



Ministry of Foreign Affairs

Pathways to improving and scaling LTR approaches in Burundi

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Institute



Pathways to improving and scaling LTR approaches in Burundi

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1. Introduction

This scoping study on ways to improve tenure security in Burundi is commissioned by the Dutch Enterprise Agency (RVO). RVO is responsible for the implementation of the LAND-at-scale program, which is a program launched by the Dutch ministry of foreign affairs to contribute to improved land governance around the world. RVO and the Embassy of The Netherlands in Burundi (EKN) are in the process of formulating a project under the LAND-at-scale program. The aim of this program is to contribute to structural change in land governance in Burundi by supporting the (geographical) scaling-up of successful land tenure registration (LTR) projects undertaken in past years by Dutch NGO ZOA in the province of Makamba. These projects have put in place local land bureaus (SFC, for *Services Fonciers Communaux*), in view of providing the population with access to easily accessible and affordable land registration facilities.

These projects have been extensively evaluated and researched, including by the Royal Tropical Institute (KIT). Whilst these works report successes in a number of respects, they also identify a series of important challenges that warrant attention. The overall impact on tenure security of these projects is fragile, particularly in terms of contributing to a lasting reduction in land disputes. The sustainability of the system is an issue of concern, as transactions occurring after registration are not yet systematically captured by the SFC. And certain groups of women struggle to gain recognition for their pre-existing rights or interests in land, which are often of a customary nature. RVO and EKN intend to design the future LAND-at-scale project so that it will deal with these challenges as effectively as possible, which requires renewed reflection on the theory of change (ToC) that underlies the adopted LTR approach.

The **objective** of this scoping study is to assist RVO and EKN by making preparations for this process of project formulation and articulation of the ToC. It does so, firstly, by offering a concise but comprehensive analysis of the main obstacles that stand in the way of improved tenure security, sustainability and protection of women's rights. This analysis puts particular focus on the way in which LTR intersects with access to justice (A2J) – the ability for land holders to appeal to formal or informal dispute resolution mechanisms to obtain fair and effective remedy in case their land rights are violated. The extent to which land holders have A2J, both during and after LTR, is a crucial but often overlooked factor determining the success of LTR in terms of improving tenure security, protecting women's land rights and, ultimately, its sustainability. Secondly, the study identifies potentially effective and efficient options to change or expand the existing LTR programming strategy to overcome these obstacles. These options are presented in the form of building blocks for an expanded ToC (outcome pathways aligned with the LAND-at-scale program ToC and EKN's multi-annual strategy). The report also reflects on the factors to be considered in scaling this approach.

The analysis has the following **structure**:

- **Section 2** sets the stage by providing a concise overview of land issues, laws and policies in Burundi. It examines the causes and consequences of the land problem in the country (Section 2.1), introduces the applicable legislative and policy framework (Section 2.2), presents an overview of the different LTR initiatives undertaken in Burundi to date (Section 2.3), and examines the challenges women face in claiming or exercising land rights (Section 2.4).

- **Section 3** explores the formal and informal institutions involved in dispute resolution (Section 3.1) and their functioning in practice (Section 3.2), with a view to assessing the extent to which land holders have access to justice (fair and effective remedies).
- **Section 4** starts with an overview of the main features and achievements of the prior EKN-funded LTR project undertaken in the province of Makamba (Section 4.1) and then goes on to discuss the three outcome areas of this project: the effect of LTR on dispute levels and tenure security (Section 4.2), the recording of transactions following registration and the implications for the sustainability of the formalized system of land management (Section 4.3), and the extent to which it has been possible to offer protection to women's land rights through LTR (Section 4.4). At the beginning of each of these sections a conceptual framework is laid out, after which the results of the project are reported. This section thus provides essential input for the development of a ToC of a new LAND-at-scale project, by sketching the pathways leading to these outcomes that underpin LTR programs, exploring what evidence is available in the literature to support these assumptions, comparing this with the results achieved in Makamba, and making explicit any assumptions that are not (yet or fully) supported by evidence.
- **Section 5** outlines the options for development of an improved and scalable LTR program for the province of Makamba. It starts by offering suggestions as to the process for developing a ToC for a LAND-at-scale project (Section 5.1) and by calling for a programmatic approach that is sensitive to the unintended effects and political nature of working on LTR in Burundi and by examining the factors that condition the scalability of this approach to LTR (Section 5.2) and then presents (in Sections 5.3, 5.4 and 5.5, respectively) options – in the form of lines of activities and related results – for expanding the ToC to improve effectiveness in terms of improving tenure security, enhancing sustainability and protecting women's land rights.
- Since we recommend expanding the approach of the new LAND-at-scale project to include lines of activities thus far not directly included in LTR programming in Burundi, **Annex 1** provides an initial mapping of organizations active on those new terrains. These organizations can be engaged with in the development of a full ToC for the new project.

2. Land issues, laws and policies in Burundi

2.1 Socio-economic conditions and land problems

Burundi is very poor, ranking 185th out of 189 countries in terms of human development in 2019.¹ More than 70% of the population lives below the poverty line of \$1.90 a day.² Land scarcity is a major underlying problem.³ Burundi is the third most densely populated country in Sub-Saharan Africa, with a rapidly growing population of currently close to 12 million and an estimated 463

¹ UNDP. 2019. Inequalities in Human Development in the 21st Century: Briefing note for countries on the 2019 Human Development Report Burundi. Available at: http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/BDI.pdf.

² Ibid.

³ The Central Intelligence Agency reports that the Burundian economy faces several structural weaknesses, including low governmental capacity, corruption, poor educational levels, a weak legal system and a poor transportation network. The country is heavily dependent on aid from bilateral and multilateral donors, but support from the international community is subject to conditions due, primarily, to concerns about governance. See <https://www.cia.gov/library/publications/the-world-factbook/geos/by.html>.

inhabitants per km² in 2020.⁴ Yet despite the population density, Burundi is among the least urbanised countries in the world⁵ and the vast majority of the population depends on subsistence farming for survival.⁶ This means that family land holdings are generally minute and frequently insufficient to meet their needs. Burundi has the world's highest hunger score and around 45% of the population is affected by food insecurity and 10% by severe food insecurity.⁷ With each generation that comes of age, since off-farm income opportunities are extremely scarce, the land is sub-divided and the problem intensifies.

As a result of this pressure on land, Burundi faces elevated levels of land disputes. Sources vary somewhat as to the proportion of the civil case load, in magistrate's courts, that is made up by land disputes. The 2017 LGAF reports that land cases make up more than 50% of the case load nationally.⁸ An older study, conducted at national level, reports that the average proportion exceeds 70%.⁹ The studies conducted by KIT in the province of Makamba show that the proportion hovers around 60% in more urbanized settings and well exceeds 70% in more rural areas.¹⁰ The household surveys included in these studies also show that on average 8% of parcels in the province of Makamba are in dispute and around 19% of households are involved in a land dispute at any given time. The vast majority of these disputes, in excess of 60% of the whole, relate to repatriation or succession.¹¹ Finally, these and other studies provide consistent indications that land competition can be so fierce that it is not uncommon for disputes to escalate into violence. In this regard it can be mentioned, for example, that around 40% to 50% of criminal cases involving violence relate to a land dispute.¹²

These problems are compounded by the effects of the country's troubled history, which is characterized by ethnic tensions, recurrent political crises and violent internal conflict. A series of rebellions in 1965, 1969, 1972, and 1988, left hundreds of thousands of mainly Hutu civilians dead and forced even larger numbers into exile. A civil war that raged between 1993 and 2005 claimed an estimated 300.000 deaths, including a large number of Tutsi; over 500.000 people fled abroad and another 800.000 were displaced internally. The land holdings they left behind were almost invariably occupied, some by opportunistic neighbours, others by people who themselves had been forced to flee or were driven to move by over-population. Following the conclusion of the Arusha Peace Accords in 2000 and elections held in 2005, many hundreds of thousands of refugees and internally displaced persons (IDPs) started to return to their places of origin. The ensuing land disputes, still unfolding today, are sensitive and disruptive in nature. After this period of relative calm, however, civil and political unrest returned, including in the context of presidential elections

⁴ See: <https://www.worldometers.info/demographics/burundi-demographics/#urb>.

⁵ See: <https://www.worldometers.info/demographics/burundi-demographics/#urb>.

⁶ World Food Program. 2020. Burundi: Country brief. Available at: <https://www.wfp.org/countries/burundi>.

⁷ Ibid.

⁸ Nindorera, L.M. 2017. La gouvernance foncière au Burundi: Evaluation avec le cadre d'analyse de la gouvernance foncière (CAGF). Available at : <http://documents1.worldbank.org/curated/en/941011504864703338/pdf/119610-WP-P095390-FRENCH-PUBLIC-7-9-2017-9-33-21-BurundiRapportfinalFrench.pdf>

⁹ Kohlhagen, D. 2009. Statistiques judiciaires burundaises : Rendements, délais et typologie des litiges dans les tribunaux de résidence. RCN Justice & Démocratie. Bujumbura. Burundi.

¹⁰ Veldman, M. and B. Wennink. 2019a. Promoting land ownership certification in Mabanda and Vugizo: Final Impact Study. Amsterdam. The Netherlands; and Veldman, M. and B. Wennink. 2019b. Promoting land ownership certification in Makamba: Fourth Impact Study. Amsterdam. The Netherlands.

¹¹ Ibid.

¹² Ibid.

in 2015, a constitutional referendum in 2018 and presidential elections in 2020, and over 400.000 Burundians have again fled their country.¹³

The impact of the global Covid-19 pandemic on poverty and land issues in Burundi remain hard to gauge at this stage. Official statistics suggest low levels of infection and mortality, though there are indications that, in reality, the numbers may well be higher.¹⁴ The authorities have imposed minimal lockdown measures. The more immediate effects of the pandemic on land tenure observed elsewhere,¹⁵ with restrictions on movement affecting land holders' ability to grow food and making them more vulnerable to encroachment, are therefore less likely to be observed in Burundi. It is possible, however, that the crisis will produce indirect effects. The Food and Agricultural Organization reports increases in prices for staple foods around the world, with the Food Price Index reaching an eight month high in early October,¹⁶ the Food Security Information Network projects sharp increases in global food insecurity due to Covid-19,¹⁷ and the International Food Policy Research Institute anticipates a significant rise in poverty rates due to the pandemic, with possibly near 150 million more people living in poverty and food insecurity this year, many of whom in Sub-Saharan Africa.¹⁸ Reflecting these global trends, the Integrated Food Security Phase Classification expects a near doubling of the proportion of people in Burundi facing high acute food insecurity in the final quarter of this year, from 6% to 11%. Burundi's already ailing economy may well take a hit and rural livelihoods could be significantly affected. Women and youth, in particular, may be exposed to pressures to relinquish their rights to more powerful family or community members. These groups are likely to experience less access to mediation and judicial systems for recourse.¹⁹ There are substantial indications that during the COVID-19 crisis, women have become more vulnerable to gender-based violence.²⁰ There is thus a possibility that increased competition over land, translates into more violence against women and girls.

2.2 Land law and policy framework

The Arusha Agreement on Peace and Reconciliation in Burundi concluded in 2000 called for reforms to make the system of land rights more equitable. The Constitution, adopted in 2005, accords to every Burundian the right to property. The 2008 Land Policy sets out the government's analysis of the land problem and its priorities for reform.²¹ Importantly, the policy characterizes the land

¹³ Schwartz, S. 2019. Home again: Refugee return and post-conflict violence in Burundi. *International Security*, v. 44, n. 2, p. 110. Available at: https://doi.org/10.1162/ISEC_a_00362.

¹⁴ Human Rights Watch. 2020. Burundi: Fear, Repression in Covid-19 Response. Available at: <https://www.hrw.org/news/2020/06/24/burundi-fear-repression-covid-19-response>.

¹⁵ Food and Agricultural Organization. 2020. Protecting land and natural resources tenure rights in the era of COVID-19 by heeding the lessons from the past. Available at: <http://www.fao.org/3/cb0706en/CB0706EN.pdf>.

¹⁶ Available at: <http://www.fao.org/worldfoodsituation/foodpricesindex/en/>.

¹⁷ Food Security Information Network. 2020. Global Report of Food Crises. Available at: <http://www.foodsecurityportal.org/sites/default/files/2020%20GRFC.pdf>.

¹⁸ Laborde, D., W. Martin and R. Vos. 2020. Poverty and food insecurity could grow dramatically as COVID-19 spreads. International Food Policy Research Institute. Available at: <http://www.foodsecurityportal.org/poverty-and-food-insecurity-could-grow-dramatically-covid-19-spreads>.

¹⁹ International Development Law Organization. 2020. Policy brief: Rule of Law and Covid-19. Available at: <https://www.idlo.int/publications/policy-brief-rule-law-and-covid-19>.

²⁰ Ibid; and Food and Agricultural Organization, 2020, supra, footnote 15.

²¹ Available at: http://www.fao.org/fileadmin/user_upload/kagera/resource/TAMP%20Kagera%20_Lettre_politique_fonciere_nov_08.pdf.

problem in terms of fierce competition over land and elevated levels of disputes and puts forward a primary objective to increase tenure security. Priorities listed in the policy include review of the legislative framework, modernization and decentralization of land administration systems, and identification of solutions to the problems of landlessness and land scarcity.

In 2011 a new Land Code was adopted, replacing a prior code dating from 1986.²² The code recognizes both public and private land and specifies that any land that is not used is considered public land. It provides for temporary rights of occupation that can be granted to parts of public land considered to be held 'in private' by the state. Under the code, rights over previously titled land are recognized as private property rights and, significantly, in a country where the most land holdings are acquired through custom, the code recognizes the legitimacy of land rights acquired and held in this manner. However, it also determines that such rights must be registered in order to benefit from the protection of formal law. To make this possible, the code introduces land administration at the decentralized level based on the issuance of ownership certificates. These provide a level of protection that is legally distinct from a title but should be strong in practice.

Given the complexity and pluriform nature of customary land rights, however, the lack of rules and guidance on the ways in which such rights can be recognized and registered under formal law creates significant scope for legal uncertainty. In a country with a very limited tradition of jurisprudence, many other aspects of the land code also give rise to uncertainty, including the obligation of owners to make appropriate use of their land, the provision preventing registration of parcels smaller than 1 ha, the status of landholdings in marshlands, and the lack of safeguards in relation to land consolidation and villagization policies. More generally, in a context characterized not only by legal pluralism but also by pervasive institutional multiplicity and competition and generalized lack of enforcement, some authors suggest rules and social norms relating to land are variable and subject to significant erosion.²³

2.3 Overview of LTR initiatives to date

As we have seen, land registration is one of the principal strategies pursued by the Burundian government to deal with the problems land pressure, land disputes and tenure insecurity. The Burundian experience with land registration and certification started with several community-based (participatory) pilots that were initiated before the adoption of the new Land Code. These pilots, including one implemented by the Swiss Development Cooperation (SDC) in the Ngozi province and another funded by the EU in the Gitega province, were meant to test how land registration and certification could best be undertaken. The focus of these pilots was on keeping costs down to a minimum, with a view to long term sustainability, whilst maximizing access and participation. Two distinct approaches can be discerned in the LTR projects that have been undertaken in Burundi. These can be referred to as a collective and an individual approach.

²² Law no. 1/13 of 9 August 2011 (Loi portant révision du Code foncier du Burundi), available at: <http://extwprlegs1.fao.org/docs/pdf/bur111284.pdf>. Hilhorst, T. and N. Porchet. 2016. Food security and land governance factsheet: Burundi. Available at: <https://www.landgovernance.org/assets/20160608-Factsheet-Burundi.pdf>.

