite proof of consent is presented upon registration.

## 2.2 NYAMUGALI

The three most common land-related disputes in Nyamugali cell are: (1) inheritance disputes; (2) disputes related to an absentee owner; and (3) boundary disputes.<sup>11</sup> The primary factors contributing to these disputes are land scarcity, overpopulation/high density, polygamy, discrimination against women, and poverty. Another cause of these disputes is a general lack of awareness among the population regarding the laws governing land rights. It was reported that, during the MINIRENA's land formalization pilot, parties in a land-related dispute were often able to reconcile their differences once they were informed of the applicable law.

**Inheritance disputes.** Among the above disputes, those related to inheritance possess the greatest potential for escalation. Like Kabushinge, inheritance disputes involve the following individuals:

- siblings due to inequitable allocation of an inheritance;
- brothers and sisters due to unequal allocation of an inheritance based on sex;
- legal wives and informal second and third wives upon the death of a husband; and
- children of legal wives and informal second and third wives where they have the same father.

Among these specific disputes, many interviewees considered those between legal wives and informal second and third wives the most severe and difficult to resolve. There was also limited mention of disputes between mothers and their children over land.

**Disputes related to an absentee owner.** Disputes that arise because the owner is absent are also common and reportedly quite divisive. Absentee owners include land lords, refugees, migrants, and prisoners. During the MINIRENA formalization pilot, there were many instances where individuals attempted to register the land in their own names, intentionally or unintentionally taking advantage of the owner's absence. Many interviewees expressed concern that disputes may increase now that land rights have been formalized because, as people return and learn that the land that they believe is their own is registered in someone else's name, they will physically retaliate or take the land by force.

**Boundary disputes.** Boundary disputes are common but tend to be resolved before escalating. MINIRENA's recent pilot formalizing land rights in Nyamugali has decreased the frequency of such disputes, and residents thought that formalized land rights will likely continue to discourage such disputes.

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<sup>11</sup> Other non-land related disputes include defaults on loans and requests for child support.

# 3.0 PROCESS FOR LOCAL RESOLUTION OF LAND DISPUTES

As noted above, the LDMP focuses on land dispute resolution at the local level – i.e., the institutions that resolve disputes at the cell level and *before* a dispute reaches the formal court system – in Kabushinge and Nyamugali cells. Thus, the LDMP and this Assessment is concerned with the *abunzi* (which is at the cell level), the cell committee, the *umudugudu* leaders and committee, and other community leaders at the cell and below.

There appears to be no formal, legally-prescribed process that a party must follow to seek relief for a dispute at any level below the *abunzi*. In practice, however, the informal processes for resolving a land dispute in Kabushinge and Nyamugali are quite similar. Parties in Kabushinge and Nyamugali consult the following institutions in this order for help in resolving land disputes:

- 1 Family – Family Council;
- 2 *Nyumba kumi* (Kabushinge only);
- 3 *Umudugudu* leader/executive committee (if all available);
- 4 Cell executive committee;
- 5 *Abunzi*<sup>12</sup>.

There are two main differences between the cells, however. First, the Kabushinge community has maintained use of the now formally-defunct *nyumba kumi*, whereas the *nyumba kumi* is not considered a step in the dispute resolution process in Nyamugali. Second, in Kabushinge, each institution below the *abunzi* is optional but encouraged. In contrast, in Nyamugali, the institutions below the *abunzi* must be consulted before the *abunzi* will consider a case.

Each of these steps is discussed below with particular attention to similarities and differences between Kabushinge and Nyamugali.

## 3.1 FAMILY – FAMILY COUNCIL

To varying degrees, all interviewees indicated that if a dispute exists within the family, the family or “Family Council” will attempt to resolve it first. The Civil Code recognizes the traditional Family Council, although the Code does not define it.<sup>13</sup> Generally, the purpose of the family council is “to take care of all interests of the family members.”<sup>14</sup> The Code recognizes that the composition and functioning of the Family Council

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<sup>12</sup> A few interviewees in both cells indicated that they or someone they knew have approached a church leader for assistance in resolving a land dispute – but rarely. Also absent from this discussion are the cell leaders themselves. In Kabushinge, the cell coordinator and cell executive secretary indicated that, while they may meet individually with a person and give advice, they will not try to resolve a dispute in order to avoid appearing biased. When such assistance is an appeal of a lower -level decision, they will direct the party to the process discussed here. Similarly, the Nyamugali cell coordinator and cell executive secretary will direct the person to the proper procedure for resolving a dispute, rather than trying to help them individually in order to avoid charges of corruption.

<sup>13</sup> A. Cyiza, *Family Law and Matrimonial Property*, at 4 (2002) (citing Civil Code, art. 455).

<sup>14</sup> *Id.*

varies from region to region and follows common practice and custom.<sup>15</sup> An expert on Rwandan family law explains:

In principle, **the Family Council consists of wise and well-behaved persons chosen from members of the extended family.** Members of the council are not permanent. **The council meets whenever there is a problem to be solved,** and it does not require a quorum. The Family Council meetings shall be convened and presided over by the Head of the Family. In his absence, it is initiated by any interested person. The Family Head is chosen by the parents among the children. He may also be designated by the Family Council, in case the parents died before designating whom the chief is. It may also be noted that it is not so required to have a Family Head.<sup>16</sup>

The Succession Law also provides for resolution of inheritance disputes by the Family Council: “At the time of succession between the children, the family council shall determine the part of the patrimony to be earmarked for the raising of minors and the part to be shared between all of the children of the *de cuius* [the deceased].”<sup>17</sup> Under the law, these decisions are made by the Succession Council, which is a subset of the Family Council. Its membership is defined in the law.<sup>18</sup>

Interviewees in both cells indicated that, typically, the family council, i.e., the husband, wife, and children, and perhaps the extended family, will get together to try to resolve the dispute.

### 3.2 NYUMBA KUMI (KABUSHINGE ONLY)

Before 2006, the *nyumba kumi* were non-salaried community leaders elected to represent a group of ten households, including their own. Typically, these individuals were well respected and trusted by their community. Age is less relevant. The majority of *nyumba kumi* are men, although now there are a few women *nyumba kumi*.

In January 2006, the government formally removed the *nyumba kumi* from their position.<sup>19</sup> In their place, communities elected leaders for each *umudugudu*, or village.<sup>20</sup>

Despite this formal proclamation, in rural Kabushinge, the vast majority of interviewees indicated that if the family cannot resolve the dispute, the party will next go to the *nyumba kumi* for assistance. Interviewees in urban Nyamugali, however, do not consider the *nyumba kumi* an option when they need help resolving land disputes.

In Kabushinge, a party will typically request that the *nyumba kumi* assist in resolving a land dispute. As one Kabushinge resident stated, “The *nyumba kumi* is the best approach because there are old and sick people who cannot go to the local authorities.”

When the dispute is within the family, the *nyumba kumi* will meet with the family to try to resolve the dispute. When the dispute involves individuals outside the family, the *nyumba kumi* will invite the disputants and neighbors to a meeting to hear the dispute and provide input. The *nyumba kumi* will then decide alone.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (emphasis in original).

<sup>17</sup> Law No. 22/1999 of 11/22/99 to Supplement Book I of the Civil Code and to Institute Part 5 regarding Matrimonial Regimes, Liberalities, and Successions, art. 51 (“Succession Law”).

<sup>18</sup> *Id.* art. 81.

<sup>19</sup> Ministry of Lands, Environment, Forestry, Water and Mines, *Phase I of the Land Reform Process for Rwanda: Results of Preparatory Field Consultations in Four Trial Districts; March – October 2006*, at 14 (2007).

<sup>20</sup> For example, in one *umudugudu*, there may be three to five *nyumba kumi*.

It appears that in many instances, a person who wants assistance from a *nyumba kumi* has to pay 100 FRW (about \$0.18 USD), although this requirement appears to be applied inconsistently. Some interviewees reported that the 100 FRW was for paper and pen. If a *nyumba kumi* decides in favor of the party who raised the dispute, he or she will be reimbursed and the losing party must pay 1000 FRW (about \$1.85 USD).

### 3.3 UMUDUGUDU EXECUTIVE COMMITTEE

The next step for a party whose dispute has not been resolved to their satisfaction is to take the dispute to the village leadership: the *umudugudu* executive committee. There are five members of the *umudugudu* committee: one leader and four members, all of whom are volunteers.<sup>21</sup> Before assuming office, members of the *umudugudu* executive committee must take a constitutional oath to uphold the law:

I, \_\_\_\_\_, solemnly swear to the Nation that I shall:

...

3. observe the Constitution and the other laws;

...

5. fulfill conscientiously my duties of representing the Rwandan people without any discrimination whatsoever;

...

7. promote respect for the freedoms and fundamental rights of the human being and safeguard the interests of the Rwanda people.

Should I fail to honor this oath, may I face the rigors of law . . . .<sup>22</sup>

In Kabushinge, all five committee leaders will decide the dispute, if they are available. At a minimum, three members must be present to decide the case. In Nyamugali, sometimes the whole committee will consider a dispute and sometimes just the leader. There is a general perception among the population that the *umudugudu* decisions can be biased and influenced by personal relationships with one of the parties or their relatives.