²³ Kohlhagen, D. 2012. Burundi: Land policy making in a conflict-prone country. Available at: https://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Burundi/files/HLP%20AoR/Land_Policy_Making_Conflict_Prone_Country_2012_EN.pdf. Kohlhagen, D. 2011. In quest of legitimacy: Changes in land law and legal reform in Burundi. In: Ansoms, A. (ed.). Natural Resources and Local Livelihoods in the Great Lakes Region of Africa. Palgrave. Kohlhagen, D. 2009. Burundi : La justice en milieu rural. RCN Justice & Démocratie. Bujumbura. Burundi.

Projects involving the individual approach generally foresee in the establishment of and support to a municipal land bureau, or SFC, which can then receive and process requests for registration and certification by individual landowners. This is the approach that is adopted most of the 40 municipalities in the country, out of a total of 129 municipalities, where SFC have been set up. The collective approach, by contrast, involves the systematic registration of all parcels within a given geographic circumscription. This is the approach that was piloted by the SDC in Ngozi. In 2012 and 2014, EKN, which contributed financially to this pilot, commissioned two studies that raised important questions that needed to be researched and experimented with further before LTR projects could be undertaken at larger scale.²⁴ These included: limited effectiveness of the approach developed in terms of reducing land disputes, limited reliance by the population on the registries to record transactions taking place after LTR, and under-recording of women's rights to land in the LTR process.

ZOA was subsequently invited by the EKN to develop a proposal for a second phase pilot project to be implemented in the South of the country, in the Makamba province, where land conflict is exacerbated by the massive return of refugees. The request was to design a program that could help to substantially reduce the level of land disputes in this area and, at the same time, generate answers to the questions mentioned above that could be of relevance to LTR in the country as a whole. Implementation of the ensuing project started at the beginning of 2014 in the municipalities of Mabanda and Vugizo, both located in Makamba province. The project, which ended in 2018, aimed to first address a substantial number of land disputes in this area through ADR and then record the result (estimated 40.000 parcels) in communal land registries and through issuance of title certificates. Around that time ZOA obtained funding from USAID for an additional project, relying on the same approach, to be implemented in the municipalities of Makamba and Nyanza-Lac. This project was recently extended to cover the remaining two municipalities of the Makamba province, Kayogoro and Kibago.

2.4 Recognition and protection of women's land rights

Gender equality is a principle enshrined in the Burundian Constitution and a number of policy documents, including the strategic framework on combatting poverty (CSLP II), Burundi Vision 2025, and the National Gender Policy (2011-2025). Still, despite progress in some respects, the situation of women remains problematic and Burundi ranks 124th out of 162 countries in the 2018 Gender Inequality Index.²⁵ The 2016 CEDAW Committee report on Burundi expressed grave concerns about the situation of women in the country, pointing to high poverty rates among rural women, the lack of opportunities for their economic empowerment, the stereotypes against them, the lack of participation in decision-making and the existence of discriminatory customary rules whereby land is allocated exclusively to men.²⁶

As reflected in this final reference, the land rights of women in Burundi are subject of significant concern and debate. Whereas the Constitution states that everyone is entitled to property and the

²⁴ Wennink, B., M. Lankhorst, J. Irutingabo. 2012. Etude diagnostique du foncier dans les Provinces de Bubanza, Bujumbura Rural et Cibitoke. Royal Tropical Institute, Amsterdam, The Netherlands. Wennink, B. et M. Lankhorst. 2014. Evaluation de quelques éléments du programme DDC d'appui à la gestion foncière au Burundi. Royal Tropical Institute, Amsterdam, The Netherlands.

²⁵ UNDP, 2019, supra, footnote 1.

²⁶ CEDAW. 2016. Concluding observations on the combined fifth and sixth periodic reports of Burundi. Available at: [https://www.refworld.org/publisher,CEDAW,,BDI,583866354,0.html](https://www.refworld.org/publisher/CEDAW,,BDI,583866354,0.html).

Land Code poses no obstacle to registering land in the name of a woman, in practice this is difficult. The Family Code provides a basis for assuming that a legally married man and woman share their belongings in community of property. In practice, however, this provision is little known and, more importantly, at odds with customary practices. These provide that the bulk of family land is passed on from father to son when he reaches the age of marriage. Husbands therefore bring most land to the marriage and manage the estate. Prior registration projects undertaken in Burundi, including notably the project undertaken in the province of Ngozi, have tended to register such land exclusively in the name of men.

Women, especially in rural areas, have little or no means of their own with which to purchase land and limited access to credit for failure to meet banks' requirements. Therefore, they depend on succession and traditional gifts (mostly by members of their paternal family) to gain rights to land.²⁷ These customary rights, however, are often secondary in nature to those of the men in their family, in the sense that whilst the women are the holders of these rights and the direct users of the land, men often have a strong or final say on matters relating to alienation of the land. In practice, rural women will often be defenseless in the face of alienation or appropriation of their land by male relatives.²⁸ The disadvantaged position of women has implications for the way in which registration unfolds. Experiences in prior pilots undertaken in Burundi suggest that up to 4 out of every 5 women who claim rights to land fail to gain recognition of these rights in the form of a title made out in their name or by having their right mentioned on the full owner's title (referred to as a *charge*, in French).²⁹

A bill to reform the Succession Law to grant women equal inheritance rights to land and a right to share in and inherit matrimonial property was drawn up shortly after the peace accords and well before land registration started being experimented with. However, the bill has been side-tracked and its supporters consider it very unlikely that conservative opposition can be overcome in the coming years. While the government has established an intersectoral committee to address the discriminatory provisions and gaps in the Person and the Family Code in which it will include provisions regarding matrimonial property regime and gifts, it considers that more awareness raising around the inheritance bill is required given the reluctance of the (non-intellectual) population regarding a daughter inheriting land.³⁰ This means that the failure to register women's existing land rights, customary and statutory, can result in large-scale dispossession and disempowerment.³¹ As we have seen, under the new Land Code, rights that aren't registered and that don't appear on the certificate cannot be afforded protection. A woman who exercises such a right in practice but is confronted by a male family member whose name is on the certificate and wants to sell or use the land himself, has little chance of success in a court case.

²⁷ Niyonkuru, R. 2015. Droits fonciers des femmes au Burundi : Le temps de l'action. Available at: https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/BDI/INT_CESCR_CSS_BDI_21680_F.pdf.

²⁸ Ibid.

²⁹ Wennink and Lankhorst, 2014, supra, footnote 24.

³⁰ CEDAW. 2019. Concluding observations on the combined fifth and sixth periodic reports of Burundi. Addendum. Information provided by Burundi in follow-up to the concluding observations. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBDI%2fCO%2f2%2fAdd.2&Lang=en.

³¹ Serwat, L. 2018. A Feminist Perspective On Burundi's Land Reform. London School of Economics. Available at: <https://www.lse.ac.uk/international-development/Assets/Documents/PDFs/Dissertation/Prizewinning-Dissertations/PWD-2018/2018-AD-LS.pdf>.

3. Land dispute resolution and access to justice in Burundi

As we have seen, in the Burundi LTR is meant to make a tangible contribution to prevention of land dispute levels. To be able to register land, however, existing land disputes need to be addressed, potentially in large numbers. And when LTR has been conducted, new land disputes will nonetheless continue to emerge, which need to be addressed. It is important, therefore, to consider the institutions involved in dispute resolution and their functioning and accessibility in practice.

3.1 Overview of institutions involved in land dispute resolution

Court system - The conventional court system in Burundi was introduced by the Belgians during the colonial period.³² It is not surprising, then, that its groundwork follows patterns roughly similar to that of the Belgian legal system.³³ The system³⁴ is composed of a Constitutional Court and a Supreme Court, which together constitute the High Court of Justice, at the very top. Then come four Courts of Appeal (in Bujumbura, Bururi, Gitega and Ngozi), 20 Intermediate Courts (*Tribunaux de Grande Instance*) at provincial level,³⁵ and 120 Magistrate's Courts (*Tribunaux de Résidence*) at municipal level. All three official languages (Kirundi, English and French) are allowed to be used in court, but in practice the national language of Kirundi is almost always used, especially in the jurisdictions closer to the population. According to the Code Judicial Organization, disputes over unregistered (including certified)³⁶ land with a value of less than BIF 1 million (roughly EUR 440) must, in first instance, be submitted to the Magistrate's Court, whereas cases involving registered land or unregistered (including certified) land with a value exceeding that amount are dealt with by the Intermediate Court.³⁷ Judgments on land disputes by the Magistrate's Court can be appealed before the Intermediate Court, whilst the Courts of Appeal may be called upon to review decisions taken in first instance by the Intermediate Courts. It is important to realize, that even when these three sets of courts hear disputes in first instance, they will rarely be the first institution to handle the a given case. From the perspective of rural litigants, the court of first instance one (and often the last) in a long line of formal and/or informal institutions.

³² Matignon, E. 2014. Justices en mutation au Burundi. Les défis du pluralisme juridique. *Afrique Contemporaine*, v.2, n. 250, p. 55. Available at: <https://www.cairn.info/revue-afrique-contemporaine-2014-2-page-55.htm>; Ingelaere, B. and D. Kohlhagen. 2012. Situating social imaginaries in transitional justice: The bushingantahe in Burundi. *International Journal of Transitional Justice*, v. 6, i. 1, p. 40. Available at: https://www.researchgate.net/publication/274163043_Situating_Social_Imaginaries_in_Transitional_Justice_The_Bushingantahe_in_Burundi.

³³ Barakamfitye, J. and J. Ncamatwi. 2017. The Burundi legal system and research. NYU Hauser Global Law School Program. Available at: <https://www.nyulawglobal.org/globalex/Burundi1.html>.

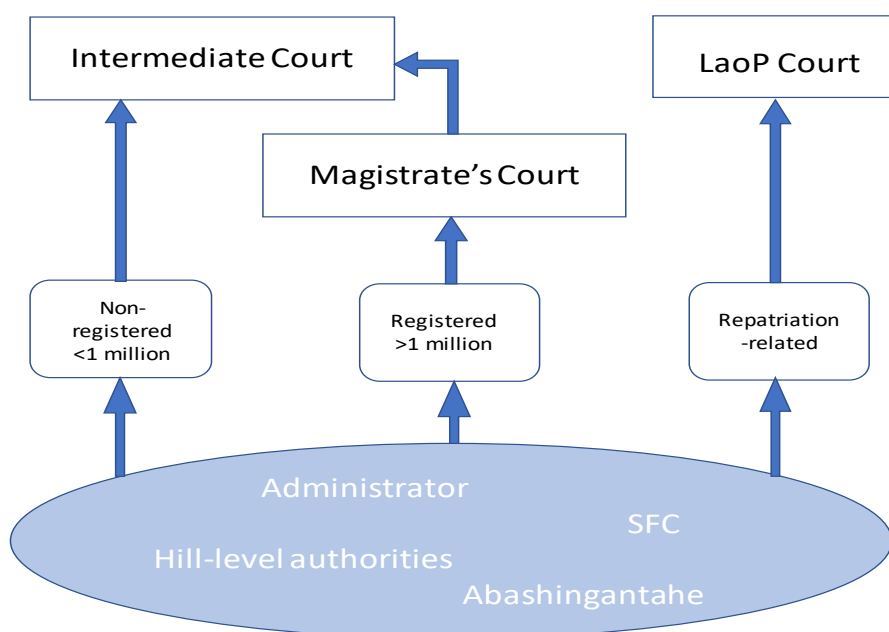
³⁴ Apart from the Court for Land and other Properties, addressed at the end of this Section, this overview does not include specialized jurisdictions (e.g. administrative court, labour courts, commercial court, etc.).

³⁵ The urban province of Bujumbura counts three Intermediate Courts; all other provinces have one.

³⁶ The Land Code makes a distinction between registered and certified land. Land is registered under the authority of national cadastre (*Conservateur des Titres Fonciers*), as per the provisions of Chapter II of the Code, whereas recording of land undertaken at municipal level, by the SFC, results in a technically lower level of protection through the establishment of a certificate (*certificat foncier*), as per the provisions of Chapter III of the Code. This report does not cover registration by the national cadaster and interchangeably uses the terms registration and recording to refer to the process that precedes the issuance of a certificate.

³⁷ See Law n.1/08 of 17 March 2005 (Code de l'organisation et de la compétence judiciaires).

Figure 1: Overview of the institutional landscape



Bashingantahe - The first institution that disputes tend to be submitted to at community level are the so-called *bashingantahe*, an institution of traditional origin.³⁸ This body of ‘wise men’ have traditionally played a significant role in maintaining social cohesion and peace in Burundian society. Whilst this role extended over many aspects of social life within rural communities, dispute resolution was and continues to be one of their core occupations. The *bashingantahe* will primarily attempt to reconcile disputants, relying on approaches (similar to) mediation. Whilst traditionally the *bashingantahe* would arbitrate (adopt a decision), if the disputants could not be reconciled, formal law does not grant them this capacity. From the colonial period onwards, this institution has been subject to gradual process of erosion.³⁹ The authority of the *bashingantahe* was diminished, first by the introduction of the formal legal system and then by revoking their status as auxiliaries of justice and as their role in mediation. In addition, their legitimacy was affected by extensive co-optation during colonial and post-colonial times. As a consequence, complaints from justice seekers about a lack of impartiality and about bribery and corruption are not uncommon.⁴⁰ At the same time, despite their lack of formal attributions, the *bashingantahe* continue to be widely consulted in rural communities and asked to help resolve disputes over land, succession and resettlement of refugees. KIT’s prior studies undertaken in Makamba suggest that around 73% of emerging within communities are submitted for consideration to the *bashingantahe*.⁴¹

³⁸ Dexter, T. and P. Ntahombaye. 2005. The role of informal justice systems in fostering the rule of law in post-conflict situations: The case of Burundi. Centre for Humanitarian Dialogue. Available at : <https://www.hdcentre.org/wp-content/uploads/2016/07/The-role-of-informal-justice-systems-in-fostering-the-rule-of-law-in-post-conflict-situations-July-2005.pdf>; Ingelaere and Kohlhagen, 2012, supra, footnote 32.

³⁹ Ingelaere and Kohlhagen, 2012, supra, footnote 32.

⁴⁰ Dexter and Ntahombaye, 2005, supra, footnote 38.

⁴¹ Based on data collected by KIT as part of impact studies reported on in Veldman and Wennink, 2019a, supra, footnote 10.

Other local-level institutions - Other institutions involved in the resolution of land disputes at community level include the *nyumbakumi* (the ‘head of ten households’), the *chef de sous-colline*, the *chef de colline*, the *élus collinaires* (elected members of the hill administration), the *chef de zone*, the SFC and the *administrateur de commune* (the mayor).⁴² Among these, the *chef de colline* appears to be the most frequently consulted, in around 64% of cases.⁴³ With regards to these local level institutions, including the *bashingantahe*, it is important to appreciate that in practice there is no fixed order in which they are consulted nor a rule that any or all need to be consulted before a case moves to the formal courts. Most cases will proceed from the *bashingantahe* to the *chef de colline* and then on to the magistrate’s court, but a non-negligible share of cases follow more erratic or counter-intuitive pathways. There are also no strong mechanisms in place at this level to avoid that the same case is submitted again to a different institution or to ensure that an institution is informed of and bases its decision on the reasoning of an institution that has handled the case at a prior stage.