Some interviewees in Kabushinge indicated that a party may have to pay the *umudugudu* committee for hearing a case, especially the losing party. The amount of payment depends on the nature of the dispute. The frequency of this practice is not clear. No interviewees indicated that they were aware of anyone paying a bribe in advance, however. Interviewees in Nyamugali indicated that no payment is required.

In both cells, if the *umudugudu* committee does not resolve the dispute to the satisfaction of one of the parties, then the leader writes a report referring the dispute to the cell executive committee for consideration. It appears that no report is prepared if the dispute is resolved.

### 3.4 CELL EXECUTIVE COMMITTEE

The cell executive committee is the local governmental body under the district and sector, comprised of 10 volunteer members, including the cell coordinator.<sup>23</sup> The resolution of disputes is one of the committee's

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<sup>21</sup> Pres. Order No. 51/01 of 15/10/16 Determining the Structure and Functioning of Village, Cell, and Sector, arts. 2 & 11 ("Order on Village, Cell, and Sector").

<sup>22</sup> Order on Village, Cell, and Sector, art. 17.

<sup>23</sup> See Law N°08/2006 of 24/02/2006 Determining the Organisation and Functioning of the District, art. 2; Order on Village, Cell, and Sector, arts. 2 (indicating voluntary service) & 10 (listing responsibilities). The cell executive secretary is the only member who is not a volunteer.

main responsibilities.<sup>24</sup> Similar to the *umudugudu* executive committee members, members of the cell executive committee must take a constitutional oath.<sup>25</sup>

Upon receipt from the *umudugudu* executive committee of a report detailing the dispute and its decision, the parties may present their case before the cell executive committee. In Kabushinge, the cell coordinator announces that the committee will be hearing a dispute on a particular day and in Nyamugali they regularly hear disputes on Fridays. The public is invited and such meetings are well attended.

Interviewees in both cells reported that parties to a dispute do not pay for the cell executive committee to hear their disputes.

In contrast to the cell executive committee, the recently formed cell land committees in Kabushinge and Nyamugali do not have a formal role in resolving land disputes. Members of the cell land committee, however, are welcome to attend the cell committee meetings where such disputes are considered. This finding is consistent with a recent presidential order.<sup>26</sup>

### 3.5 ABUNZI

The last step before the formal courts is the *abunzi*, or mediation committee at the cell level.<sup>27</sup> Of the institutions that resolve disputes locally, the *abunzi* is the only one whose formal, statutory mandate is dispute resolution via mediation.

Mandated by the Constitution<sup>28</sup> and the Organic Law on Mediation Committees, the *abunzi* is “an organ meant for providing a framework of obligatory mediation prior to submission of a case before the first degree courts hearing cases referred to in articles 8 and 9 of this organic law.”<sup>29</sup> That is, the formal courts act as an appellate court and will not consider a dispute unless the *abunzi* has first considered and ruled on the dispute, with some exceptions for property over a certain value.

The *abunzi* is comprised of 12 volunteers, all of whom must be residents of the cell, at least 30 percent women, and be “persons of integrity and are acknowledged for their mediation skills.”<sup>30</sup> There are also three alternates. The cell council elects the *abunzi* whose members serve a two-year term, which is renewable.<sup>31</sup> The cell executive secretary acts as the secretary of the *abunzi*.<sup>32</sup>

Before assuming his or her responsibilities, each *abunzi* mediator must take an oath of office in front of the population and the cell coordinator, which includes swearing to “observe the Constitution and other laws” and to “consciously fulfill my duties of representing the Rwandan people without any discrimination whatsoever,” and “promote respect for the freedoms and fundamental rights of the human being and

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<sup>24</sup> Order on Village, Cell, and Sector, art. 31(7).

<sup>25</sup> Order on Village, Cell, and Sector, art. 33.

<sup>26</sup> See Pres. Order No. 54/01 of 12/10/2006 determining the structure, responsibilities, functioning, and composition of Land Commissions, art. 21 (“there are hereby established at the Sector and Cell levels Land Committees to assist Land Commissions at the District level in the fulfillment of their mandate”).

<sup>27</sup> Organic Law No. 31/2006 of 14/08/2006 on Organization, Jurisdiction, Competence, and Functioning of the Mediation Committee, art. 2 (hereinafter “Abunzi Law”); see also Ministerial Order N° 122 of 18/12/2004 on Internal Rules and Regulations of the Mediation Committee. The Organic Land Law provides for mediation committees at the sector level, not the cell level. See Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, art. 53. That provision is no longer good law, however, because all legal provisions contrary to the Abunzi Law are abrogated. See Abunzi Law, art. 32.

<sup>28</sup> CONST. OF THE REPUBLIC OF RWANDA, art. 159; Amend. No. 02 of 08/12/2005 of the Const. of the Republic of Rwanda of June 4, 2003, as amended to date, art. 17.

<sup>29</sup> Abunzi Law, art. 3.

<sup>30</sup> Abunzi Law, art. 4.

<sup>31</sup> See Pres. Order No. 43/01 of 16/08/06 Establishing Regulations on Election on Electing Mediation Committee Members, art. 2.

<sup>32</sup> Abunzi Law, arts. 4 & 5.

safeguard the interests of the Rwandan people.”<sup>33</sup> In the oath, the mediator acknowledges that for failure to honor the oath, “may I face the rigors of the law.”<sup>34</sup>

The *Abunzi* Law mandates that the *abunzi* makes decisions consistent with the law: “To settle the conflict submitted to them, the Mediators shall seek first to conciliate the two parties. In case of non-conciliation, they take decision consciousness [sic] in all honesty and in accordance with the laws and place’s custom, provided it is not contrary to the written law.”<sup>35</sup>

### 3.5.1 Jurisdiction of the Abunzi

The *abunzi* operates at the cell level, with broad jurisdiction over civil disputes related to:

- 1 Lands and other immovable assets whose value does not exceed three million Rwandan francs;
- 2 Cattle and other movable assets whose value does not exceed one million Rwandan francs;
- 3 Breach of contract where the value of the matter at issue does not exceed one million Rwanda francs (unless commercial or labor contracts in which case the maximum amount is 100,000 Rwandan francs)
- 4 Family cases other than those related to civil status; and
- 5 Succession when the matter at issue does not exceed three million Rwandan francs.<sup>36</sup>

The *abunzi* also has jurisdiction over some criminal cases, including some land-related matters:

- 1 Removing or displacing parcel boundaries;
- 2 Destroying, damaging, or stealing crops where the value does not exceed three million Rwandan francs; and
- 3 Thefts or distortion by married persons committed to the detriment of their spouses, by a widow or widower as to assets which belonged to the deceased spouse, by descendants to the detriment of their ascendants, by ascendants to the detriment of their descendants, or by allies at the same degree.<sup>37</sup>

### 3.5.2 Abunzi Process

The *Abunzi* Law provides the procedure for filing and hearing a dispute:

- The party with the dispute must make a written or verbal request to the cell executive secretary (or deputy). The cell executive secretary must immediately add the case to a cause list and issue a subpoena to the other party, briefly identifying the matter, venue, day, and time of hearing.
- On the day of the hearing, the parties choose three mediators out of the twelve to hear their case. If the parties cannot agree, each party chooses one mediator, and the mediators choose the third. Parties do not have the right to refuse the mediators selected under the prescribed process.<sup>38</sup>

Lawyers may assist parties but may not appear before the *abunzi*. During the public hearing, the *abunzi* may hear testimony from both parties as well as from witnesses with information regarding the matter.<sup>39</sup>

After the hearing, the mediators adjourn for a private conference to deliberate. Decision is by consensus or majority. The mediators must decide the case within 30 days of the cell executive secretary adding the case to the cause list.<sup>40</sup>

The mediators’ decision is memorialized in written minutes, signed by both parties, and must be made

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<sup>33</sup> *Id.*, art. 7.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*, art. 21.

<sup>36</sup> *Id.*, arts. 2& 8.

<sup>37</sup> *Abunzi* Law, art. 9.

<sup>38</sup> *Id.*, arts. 17 & 18. See article 19 for failure to appear.

<sup>39</sup> *Id.*, art. 20.

<sup>40</sup> *Id.*, arts. 20 & 22.

available to the parties within five days of the decision. The contents of the minutes are prescribed by the *Abunzi* Law.<sup>41</sup> An unsatisfied party has 30 days from notification of the decision to appeal to the court of first instance, and must submit a copy of the minutes on appeal.<sup>42</sup>

### 3.5.3 *Abunzi* In Kabushinge

The Kabushinge *abunzi* appear to be functioning consistent with the procedures outlined above. As of January 2008:

- Since its formal inception, there had been 111 cases before the *abunzi*. Two were appealed to court, four were never decided. Out of the two appealed, the court affirmed one and the other is still pending.
- There are three cases pending on the cause list.
- There are seven male and seven female mediators on the *abunzi*. A female *abunzi* member said that the fact that she is a woman does not minimize her role or opinion.
- Technically, there is no fee for filing a case before the *abunzi* but the summons costs 100 FRW (approximately \$0.18).
- The cases that come directly to the *abunzi* tend to be related to succession. Most of these are brought by women, according to one interviewee “because they are the ones discriminated against by their families.”
- If there are cases on the cause list, the Kabushinge *abunzi* will meet on Thursdays at 9am. The public is invited to attend and many people come to observe.
- If the law is silent on an issue, the *abunzi* “bases decision on what people say, what they’ve seen, and their own views,” according to one *abunzi* member, and they base decisions on “custom.”
- The *abunzi* has reversed the majority of cases appealed from below. Residents and *abunzi* members attribute such reversals to the fact that the *abunzi* has some guidance on the law. The president of the *abunzi* has a copy of the Succession Law.<sup>43</sup> It appears that no mediator has a copy of the Organic Land Law.
- In addition to preparing the minutes, the cell executive secretary writes a monthly report for the Sector.
- Sometimes the panel of three is comprised of only women. Parties tend to choose female mediators more than male mediators. According to interviewees, men tend to choose female mediators because their cases are usually against their wives and they do not want the wife to think that the decision will be biased. Female parties tend to choose female panelists because most women think that other men might give more weight to opinions of men and because they think that male mediators may be friends with the other party, usually her husband.

### 3.5.4 *Abunzi* In Nyamugali

The Nyamugali *abunzi* also appear to be functioning consistent with the procedures outlined above.

As of January 2008:

- There are five vacancies on the *abunzi*. This fact is attributed to the voluntary nature of the position and that people cannot take time off of work in Kigali.
- Since its inception in Nyamugali, the *abunzi* has considered 20 cases, one of which was appealed. That case is still pending.
- Almost equal numbers of men and women have taken disputes to the *abunzi*. Rarely if ever has an orphan filed a case.

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<sup>41</sup> See *Abunzi* Law, art. 22.

<sup>42</sup> *Abunzi* Law, arts. 22, 25–26. In another cell in Musanze district, where an *abunzi* failed to prepare the decision and minutes within the prescribed time, causing the party to lose her right to appeal, she took that issue to the court. Upon review, the court ordered the *abunzi* to collectively pay the party two million FRW (about \$3710 USD). Interviews with Haguruka lawyers in Musanze and Kigali, Jan. 2008.

<sup>43</sup> The *Abunzi* Law does not indicate the *abunzi* president’s role and responsibilities.

- The President has developed draft regulations governing *abunzi* conduct, which the *abunzi* mediators are reviewing before agreeing to them.
- Provided there is a case pending, the Nyamugali *abunzi* meets on Sundays at 2pm.
- Announcements of the next *abunzi* hearing are posted outside the cell office. Although not everyone can read, people learn of the hearing via word of mouth.
- Rarely has the *abunzi* agreed with the decisions below.

Following an *abunzi* decision, other community members may resolve a similar dispute consistent with the *abunzi*'s decision – without going to the *abunzi*.

# 4.0 LOCAL CAPACITY AND CONSTRAINTS FOR RESOLVING LAND DISPUTES

## 4.1 CAPACITY

Local capacity to resolve land disputes is bolstered by the fact that the local institutions and individuals are committed to fair resolution. Residents indicated that there is strong community support for local dispute resolution actors, and there is a demand for community-based resolution of disputes.

*Commitment to fair resolution of disputes.* The greatest strength of the dispute resolution institutions in Kabushinge and Nyamugali is their apparent sincere commitment to fair and effective resolution of land disputes. All of the individuals interviewed, who are volunteers with limited personal resources, considered it an honor to serve the community and are committed to peaceful resolution of land disputes. Most of them said that they would accept another term if elected.

*Strong community support.* The capacity of the local dispute resolution institutions is strengthened by the apparent strong community support for local resolution. Despite known shortcomings, both Kabushinge and Nyamugali communities expressed their approval of the process. Both communities regard the *abunzi*, in particular, as fair.

*Demand for community-based resolution of disputes.* In addition, there is a demand within each community for resolution of land disputes at the local level. Many interviewees expressed strong approval of local efforts to resolve disputes because such resolution is physically accessible to the community, especially the most vulnerable. Another reason for supporting local resolution of disputes is that the local leaders know the people involved and the issues better. As one interviewee shared, “Decentralized government is good because there is always someone you can go to for help.”

## 4.2 CONSTRAINTS

Significant technical constraints to fair and effective dispute resolution remain, however. The local institutions and individuals lack the skills and knowledge to resolve disputes consistent with the law and institutional support is limited to non-existent.

*Lack of knowledge about the law and dispute resolution methods.* Each institution and individual included above has had no training on the basic dispute resolution methods and the basic tenets of Rwandan land law.<sup>44</sup> With few exceptions, in both cells, these institutions and individuals have no access to copies of applicable laws and the few individuals who have a copy of the Succession Law acknowledged the need for a summary or a simplified version of the law.

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<sup>44</sup> MINIRENA provided training to the new cell land committees.

This lack of familiarity with dispute resolution methods and applicable law impedes the institutions from being as effective and fair as they could otherwise be. This limitation is particularly problematic because each of those responsible for engaging in dispute resolution has a legal obligation to apply the law, as discussed above. Recognizing this, one *abunzi* member indicated, “Training on the Organic Land Law and dispute resolution would be helpful because our decisions will be based on the law and we want that.”

Given the potential for frequent turnover with a two-year term for a mediator,<sup>45</sup> there will also be the continued constraint of keeping new members apprised of the law and dispute resolution methods, and thus a constraint on sustained institutional capacity.

Also, the two main laws that pertain to land rights, or the transfer of land rights – the Organic Land Law and the Marital Property and Succession Law – have some ambiguities and inconsistencies that can make their application difficult. If the *abunzi* are expected to apply the law, then those provisions should be clarified.

***Lack of institutional support and resources.*** For institutions to be effective, they also require institutional support and resources. Recognizing this necessity, the *Abunzi* Law provides that the district “shall provide necessary requirements to the Mediation Committees operating therein in order for them to fulfill their attributions. The Government shall support Districts in this activity.”<sup>46</sup> And yet the volunteer *abunzi* in Kabushinge and Nyamugali have not received support for such basic necessities as cellular phone airtime and transportation costs.

The *abunzi* is formally under the jurisdiction of the Ministry of Justice, with the Ministry of Local Government providing administrative oversight. Neither *abunzi* president in Kabushinge and Nyamugali has regular interaction with the Ministry of Justice. The *abunzi* secretaries in Kabushinge and Nyamugali submit written monthly reports on the *abunzi*'s activities to the Sector, but neither had received any feedback or questions regarding the reports.

Few *abunzi* members expressed dissatisfaction with their status as volunteers, but each commented that their service is burdensome because they personally bear the costs associated with such service (such as transportation, pens, paper, cellular phone airtime, etc.). Some suggested that, similar to the service of *gacaca* judges, *abunzi* mediators should be entitled to health insurance and school fees for their children.

Several also suggested that, at a minimum, the *abunzi* should be provided with water (similar to when the cell executive committee meets).

While the team was conducting this Assessment, a Ministry of Justice official informed the team that, effective this year, *abunzi* mediators and up to four family members will be entitled to health insurance.<sup>47</sup> None of the interviewees were aware of this new benefit but were pleased to learn of it.

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<sup>45</sup> For example, *abunzi* elections are scheduled for July 2008.

<sup>46</sup> *Abunzi* Law, art. 27.

<sup>47</sup> The Ministry of Justice also indicated that it is seeking funding to provide bicycles to the *abunzi*.

# 5.0 BARRIERS TO ACCESS FOR WOMEN AND VULNERABLE GROUPS

As part of the Assessment, the team sought to identify barriers to access that women and vulnerable groups face, to the extent that such barriers exist. The team found that circumstances for women and vulnerable groups in the two communities were quite similar and therefore are discussed together.

As background, women in the two cells indicate that they have many problems: limited or no access to land, limited education, no husbands, abusive husbands, no jobs, large households including extended family, land-related conflicts with informal second and third wives, illiteracy, and HIV/AIDs. And because many women in Nyamugali are landless, one interviewee explained: “Not having anywhere else to live leads to all the other problems that women face.” Another interviewee indicated, “Social problems are resolved by local leaders but survival problems [of women], by no one.”

## 5.1 BARRIERS TO ACCESS FOR WOMEN

**Ignorance of the law.** Overall, interviewees consistently identified ignorance of their own rights and applicable laws as a barrier because such ignorance prevents them from knowing when they should assert their rights. This is especially important because asserting their rights can be risky; it may create additional tension in the home and perhaps result in violence. One interviewee indicated, “Because we’re not aware of our rights, pressure from family and conflicts within the family scares us away from pursuing it.”

In addition, men are ignorant of land rights. Many women interviewed believe that if only men were informed of women’s and children’s land rights, they might “accept” those rights, thus minimizing conflicts and the need for dispute resolution.

That being said, the majority of women knew the basic steps that they should take if they wanted assistance in resolving a land dispute. The only exception to this is that some women in Kabushinge were under the impression that they had to first seek assistance from the *umudugudu* and cell levels before accessing the *abunzi*, which is not the case in Kabushinge.

**Fear of physical violence.** In addition to ignorance of the law, by far the greatest barrier that women face in accessing the dispute resolution process is the realistic fear of retaliation by their family, which jeopardizes their safety. They explained that women who raise a dispute, especially with their husbands, risk physical abuse. Domestic violence is reportedly common in both communities. One interviewee indicated, “As widows, when your relatives are against you because of a property dispute, you have to run away from your land because they might kill you.”

**Fear of community mistreatment.** Women also fear the negative reaction of their community if they raise a dispute. The community may scorn a woman who publicly raises a dispute because doing so is considered disrespectful of her husband. One woman indicated, “A woman cannot file a case when she has a husband – if she does, she’ll be regarded as a rebel.” And another shared, “A woman will get support if she is not too independent.”