CNTB and the specialized court - Given the centrality of the issue in the Burundian context, the specialized legal framework and institutions for addressing land problems involving returning refugees and IDPs also need to be mentioned. In 2006 the National Commission for Land and Other Properties (CNTB) was established to mediate and resolve such disputes. Initially, the CNTB was relatively independent and primarily promoted a policy of sharing land between returnees and residents. It is important to note, also, that people could appeal through the regular court system, which often reversed the CNTB’s decisions.⁴⁴ After several years however, the work of the CNTB became more politicized and its policy line hardened, requiring full restitution of all land and property to returnees. The approach shifted from mediation to adopting rulings and the CNTB is reported to have retroactively and reopened some cases where disputants had already agreed to share their land. At the same time, the authorities amended the law to allow for enforcement of CNTB decisions, even in cases where an appeal to the ordinary courts was still possible. At a later stage, a specialized court was created, the *Cour Spéciale des Terres et Autres Biens*, to hear appeals against CNTB decisions. A number of international observers have suggested that these legal and policy changes, which, as we have seen, occur against the background of dire economic conditions and intense pressure on land, pose a threat to peace and stability by reactivating resentments and ethnic divisions.⁴⁵

LTR-specific institutions - Finally, an institution that plays an important part specifically in addressing disputes that occur during the process of LTR must be mentioned. The collective approach to LTR, involving systematic recording of all parcels within a given geographic circumscription, is a massive operation. Within a relatively short amount of time, large number of parcels need to be surveyed and equally large or larger numbers of land holders need to be identified. For this reason, the Land Code provides for the establishment of a *Commission de*

⁴² Peace and Justice committees, often set up by churches and/or NGOs, also play a role, sometimes of importance, in resolving disputes in certain areas, including in Makamba. See Van Leeuwen, M. 2010. Crisis or continuity? Framing land disputes and local conflict resolution in Burundi. *Land Use Policy*, v. 27, p. 753. In the case of intra-familial disputes, a family council may be called to find a solution. Observatoire de l’Action Gouvernementale. 2007. *Analyse critique du fonctionnement de la justice de proximité au Burundi*. Available at : <https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Pouvoir%20judiciaire/OAG%20rapport%20justice%20de%20proximite%202007.pdf>.

⁴³ Based on data collected by KIT as part of impact studies reported on in Veldman and Wennink, 2019a, supra, footnote 10.

⁴⁴ Schwartz, 2013, supra, footnote 13.

⁴⁵ See in particular International Crisis Group. 2014. *Les terres de la discorde (II) : Restitution et réconciliation au Burundi*. Available at: <https://reliefweb.int/report/burundi/les-terres-de-la-discorde-ii-restitution-et-r-conciliation-au-burundi>.

Reconnaissance Collinaire (CRC), at the level of every hill in the municipality concerned, to assist the SFC. It is composed of seven members, including a representative of the municipal administration, the *chef de colline* or his representative, two *élus collinaires* and three members chosen directly by the population.⁴⁶ As suggested, during the process of registration, many existing and latent disputes will come to the surface. The CRC will be the first institution to seek to mediate and resolve such disputes and, crucially, it draws up a report concerning each parcel identified that determines, amongst others, whether it is considered ready for registration or in dispute.⁴⁷ If it is labelled as being in dispute or if an opposition procedure is initiated at a later stage by a party that was excluded from the process or disagrees with its outcome, the case will be brought before the competent court. In practice, however, such disputes may follow pathways that deviate from the prescribed procedure.

3.2 Common problems with Access to Justice

Access to Justice (A2J) is a crucial though often disregarded precondition for the success of LTR.⁴⁸ A2J, in a general sense, refers to the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.⁴⁹ As reflected in this definition, A2J is about more than improving justice seekers' access to courts or providing legal representation. There can be no A2J where citizens (especially marginalized groups) have no confidence in the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where remedies are not effective. A2J therefore also covers such issues as legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight.

The A2J dimensions of land governance and LTR concern land holders' ability to claim, exercise and, if need be through recourse to formal or informal justice institutions, defend their rights. If land holders are unable to have their rights fairly adjudicated and recognized in the LTR process, this may result in injustices (legitimate claimants are not recognized) and can be a source for continued tenure insecurity. And following LTR, disputes will continue to emerge with regard registered land (for example about the rights of successors). Again, if in such circumstances disputants have insufficient access to legitimate, competent and effective dispute resolution mechanisms, this will undermine the legal certainty that the system of formalized land tenure is meant to ensure. It is important, therefore, that the problems with A2J in Burundi are considered in the design of a new LAND-at-scale-supported LTR project.

Global rankings – Unfortunately, Burundi is not included in the finely grained Rule of Law Index of the World Justice Project. Still, there are significant indications that the Rule of Law and A2J in Burundi are matters of grave concern. It ranks 182nd out of 193 countries in the World Bank's 2019 Rule of Law Index (following a negative trend)⁵⁰ and 162nd out of 176 countries in Transparency

⁴⁶ See Articles 385 and 394 of the Code Foncier.

⁴⁷ See Article 395 of the Code Foncier.

⁴⁸ Veldman, M. 2020. Land disputes, land tenure registration and access to justice in fragile and conflict affected states: Questioning our assumptions. KIT Practice Brief. Available at: https://www.kpsrl.org/sites/default/files/2020-08/P01%20Practice%20Brief%20LTR%20FCAS_KIT_ZOA_VF.pdf.

⁴⁹ See UNDP. 2004. Access to Justice, available at: https://www.undp.org/content/dam/aplaws/publication/en/publications/for-website/access-to-justice-practice-note/Justice_PN_En.pdf; and <https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice>.

⁵⁰ Available at: <https://databank.worldbank.org/databases/rule-of-law>.

International's 2019 Corruption Perception Index⁵¹. With regards to the protection accorded to property rights, specifically, it can be noted that the country ranks 121st out of a total of 129 countries in the Property Rights Alliance's 2019 International Property Rights Index (with very low scores for Rule of Law, judicial independence, corruption and effective protection of rights).⁵² Based on the World Bank's 2017 Burundi Land Governance Assessment⁵³ and qualitative studies of the subject matter, the concrete problems with A2J in case of disputes over land that underly these poor rankings can be summarized as follows.

A2J in the narrow sense – A2J in the sense of rights holders being able to take a case before a mechanism to have it heard and get a decision, is not the main problem in Burundi. As we have seen, a range of different institutions, extending right down to the grassroots level, is available and these institutions can generally be approached quite easily. In principle, dispute resolution services offered by institutions at the local level, such as the *bashingantahe* and the *chef de colline*, are free of charge. And with a magistrate's court in every municipality and modest court fees,⁵⁴ even the formal system can be accessed with relative ease,⁵⁵ although physical distances within municipalities can be large. Particularly at the local level, decisions also tend to be adopted without much delay. The court system operates more slowly and the length of formal procedures is something that justice seekers often complain about.⁵⁶ Still, in first instance, a significant majority of cases is decided upon within 18 months.⁵⁷

It should be noted that the situation is more challenging for women rights holders who seek to access justice. The practical barriers to accessing justice are steeper for them because their access to the necessary resources and ability to leave the household are more limited. More importantly still, they will face significant socio-cultural barriers to accessing justice when their rights are infringed or denied.⁵⁸ Beliefs prevailing in rural communities as to the role and rights of women, often of customary origin, will mean that they are often reluctant to speak out against injustices, for fear that they will not be heard or that they might suffer repercussions within their community. This is confirmed, also, by the many focus group discussions with women that were held in the context of KIT's impact studies of the LTR project in Makamba.⁵⁹

A2J in the broader sense – It could be argued, however, that the ease of access in the narrow sense described above, affects access in the broader sense of being able to obtain a fair and effective outcome to a dispute. As suggested above, dispute resolution, particularly at the local level, is characterized by substantial normative and institutional multiplicity.⁶⁰ In our context this means

⁵¹ Available at: <https://www.transparency.org/en/cpi/2019>.

⁵² Available at: <https://www.internationalpropertyrightsindex.org/>.

⁵³ Nindorera, 2017, supra, footnote 8.

⁵⁴ Ibid, at p. 46.

⁵⁵ Ibid, at p. 138. A significant minority of pending cases is older than 5 years, however.

⁵⁶ Kohlhagen, 2011, supra, footnote 23.

⁵⁷ Ibid, at p. 139.

⁵⁸ Munezero, C., E. Kamwenubusa and J. Bizongwako. 2016. Les enjeux de l'accès de la femme à la terre au Burundi. Rapport alternatif sur la mise en oeuvre de la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes. International Land Coalition. Available at : https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BDI/INT_CEDAW_NGO_BDI_25415_F.pdf; RCN Justice & Démocratie. 2018. Note de plaidoyer : pour un meilleur accès des femmes à la justice au Burundi. Available at: https://rcn-ong.be/wp-content/uploads/2018/01/20160225_BUR-Note_de_plaidoyer_VOUT.pdf.

⁵⁹ Veldman and Wennink, 2019a, supra, footnote 10.

⁶⁰ Kohlhagen, 2012, supra, footnote 23; Kohlhagen, 2011, supra, footnote 23; Van Leeuwen, M. 2010. Crisis or continuity? Framing land disputes and local conflict resolution in Burundi. *Land Use Policy*, v. 27, p. 753; Tchatchoua-Djomo, R. 2018. Improving local land governance? Exploring the linkages between land governance reforms,

that formal laws, including rights to land, matrimonial property or succession under the Land Code, the Family Code and other instruments, are poorly known amongst the population; norms emanating from other sources, notably custom, may compete with and contradict these laws; the awareness of different institutions active particularly at the local level of formal laws and the extent of their adherence to customary practices and notions may vary; recording of decisions at this level and, particularly, of the argumentation supporting it, is uncommon; and decisions adopted by one institution will not necessarily form the basis of the review by a subsequently consulted institution.

A lack of independence and impartiality of dispute resolution mechanisms, very limited access to legal assistance, and serious problems with the enforcement of decisions further complicate the situation. In the perception of justice seekers, relationships and money will be at least as important in dispute resolution at the local level as the truth about the facts and the applicable law. There is a widespread perception that if a certain institution adopts an undesired decision, this is likely the result of favoritism or bribery and that another institution can be found and convinced to produce a more favorable result (forum shopping).⁶¹ Even at the level of the courts, independence and impartiality are not guaranteed.⁶² It should also be realized that justice seekers approach these informal and formal institutions largely without legal representation or advice.⁶³ Thus, their lack of understanding of their rights and of applicable procedures can have serious consequences for the outcome of their case. Finally, enforcement of decisions on land disputes is a serious challenge.⁶⁴ Decisions taken at the local level are not legally enforceable. The level of enforcement of decisions by magistrate's courts is very low and cases concerning resistance against enforcement of land-related court decisions are not uncommon in criminal courts. In practice, this means that a successful court case doesn't necessarily translate into a change in the realities on the ground.

Taken together, these factors explain why disputants often fail to obtain what they consider a fair and effective remedy to their grievances and why disputes don't easily come to an end. In this regard it should be remembered that land is crucial for the livelihood and survival of rural Burundians. In many cases, after an institution renders a decision, disputes continue to fester, until tensions rise

institutional pluralism and tenure security in Burundi. *The Journal of Legal Pluralism and Unofficial Law*. Available at: <https://doi.org/10.1080/07329113.2017.1419403>.

⁶¹ Dexter and Ntahombaye, 2005, *supra*, footnote 38.

⁶² Transparency International, 2019, *supra*, footnote 51; Observatoire de l'Action Gouvernementale, 2007, *supra*, footnote 42; Rufyikiri, I. 2010. L'indépendance de la magistrature au Burundi: Bilan et perspectives. Available at: https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Pouvoir%20judiciaire/Rufyikiri_220110.pdf; Niyonkuru, A. 2011. L'indépendance du pouvoir judiciaire burundais vis-à-vis de l'exécutif. Konrad Adenauer Stiftung Librairie Africaine d'Etudes Juridiques, v. 7, p. 1. Available at: <https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Pouvoir%20judiciaire/Niyonkuru%20KAS%20Vol%207%202011.pdf>.

⁶³ Moriceau, J. and C. Niyonzima. 2011. Etude de base sur l'aide juridique et l'assistance judiciaire au Burundi. Avocats Sans Frontières. Available at: https://asf.be/wp-content/publications/EtudeAideLegaleBurundi_JMoriceau2011.pdf; Kohlhagen; Kohlhagen, D. 2007. Le tribunal face au terrain : Les problèmes d'exécution des jugements au Mugamba dans une perspective juridique et anthropologique. RCN Justice & Démocratie. Available at: <https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Pouvoir%20judiciaire/Kohlhagen-Burundi.pdf>.

⁶⁴ Kohlhagen, 2007, *supra*, footnote 63; Kohlhagen, 2011, *supra*, footnote 23; Niyonkuru, A. 2016. L'exécution des jugements civils au Burundi : Incohérence normative, pratique à la limite de la légalité, ver dans le fruit. Librairie Africaine d'Etudes Juridiques, v. 3, p. 405. Available at: <https://www.uantwerpen.be/images/uantwerpen/container49546/files/Burundi/AP1.pdf>; Nindorera, 2017, *supra*, footnote 8. The last report makes mention of possible but as yet unconfirmed recent signs of improvement in the rate of enforcement of decision.

again, or another opportunity emerges to submit it to arbitration by the same or a different institution.⁶⁵

4. Results of LTR projects undertaken in Makamba

4.1 Output-level achievements and impact studies

In this section the results of ZOA's EKN-funded LTR project in Makamba are discussed. We focus on this project for a range of reasons. ZOA's project is built upon the experience of the prior EKN-funded project in the province of Ngozi, it notably adopts the grouped approach to LTR, it is by far the best studied LTR project in Burundi, and the LAND-at-scale project under formulation will, in turn, seek to carry forward and scale-up the work initiated by ZOA. It is important to reiterate, at this point, that ZOA's project was designed to overcome the weaknesses of the project in Ngozi that were highlighted by the studies commissioned by EKN in 2012 and 2014. The project proposal thus articulated the following three main outcome level changes: a reduction in the level of land disputes, a high level of transactions effectuated after registration being captured, and high levels of women's customary and statutory land rights being recorded.

Implementation of the project started in 2014 with the establishment of two SFC in the municipalities of Mabanda and Vugizo and the incorporation of these services in the municipalities' development plans and budgets. The support provided also involved assistance with the recruitment and training of a total of 510 municipal land officers and land office assistants, and the formation of local committees (Commissions de Reconnaissance Collinaire, CRC), responsible for identification of parcels and owners. ZOA also developed important technical innovations, which improved both the accuracy and the efficiency of the LTR process, including the use of aerial photography, GPS devices and a cloud-based system to upload data collected in the field. In addition, ZOA realized the importance of resolving disputes prior to registration and strongly emphasized the strengthening of the mediation capacities of the CRCs, so as to avoid that errors might occur in recording of rights and that rights registered might subsequently be challenged.

Relying on this improved approach, in the short period between December 2014 and November 2016, ZOA realized a series of strong output-level results. These include 6.636 disputes identified during registration and 5.239 disputes settled through mediation, 43.696 parcels registered, representing 92% of the surface area of the two municipalities, and a total of 10.409 title certificates established and 3.894 certificates collected by rights holders. In interpreting these results it is useful to keep in mind that the municipalities of Mabanda and Vugizo both have a population of around 70.000.⁶⁶

In order for ZOA to be able to also track the effects of its intervention at outcome level, a rigorous impact study was foreseen. The study, which was in large part carried out by KIT, involved a mix of quantitative and qualitative research techniques, with a large-scale in-depth survey at its heart. Additional sources of information were relied upon mainly for the purposes of triangulating survey results. Between 2014 and 2019 seven assessments were conducted, which involved over 5.000

⁶⁵ Van Leeuwen, M. 2010. Crisis or continuity? Framing land disputes and local conflict resolution in Burundi. *Land Use Policy*, v. 27, p. 753.