**Perception of bias.** Although the community generally perceives the *abunzi*, in particular, as fair, many women perceive certain individuals engaged in dispute resolution as biased towards men because of relationships that male parties have with them – “they hold sway over them.” Some women are discouraged by this perceived bias: “[The *abunzi*] must apply law but when it comes down to wives, they apply custom.” Another interviewee stated, “Usually women are desperate because women are poor. Women’s problems with husbands are often resolved at higher levels because their husbands may be friends or drink with the *umudugudu* or *nyumba kumi*.” Regardless of whether these perceptions are accurate, they impact a woman’s decision to take the risks discussed above and seek outside assistance in resolving a land dispute. However, if these perceptions are accurate, the behavior needs to be addressed.

**Lack of time.** Many women stated that they do not have time to go through the process to get assistance in resolving a land dispute while they are caring for children, maintaining the household, and either working in the fields or at a job. Combined with the barriers above, for many women, acquiescing is easier than seeking assistance.

**Lack of an advocate.** For women, the lack of an advocate of any kind also hinders their access. Neither community has ready access to a legal aid NGO. The closest legal aid NGO is many kilometers away and the National Women’s Council (NWC) is not perceived as a viable advocate. This perception is unfortunate because the NWC is a constitutionally-created governmental body intended as “a social forum where girls and women put together their views in order to solve their own problems and to participate in and have a say in the development of the country.”<sup>48</sup> Two primary responsibilities of the NWC are: “to train women to analyze and solve their own problems together” and “to encourage them in the fight for equality and complementarily between men and women.”<sup>49</sup>

Although one NWC representative had assisted many women with their problems, most interviewees did not identify the NWC as a place they would go for assistance. This fact is unfortunate because NWC representatives in other communities have been able to assist women with disputes. Another representative felt that the local authorities do not take the NWC seriously and, therefore, women do not take them seriously.

## 5.2 BARRIERS TO ACCESS FOR VULNERABLE GROUPS

Vulnerable groups perceive all of the same barriers as women do to accessing local dispute resolution mechanisms. Their vulnerability appears to heighten such barriers, however.

**Widows.** In addition to the barriers for women generally, widows must confront additional barriers if they want assistance with resolving a dispute. These barriers relate to those discussed above but widows perceive them as perhaps even more difficult to overcome: “Sometimes when you are a widow, family heads have more power than you and can influence local authorities – sometimes if you keep fighting for your rights, they kill you.”

When asked the reasons that none of the widows in the interview groups had been to the *abunzi* (no one could recall a widow going to the *abunzi*), one widow responded, “because we are widows, we feel we have

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<sup>48</sup> See CONST., art. 187; Law N° 27/2003 of 18/08/2003 Determining the Organization, Attributions and Functions of the National Women’s Council (Official Gazette. N° Special Bis of 03/09/2003), art. 4 (“Law on NWC”).

<sup>49</sup> Law on NWC, art. 4(2) & 4(7).

less power and we think that the other party and the *abunzi* are in the same camp and they don't have time to pursue it." When asked to identify measures that might increase their confidence in the *abunzi*, the widows could not suggest anything.

**Orphans.** Orphans also confront many barriers to access, including a perception of bias, lack of an advocate, lack of time (because they are in school and/or are caring for younger siblings), and fear of reprisal from extended family members. Overall, orphans perceive the local institutions and community at large as ambivalent to their land problems: "We feel our problems are not taken seriously because we are young and orphaned and our issues are postponed."

**Genocide survivors.** As with widows and orphans, the access barriers for many genocide survivors are multiplied by an absence of hope. For example, one genocide survivor shared, "I don't care about my land rights because it is useless to care. . . We [genocide survivors] have specific problems but no one cares." Another genocide survivor is afraid to go to authorities for assistance with a land issue because "they are the ones that killed my parents."

For genocide survivors, issues go beyond whether to openly assert a land right to the question of whether to relinquish their land right. In many instances, a survivor will not want to return "home" and claim land out of fear and, as a result, the survivor relinquishes that right because the land is not being used.

# 6.0 PRELIMINARY RECOMMENDATIONS TO HELP IMPROVE LOCAL DISPUTE RESOLUTION

These recommendations are preliminary and will be supplemented in the final reports coming out of the LDMP project.

## 6.1 RECOMMENDATIONS FOR THE LDMP

The following measures ought to be included during the LDMP, within budget constraints:

- Train and mentor the local dispute resolution institutions and individuals identified in this report, including representatives of the National Women’s Council, on dispute resolution methods, dealing with conflict of interest, gender-sensitivity, and the law governing land rights, including the land rights of women and children, as planned;
- Solicit from the trainees additional types of training that might be helpful to them;
- Provide copies of all relevant laws governing land rights, including the rights of women and children, and summaries of those laws to the extent readily available, to the trainees, in addition to their training materials;
- Offer to help establish a “legal resource center,” by providing several copies of the above materials to cell authorities for the public to access; consult with cell authorities for best location for such a center;
- Conduct informational meetings for women and vulnerable groups regarding the findings in this assessment and LDMP efforts to train and mentor local institutions and individuals on their land rights;
- Discuss with cell authorities and the *abunzi* president the possibility of making an explicit exception to the requirement that a party must take his or her dispute to the *umudugudu* committee first, and allow women and/or vulnerable groups who have a dispute with a family member to file first with the *abunzi*.

## 6.2 BROADER RECOMMENDATIONS

The following recommendations are beyond the scope of the LDMP:

### Public Information & Awareness

- MINIRENA to educate public on the law governing land rights, including the land rights of women and children, and enforcement of rights, including consequences for failing to respect those rights; and
- MINIRENA to inform public on the government’s commitment to law-based local dispute resolution and government’s efforts to fulfill that commitment.

## **Institutional Support**

- MINIJUST and MINALOC to issue a joint order that clarifies each ministry's responsibilities related to the *abunzi*'s functions, oversight, and support;
- MINIRENA and MINIJUST to ensure that copies of new laws, decrees, and orders are provided to each of the institutions discussed here in order to ensure that their legal knowledge remains current;
- MINILOOC to require that the sector official responsible for reviewing the reports from the *abunzi* convene quarterly meetings with, at the least, *abunzi* presidents from each cell and a Ministry of Justice official to discuss common and emerging issues and constraints, including relevant legal amendments, procedural improvements;
- MINIJUST / MINALOC to consider providing the same benefits to *abunzi* members that *gacaca* judges receive;
- MINIJUST / MINALOC to provide a monthly stipend to each *abunzi* member as reimbursement for reasonable and necessary costs incurred. Such a stipend should be higher for presidents' of the *abunzi*, given their additional administrative burden;
- MINIJUST / MINALOC to provide same training to newly-elected *abunzi* members as part of orientation, and refresher training to incumbents;
- Open and consistent communications between the *abunzi* and the judiciary;
- Leaders of each of the institutions to remind those engaged in dispute resolution of their oath of office and that the perception of bias causes the institution to lose legitimacy and therefore be less effective in carrying out their mandate;
- Local authorities to utilize the energy and commitment of the National Women's Council representatives by inviting their participation in governmental meetings, as appropriate, and consulting on issues that impact women's status, security, and livelihoods.

## **Greater Access to Dispute Resolution for Women and Vulnerable Groups**

In addition to these recommendations, the LDMP will produce a *Participation and Beneficiary Plan*, which includes additional recommendations based on lessons learned during the project's implementation.

- MINIRENA / MINIJUST / MINALOC to ensure women and vulnerable groups have increased access to local resolution of land disputes by challenging their representatives to identify and implement measures to reduce barriers that women and vulnerable groups face – and include such measures in their performance contracts;
- GoR to continue its efforts to combat gender-based violence;
- Leaders of each of the local institutions to consider options for increasing transparency of the dispute resolution processes; and
- MINIJUST / MINIRENA / MINALOC to commit to exploring legal aid options for women and vulnerable groups.

# ANNEX I: DESK STUDY ON FORMAL DISPUTE RESOLUTION IN RWANDA

## I.0 INTRODUCTION

Disputes over land in Rwanda can be resolved in multiple forums: informally within families and local institutions as well as more formally before a mandatory mediation committee (*abunzi*) and the courts. In addition, there are two special institutions, the Office of the Ombudsman and the Human Rights Commission, that were established to help resolve major issues facing the country (including land disputes). This desk study describes these formal institutions, i.e., the *abunzi*, courts, and special institutions, as a supplement to the discussion of local dispute resolution mechanisms in the Land Dispute Management Project's *An Assessment of Local Resolution of Land Disputes in two Pilot Areas: Kabushinge and Nyamugali Cells, Rwanda* (Jan. 2008).

As mentioned above, land disputes are resolved by the *abunzi*, the courts and, more generally addressed by special institutions. Each is described in more detail below.

## 2.0 ABUNZI, AKA “MEDIATION COMMITTEE”

After a party has exhausted the local processes for resolving land disputes, and remains unsatisfied with the result, he or she may proceed to the *abunzi*, or mediation committee, at the cell level.<sup>50</sup> (As discussed in the *Assessment*, whether a party must first seek relief from the *umudugudu* and cell authorities is not consistent across even just two cells.) Of the institutions that resolve disputes locally, the *abunzi* is the only one whose formal, statutory mandate is dispute resolution via mediation.

Mandated by the Constitution<sup>51</sup> and the Organic Law on Mediation Committees, the *abunzi* is “an organ meant for providing a framework of obligatory mediation prior to submission of a case before the first degree courts hearing cases referred to in articles 8 and 9 of this organic law.”<sup>52</sup> That is, the formal courts act as an appellate court and will not consider a dispute unless the *abunzi* has first considered and ruled on the dispute, with some exceptions for property over a certain value.

The *abunzi* is comprised of 12 volunteers, all of whom must be residents of the cell, at least 30 percent

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<sup>50</sup> Organic Law No. 31/2006 of 14/08/2006 on Organisation, Jurisdiction, Competence, and Functioning of the Mediation Committee, art. 2 (Official Gazette, Year 45 No. special of 16 Aug. 2006) (hereinafter “Abunzi Law”); see also Ministerial Order N° 122 of 18/12/2004 on Internal Rules and Regulations of the Mediation Committee.

The Organic Land Law provides for mediation committees at the sector level, not the cell level. See Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, art. 53 (Official Gazette Year 44 No. 18 of 15 Sept. 2005). That provision is no longer good law, however, because all legal provisions contrary to the Abunzi Law are abrogated. See Abunzi Law, art. 32.

This section on the *abunzi* duplicates the *abunzi* section in the *Assessment* so that this Desk Study may be a stand-alone document on formal dispute resolution in Rwanda.

<sup>51</sup> CONST. OF THE REPUBLIC OF RWANDA, art. 159 (2003); Amend. No. 02 of 08/12/2005 of the Const. of the Republic of Rwanda of June 4, 2003, as amended to date, art. 17.

<sup>52</sup> Abunzi Law, art. 3.

women, and be “persons of integrity and are acknowledged for their mediation skills.”<sup>53</sup> There are also three alternates. The cell council elects the *abunzi* whose members serve a two-year term, which is renewable.<sup>54</sup> The cell executive secretary acts as the secretary of the *abunzi*.<sup>55</sup>

Before assuming his or her responsibilities, each *abunzi* mediator must take an oath of office in front of the population and the cell coordinator, which includes swearing to “observe the Constitution and other laws” and to “consciously fulfill my duties of representing the Rwandan people without any discrimination whatsoever,” and “promote respect for the freedoms and fundamental rights of the human being and safeguard the interests of the Rwandan people.”<sup>56</sup> In the oath, the mediator acknowledges that for failure to honor the oath, “may I face the rigors of the law.”<sup>57</sup>

The *Abunzi* Law mandates that the *abunzi* makes decisions consistent with the law: “To settle the conflict submitted to them, the Mediators shall seek first to conciliate the two parties. In case of non-conciliation, they take decision consciousness [sic] in all honesty and in accordance with the laws and place’s custom, provided it is not contrary to the written law.”<sup>58</sup>

## 2.1 Jurisdiction of the *Abunzi*

The *abunzi* operates at the cell level, with broad jurisdiction over civil disputes related to:

- 1 Lands and other immovable assets whose value does not exceed three million Rwandan francs;
- 2 Cattle and other movable assets whose value does not exceed one million Rwandan francs;
- 3 Breach of contract where the value of the matter at issue does not exceed one million Rwanda francs (unless commercial or labor contracts, in which case the maximum amount is 100,000 Rwandan francs);
- 4 Family cases other than those related to civil status; and
- 5 Succession when the matter at issue does not exceed three million Rwandan francs.<sup>59</sup>

The *abunzi* also has jurisdiction over some criminal cases, including some land-related matters:

- 1 Removing or displacing parcel boundaries;
- 2 Destroying, damaging, or stealing crops where the value does not exceed three million Rwandan francs; and
- 3 Thefts or distortion by married persons committed to the detriment of their spouses, by a widow or widower as to assets which belonged to the deceased spouse, by descendants to the detriment of their ascendants, by ascendants to the detriment of their descendants, or by allies at the same degree.<sup>60</sup>

## 2.2 *Abunzi* Process

The *Abunzi* Law provides the procedure for filing and hearing a dispute:

- The party with the dispute must make a written or verbal request to the cell executive secretary (or deputy). The cell executive secretary must immediately add the case to a cause list and issue a subpoena to the other party, briefly identifying the matter, venue, day, and time of hearing.

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<sup>53</sup> *Id.*, art. 4.

<sup>54</sup> See Pres. Order No. 43/01 of 16/08/06 Establishing Regulations on Election on Electing Mediation Committee Members, art. 2.

<sup>55</sup> *Abunzi* Law, arts. 4 & 5.

<sup>56</sup> *Id.*, art. 7.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*, art. 21.

<sup>59</sup> *Id.*, arts. 2 & 8.

<sup>60</sup> *Abunzi* Law, art. 9.

- On the day of the hearing, the parties choose three mediators out of the twelve to hear their case. If the parties cannot agree, each party chooses one mediator, and the mediators choose the third. Parties do not have the right to refuse the mediators selected under the prescribed process.<sup>61</sup>

Lawyers may assist parties but may not appear before the *abunzi*. During the public hearing, the *abunzi* may hear testimony from both parties as well as from witnesses with information regarding the matter.<sup>62</sup>

After the hearing, the mediators adjourn for a private conference to deliberate. Decision is by consensus or majority. The mediators must decide the case within 30 days of the cell executive secretary adding the case to the cause list.<sup>63</sup>

The mediators' decision is memorialized in written minutes, signed by both parties, and must be made available to the parties within five days of the decision. The contents of the minutes are prescribed by the *Abunzi* Law.<sup>64</sup> An unsatisfied party has 30 days from notification of the decision to appeal to the court of first instance, and must include a copy of the minutes in the appeal.<sup>65</sup>

### 3.0 COURTS

There are four levels of “ordinary” courts within the Rwandan judicial system: the Supreme Court, the High Court of the Republic, the Higher Instance Courts, and the Lower Instance Courts.<sup>66</sup> There are also three courts with special jurisdiction: *Gacaca* courts, military courts, and commercial courts.<sup>67</sup>

#### 3.1 Supreme Court

The Supreme Court is the highest court with jurisdiction over the entire territory of Rwanda.<sup>68</sup> Its decisions are binding on all parties, and are not “susceptible to appeal except in terms of petitions for the exercise of the matter of mercy or revision.”<sup>69</sup> The Supreme Court has appellate jurisdiction over cases heard and decided in the first degree by the High Court of the Republic, the Military High Court, and the Commercial High Court, with a few enumerated exceptions.<sup>70</sup> Among other provisions, the Supreme Court has special

<sup>61</sup> *Id.*, arts. 17 & 18. See article 19 for failure to appear.

<sup>62</sup> *Id.*, art. 20.

<sup>63</sup> *Id.*, arts. 20 & 22.

<sup>64</sup> *Id.*, art. 22.

<sup>65</sup> *Id.*, arts. 22, 25–26. In another cell in Musanze district, where an *abunzi* failed to prepare the decision and minutes within the prescribed time, causing the party to lose her right to appeal, she took that issue to the court. Upon review, the court ordered the *abunzi* to collectively pay the party two million FRW (about \$3710 USD). Interviews with Haguruka lawyers in Musanze and Kigali, Jan. 2008.

<sup>66</sup> CONST., art. 143; Amend. No. 02 of 08/12/2005 of the Const. of the Republic of Rwanda of June 4, 2003, as amended to date, arts. 11–15; Organic Law N° 07/2004 of 25/04/2004 Determining the Organisation, Functioning and Jurisdiction of Courts, arts. 180–86, as amended by Organic Law No. 14/2006 of 22/3/2006, arts. 72–80 (Official Gazette Year 45 special of 23 Mar. 2006). The 2004 Organic Law was amended again by Organic Law No. 56/2007 of 13/12/2007 (Official Gazette Year 47 no. 5, 1 Mar. 2008) but that amendment does not affect the provisions cited here.

Just before this document was sent for publication, the Parliament again amended the Constitution on June 25, 2008. See: E. Musoni, “Parliament Amends Constitution,” THE NEW TIMES at: <<http://allafrica.com/stories/printable/200806250525.html>>. Among the amendments are provisions changing the names of the courts: the Higher Instance Court was renamed as “Intermediate Court,” and the Lower Instance Court was renamed the “Primary Court.” Because a copy of the amended Constitution is not currently available, this document refers to the courts consistent with their names in the 2005 amendments.

<sup>67</sup> Amend. No. 02 of 08/12/2005 of the CONST., art. 11.

<sup>68</sup> CONST. art. 144, as amended. [Organic Law N° 01/2004 of 29/01/2004 Establishing the Organisation, Functioning and Jurisdiction of the Supreme Court, arts. 1 & 2 \(Official Gazette No. 3 of 01/02/2004\)](#) (“Supreme Court Law”).

<sup>69</sup> Supreme Court Law, art. 2.

<sup>70</sup> *Id.*, art. 43, as amended by Organic Law No. 58/2007 of 16/12/2007, art. 3 (Official Gazette No. 5 of 01/03/2008).

jurisdiction over petitions on the constitutionality of the organic laws, laws, decree-laws and international treaties and agreements.<sup>71</sup>

The Supreme Court is not usually a court of second or even final instance on issues of land. Land disputes are generally brought in the Lower Instance Courts, making the High Court of the Republic the last court of appeal.