⁶⁶ Commune de Mabanda. 2010. Monographie de la commune de Mabanda. Mabanda. Burundi. Commune de Vugizo. 2010. Monographie de la commune de Vugizo. Vugizo. Burundi.

interviews and 250 focus group discussions with land holders, as well as analysis of more than 1.000 court cases. The results of these impact assessments are presented in the following sub-sections.⁶⁷

4.2 Levels of tenure security

4.2.1 Conceptual framework

Before presenting the impact of the project in Makamba on dispute levels, it is important – both to allow for a good interpretation of these results and with a view to the formulation of a theory of change – to discuss the links between land tenure security, land tenure registration and land disputes, from a conceptual point of view.

Land tenure security - Tenure security is central both to the LAND-at-scale ToC and principles, as well as to the Land Policy of the government of Burundi. For the purposes of this study, and in alignment with the VGGT⁶⁸ on which the LAND-at-scale principles are based, tenure security is defined as the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the benefits that flow from it, which includes the certainty that an individual's rights to land will be recognized by others and protected in cases of specific challenges and the threat of eviction.⁶⁹ Tenure security has been linked to a range of benefits. There is considerable empirical evidence that tenure security provides conditions for reducing poverty and improving food security, as it influences the extent to which farmers are prepared to invest in improvements in production and land management.⁷⁰ Tenure security is also recognized to have secondary social effects, including in relation to health and education, and can contribute to social stability. The concept is thus considered to be of cross-cutting importance to the Sustainable Development Goals (SDG), including for the eradication of poverty (SDG1) and hunger (SDG2), gender equality and empowerment of women (SDG5), building inclusive, resilient and sustainable urban areas (SDG11), reducing land degradation (SDG15) and fostering peace and security (SDG16).

Land tenure registration - Whilst the importance of tenure security for development is thus broadly recognized, there is much debate about how it can best be fostered and about the conditions in which interventions are needed or justified to seek to improve it. Land tenure registration is the approach most commonly put forward to address problems of tenure insecurity. LTR consists of identifying land holdings and the persons who hold rights to these lands. The results (location, dimensions, boundary markers, name of the rights holder) are recorded in a registry and proof of tenure is given to the rights holder. In an immediate sense this is expected to make land rights less vulnerable to contestation and prevent disputes. This improved security, in turn, is assumed to create the conditions for increased investments, access to credit and productivity. The empirical evidence on the effects of LTR is mixed, however, and, whilst there are notable exceptions, this

⁶⁷ Veldman, M and B. Wennink. 2019. Promoting Land Ownership Certification in Mabanda and Vugizo, Burundi: Final Impact Study. Royal Tropical Institute, Amsterdam, The Netherlands. This report brings together the findings of all seven impact studies, as well as of the two specific inquiries made into the situation of women.

⁶⁸ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries (VGGT).

⁶⁹ Definition adapted from Payne, G. and J. Quan. 2012. Secure land rights for all. UN Habitat. Available at: <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2488>.

⁷⁰ Stevens, C., Y. Panfil, B. Linkow, A. Hagopian, C. Mellon, T. Heidenrich, N. Kulkarni, I. Bouvier, S. Brooks, S. Lowery, and J. Green. 2020. Land and Development: A Research Agenda for Land and Resource Governance at USAID. Available at: <https://www.land-links.org/research-publication/land-and-development-a-research-agenda-for-land-and-resource-governance-at-usaid/>. This recognition is reflected in the fact that Sustainable Development Goal 1 (end poverty) is tracked in part by an indicator on the proportion of adults with legally recognized documents over their land or who perceive their tenure rights as secure.

applies particularly to Sub-Saharan Africa.⁷¹ Of the various expected benefits, the effect on investment in and maintenance of land finds most support in research, whilst the effect on access to credit is very limited.⁷² Moreover, there is considerable evidence that LTR can produce unintended adverse effects, including an increase in disputes, dispossession of rights holders and erosion of rights of women.⁷³

Together with the realization that the beneficial effects of LTR should not be taken for granted, there is growing awareness that pre-existing informal tenure arrangements should not necessarily be assumed to be insecure. Roughly from the start of the century, this has led to the development of a new generation of LTR approaches that are more context-sensitive, in the sense that they rely more on local capacity, seek to align with pre-existing arrangements, involve a lower level of cost, and are better tailored to existing administrative capacities. These appear to generate better results,⁷⁴ but the supporting evidence base still remains quite narrow.⁷⁵ In addition, growing evidence that efforts to improve tenure security are often hindered by rent-seeking, corruption, politics and patronage, has increased recognition that the success of LTR initiatives depends in significant measure on the wider land governance situation.⁷⁶

Land disputes and conflict - As we have seen, the perception that one's enjoyment of a right to land is or may be threatened is at the core of the definition of tenure security. The government of Burundi explicitly describes its primary objective to enhance tenure security in terms of a need to deal with the high level of land disputes.⁷⁷ In principle, disputes between individuals or groups about the

⁷¹ Benjaminsen, T., S. Holden, C. Lund, and E. Sjaastad. 2008. Formalisation of land rights: Some empirical evidence from Mali, Niger and South Africa, in: *Land Use Policy*, v. 26, p. 28; Platteau, J. 1996. The evolutionary theory of land rights as applied to Sub-Saharan Africa: A critical assessment, in: *Development and Change*, v. 27, i. 1, p. 29; and Dickerman, C. 1989. *Security of Tenure and Land Registration in Africa: Literature Review and Synthesis*, University of Wisconsin-Madison LTC Paper n. 137.

⁷² See Stevens, et al, supra, footnote 70. English, C., A. Locke, J. Quan and J. Feyertag. 2019. *Securing land rights at scale Lessons and guiding principles from DFID land tenure regularisation and land sector support programmes*. Available at: https://www.researchgate.net/publication/333658289_Securing_land_rights_at_scale_Lessons_and_guiding_principles_from_DFID_land_tenure_regularisation_and_land_sector_support_programmes_NonCommercial_Licence_CC_BY-NC_40/link/5cfaa587299bf13a38457f60/download .

⁷³ Singirankabo, U. and M. Ertsen. 2020. Relations between land tenure security and agricultural productivity: Exploring the effect of land registration. Available at: <https://www.mdpi.com/2073-445X/9/5/138>; Benjaminsen et al, 2008, supra, footnote 71; Platteau, 1996, supra, footnote 71; Dickerman, 1989, supra, footnote 71; and Ghebru, H. 2019. Women's land rights in Africa. In: 2019 Annual trends and outlook report: Gender equality in rural Africa. Quisumbing, A., R. Meinzen-Dick and J. Njuki. International Food Policy Research Institute (IFPRI). Washington, DC. United States. Available at: https://doi.org/10.2499/9780896293649_04; Serwat, 2018, supra, footnote 31.

⁷⁴ See e.g. English et al. 2019, supra, footnote 72; Ali, D., K. Deininger, and M. Goldstein. 2011. Environmental and gender impacts of land tenure regularization in Africa: Pilot evidence from Rwanda, World Bank Policy Research Working Paper n. 5765, Washington DC, US; and Santos, F., D. Fletschner, and G. Daconto. 2012. Enhancing inclusiveness of Rwanda's land tenure regularization program: Initial impacts of an awareness raising pilot, Paper prepared for the 2012 World Bank Conference on Land and Poverty.

⁷⁵ See Stevens, et al, supra, footnote 70.

⁷⁶ Klopp, J. and O. Lumumba. 2017. Reform and counter-reform in Kenya's land governance. Available at: <https://www.tandfonline.com/doi/abs/10.1080/03056244.2017.1367919?journalCode=crea20>; Kjaer, A. 2017. Land governance as grey zone: The political incentives of land reform implementation in Africa. Available at: <https://www.tandfonline.com/doi/abs/10.1080/14662043.2017.1272876?journalCode=fccp20>; and Boone, C. 2014. Property and political order in Africa. Land rights and the structure of politics. Available at: <https://www.cambridge.org/core/books/property-and-political-order-inafrica/86A454E0C6FCE760199745807D6017A9>

⁷⁷ It is important to distinguish between disputes and conflict. Disputes are defined as the incompatibility of interest, objectives or future positions, whilst conflicts are defined as the pre-hostilities phase and hostilities are prolonged and

distribution of scarce resources are an inevitable and arguably necessary feature of development.⁷⁸ High levels of disputes, however, can be disruptive and impede development, peace and security. The empirical literature suggests that unresolved land disputes can prevent investment and decrease agricultural production.⁷⁹ There are indications, also, that land disputes may adversely affect disputants' food security.⁸⁰ Finally, the literature identifies unresolved land disputes as a potential source of larger scale violent conflict, particularly when such disputes overlap with ethnic divisions and their build-up coincides with economic, political, or demographic shocks.⁸¹

Grosso modo, the causes of disputes and conflict over land in Africa, often intertwined in practice, can be grouped into three categories.⁸² All of these can be seen reflected in the discussion of the Burundian context provided above. The first is a combination of land scarcity, population pressure, adverse climatic factors and limited off-farm income-generation opportunities, resulting in often fierce competition over land.⁸³ In FCAS, in particular, these problems are compounded by the effects of ethnic tensions, recurrent political crises and violent internal conflict,⁸⁴ which lead to population displacements and overlapping land claims. Weak governance and institutions are a third factor commonly identified as contributing to disputes and conflict over land.⁸⁵ Whilst fairly evident, it is important to distinguish these different causes, since – as we are about to see – LTR may help improve land governance, but will not influence the broader social, economic and political trends that influence competition over land.

LTR and land disputes - LTR is meant to increase legal certainty regarding land rights and to reduce the scope for land disputes. It is important to realize, however, that the impact of LTR on land dispute levels remains understudied and the small body of available evidence presents a mixed picture. An empirical study of an LTR project undertaken in Uganda, reports a deterioration of the situation.⁸⁶ A second publication on the results of a registration program undertaken in Ethiopia, on the other hand, reports a decrease in disputes.⁸⁷ It should be noted, however, that this second study focuses exclusively conflicts concerning boundaries and is based only on ex post perceptions about changes in case volumes at the local-level. A third contribution assessing effects in Mali does not report on the overall impact on dispute levels but notes that LTR initially led to a substantial rise in

often multi-actor forms of violence. Usually it is the accumulation of sources of tension that explains the shift from disputes to conflict. Barringer, R. 1972. *War Patterns of Conflict*, The MIT Press, Cambridge.

⁷⁸ Barron, P., C. Smith and M. Woolcock. 2004. *Understanding Local Level Conflict in Developing Countries: Theory, Evidence and Implications from Indonesia*, World Bank Social Development Paper n. 19.

⁷⁹ Deininger, K., and R. Castagnini. 2006. *Incidence and Impact of Land Conflict in Uganda*, in: *Journal of Economic Behavior & Organization*, v. 60, i. 3, p. 321.

⁸⁰ Uyang, F., E. Nwagbara, V. Undelikwo and R. Eneji. 2013. *Communal Land Conflict and Food Security in Obudu Local Government Area of Cross River State, Nigeria*, in: *Advances in Anthropology*, v. 3, i..4, p. 193; Linkow, B. 2016. *Causes and Consequences of Perceived Land Tenure Insecurity: Survey Evidence from Burkina Faso*. *Land Economics*, v. 92, i. 2, p. 308. University of Wisconsin Press. Available at: <http://le.uwpress.org/content/92/2/308.abstract>.

⁸¹ Deininger, K. 2003. *Land Policies for Growth and Poverty Reduction*. Washington DC: World Bank.

⁸² Wehrmann, B. 2008. *Land Conflicts: A practical guide to dealing with land disputes*, GTZ Land Management, available at: <https://www.giz.de/fachexpertise/downloads/Fachexpertise/giz2008-en-land-conflicts.pdf>

⁸³ Barron et al., 2004, *supra*, footnote 78.

⁸⁴ Wehrmann, 2008, *supra*, footnote 82.

⁸⁵ Eck, K. 2014. *The Law of the Land: Communal Conflict and Legal Authority*, in: *Journal of Peace Research*, v. 51, i.4, p. 441.

⁸⁶ Deininger, K. and R. Castagnini. 2004. *Incidence and impact of land conflict in Uganda*, World Bank Policy Research Working Paper n. 3248.

⁸⁷ Holden, S., K. Deininger and H. Ghebru. 2010. *Impact of land registration and certification on land border conflicts in Ethiopia*, World Bank, Washington, D.C.

disputes.⁸⁸ The evidence from Rwanda's nation-wide LTR program, finally, is inconclusive. Official statistics suggest that nationally around 0,2% of parcels surveyed were found to be in dispute during the LTR process,⁸⁹ which contrasts with the finding in an ex post assessment that 11% of households were involved in a land dispute.⁹⁰

LTR and A2J – The extent to which LTR can be relied on to improve tenure security and reduce dispute levels, depends significantly on right holders' ability to access formal or informal institutions of justice.⁹¹ A rights holder's absence or lack of awareness of his or her rights, misinformation provided by a self-interested neighbor or family member, a mistake or omission by a member of the survey team, misinterpretation of the law by an agent involved in adjudication, abuse of power by an official involved in the process and many other factors can lead to errors in recording of rights, with potentially devastating consequences for the people concerned. Avoiding such problems depends on the safeguards incorporated in the process, or, in other words, on the extent to which land holders are informed and aware of their rights and able to access institutions to obtain a fair and effective remedy when their rights are threatened or have been violated. Failure to ensure that such access is provided for, can also lead to escalation of disputes that emerge during LTR.⁹² And once in place, the ability of the system based on registered rights to improve legal certainty depends on whether rights holders are convinced that it will ensure more effective protection of their rights. If access to justice is limited because of factors such as cost, distance, excessive delays, lack of information, assistance or representation, language problems, distrust, a perceived lack of impartiality or independence, or the inability to enforce decisions, there is a distinct possibility that LTR will not contribute significantly to improving tenure security.

Reducing land dispute levels is not the sole policy objective pursued through LTR in Burundi or elsewhere. This was pointed out by several stakeholders interviewed for the purpose of this study. Other objectives include land market development, better access to credit and enhanced land-based investment and, as shown above, there is substantial evidence to justify an expectation that these effects can ensue. There are reasons, however, to be cautious in assessing the likelihood that this would happen in a fragile and conflict-affected setting marked by elevated levels of land disputes, such as Burundi. The possibility cannot be discarded that persistence of significant volumes of disputes following LTR, particularly when accompanied by lack of recording of large numbers of transactions, would eventually affect land holders' decisions to make land-based investments, to seek credit and increase production. In other words, for the long-term sustainability of the expected economic effects of LTR, finding ways of enhancing its impact on preventing disputes is key.

Given the scarcity of research on this topic, there are two further issues that need to be treated with caution in the formulation of a ToC for a new LAND-at-scale LTR project in Burundi. First, whilst the

⁸⁸ Benjaminsen et al. 2008, supra, footnote 71.

⁸⁹ Ngoga, T. 2018. Land governance assessment framework Rwanda, <http://documents.worldbank.org/curated/en/905231504857005613/Land-governance-assessment-framework-final-report-Rwanda>.

⁹⁰ Biraro, M., Khan, S., Konguka, G., Ngabo, V., Kanyiginya, V., Tumushere, W. and P. Jossam. 2015. Access to the land tenure administration system in Rwanda and the outcomes of the system on ordinary citizens, *Journal of Land Administration in Eastern Africa*, v. 3, i. 1, p. 346-352.

⁹¹ Veldman, 2020, supra, footnote 48.

⁹² See the discussion in the next section of the findings of KIT's impact studies conducted in Makamba regarding the link between LTR and violent crime.

main objective of LTR may be to contribute to a long-term reduction in land disputes, in the short-term it may cause a rise in dispute levels.⁹³ As registration teams start identifying and delineating parcels and naming right holders, latent disputes will come to the surface. This will happen because everyone who holds a claim to land that risks being registered in someone else's name needs to come into action or forego his claim. In a context where land disputes are prone to escalate into violence and will often be linked to broader conflict or tensions within society, such a surge in disputes could have very harmful effects. Second, there are reasons to assume that LTR is more effective in preventing some but not all types of disputes. By recording the location and dimensions of parcels and providing strong legal proof of ownership, LTR can be particularly effective to prevent boundary disputes between neighbours and disputes arising out of sale and purchase of land. Many intra-familial disputes, however, are unaffected by LTR,⁹⁴ as are disputes between returnees and incumbents they find on their land. In Mabanda and Vugizo, these two types of dispute make up around 60-70% of the whole. This means that the expectations as to the preventive effect of LTR should not be raised too high.

4.2.2 Impact study findings

In line with this conceptual framework the impact study embedded into ZOA's project sought to assess the effect of its intervention on land tenure security by looking at the extent to which rights holders experience or expect a threat to the enjoyment of their right to land.⁹⁵ Specifically, the following indicators were looked at:

- The proportion of parcels in the (representative sample) that are or have been in dispute in the past 12 months;⁹⁶
- The proportion of households (representative sample) who expect that it is more likely than not that they will be involved in a new dispute within 12 months;
- The proportion of land cases as part of the civil case load of courts of first instance;
- The proportion of criminal cases related to a prior land dispute in courts of first instance.

Findings (dispute levels and perceptions) - The evolution of parcels in dispute over time as ZOA implemented LTR in the various groups of *collines* (administrative areas) of Mabanda and Vugizo is made visible in the table below. The shaded areas indicate that the LTR process is completed in a given group and period. This table tells us that over the course of the project, from the baseline study (2014) to the final impact study (2019), the general trend in dispute levels involved an initial and fairly substantial rise, followed by a gradual decline that eventually appears to converge back to baseline values.⁹⁷ The downward trend in dispute levels was also observed in the control group

⁹³ Benjaminsen et al, 2008, supra, footnote 71.

⁹⁴ If the owner of a property passes away and a dispute ensues between the descendants about its division, the fact that the parcel is registered and certified makes no difference.

⁹⁵ The impact study findings reported in this section are drawn from Section 4.3 of Veldman and Wennink, 2019a, supra, footnote 10.

⁹⁶ Ibid. The study also tracked the proportion of households that are or have been involved in a land dispute in the past 12 months. The results in this regard are very similar to the proportion of parcels in dispute and are not discussed separately here.

⁹⁷ Ibid. For groups 2 and 3 the rise and fall coincides with the start and end of registration, for group 1 the peak is reached a bit later, and in group 4 dispute levels rise and start falling before registration gets on its way. A similar pattern was observed in ZOA's second (USAID funded) LTR project in Makamba, with the rise in disputes levels kicking in slowly in group 1 but remaining persistently high throughout the rest of the project, whilst the effect in group 4 was somewhat anticipated and remained persistently low throughout the rest of the project. A plausible explanation for these effects

and was stronger there than in any of the intervention groups. The study also examined the impact on specific types of dispute, relating to boundaries or sale and purchase, that LTR is most likely to prevent. No reduction in the levels of such disputes could be established.⁹⁸

Table 1: Dispute levels per parcel (source : Veldman and Wennink, 2019a)

Studies	Group 1	Group 2	Group 3	Group 4	Group 5-C
1	8.71%	5.97%	6.91%	11.01%	8.31%
2	7.58%	7.92%	11.30%	12.82%	10.64%
3	14.66%	11.24%	8.99%	6.64%	10.65%
4	15.38%	3.91%	12.26%	8.62%	6.99%
5	11.89%	4.58%	4.35%	5.76%	6.51%
6	11.14%	3.40%	5.79%	4.26%	4.11%
7	11.19%	5.99%	6.00%	6.77%	3.92%

The findings of the inquiry into land holders' expectations about future disputes show a trend that is similar to the one relating to the level of disputes actually unfolding on the ground. When LTR started, the proportion of respondents who thought it more likely than not that they would be involved in a dispute in the next 12 months increased from around 26% at the baseline to around 40%.⁹⁹ The proportion of land holders who anticipated a dispute then gradually dropped below the baseline value to 14%, but over the course of the two years following the completion of LTR operations this gradually rose back to 21%.

To triangulate the findings of the household surveys, the impact study looked at the share that land disputes make up of the civil caseload, by looking at samples of cases drawn from the dockets of the *Tribunal de Résidence*. As far as could be verified, this share remained stable at around 70-75% throughout the project period, with a slightly higher level of disputes in Vugizo than in Mabanda. The final indicator focused on the consequences of land disputes, by looking at the proportion of cases prosecuted before the criminal court in Makamba (*Tribunal de Grande Instance*), which involved allegations of violent forms of crime.¹⁰⁰ Problems relating to data collection and data analysis make it hard to draw definite conclusions in this regard.¹⁰¹ What is clear is that at over 25% the proportion of criminal cases related to a prior land dispute is very substantial in the province. That is, land disputes continue to be a serious cause of instability and conflict. No clear difference could be discerned between areas treated and not treated.

could be that it takes a while before the population of the first group to undergo LTR understands the process well and appreciates the implications, after which the news spreads throughout the municipality and the population of the last group becomes aware and starts reacting before the process is initiated.

⁹⁸ Ibid. As regards disputes about sale and purchase, it must be pointed out that the volume of transactions in the intervention area increased threefold over the project period. The focus group discussions confirm these findings of the household survey. The fact that disputes related to sale and purchase have not increased may therefore be a sign that LTR succeeded in better securing such transactions. This result, however, needs to be assessed in the light of the discussion below in Section 3.3 regarding the sustainability of the LTR system.

⁹⁹ Ibid. With the exception of group 4, where the effect was again anticipated.

¹⁰⁰ Ibid. These are crimes that involve the use of force or the threat of force, such as murder, manslaughter, assault, battery, and robbery (armed or otherwise with force).

¹⁰¹ Ibid. Criminal courts hear cases from the entire province of Makamba, that is, from more municipalities than Mabanda and Vugizo. Necessary information to allow the research team to discern which cases in its sample related to either the intervention or the control area was not available for all periods. Also, the majority of decisions in criminal cases are only summarily reasoned. Without a discussion of the facts of the case, no determination could be made whether it was land-related. Such cases were counted as not related to land.

Discussion (long-term impact) – Seen together, these findings suggest that the LTR project in Mabanda and Vugizo did not result in a marked and lasting reduction of land disputes. Throughout the project period dispute levels fluctuated,¹⁰² but there is no sign of an improvement in treated areas vis-à-vis non treated areas. Likewise, perceived tenure security (land holders' expectations regarding future disputes) did not improve substantially. The final impact study report offers three explanations why, despite strong investment in mediation and subsequent registration of land holdings, a substantial share of land holders continues to feel insecure. First, participants to focus group discussions organized throughout the impact study considered that land disputes did not come to an end after mediation or LTR and tended to expect that they would reemerge later for multiple reasons. The participants' reflections suggested that a sense of not really having been heard or having received justice paired with poverty would push people to resume a dispute at a later point in time.¹⁰³ This was viewed as likely, regardless of whether parcels had been registered or not and whether the other party had obtained a certificate or not. Second, as we have seen, most disputes in Mabanda and Vugizo concern repatriation and succession, which LTR can less effectively prevent. Third, for reasons that partly relate to the law and are partly motivated by expediency, in many cases the project only recorded the outer boundaries of larger family estates and not the subdivisions within those estates. However, a substantial proportion of disputes in the area, including those most prone to escalate into violence, concern these intra-familial relations and divisions.

Discussion (immediate impact) – During the project period the areas studied have witnessed a rise and fall in dispute levels. The fact that in the intervention areas the surge was more substantial and the decline more gradual than in the control areas, suggests this effect may partially be attributable to LTR. Focus group discussions held in the different phases of the project clearly indicate that LTR gave rise to disputes that would otherwise not have emerged or would have emerged later. Given the adverse impact of disputes on land holders' well-being and food security and the potential of land disputes to engender violence, this is an effect to take very seriously in the formulation of the future LAND-at-scale project. In this regard, the effects observed in the first group of collines (randomly selected from both municipalities) that underwent LTR at the start of 2015 are noteworthy. During the last study in 2019 this group still experienced double the level of disputes recorded in 2014. At this stage ZOA, the SFCs and the local partner involved in mediation were still gathering experience. Unlike other parts of the intervention area, this group also included areas with particularly high prevalence of disputes concerning repatriation. Yet parts of the control area involved similarly high levels of these disputes, which did subside substantially over time. Focus group discussions held throughout the program period suggest that repatriates and incumbents tended to be reluctant to accept mediation of their dispute by the institutions responsible for LTR (notably the CRCs). They also suggest that, in the context of the CNTB's more restrictive current policy, LTR may in certain cases unsettle the outcome of earlier land sharing arrangements between repatriates and incumbents.

¹⁰² Ibid. Other factors than LTR alone will have affected dispute levels during the project period. Dispute levels are determined by a range of contextual factors, including land pressure, climatic conditions affecting harvests, changes in poverty and income levels, off farm income-generating opportunities, security conditions and the general socio-political climate. In this respect it is to be noted that the project was largely implemented in a period of national crisis, related to presidential elections and an attempted coup d'état in 2015, which resulted in renewed violence, political instability and a worsening in socio-economic conditions across the country.

¹⁰³ Ibid. They consistently indicate that reasons to reopen a case include, in particular, changes in poverty and income level including bad harvests, rapid population growth and related land pressure, changes in power relations (i.e. changes in influential persons in the family or among local officials).

4.3 Recording of transactions

4.3.1 Conceptual framework

Before presenting the impact of the project in Makamba on transactions and sustainability, it is important – both to allow for a good interpretation of these results and with a view to the formulation of a theory of change – to discuss these matters from a conceptual point of view. To increase tenure security and reduce land disputes in the long term, it is crucially important that the land management system put in place is kept up to date after initial registration.¹⁰⁴ If changes in ownership that occur after registration are not reflected in the registry, land rights will gradually slip back into informality and the function of the registry as the place where land ownership can indisputably be verified will be seriously undermined. In that case, ultimately, LTR can lead to heightened tenure insecurity, as confusion is created over what claims will be accepted in court, and can hinder the land market, since owners can't be certain their right won't be challenged.¹⁰⁵ The results of many LTR initiatives in Africa and beyond are recognized to have suffered from these problems,¹⁰⁶ including for example Rwanda's nation-wide land regularization program.¹⁰⁷

In the literature, two sets of explanations for these problems are identified.¹⁰⁸ The bulk of the literature focuses on causes relating to the design and operation of registration and land administration processes and systems,¹⁰⁹ including high transaction costs, complicated bureaucracies, complex procedures, long transaction time and distance to land registration offices. Accordingly, LTR programs on the ground have focused primarily on improving these processes and systems. More recently, however, some authors draw attention to the need to consider the socio-cultural norms and practices that govern the interactions between people and land and how these interactions affect the maintenance of the land registration systems.¹¹⁰ There is evidence from a range of different contexts suggesting that customary inheritance practices, in particular, stand in the way of recording of transfers occurring after LTR.¹¹¹

¹⁰⁴ Abubakari, Z., C. Richter and J. Zevenbergen. 2019. A tripartite normative interaction in land registration: Inheritance and land information updating. Paper prepared for presentation at the 2019 World Bank conference on Land and Poverty. Available at: https://www.researchgate.net/publication/334491253_a_tripartite_normative_interaction_in_land_registration_inheritance_and_land_information_updating.

¹⁰⁵ Platteau, 1996, supra, footnote 71.

¹⁰⁶ Ibid; Biraro, M., R. Bennett and C. Lemmen. 2015. Accelerated land administration updates. In Zevenbergen, J., W. de Vries and R. Bennett (Eds.). *Advances in responsible land administration*. Available at: https://ezproxy.utwente.nl:2315/library/2015/chap/bennett_acc.pdf; and Deininger, K., C. Augustinus, S. Enemark and P. Munro-Faure. 2010. Innovations in Land Rights Recognition, Administration, and Governance. Available at: <http://doi.org/10.1596/978-0-8213-8580-7>; Barnes, G. and C. Griffith-Charles. 2007. Assessing the formal land market and deformalization of property in St. Lucia. *Land Use Policy*, 24, 494–501. Available at: <http://doi.org/10.1016/j.landusepol.2006.08.001>;

¹⁰⁷ Byamuka, B. 2018. Land governance in an interconnected world: Lessons from land tenure regularisation programme (2009-2018) in Rwanda. Paper prepared for presentation at the 2018 World Bank conference on Land and Poverty;

¹⁰⁸ Abubakari et al, 2019, supra, footnote 104.

¹⁰⁹ Biraro, 2015, supra, footnote 106; Chimhamhiwa, D., P. van der Molen, O. Mutanga and D. Rugege. 2009. Towards a framework for measuring end to end performance of land administration business processes - A case study. Available at: <http://doi.org/10.1016/j.compenvurbsys.2009.04.001>; Enemark, S., B. Clifford, C. Lemmen and R. McLaren. 2014. *Fit-For-Purpose Land Administration*. Joint publication by FIG and World Bank. Copenhagen, Denmark; and Zevenbergen, J., C. Augustinus and D. Antonio. 2012. *Designing a Land Records system for the poor*. Available at: <http://www.stdm.glt.net/docs/Designing-a-Land-Records-System-for-The-Poor.pdf>.

¹¹⁰ Aboubakari et al, 2019, supra, footnote 104.

¹¹¹ Barnes and Griffith-Charles, 2007, supra, footnote 106; Platteau, 1996, supra, footnote 71.

As yet, the A2J dimensions of this issue remain unexplored in the literature. Though it would be intuitive to assume that new owners have a strong interest in securing formal recognition of their right, this logic may not always prevail in practice. In a context where a potential dispute over newly acquired land is most likely to be handled at local level by informal institutions and where the outcome of the case is perceived to be primarily determined by relations and money, rather than facts and law, incentives to incur the costs of recording a transaction may be limited.

3.3.2 Impact study findings

The LTR pilots undertaken in other parts of Burundi struggled to change long standing practices relating to transfers in ownership, resulting in gross under-reporting of transactions at the SFCs.¹¹² For this reason, the aim to ensure that the new system would be sustainable – understood and trusted by the population and used to capture the majority of transactions – was enshrined in the results framework of ZOA’s project. The impact studies show that whilst ZOA realized remarkable improvements over time, the recording of these transactions in the SFC registries remains one of the major challenges of its approach.¹¹³

Findings - It is quite common for land to change hands in Mabanda and Vugizo. Over the course of the project, the rate of transactions increased substantially, from 2% of parcels per year to 7% of parcels. During the first half of the project none of the transactions that took place were recorded in the SFC registries. After the mid-term review expressed concerns about this, ZOA and its municipal partners changed their approach. Where first they relied essentially on land holders’ own initiative, in the second half of the project, authorities at the level of the collines were encouraged to report transactions taking place in their communities. This allowed the rate of recording of transactions to gradually increase gradually to around 50% of the level of transactions observed by means of the household survey. Still, the final impact study report estimates that between 2015 and 2019 some 8,200 transactions occurred in areas having undergone registration that are most likely not captured by the SFC. This equates to around 10% of the parcels in the two municipalities. It must be mentioned, however, that it in the context of the household survey it could not always be determined whether a parcel was registered individually or as part of a larger estate. It is possible therefore that the numbers based on the household survey include transactions that would not need to be recorded in the SFC. This would be the case if they only concern internal subdivisions and existing rights holders. Nonetheless, it is clear from the almost 100 focus group discussions held on this topic over the course of the project that substantial volumes of transactions concerning individually registered parcels went unrecorded. Assuming no further efforts have been made to improve the rate of recording after the end of the project, the SFC registries are progressively becoming outdated.