### 3.2 High Court of the Republic

The High Court of the Republic also has territorial jurisdiction over all of Rwanda.<sup>72</sup> It is competent to hear appeals on foreign court decisions, is a court of first instance on certain serious crimes, and a court of last instance for qualified appeals from a Higher Instance Court.<sup>73</sup> The High Court may specifically hear complaints in the first instance arising from expropriation.<sup>74</sup> Otherwise, the High Court may only hear instances of land disputes if it is on appeal from a lower court ruling. Decisions of the High Court may be appealed to the Supreme Court, unless the suit was originally brought in the Lower Instance Court or the subject matter falls outside of the Supreme Court's jurisdiction.<sup>75</sup>

### 3.3 Higher Instance Courts

The Higher Instance Courts are the third tier of the courts. Higher Instance Courts have subject matter jurisdiction over certain criminal cases, including against juveniles, and insurance cases, and have appellate jurisdiction over cases from Lower Instance Courts, and cases that are not within the jurisdiction of other courts.<sup>76</sup> There are multiple "specialized chambers" at this level, each of which has jurisdiction over specific disputes, such as tax or other administrative cases.<sup>77</sup> Judgments by the Higher Instance Courts can be appealed to the High Court of the Republic.<sup>78</sup>

### 3.4 Lower Instance Courts

Lower Instance Courts are usually the court of first instance in Rwanda.<sup>79</sup> They have general jurisdiction over the majority of disputes.

Lower Instance Courts have jurisdiction to hear, among other things, disputes relating to "land and livestock and their succession."<sup>80</sup> A condition precedent to invocation of the Lower Instance Courts' jurisdiction, however, is a decision by the *abunzizi*: "[C]ases provided for by the Organic Law determining the organization, powers and functioning of the mediation Committee [sic] shall be settled by that committee before it is transmitted to Courts as provided for by the Constitution of the Republic of June 4, 2003, as amended to

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<sup>71</sup> Supreme Court Law, art. 45.

<sup>72</sup> CONST. art. 149.

<sup>73</sup> Organic Law No. 07/2004 Determining the Organization, Functioning and Jurisdiction of Courts, art. 106 ("Law on the Courts"), as amended by Organic Law No. 14/2006 of 22/03/2006, art. 17 (Official Gazette Year 45 no. special of 23 Mar. 2006). The Law on the Courts was amended a second time by Organic Law No. 56/2007 of 25/04/2007 (official Gazette Year 47 no. 5 of Mar. 1, 2008), but that those amendments are not relevant here.

<sup>74</sup> CONST., art. 149; Law on the Courts, art. 93, as amended by art. 62(7)-(8) of Organic Law No. 14/2006.

<sup>75</sup> Law on the Courts, art. 108, as amended by art. 68 of Organic Law No. 14/2006.

<sup>76</sup> *Id.*, arts. 72–78, as amended by arts. 44–49 of Organic Law No. 14/2006.

<sup>77</sup> *Id.*, arts. 83–84, as amended by arts 54–55 of Organic Law No. 14/2006.

<sup>78</sup> *Id.*, art. 87, as amended by art. 59 of Organic Law No. 14/2006.

<sup>79</sup> Amend. No. 02 of 08/12/2005 of the Const. art. 15; Law on the Courts, art. 65, as amended by art. 34 of Organic Law No. 14/2006.

<sup>80</sup> Law on the Courts, art. 66, as amended by art. 36 of Organic Law No. 07/2004.

date in its article 159.”<sup>81</sup> That is, if a the subject of the dispute is land or livestock valued at less than three million Rwandan francs, a party must first file its claim before the *abunzi*. Disputes involving property greater in value may proceed directly to the Lower Instance Courts.

Disputes whose monetary value is less than 50,000 Rwandan Francs may be heard by the Lower Instance Courts, but are not appealable to any higher court.<sup>82</sup> When value of the dispute is higher than 50,000 Rwandan Francs, the judgment may be reviewed by the Lower Instance Court or an appeal made to the Higher Instance Court (see below).<sup>83</sup>

### 3.5 A Note about Venue

Suit may be brought in the court situated where a defendant ordinarily resides.<sup>84</sup> When there are two or more defendants, the plaintiff can choose the court of any of the defendants’ ordinary residence.<sup>85</sup> However, in cases concerning immovable property, the court situated where the property is located has jurisdiction.<sup>86</sup> In instances where the property exists in two different jurisdictions, the plaintiff may choose any court in which part of the property is located, particularly if the defendant resides in the area, though jurisdiction defaults to the court situated in the territory containing the larger part of the property if no specific choice is made.<sup>87</sup> Inheritance suits are to be brought where the inheritance has occurred.<sup>88</sup>

## 4.0 SPECIALIZED COURTS

There are three specialized courts: *Gacaca* courts, military courts, and commercial courts.

The *Gacaca* courts have specific jurisdiction: “trial and judgment of cases against persons accused of the crime of genocide and crimes against humanity committed which were committed between October 1, 1990 and December 31, 1994,” with a few exceptions.<sup>89</sup>

There are three levels of *Gacaca* courts: the cell, the sector, and appeals at the sector level.<sup>90</sup> Each of these courts draws from the local populace to assist in the trials. Crimes against property that occurred as part of the genocide, presumably including land confiscation and similar incidents, are the lowest category of offense a *Gacaca* Court will hear.<sup>91</sup>

Military jurisdiction includes military tribunals and the Military High Court.<sup>92</sup> These courts try in the first instance all offenses committed by military personnel, inside or outside of the territory of Rwanda, including

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<sup>81</sup> *Id.*

<sup>82</sup> Law on the Courts, art. 71, as amended by art. 42 of Organic Law No. 14/2006.

<sup>83</sup> Law on the Courts, art. 71, as amended by art. 42 of Organic Law No. 14/2006.

<sup>84</sup> *Id.*, art. 121.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*, art. 129.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*, art. 130.

<sup>89</sup> CONST., art. 152.

<sup>90</sup> Organic Law N° 16/2004 of 19/06/2004 Establishing the Organisation, Functioning and Competence of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed between October 1, 1990 and December 31, 1994, arts. 3–4 (“Gacaca Law”); see also [Law No. 08/2004 of 28/04/2004 on the Establishment, Organisation, Duties and Functioning of the National Service in Charge of Follow-up, Supervision and Coordination of the Activities of Gacaca Jurisdictions](#).

<sup>91</sup> Gacaca Law, art. 33–34, & 41; see also Danielle Tully, Note, *Human Rights Compliance and the Gacaca Jurisdictions in Rwanda*, 26 BOSTON COLL. INT’L & COMPARATIVE L. REV. 385, 392 (2003).

<sup>92</sup> CONST. arts. 153–55.

the crime of genocide.<sup>93</sup> A suit for damages may in some circumstances be filed concurrently in a civil court, though the law is unclear on whether these suits may include land issues.<sup>94</sup>

There are three commercial courts throughout the country, plus the Commercial High Court.<sup>95</sup> Such courts have jurisdiction over “commercial matters,” which is a defined term to include “commercial, financial, fiscal and other matters closely related to them regarding” an enumerated list including “commercial contracts” and “commercial activities.”<sup>96</sup> Whether a contract for the transfer of land is a “commercial contract,” for example, is unclear. It does appear, however, that a dispute involving a mortgage would fall within the jurisdiction of the commercial courts because “commercial matters” include disputes related to transactions between “persons and financial institutions.”<sup>97</sup>

Another limit on the jurisdiction of the commercial courts is that the cases may not exceed 20 million Rwf (about \$37,105 USD). Cases valued in an amount greater than 20 million Rwf are solely within the jurisdiction of the Commercial High Court.<sup>98</sup> The Commercial High Court also has jurisdiction over interlocutory, interim orders, and judgments of the Commercial Courts.<sup>99</sup>

## **5.0 SPECIAL INSTITUTIONS THAT ADDRESS LAND DISPUTES**

There are two more institutions that address land disputes. Parties may of their own initiative go to the Office of the Ombudsman or the Human Rights Commission, if not satisfied with prior decisions. Parties may also go to Office of the Ombudsman or the Human Rights Commission after the case has been decided by the court if the concerned institution fails to execute the judgment. It should be noted that these two institutions do not have the power to make judgments. They simply act as advisory institutions.

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<sup>93</sup> Law on the Courts, art. 138.

<sup>94</sup> *Id.*, art. 138.

<sup>95</sup> Organic Law No. 59/2007 of 16/12/2007 Establishing the Commercial Courts and Determining Their Organisation, Functioning and Jurisdiction (Official Gazette Year 45 No. 5 of 01/03/2008).

<sup>96</sup> See *id.*, art. 3(1).

<sup>97</sup> See *id.*, art. 3(3).

<sup>98</sup> *Id.*, art. 5.

<sup>99</sup> *Id.*

## 5.1. Office of the Ombudsman

The Office of Ombudsman is not a court; it is an “independent public institution.”<sup>100</sup> It is responsible for the following:

1. Acting as a link between the citizens and public and private institutions;
2. Preventing and fighting against injustice, corruption, and other related offences in private and public administration.
3. Receiving and examining, in the aforementioned context, complaints from individuals and independent associations against the acts of public officials or organs, and private institutions and to mobilize these officials and institutions in order to find solutions to such complaints if they are well founded.<sup>101</sup>

The Ombudsman’s Office is prohibited from involving itself in an investigation or adjudication relating to matters which are already before the courts.<sup>102</sup> The Office may, however, submit complaints that it has received to courts or the prosecution, which are then required to respond to the Office.<sup>103</sup>

The Office advises authorities on issues related to land, including land allocation; land disputes between individuals, especially where there are delays involved or lack of enforcement, and land expropriation.