Discussion - The under-recording of transactions is explained by several factors. The law assumes new owners will be motivated to ensure that their right is properly recorded at the SFC. If they don’t, it is the right of the old owner that is legally recognized. First, it is important to mention that under-recording is not primarily an issue of land holders’ unfamiliarity with this new system. The majority of participants to the focus groups, men and women, showed awareness of the need to notify the SFC when a parcel changes hands. They often point to the purchase tax (which can amount to 10% of the price), the fee for recording transactions and the distance they need to travel to the SFC

¹¹² Wennink and Lankhorst, 2014, supra, footnote 24 and Wennink et al, 2012, supra, footnote 24.

¹¹³ The impact study findings reported in this section are drawn from Section 5.2 of Veldman and Wennink, 2019a, supra, footnote 10.

offices as the main obstacles. In-depth discussions with respondents revealed that more fundamental doubts about the new system also play a part. Many participants to the focus groups questioned whether going through the SFC would provide them sufficient extra security to justify the necessary investment in time and above all money. In their opinion, the traditional system with witnesses and documents drawn up by local leaders, which they can continue to rely on, sufficiently secures their rights in a situation where everybody knows all persons involved. The focus group discussions suggest that it is buyers of land from outside of the community, family or immediate circle of neighbours who are more likely to be self-motivated to register their transaction.

Generally, respondents in focus groups in all data collection rounds did not understand the new system to require them to register transactions based on succession or traditional gifting and strongly rejected the idea of having to pay a fee to the SFC for the registration of such a transaction. This is important, since 81.19% of the transactions observed by means of the household survey are of this kind. Under customary law, the handing down of family land from one generation to the next is not considered a form of alienation and other forms of traditional gifting (to both sons and daughters) are mostly seen as arrangements of a temporary nature, which don't affect the integrity of the family estate. The fact that the new system would require land holders to pay a fee in such cases, is perceived as an undue tax imposed by the government. Since in their understanding the land doesn't change hands and they have never before had to pay a fee for this kind of transaction, this is considered unjust.

A final reason why the rate of recorded transactions remains very low may relate to the role of *colline*-level authorities. Such authorities, notably the chef de *colline*, will generally be involved in transactions as witnesses and will, in the case of purchasing-sales agreements, sometimes even draw up some form of document. This assistance with the 'formalization' of transactions is not free of charge. Usually it involves a payment of a sum of money or another form of compensation. And this is where there may be a problem. Few land holders will agree to pay a fee both to the leaders of the *colline* for these services they provide as community leaders and to the SFC for recording the transaction. Colline-level leaders who cooperate with the system put in place after the mid-term to help the SFCs track transactions therefore risk undermining their ability to receive compensation for their role in facilitating transactions. Stakeholder interviews suggest that their incentives to do so actively and fully are mitigated.

4.4 Protection of women's land rights

4.4.1 Conceptual framework

Providing adequate protection for women's land rights has proven challenging in prior LTR projects undertaken in Burundi.¹¹⁴ Burundi is not unique in this sense, this has been a major shortcoming of LTR initiatives throughout Sub-Saharan Africa, where customary laws prevails.¹¹⁵ In discussions about funding ZOA's proposal for Mabanda and Vugizo, in 2013, EKN emphasized the importance it attached to the proper recording of women's rights. In particular, the project would need to ensure that no pre-existing rights of women to land would be lost in the process and that LTR make the

¹¹⁴ Wennink and Lankhorst, 2014, supra, footnote 24 and Wennink et al, 2012, supra, footnote 24.

¹¹⁵ Kevane, M. and L. Gray. 2008. Diminished access, diverted exclusion: Women and land tenure in Sub-Saharan Africa. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1096247; Platteau, 1996, supra, footnote 71.

recorded rights of women more secure.¹¹⁶ To appreciate why this was and remains a challenging ambition, the following must be understood.

Women's customary rights - In Burundi, as in much of Sub-Saharan Africa, women's land rights are mainly governed by custom. This is different from the situation in neighboring Rwanda, where women's inheritance rights are regulated by statutory law.¹¹⁷ It is often thought that customary law does not grant rights to women, but this is not the case. Around 90% of the rights to land that women exercise in Mabanda and Vugizo are acquired through custom.¹¹⁸ What is true is that these rights are generally less extensive than those of men. And not only are women's customary rights to land weaker than those of men, as will be explained in more detail below, they are often subject to a superior right of a male relative to the same parcel, particularly as regards matters of control. Moreover, the rights women exercise under customary law in Sub-Saharan Africa are recognized to be subject to subtle processes of erosion, caused by broader socio-economic changes and progressive individualization of land tenure.¹¹⁹

The most important categories of women's land rights are the rights exercised by widows over their late husband's land and the right of *igiseke*. These categories make up 33% and 40%, respectively, of women's land rights in Mabanda and Vugizo.¹²⁰ Under customary law, a woman who is widowed will generally be allowed to keep part of her late husband's land, if she has sons who are under-age. Generally, these rights are more encompassing than the right of *igiseke*, but they seldom involve full management rights. In principle, a widow only holds these rights in the name of her sons. Widows with adult sons will in most cases live with one of these and have the right to use one or more of his plots. Widows without male offspring are much less secure of being able to stay on their husband's land and will often need to rely on their *igiseke*.

In the close to 50 focus group discussions held on this topic throughout the project, *igiseke* was described as a right for married women to ask for a plot of land from their father (or brothers). The *igiseke* gives a right to use the land, but in most cases, it does not include the right to take management decisions. Such rights are exercised by the male relative with the fuller right to the parcel. In most, but not all cases, however, a woman does have opposition rights, meaning that she is entitled to reject management decisions that unduly curtail her right. The parcel of land that is subject to a right of *igiseke* continues to be part of the family estate of the father or brother. It does not become part of the husband's land and nor can the woman transfer the right to her children, by succession or gifting, for a woman's children are considered part of her husband's family. Though participants to the focus groups tended to affirm that according to their customs every married woman has this right, in practice, it is not the case that every woman gets an *igiseke*.

¹¹⁶ Lankhorst, M. 2014. Service foncier communal dans les communes de Mabanda et Vugizo : Rapport sur les droits fonciers des femmes. The Hague Institute for Global Justice, The Hague, The Netherlands.

¹¹⁷ Lankhorst, M. and M. Veldman. 2011. Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda. In: Working with customary justice systems, post-conflict and fragile states. Harper, E. (ed.). International Development Law Organization, Rome, Italy; and Daley, E., R. Dore-Weeks and C. Umuhoza. 2010. Ahead of the game: land tenure reform in Rwanda and the process of securing women's land rights. Journal of Eastern African Studies, v. 4, i. 1, p. 131.

¹¹⁸ Veldman and Wennink, 2019a, supra, footnote 10.

¹¹⁹ Whitehead, A. and D. Tsikata. 2002. Policy discourses on women's land rights in Sub-Saharan Africa: The implications of the re-turn to the customary. Journal of Agrarian Change, v. 3, n. 1 and 2, p. 67; and Yngstrom, I. 2002. Women, wives and land rights in Africa: Situating gender beyond the household in the debate over land policy and changing tenure systems. Oxford Development Studies, v. 30, n. 1, p. 21.

¹²⁰ Veldman and Wennink, 2019a, supra, footnote 10.

Registering women’s customary rights – In a case like that of Burundi, where women’s pre-existing land rights are regulated by custom rather than statutory law, LTR is not a simple matter of identifying and recording rights as they are. The formal rights recorded differ in terms of structure and substance from those held and exercised under customary law. Where, as we saw, under customary law multiple rights to one parcel of land can be exercised by different people, the property rights that these rights need to be converted to in the process of registration are full and individual. This, combined with the weaker status of their rights, means there is a significant risk that LTR projects such as those implemented by ZOA in Burundi lead to the unintended effect of cancelling or further weakening of women’s land rights.¹²¹ This can be explained as follows.

Since the customary rights that a woman exercises to a piece of land will often exist next to a superior right to the same parcel by a male family member, there is a substantial chance that it will be registered in the name of the man. Even if, in practice, the woman will be able, initially, to continue exercising her old right, the longer-term effect may be to weaken their rights. Legally, a right that is not registered and that does not appear on the certificate ceases to exist. If, after registration, the husband, brother or uncle, who holds the certificate, wants to sell the land or wants to use it himself, the woman will have a weakened bargaining position, including because she would most likely not be successful in seeking protection in court. Some categories of customary rights, including notably the right of *igiseke* in the Burundian context, are particularly vulnerable.¹²² These are rights that aren’t continuously exercised, but that a woman can invoke on a part of her father’s or brother’s land in times of hardship (e.g. a bad harvest, abandonment or widowhood).¹²³

Women’s access to justice will be an important factor determining whether their rights are eroded in the LTR process. In a context like that of Burundi, the rights recorded in LTR are different in form and substance from pre-existing customary rights. Providing clarity – legal certainty – to rights holders and actors involved in LTR, as to the way in which specific types of rights of women are to be recorded or protected is key (see the discussion immediately below on registration as full ownership and derived rights). In addition to being aware of their substantive rights, women need information on the process of LTR, on the risks involved and on available remedies when they see their rights threatened or violated. Clearly, the extent to which their families and communities are supportive of women’s interests in having their rights recognized, their ability to appeal to competent institutions when their rights are threatened or violated, and the willingness and ability of these institutions to provide them with fair and effective remedies will also play a part. And these considerations do not only apply to women’s situation during LTR. Without access to justice, women’s ability to exercise and defend recorded rights will be fragile. Similarly, young women who come of age after LTR may struggle to claim as yet unrecorded rights.

Full ownership and derived rights – It must be stressed, however, that if a woman’s parcel is not registered in her name, this does not necessarily mean that it has ended up in the name of her brother or husband, as a result of bad faith or discrimination. Not all forms of rights exercised by women prior to LTR can be registered as full rights of ownership in their own name. Some customary use rights for women, though very important from a social and economic point of view, are insufficiently encompassing to be compared with ownership rights under formal law. If the right does not include the ability to take management decisions with regard to the parcel – if for example the woman cannot decide to sell it, pass it on to her descendants, or rent it out, as any owner under

¹²¹ Kevane and Gray, 2008, *supra*, footnote 115; and Platteau, 1996, *supra*, footnote 71.

¹²² Lankhorst, 2014, *supra*, footnote 116.

¹²³ Lankhorst and Veldman, 2011, *supra*, footnote 117; and Lankhorst, 2014, *supra*, footnote 116.

civil law could – it cannot be registered as a right of ownership in the holder’s name, unless the person holding the ‘primary’ right agrees to do so. To do so would be to register more than existed beforehand and, thus, to use LTR as a means of conferring more rights rather than as an instrument to recognize and consolidate existing rights.

The risk of canceling or weakening women’s customary rights can be reduced, if statutory law provides instruments to tailor the rights that are recorded to the pre-existing situation. The Land Code also makes it possible to register more limited rights derived from ownership. One such derived right recognized in Burundian civil law is the right of usufruct, which gives the holder a strong right to use the land that can be invoked against the holder of the full right of ownership and his successors through purchase, inheritance, or gifting. Such a use-right can be limited in terms of scope and duration. This means that a substantial proportion of the customary use-rights exercised by women that cannot be registered as full ownership in their own name can still be recorded and offered protection. This option will be particularly relevant for those customary rights, such as notably the right of *igiseke* given by a father to his daughter when she marries, that do not confer the ability to initiate and take management decisions with respect to the parcel, but that do allow the woman to oppose such a decision by a male family member. The French term that is used to recognize a derived right is registration in the form of a *charge*.

Women’s statutory rights – Whilst Burundi lacks a law on inheritance, confirming and clarifying their rights to the land of their biological family, other aspects of statutory law can be seized upon in LTR to strengthen their position. As noted in Section 2.4, the Family Code provides grounds to argue that, absent a marriage contract, a legally married man and woman share their belongings in community of property. This provision is little known and, more importantly, it is at odds with customary practices. Custom provides that the bulk of family land is passed on from the father to his sons when they reach the age of marriage. Husbands therefore bring most land to the marriage and manage the estate. Prior registration projects undertaken in Burundi have, without exception, registered such land exclusively in the name of the husband.¹²⁴

Research conducted in Rwanda, which has firmly enshrined married women’s rights to matrimonial property, suggests that explicitly recognizing such land as being held in community of property by the husband and wife on the certificate can strengthen a woman’s position. It can enhance women’s ability to decide on the use of the land and of its proceeds and it can help women block unilateral management decisions by the husband that go against the interests of the household.¹²⁵ Still, there are strong indications, also from Rwanda, that the mere administrative act of recording women’s right to matrimonial property is no guarantee that they will be able to exercise this right in a meaningful way. In rural communities where the level of penetration of statutory law is low and notions of customary law continue to shape norms, beliefs and behaviour, women may not fully be aware of these rights and may face serious opposition from their husbands and their families when

¹²⁴ Wennink and Lankhorst, 2014, supra, footnote 24 and Wennink et al, 2012, supra, footnote 24.

¹²⁵ Santos, F., D. Fletschne and G. Daconto. 2014. Enhancing inclusiveness of Rwanda’s land tenure regularization program: Insights from early stages of its implementation. *World Development*, v. 62, p. 30.; Jones-Casey, K., L. Dick and A. Bizoza. 2014. *The Gendered Nature of Land and Property Rights in Post-Reform Rwanda*. USAID, Kigali, Rwanda; and Daley et al., 2010, supra, footnote 117. Note also that joint registration of matrimonial property and spousal consent for land transactions are two of the six proxies established to measure the proportion of countries where the legal framework (including customary law) guarantees women’s equal rights to land ownership and/or control over land, based on internationally recognized standards, particularly from the Voluntary Guidelines on Responsible Governance of Tenure (VGGT) and the International Convention on the Elimination of Discrimination against Women (CEDAW). Available at: <https://landportal.org/book/sdgs/5a2/sdgs-indicator-5a2>

they seek to invoke them.¹²⁶ Access to justice will again be a crucial factor determining the extent to which women can protect their interests.

4.4.2 Impact study findings

The first generation of LTR projects in Burundi, launched in 2007, consistently failed to record women's pre-existing (statutory and customary) rights to land, which resulted in only a negligible share of these rights being recorded at the SFCs.¹²⁷ Whilst in the last year of the project in Makamba significant numbers of parcels were recorded as jointly owned by husband and wife, , there is a need to bolster these results. In addition, protection of women's customary rights remains a challenging endeavour, whereas these rights are very important from a social and economic point of view for women in rural Burundi.¹²⁸ **Findings (women's customary rights)** – The final impact study report found that 35% of the parcels that were identified in the household survey as having a woman principal rightsholder were registered in the name of that woman (32%) or protected in the form of a charge made out in that woman's name (3%). The overbearing majority of these rights are acquired through custom (85%). This suggests that further improvements could have been realized in seeking to protect women's land rights in the intervention area. In the following we will examine this issue further. Before doing so, it must be noted that compared to previous LTR registration projects in Burundi in which only a negligible proportion of women's rights were recorded, the results that ZOA achieved are remarkable.