## 5.2. National Human Rights Commission

The National Human Rights Commission is an independent national institution, the responsibilities of which include:

1. Educating and mobilizing the population on matters relating to the rights of the person;
2. Examining the violations of human rights committed on Rwandan territory by State organs, public officials using their duties as cover, by organizations and by individuals;
3. Carrying out investigations of the violations of rights abuse in Rwanda and filing complaints in respect thereof with the competent courts.<sup>104</sup>

More specifically, the NHRC activities include the following:

- sensitizing and training all categories of Rwandan population as regards Human Rights;
- giving, upon its own initiative or upon request, its advice on bills relating to human rights;
- sensitizing the government institutions as regards ratification of International Conventions relating to human rights and making sure they are integrated in internal laws;
- receiving and examining claims relating to human rights violation, either on its own initiative or upon request;

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<sup>100</sup> CONST., art. 182; amend. no. 02 of 08/12/2005 of the Const. of the Republic of Rwanda of June 4, 2003, as amended to date, arts. 11–15. For the Office’s website in Kinyarwanda, see: <<http://www.ombudsman.gov.rw/>>.

<sup>101</sup> CONST. art. 182; amend. no. 02 of 08/12/2005 art. 22.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Const., art. 177; [Law N° 04/99 of 12/03/1999 Establishing the National Human Rights Commission \(Official Gazette n° 6 of 15/03/1999\)](#) (“NHRC Law”), as modified and completed by [Law N° 37/2002 of 31/12/2002 \(Official Gazette no. special of 16/01/2003\)](#).

- receiving and analyzing testimonies on human rights violations;
- getting to any place where human rights violations allegations are reported ;
- . . .
- providing the relevant authorities with suggestions as to actions which may be taken in order to stop and punish human rights violations in accordance with the law;
- requesting that any person committing human rights violations be prosecuted; . . .<sup>105</sup>

Like the Office of Ombudsman, the Human Rights Commission does not interfere with the day-to-day functioning of other institutions but collaborates and advises, accordingly.

## 6.0 SUMMARY

Disputes over land are generally first brought to local authorities. If the dispute is intra-family the first attempt to resolve it is made within the family, and then taken to as many as three levels of local institutions, before it is brought to the *abunzi*.

If the land dispute involves property valued less than three million francs, a decision by the *abunzi* is a condition precedent to invoking the jurisdiction of the courts. For property disputes valued more than three million francs, a party may proceed directly to the courts.

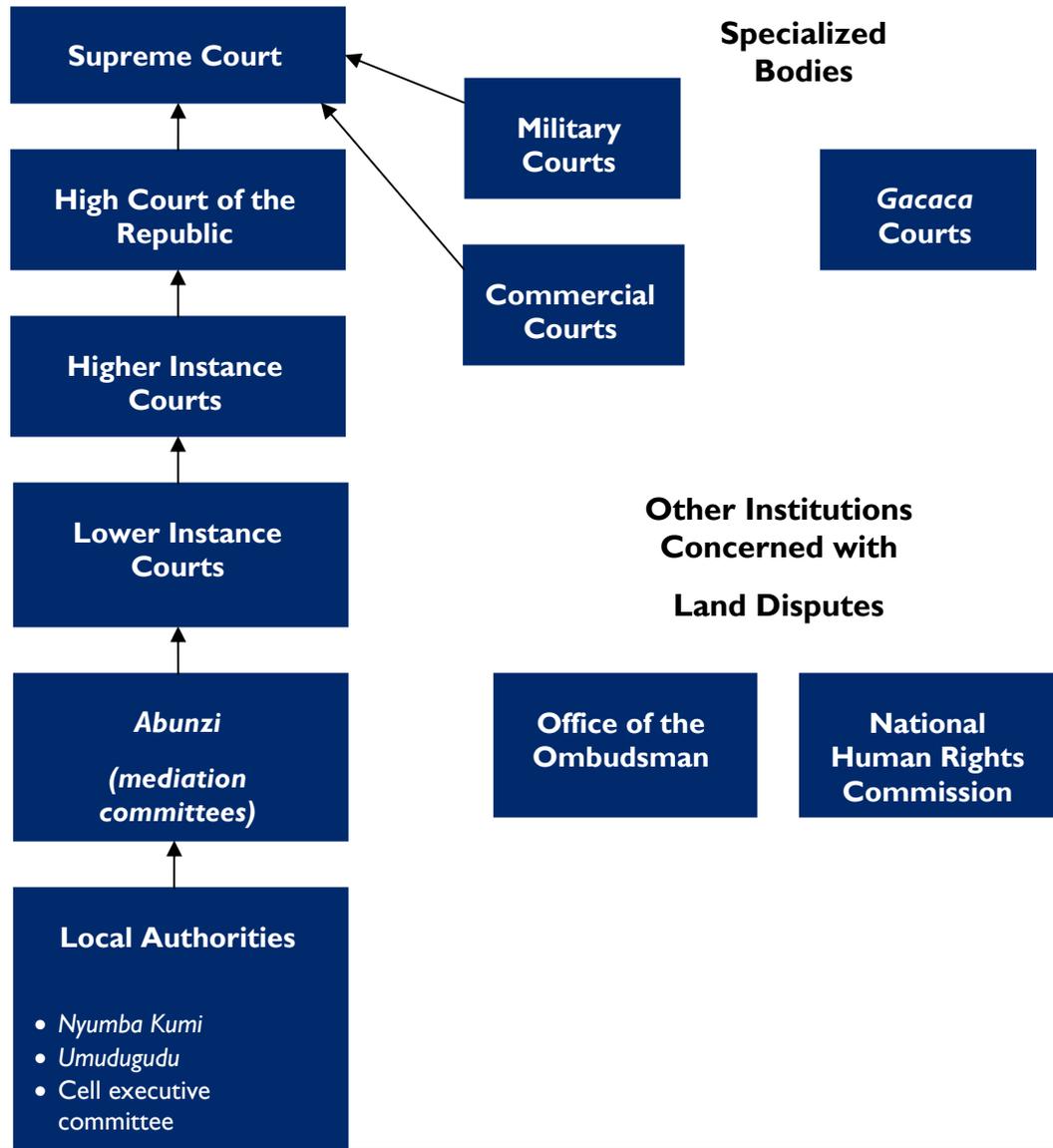
If the solution reached is not acceptable to one of the parties, the *abunzi* decision may be appealed to the formal court system, in particular the Lower Instance Court with jurisdiction where the property is located. Decisions may be appealed to the next highest court, the Higher Instance Court, and finally to the High Court of the Republic. Depending on whether a dispute is a commercial matter, however, the Commercial Courts may have jurisdiction, particularly if the dispute involves a mortgage.

*Gacaca* Courts may have jurisdiction where the land dispute is part of a larger charge of genocide or crimes against humanity. Special institutions – the Office of the Ombudsman and the National Human Rights Commission – may intervene at any level when one party is not satisfied and submits a complaint. These institutions cannot interfere with court processes, however; they can only advise if the case is not handled properly.

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<sup>105</sup> NHRC Law, art. 4.

## Land Dispute Resolution Institutions in Rwanda



Please refer to the text for exceptions to the appellate process not represented here.

# ANNEX II: SUMMARY OF DISPUTES IN MINIRENA’S LAND REGISTRATION PILOT AREAS

MINIRENA requested that the LDMP summarize the types of disputes that arose during the pilot process for registering land rights, which occurred in four pilot areas. Those areas are:

1. Musanze District, Rwaza Sector, Kabushinge Cell (LDMP);
2. Gasabo District, Gatsata Sector, Nyamugali Cell (LDMP);
3. Karongi District, Ruganda Sector, Biguhu Cell; and
4. Kirehe District, Muhama Sector, Mwogu Cell.

Two of these pilot areas are part of the LDMP.

During the pilot registration process, if a dispute arose, the cell adjudication committee would try to resolve the dispute. When a dispute could not be resolved, the cell adjudication committee that referred the parties to the dispute captured basic information about the dispute and referred the dispute to the *abunzi*. This information is summarized below.

Although complete details on the disputes are not available, some general characterizations can be made. The overwhelming majority of disputes was intra-family ownership disputes – and almost always related to inheritance. After inheritance, the second most common type of intra-family ownership dispute arose between multiple wives of one man or those wives’ children.

The second most common type of dispute was ownership disputes between non-related persons. The third most common type of disputes related to boundary disagreements.

This summary is just that – a summary. The National Land Tenure Reform Program at MINIRENA is analyzing a vast amount of data collected during the pilots, including data related to disputes.