As explained above, the challenge in assessing the impact of LTR on women's customary rights is to determine what proportion should be protected as full ownership or as a derived right (i.e. by means of a charge) and what part is insufficiently encompassing to be registered. For this purpose, the household survey embedded in the impact study classified the rights women exercised over land in terms of the extent to which the woman in question is able to exercise management rights, opposition rights, or use rights. The results of the survey show significant variation in the bundle of rights that women may exercise. This is so even between different women that hold the same type of customary right. The impact study therefore relied on the following principles to determine whether or not a woman's right identified by means of the household survey could have been offered protection through LTR. Whilst women who hold rights under customary law which confer full management rights should see their land registered in full ownership, rights involving more limited management rights can either be registered as full ownership or in the form of a charge (usufruct). Similarly, it would be reasonable to expect that women with full opposition rights should at least end up with a charge, to recognize that although she does not initiate management decisions, she does have an interest in the land that warrants protection. But if women only have use rights to a piece of land and do not exercise control or opposition rights, their rights cannot be considered full enough to be recorded in their name or protected in the form of a charge.

Relying on these principles, the impact study found that the share of parcels registered in a woman's own name or by means of a charge is lower than the proportion of women who, according to the

¹²⁶ Treidl, J. 2018. Sowing gender policies, cultivating agrarian change, reaping inequality? Intersections of gender and class in the context of marshland transformations in Rwanda. *Antropologia*, v. 5, n. 1, p. 77; Polavarapu, A. 2011. Procuring Meaningful Land Rights for the Women of Rwanda. *Yale Human Rights and Development Law Journal*, v. 14, p. 105.

¹²⁷ Wennink and Lankhorst, 2014, *supra*, footnote 24 and Wennink et al, 2012, *supra*, footnote 24.

¹²⁸ The impact study findings reported in this section are drawn from Section 5.3 of Veldman and Wennink, 2019a, *supra*, footnote 10.

survey, exercise full management rights. In the case of widows' rights, results achieved are quite positive: almost all women found to exercise management rights (50% of widow's parcels) saw their late husband's land registered in their name. However, very few of the additional 47% of widow's parcels over which they have no management rights but exercise full opposition rights, are protected by means of a charge. In the case of rights married women acquire from their parents (*igiseke*), the level of protection realized is relatively lower. It was found that only 3% of these rights are offered the protection of registration, whilst close to 7% of these rights confer full management rights. And whilst an additional 47% of the women with *igiseke* rights were found to enjoy full opposition rights, only 5% of *igiseke* rights were protected by means of a charge. On this basis the final impact study report concludes that, there appears to be significant scope to expand the level of protection particularly of *igiseke* rights, whether through registration in a woman's own name or in the form of a charge.

Discussion (women's customary rights) – Women participating in focus group discussions organized as part of the impact studies conducted one year and two years after full completion of LTR operations consistently pointed to obstacles that stood in the way of recording their customary land rights. Relatively few women attempted to have their customary land rights registered. Focus groups discussions with women and men confirmed a lack of awareness about women's land rights and the ways in which these could be registered. In this respect, it is important to point out that in focus groups with women respondents, complaints were frequently voiced about the lack of awareness raising activities, the fact that these were undertaken at the last moment only, and generally did not provide specific information for women. They particularly regretted the fact that they were only informed regarding the different options to protect their rights (for example by means of a registered charge) after completion of the LTR process. A significant share of women also indicated that they were not or only marginally involved in the process on the day of registration. In such cases the decision about the registration of the land they hold an interest in was taken by their husband, father or brothers and sometimes by the agent d'appui. Women who did report trying to get their rights recognized frequently indicated that their requests were met with hostility.

Findings (women's statutory rights) – The report on the impact study conducted at mid-term noted that none of the parcels in the groups of *collines* registered at that point had been registered in co-ownership by a husband and wife, whilst it had to be assumed that at least a significant proportion of the adult population was legally married. It was suggested therefore that a good part of the parcels recorded in the name of a man could have been registered in this way. In the second half of the project ZOA and its partners made a very strong effort to record such rights in co-ownership, both in areas newly registered and in areas that had undergone registration before the mid-term. As a result, the final impact study report found that a total of 25.622 parcels, 58.64% of the total parcels in the two municipalities, were registered in co-ownership between spouses. This is a very significant achievement.

Discussion (women's statutory rights) – The final impact study report suggests that a very substantial share of men and women interviewed as part of the household survey weren't (fully) aware that they have been registered as co-owners of land. When asked to explain in what form parcels held by household members were recorded, less than 1% of respondents referred to registration as matrimonial property, whilst the overbearing majority referred to registration in the name of the man or the family. These results are supported by the focus group discussions organized among men and women. When asked about the meaning of LTR in their personal life and more generally life on the *colline*, neither the groups of men nor the groups of women mentioned

registration in co-ownership as a significant change. A substantial share of the men in the groups did appear to be aware that some of their land had been registered in co-ownership. But, generally, they did not consider this to make any difference compared to the situation prior to LTR, that is, they didn't see it as limiting their freedom to manage the land as before. For women, the situation is different. Although a significant share of women appeared to know that a husband's land could be registered in co-ownership, almost all believed that their own husband's land had either been registered in the husband's name or the name of the family. In discussions about the findings of the final impact study ZOA explained that this lack of awareness among right holders must probably be ascribed to the fact that land belonging to officially married couples was automatically registered in co-ownership at an administrative level. The awareness raising activities accompanying this drive, conducted in a relatively short amount of time and targeting a massive number of parcels, appear not to have reached a wide enough section of the population and not to have tailored to the informational needs of women.

Benefits of LTR for women – That said, the impact studies also revealed cases where registration of a woman's customary or marital property right involved tangible benefits. Women whose customary rights had found recognition mentioned a feeling of being in a better position to protect household land and thereby the future of their children. These women also spoke of feeling more secure, of no longer living in fear of their land being grabbed by their brothers. Some women whose right to marital property was recorded indicated that they no longer felt the threat of being chased away by their husband. A small number of respondents also gave concrete examples in changes in behaviour or relations. Some women explained how disputes with their brothers over their right of *igiseke* had subsided or were avoided now that boundary lines had been fixed through registration. Others explained that the relation with their deceased husband's family had become less problematic now that their rights had been recorded. Certain women indicated that they had started to plant multi-annual cash crops, including coffee and tea, where before they were not allowed to or did not have the confidence to grow more than seasonal crops on their *igiseke* land. And one woman explained that the fact that the parcel had been registered in her name had given her the resolve to build a house on the parcel, which before she thought would have been challenged by male family members.

5. Building-blocks for a LAND-at-scale project ToC

5.1 An integrated ToC

RVO and EKN intend to commission a project under the LAND-at-scale program that will build on the experiences of the LTR initiatives undertaken to date in Burundi. This scoping study aims to assist RVO and EKN in this process. It has done so, in the sections above, by analysing the main obstacles that stand in the way of improved tenure security, sustainability and protection of women's rights. In this section, we explore options to change or expand the existing LTR programming strategies to overcome these obstacles. These options are presented in the form of building blocks for an expanded ToC. It is recommended that RVO and EKN first develop a broad project statement and use this to identify, through tendering or by means of an assignment, a consortium to implement the project. The ToC should primarily be developed by this consortium, together with RVO, EKN and key national stakeholders. For its effectiveness, it is highly important that the organizations who will implement the project lead this process and fully internalize the ToC. The new project will have a wider scope of action than its predecessors, including lines of action on dispute management, access

to justice and policy advocacy. The consortium will therefore likely be composed of organizations with different but complementary backgrounds. The development and articulation of a shared vision of their joint efforts to pursue their common objectives will be key.

Integrating A2J in the LTR approach – A2J is a crucial factor determining the outcome of LTR. LTR involves a large and complex, technical, administrative and logistical process. Ultimately, though, it is about better securing rights of land holders. In the collective approach to LTR decisions are made about the land rights of many thousands of individuals. Mistakes and abuses are possible and can result in disenfranchisement, loss of livelihoods and violence. These risks apply to all land holders, but women are particularly vulnerable. The outcomes of the process, in an immediate sense, thus depend on land holders' abilities to know and if need be claim their rights, by turning to competent and legitimate institutions. And once the system is in place, land holders need to be convinced that their rights as recorded matter and can and will be enforced by a court and by local dispute resolution mechanisms acting in the shadow of the courts. If they aren't, dispute are unlikely to subside and the security needed to allow for increased investments in land and production will remain elusive. Similarly, if land holders are unconvinced that the new system offers fair and effective remedy in case their rights are infringed, incentives to record transactions may be limited.

For these reasons, it is recommended that relevant A2J dimensions are fully integrated in and mainstreamed throughout LAND-at-scale's project approach and ToC. This will ensure that implementers keep a clear and constant focus on project outcomes in conducting LTR operations in the field. We would warn, in particular, against an approach in which A2J is treated as a separate project component or made the object of a distinct project, dissociated from LTR operations. This is important both for reasons related to planning and timing of activities and for ensuring that the project can flexibly adapt to the realities encountered in the field. The activities put forward in the recommendations below to strengthen A2J in the context of LTR – concerning legal awareness raising, access to legal assistance and representation, support to local level dispute mechanisms and increasing capacity of courts – need to be implemented in close coordination with LTR operations. They need to be available at the right moment before, during or after LTR, if they are to be effective. And integration will be important to ensure that the project planning and approach can be adapted, if for example preparatory activities in a given area suggest there will be specific challenges with regards protecting women's land rights in LTR or if the results of LTR show heightened levels of disputes. Dissociating responsibility for the A2J work from the broader LTR operations, is likely to lead to coordination problems and to diminish the project's results.

5.2 A context-sensitive approach

Outcome orientation - A new LAND-at-scale program will need to adopt a programmatic approach that is well suited to the objective pursued and the context in which this is done. This approach needs to be thoroughly outcome focused. ZOA's LTR project, which was reviewed in Section 3, was built on prior EKN-funded LTR projects. Assessments of these prior projects commissioned by EKN raised important questions regarding its effects on tenure security, recording of transactions and protection of women's land rights. ZOA's project was specifically designed to find ways of overcoming these obstacles, including with a view to possible national upscaling. As we saw above, in the first half of the program, up until the issuing of the mid-term review, only very modest progress was made in these respects. Part of the explanation lies in the fact that LTR is a massive and complex undertaking that can easily lead implementation teams to focus on and be immersed in operational and technical tasks and outcome level results to slip to the background. This requires

constant monitoring at outcome level, for instance by combining periodic impact assessments with more continuous outcome harvesting, but also an effective feedback mechanism that ensures that information is swiftly and smoothly incorporated into program implementation.

Conflict-sensitivity - Closely related is the need to ensure that the programmatic approach is conflict-sensitive. There are significant risks inherent in implementing LTR in a context characterized by severe poverty, food insecurity, gender inequality and conflict over land. We have seen that it can lead to an initial and quite substantial rise in disputes, which in turn involves a potential for land-related violence. Absent a clear legislative framework, LTR can also lead to the erosion of women's customary land rights. These adverse outcome-level effects need to be constantly tracked and action needs to be taken to prevent and proactively mitigate harm. This requires the project monitoring, evaluation, accountability and learning system to clearly identify risks and mitigation measures, as well as a framework and indicators to monitor these.

Conscious of political dimensions - Similarly, LTR is not a neutral and technical endeavor. It intersects in potentially problematic ways with the highly sensitive national policies regarding land rights of returnees. Registration of women's land rights is subject to diverging views and fierce opposition, both within communities and at the political level. More generally, in the roll out of LTR in the field questions of law and policy arise that require engagement at the central level. This includes, for example, more technical issues such as the setting of fees for recording of transactions (see Section 4.3). Around the time of the first LTR pilots in Burundi, political processes were more inclusive and open to new ideas.¹²⁹ These pilots, including notably the EKN-funded project of the SDC, worked in parallel at the national and local levels.¹³⁰ This led to significant exchange of experience, between pilots and even with similar initiatives elsewhere in Sub-Saharan Africa, and allowed for further development and improvement of the LTR approach.¹³¹ This type of policy engagement with the government has since become more difficult to embed into programs, including because of changes in donor policies. For the reasons provided above, however, it would seem critical to create room within a new LAND-at-scale project for substantial engagement at this level, including through support to civil society organizations and platforms.

Problem-driven iterative adaptation - For these reasons, it is recommended that RVO and EKN avoid seeking to make the consortium implementing the new project accountable to a rigid logical framework, without regard for changes in context dynamics or complexity. New ways of doing development, pioneered by both practitioners and scholars, have been emerging—among them problem-driven iterative approaches (PDIA) and Doing Development Differently (DDD).¹³² These new ideas revolve around the recognition that in complex environments, including contexts of fragility and conflict, programming needs to be locally owned, context-driven, flexible and adaptive to the changing circumstances. Specifically, these approaches are focused squarely on the project's

¹²⁹ Burundi's score on Freedomhouse's Freedom in the World Index has, for example, steadily declined over the past years. See <https://freedomhouse.org/country/burundi/freedom-world/2020>.

¹³⁰ Wennink and Lankhorst, 2014, *supra*, footnote 24.

¹³¹ In 2011 and 2014 the SDC notably organized the *Rencontres foncières de Bujumbura*, international events to exchange experiences with low cost community-based land registration. See Thinon P., A. Rohegude and T. Hilhorst. 2012. *Rencontres foncières, Bujumbura 28-30 mars 2011*. Coopération suisse, Bujumbura, Burundi.

¹³² Overseas Development Institute. 2016. *Doing development differently. Who we are, what we're doing, what we're learning*. Available at: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11176.pdf>; Andrews, M., L. Pritchett, S. Samji and M. Woolcock. 2015. *Building capability by delivering results: Putting Problem-Driven Iterative Adaptation (PDIA) principles into practice*. In: A. Whaites, E. Gonzalez, S. Fyson and G. Teskey. *A governance practitioner's notebook: Alternative ideas and approaches*. OECD, Paris, France. Available at: <https://ecdpm.org/wp-content/uploads/Governance-Notebook.pdf#page=125>.

outcomes, while allowing the pathways to achieve them (activities, outputs) to be progressively determined based on the evolving programmatic context, rather than on a pre-determined programmatic vision. In these more adaptive approaches, the ToC may change over time, as various approaches are tested and perhaps discarded and replaced with others more likely to achieve success. Such approaches are particularly well-suited to programming in fragile contexts, like those of Burundi, as they allow the project designers and implementers to seek out those approaches most likely to have a positive impact, while minimizing the risk of adverse consequences with respect to fragility or conflict dynamics.

Sustainability – In the development of the new LAND-at-scale project, the sustainability of the approach will have to be looked at in relation to each of the three main outcome areas. To allow the new system of formalized land rights to take root and contribute to progressively reducing dispute levels and improving tenure security, sustained accompaniment of dispute resolution capabilities is needed after completion of LTR operations. In addition, sustained efforts are needed following LTR operations to ensure that land holders gain sufficient confidence in the system's ability to secure their rights to want to register subsequent transactions. And to consolidate the gains achieved during LTR in terms of protection of women's land rights, it will be important to ensure that support is available for women to allow them to exercise and defend these rights, as well as for new generations of women so that their statutory or customary rights are properly recorded. Clearly, then, securing the land rights of the men and women of Makamba and elsewhere in Burundi, requires more than a one-off mediation and registration campaign. The new project should adopt a longer time horizon and clearly articulate a gradual exit strategy.