## Summary of Disputes by Parcel in the MINIRENA Land Registration Pilot Areas

	Nyamugali cell (LDMP)	Mwogu cell	Biguhu cell	Kabushinge cell (LDMP)	TOTAL
Boundary dispute: inter-family	10	2	1		13
Boundary dispute: intra-family	2		2	1	5
Ownership dispute:	11	9	28	7	55

inter-family					
Ownership dispute: intra-family	9	9	62	69	<b>149</b>
Ownership dispute: individuals vs. local authority	1	6			<b>7</b>
Ownership dispute: individuals vs. state				1	<b>1</b>
Other: unknown				3	<b>3</b>
<b>TOTAL DISPUTES / PARCELS<sup>106</sup></b>	<b>33 / 1040</b>	<b>26 / 2800</b>	<b>93 / 3019</b>	<b>81 / 7432</b>	<b>233 / 14,291</b>

Each dispute is listed below along with basic details. Please note that where it appeared that one dispute related to several parcels, this is indicated by a bracketed lower case letter after the parcel number.

## Mwogu Cell

### Boundary Dispute: Inter-family

1. Encroachment dispute
2. Transaction-related boundary dispute

### Ownership Dispute: Inter-family

3. Purchased land incorrectly registered to the state
4. Dispute over sale of orphan's land (a)
5. Dispute over sale of orphan's land (a)
6. Persons claiming another is staying on their land (b)
7. Persons claiming another is staying on their land (b)
8. Persons claiming another is staying on their land (b)
9. Dispute over transaction
10. Dispute over orphan's land (c)
11. Dispute over orphan's land (c)

### Ownership Dispute: Individuals vs. Local Authority

12. Village leadership moved others onto an exiled person's land (d)
13. Village leadership moved others onto an exiled person's land (d)
14. Village leadership moved others onto an exiled person's land (d)
15. Village leadership moved others onto an exiled person's land (d)
16. Village leadership moved others onto an exiled person's land (d)
17. Orphan's land given away by local authority to others

### Ownership Dispute: Intra-family

18. Inheritance dispute between brothers (e)
19. Inheritance dispute between brothers (e)
20. Inheritance dispute between brothers (e)
21. Dispute over orphan's land
22. Polygamy-related dispute
23. Polygamy-related dispute (f)
24. Polygamy-related dispute (f)

<sup>106</sup> The second number is the total number of parcels registered in that cell.

25. Intra-family land grab
26. Child claims land from mother after she remarries

## **Nyamugali Cell**

### **Boundary Dispute: Intra-family**

1. Encroachment dispute
2. Family member gifted land took over larger share than gifted

### **Boundary Dispute: Inter-family**

3. Encroachment
4. Encroachment
5. Encroachment
6. Transaction-related boundary dispute
7. Encroachment
8. Encroachment on church's land
9. Encroachment on church's land
10. Encroachment on church's land
11. Encroachment on church's land
12. Encroachment

### **Ownership Dispute: Intra-family**

13. Uncle claims children do not have right to inherit mother's land
14. Dispute over registration between spouses
15. Person registered another family member's land as own
16. Land taken over by other family members while owner was in jail
17. Divorced mother is trying to claim ex-husband's house for child
18. Husband claims land as his own, says wife does not have a right
19. Person lent a house now claims ownership
20. Inheritance dispute (a)
21. Inheritance dispute (a)

### **Ownership Dispute: Inter-family**

22. Two persons claim the same land
23. Two persons claim the same land
24. Association claims person gifted land to it
25. Dispute related to transaction
26. Dispute over ownership
27. Dispute over ownership between private owner and school
28. Land grab
29. Land grab
30. Land grab
31. Dispute over ownership
32. Dispute over ownership after failed business venture

### **Ownership Dispute: Individuals vs. Local Authority**

33. Land taken by authority to build *umuduqudu* bureau

## **Biguhu Cell**

### **Boundary Dispute: Inter-family**

1. Boundary dispute

### **Boundary Dispute: Intra-family**

2. Claim one family member registered more land than has right to

3. Boundary markers removed

**Ownership Dispute: Inter-family**

4. Dispute related to transaction
5. Ownership dispute
6. Dispute related to returnees
7. Ownership dispute
8. Transaction dispute
9. Former tenants claim ownership rights (a)
10. Former tenants claim ownership rights (a)
11. Former tenants claim ownership rights (a)
12. Former tenants claim ownership rights (a)
13. Dispute over land sale
14. Dispute over land sale
15. Dispute over land sale
16. Dispute over land
17. Dispute over land
18. Dispute over land after original owner gets out of jail
19. Guardian of land while other was exiled do not want to return it
20. Dispute over land sale done without family's knowledge
21. Dispute over land sale done without family's knowledge
22. Dispute over ownership (b)
23. Dispute over ownership (b)
24. Land sale dispute
25. Dispute over land sale done without family's knowledge
26. Tenants will not return land
27. Land sold by non-owner
28. Land sold by non-owner
29. Land sold by non-owner
30. Dispute over ownership
31. Dispute over ownership

**Ownership Dispute: Intra-family**

32. Brother has returned and expects land back
33. Inheritance dispute: sister claims land
34. Polygamy related dispute
35. Dispute over land
36. Polygamy related dispute
37. Polygamy related dispute
38. Polygamy related dispute
39. Polygamy related dispute
40. Inheritance dispute: sister claims land
41. Polygamy related dispute
42. Polygamy related dispute
43. Inheritance dispute: brother claims land for sister
44. Polygamy related dispute (c)
45. Polygamy related dispute (c)
46. Inheritance dispute
47. Sibling land sharing dispute
48. Inheritance dispute
49. Inheritance dispute
50. Inheritance dispute (d)
51. Inheritance dispute (d)

52. Polygamy related dispute
53. Polygamy related dispute
54. Polygamy related dispute
55. Polygamy related dispute
56. Polygamy related dispute
57. Polygamy related dispute
58. Dispute over land
59. Polygamy related dispute
60. Dispute between brothers
61. Inheritance related dispute
62. Inheritance related dispute
63. Land dispute
64. Inheritance related dispute (e)
65. Inheritance related dispute (e)
66. Land dispute (f)
67. Land dispute (f)
68. Inheritance dispute (g)
69. Inheritance dispute (g)
70. Inheritance dispute (g)
71. Inheritance dispute (g)
72. Unknown
73. Inheritance dispute (h)
74. Inheritance dispute (h)
75. Inheritance dispute
76. Land dispute
77. Land dispute
78. Inheritance dispute
79. Inheritance dispute
80. Inheritance dispute
81. Polygamy related dispute
82. Inheritance dispute
83. Inheritance dispute (i)
84. Inheritance dispute (i)
85. Inheritance dispute (i)
86. Inheritance dispute (i)
87. Inheritance dispute (k)
88. Inheritance dispute (k)
89. Inheritance dispute (k)
90. Inheritance dispute (k)
91. Inheritance dispute
92. Unknown
93. Polygamy related dispute

## **Kabushinge Cell**

### **Boundary dispute: Intra-family**

1. Dispute over boundary

### **Ownership dispute: Inter-family**

2. Land held by non-owners
3. Legal problem over ownership

4. Dispute over land exchange
5. Ownership dispute
6. Dispute between renter and owning family
7. Dispute over land exchange
8. Ownership dispute with church

**Ownership dispute: Intra-family**

9. Inheritance dispute (a)
10. Inheritance dispute (a)
11. Inheritance dispute (b)
12. Inheritance dispute (b)
13. Inheritance dispute (b)
14. Inheritance dispute
15. Inheritance dispute
16. Inheritance dispute
17. Inheritance dispute
18. Inheritance dispute (c)
19. Inheritance dispute (c)
20. Inheritance dispute
21. Orphan claims land
22. Husband sells land without wife's permission (d)
23. Husband sells land without wife's permission (d)
24. Sold family land without consent of one brother
25. Inheritance dispute, sisters got smaller share than brothers (e)
26. Inheritance dispute, sisters got smaller share than brothers (e)
27. Inheritance dispute, sisters got smaller share than brothers (e)
28. Polygamy related dispute (f)
29. Polygamy related dispute (f)
30. Land sold without family's consent
31. Polygamy related dispute (g)
32. Inheritance dispute between brothers
33. Polygamy related dispute (g)
34. Inheritance related dispute
35. Husband sold land without wife's understanding
36. Land sold without family's consent
37. Land sold without family's consent
38. Inheritance related dispute
39. Inheritance related dispute
40. Inheritance related dispute
41. Land sold without family's consent
42. Inheritance related dispute
43. Dispute over who owns land
44. "Sharing land that is not yet understandable"
45. Inheritance related
46. Dispute between siblings
47. Sisters received smaller share than brothers
48. Grandchildren inheritance dispute
49. Dispute over ownership
50. Inheritance dispute
51. Dispute over ownership
52. Dispute over ownership
53. Dispute over ownership

54. Inheritance related dispute
55. Inheritance dispute
56. Inheritance dispute
57. Inheritance dispute
58. Inheritance dispute
59. Inheritance dispute
60. Inheritance dispute (h)
61. Inheritance dispute (h)
62. Inheritance dispute (h)
63. Inheritance dispute (i)
64. Inheritance dispute (i)
65. Inheritance dispute (k)
66. Inheritance dispute (k)
67. Inheritance dispute (k)
68. Inheritance dispute (k)
69. Inheritance dispute (k)
70. Inheritance dispute (k)
71. Inheritance technicality
72. Inheritance dispute (l)
73. Inheritance dispute (l)
74. Inheritance dispute
75. Dispute
76. Dispute
77. Dispute over ownership

**Ownership dispute: individuals vs. state**

78. Expropriation dispute

**Unknown**

79. Nature of dispute unknown
80. Nature of dispute unknown
81. Nature of dispute unknown

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