Scalability – RVO, EKN and the consortium will need to develop a balanced scaling strategy for the new project. Whilst scaling is certainly possible, it is suggested that it should perhaps not primarily be thought of in geographic terms. The existing project approach is not yet perfected. Outcome-level effectiveness remains limited in certain respects and the risk of adverse effects (harm) cannot be discarded. There is a clear suggestion emerging from the impact studies that pressure to deliver output-level results, which would inevitably increase in case of significant geographic upscaling, diminishes outcome-level results. This was confirmed in the stakeholder interviews conducted for the present scoping study. Moreover, it is recommended that the new project adopts a broader and therefore more complex approach, by deepening the justice and gender dimensions and expanding engagement at the policy level. Finally, as suggested, it is advised that the program adopts a longer time horizon. Put together, these arguments suggest that the scope of the new project should not exceed the provincial level. Such a provincial-level project could include follow-on activities in municipalities of Makamba already covered by earlier projects. Articulation of a roadmap towards scaling at national level, or in other provinces, could be included under the policy engagement outcome area of the new project.

5.3 Options for improved (perceived) tenure security

Dispute management will require significant attention in the development of the new project. Before developing recommendations in that regard, a point must be made with regards to the scope of the LTR approach and its implications for dispute management.

Undivided family land – Up to a quarter of the land registered in prior projects in Makamba was recorded in the name of the descendants of the last known rights holder. This approach was adopted where a final partition of the land of the lineage head had not yet taken place according to customary rites. These tend to be larger estates of an extended family with many internal

subdivisions. In such a case the individual members of this group are not identified in the process and nor are the internal subdivisions that already exist. Though there are good practical reasons for adopting this approach, related to expediency, there are strong strategic reasons to apply it sparingly and try to convince the members of such families to proceed to a full partition of the family estate.¹³³ First, around 35% of disputes in Mabanda and Vugizo are intra-familial, and the bulk of these disputes concern undivided family land.¹³⁴ Second, data collected at the criminal court of Makamba throughout the 7 phases of the impact study shows that this type of dispute can turn violent (21% of land-related criminal cases are intra-familial).¹³⁵ The key informants interviewed for the present scoping study also stressed that in their experience intra-familial disputes over land frequently lead to violence and serious crimes such as murder. This means that if the new LAND-at-scale project were to adopt the same approach of leaving sub-divisions of family land unregistered, this would mean that it would not seek to strengthen tenure security where it is most needed to prevent disputes. In Section 4.5 recommendations are issued as to *how* to deal with undivided family estates.

The following recommendations concern the management of disputes before, during and after completion of the LTR process.

Strengthen community dispute management – Disputes are best addressed as early as possible and in close proximity to the parties and parcel at issue. Community-based dispute resolution will be key. In the impact studies reviewed for this report, questions were raised about the quality of dispute mediation.¹³⁶ It will be important not to conceptualize the need for dispute management as something temporary, which immediately precedes LTR operations and can then be closed. We have seen that dispute levels may rise because of LTR and even substantially so. Impact study results not only show that this effect may go on for many months after LTR, but also that it may start well ahead of these operations. These disputes will not all be addressed to the CRCs or SFCs and it will be important for the project to seek to engage with a broader array of actors to progressively foster harmonized approaches. It must also be considered that land disputes between incumbents and returning refugees and between relatives about succession cannot be prevented through LTR alone. These two categories of disputes together make up around 60-70% of all land disputes in Mabanda and Vugizo and proportions are similar elsewhere in the province. If these disputes aren't managed well, they can escalate into violence and undermine the perceived tenure security that the new system of formalized land tenure seeks to install. **How?** As already suggested, this means that substantial investments are needed to develop and strengthen the capacities of the members of the CRC. They will require training (emphasizing practice and interactivity) and must be made familiar with relevant tools (such as leaflets and cartoons) ahead of their work in the field and should be

¹³³ A legal argument that has been advanced to support extensive reliance on the practice of registering undivided family land is that otherwise the interests of unknown family members are undermined. However, this is a problem that the legislator has foreseen and addressed differently. It is never possible for an SFC to completely exclude the possibility that there are no other potential claimants to any parcel that is registered. This is not a problem that is unique to undivided family land. For this reason, the law provides for an opposition procedure as part of the registration process, and even after registration is complete, family members who have been excluded have the option of going to court. It is of course difficult to estimate how often that would happen, but the number is likely to be insignificant in comparison to the very substantial amount of parcels that are currently not being individually registered and to the possible adverse consequences thereof in terms of continuation of disputes and escalation into violence.

¹³⁴ Veldman and Wennink, 2019a, supra, footnote 10.

¹³⁵ Ibid.

¹³⁶ Concretely, the consortium will have to assess needs for strengthening of capacities in terms of mediation, the law (including women's land rights), relevant legal procedures and the importance of the SFC registry.

able to get support, for example with complicated cases, when they conduct their work. To the extent possible, this support should be extended to other community-based institutions involved in dispute resolution, such as the *bashingantahe*, *chefs de colline*, or peace and justice committees, so that they work in synergy with the project. It will be important, finally, that the support to these various actors maintained in the medium term to sustain and consolidate the results of the project.

Support magistrate's courts – The rise in disputes brought on by LTR will also affect the magistrate's courts. At one stage, a fourfold increase in the level of land disputes emanating from areas having undergone registration was observed.¹³⁷ A significant increase in the volume of cases can hamper the functioning of the courts, lead to the build-up of backlogs and may contribute to increasing the risk of land disputes escalating into violence. At minimum, therefore, support to magistrate's courts to enable them to deal with a larger volume of disputes should therefore be foreseen in the new project. **How?** In the first place, ways will need to be found to boost the capacity of magistrate's courts to process cases in areas where LTR is undertaken. This should start when awareness raising campaigns are initiated and be maintained until at least a year after registration is completed. Increasing court capacity will not be straight forward, as judges cannot be appointed on a short-term basis. Early engagement with the judiciary and ministry of justice will be important, therefore. Adopting approaches relied on in case backlog reduction projects can be explored, including temporarily re-assigning magistrates from courts with excess capacity, working with judge-apprentices or recently retired judges, temporarily appointing experienced lawyers as substitute judges (*juges suppléant*), and providing support to clerks' offices.

There are strong arguments to include more substantial support as well. One of the main assumptions underlying LTR and the project, is that the evidence of ownership will be successfully used in any legal proceedings to deflect other parties' claims. This should eventually result in widely spread awareness that there is little chance of success in challenging a registered owner and thus in a significant reduction of disputes. For many reasons, however, this assumption cannot be taken for granted in Burundi. For example, following registration courts do not consistently consult the information stored at the SFC in deciding on land matters and, even if they do, they generally lack the means to visit the place of conflict and to verify whether the information at the SFC reflects the situation on the ground.¹³⁸ In addition, less than a tenth of civil judgments are enforced after two years.¹³⁹ That is, if your certified land is illegally occupied by someone and even if you are successful in challenging this in court, the chances of actually being able to get the imposter to vacate the land are not very high. This poses a serious threat to tenure security and the sustainability of the project. In other words, for information stored at the SFC and land certificates to be used and taken seriously by land holders and potential buyers, and for dispute levels to stay low, it is essential that courts render land justice in a timely, impartial, predictable and effective manner.¹⁴⁰ It is recommended, therefore, that ways to provide more substantial support are explored and integrated into the LAND-at-scale project ToC.

¹³⁷ Veldman and Wennink, 2019a, supra, footnote 10.

¹³⁸ Wennink and Lankhorst, 2014, supra, footnote 24.

¹³⁹ Kohlhagen, 2009, supra, footnote 9.

¹⁴⁰ Given that in the case of Burundi there may be reservations about providing support to courts as state institutions, it is important to remark that just strengthening mediation mechanisms without working on courts will most likely be ineffective. Mediation happens in the shadow of the law. If disputants know that the outcome of legal proceedings can be influenced or ignored, there are no strong incentives to enter into or comply with the result of mediation and problems with tenure security will persist.

Provide legal aid services - To manage a surge in disputes and consolidate the results of the project over the longer term, legal aid services would also need to be made available, particularly to vulnerable groups. These groups stand to lose most in the complex and hectic process of LTR, where awareness and voice are key to reaching fair outcomes. There is a significant likelihood also that the gains of the project in terms of registering women's statutory or customary land rights will be challenged on the ground after LTR. Women may be prevented from exercising these rights, the land in question may be alienated without their consent, etc. In addition, such a service should help to ensure that women who obtain an *igiseke*, marry, or become widowed after registration, can gain proper recognition for their rights. Without such measures, the gains achieved risk being mostly transitory in nature. **How?** There are multiple ways in which the provision of legal aid services can be organized. It is recommended to work, as much as possible, with paralegals, legal aid clinics and lawyers already established in the targeted areas. Ideally, the LAND-at-scale project would provide support to or create the conditions for a system that combines a wide reach, deep into the communities, with expertise in the main localities. Community members (usually with a certain status and education) can be trained as paralegals on the essentials of land rights and the LTR process, can act as highly valuable persons of reference for their fellow community members. They should be linked, through facilitated regular exchange, to legal aid clinics and to qualified lawyers, so that cases can be dealt with at a level that matches their complexity and significance.

Invest in coordination and monitoring – And finally, in a context marked by institutional multiplicity, normative confusion and forum shopping, a new project should invest in fostering coordination and collaboration between the magistrate's courts, community-based mechanisms and legal aid providers. This would enable these actors to identify common problems in the handling of specific types of disputes and to work together to solve these as early on in the process as possible. **How?** Existing tools and guidelines, developed in the framework of the prior projects, as well as the analysis made of judicial cases, could be utilised as basis for such exchanges. Including because of concerns about impartiality in dispute resolution, it is advisable to develop CSO monitoring capacity to track dispute levels, challenges to the rights of vulnerable groups, and obstacles in dispute resolution. The methodology of the impact study can provide a basis for developing such a system. The resulting information can then be channelled to the magistrate's courts, local authorities (SFCs), community-based dispute resolution mechanisms, and to legal aid providers. Finally, the information thus gathered could be used to inform policy makers in both the land and the justice sector, and to support advocacy efforts.

5.4 Options for improved recording of transactions

As suggested above, the ToC of a new LAND-at-scale LTR project should adopt a longer time horizon and devote substantial attention to the sustainability of the approach. ZOA registered impressive increases in the rate of recording of transactions, but significant challenges remain to ensure that the SFC registries are kept up to date and contribute fully to securing land rights and reducing disputes. In this regard the final impact study contains a series of recommendations that remain pertinent today.

Focus on the short term – Under the old project ZOA has helped put in place a system whereby local authorities identify and communicate transactions taking place in their locality. The importance of institutionalising and maintaining the mechanisms of communication and exchange of information between the *collines* on the one hand and the SFC on the other cannot be sufficiently underscored. Evidence from Mabanda and Vugizo shows, however, that the effectiveness of this approach is

affected by incentive problems on the side of land holders and local authorities and more is needed to overcome these problems. **How?** Concretely, it will be important to enable SFCs to organize campaigns, whereby their agents return at regular intervals to *collines* already registered to capture transactions.

And the long term (!) – It is essential to realize, however, that such a system, even if improved, is insufficient to allow the SFCs to significantly strengthen land holders' security of tenure in a lasting way. The reluctance of land holders to record transactions on their own initiative, as observed in Mabanda and Vugizo, is an important sign that the population was not fully bought-in to the new system for managing land rights. At the end of the project, they clearly did not yet see the SFC registries as the only source of valid information about ownership and they did not perceive non-recorded transactions as being invalid. As long as that is not the case, the system of formalized land rights put in place through LTR cannot contribute to a lasting improvement in tenure security. To foster ownership by the population of the new system, the new consortium should reflect on ways not only to allow SFCs to engage substantially with the population, but also to increase their accountability vis-à-vis the population and to provide the population with a stake in their governance.

Raise awareness – If land holders' motivation to work with the system and record transactions is key to the sustainability of the system, a first line of activities for the new consortium to develop should focus on awareness. **How?** It is important to carefully consider the approach to awareness raising around the recording of transactions. There is sometimes a tendency in Burundi, and beyond, to think of awareness raising in terms of needing to 'sensitize' or 'educate' the population, in our case land holders, about what is required of them. Experience gathered in the project in Mabanda and Vugizo suggests that it is important rather to empower targeted communities by (1) showing them scenarios with positive and negative outcomes, (2) helping them understand what factors lead to one or the other outcome, (3) what risks different groups may run, and (4) what they can do themselves to try to foster positive outcomes.

Enhance payment capacity – The ToC will have to clearly reflect the learning of past projects that it is not enough for land holders to be aware of the processes to follow. Land holders need to pay fees to record their transactions, as well as other substantial costs including a sales tax, and this constitutes a significant barrier to the functioning of the system. **How?** The new consortium could seek to address this by more clearly linking their LTR initiative to initiatives to foster agricultural and economic development. Where yields are improved and/or cash crops are produced and channelled to markets, the value of land increases and the volume of transactions over land tends to grow. In principle, the ability to and interest in making investments to secure one's tenure should also grow. To this end, the consortium could, for example, explore the possibility of providing assistance in the establishment of saving schemes, such as the 'village savings and loans associations' (VSLA) approach.¹⁴¹

Reduce costs of recording transactions – The setting of fees themselves should also be carefully considered. With a view to long term sustainability of the system, these fees should initially be set very low and only gradually increase over the years. Particularly when land changes hand through succession or traditional gifting bringing the costs of registering transactions down to zero should be considered. These are the most frequent types of transactions and this is where there is most resistance among the population to the idea of recording. Recording fees are of course be set by the municipalities, not the consortium. Given that they need the transaction fees to keep the SFCs

¹⁴¹ See: <http://www.vsla.net/aboutus/vslmodel>.

operational, the municipalities of Mabanda and Vugizo were opposed to this approach. We advise that in the development of the ToC the consortium engages with the municipalities of the target areas on this matter. **How?** An option to consider would be to include a temporary and gradually declining subsidy to the SFCs. The necessary investment would be minimal in comparison to the potential loss that would ensue if the SFC registries, set up through an investment of millions of euros, would quickly become obsolete.¹⁴² Progress on this front may also require engagement at policy level and within the sector working group, which would need to be foreseen in the project ToC.

Avoid overemphasizing certificates – One of the obstacles to recording of transactions in past projects was the insistence by SFCs that the seller of a plot first withdraws and pays for his certificate before the buyer can have his right recorded. Certificates have been given much importance because they tend to feature prominently in implementers' results frameworks and because issuance of certificates is a potential source of income for the municipalities. It can be questioned, however, whether from a land holder's point of view as much importance should be given to certificates.¹⁴³ As we have seen, very few land holders are willing to invest in a certificate. There is certainly an added value to land holders having a certificate, both in terms of facilitating transactions and reducing the scope for corruption at the level of the SFCs. But this value is not so great as to justify the non-recording of transactions. The new consortium could consider providing regular external audits of the SFCs as an alternative or additional way of preventing corruption.

Strengthen SFC capacity and financing – Efforts to build SFC capacity have focused primarily on technical aspects of the LTR process (in the field) and on administrative procedures (in the office), which are well known. Considering the problems observed with recording of transactions, a future project should consider investing more in the capacity of the SFC staff to engage with their communities, deliver quality services, and be accountable. The final impact study also raised questions about the financing of the SFCs in Mabanda and Vugizo after the closure of the project. Clear commitment from the municipalities was manifested in provisions made in the municipal budgets to continue to cover certain SFC staff salaries. This, however, included only part of the staff costs and other costs necessary for a proper functioning of the SFC (such as trips from the offices to the *collines*, renewal of materials and equipment) were less insured for the direct future.

5.5 Options for improved protection of women's rights

Develop a clear and detailed ToC - As reflected in the analytical sections of this report, the registration of women's land rights is a complex endeavor in the Burundian context. It has the potential to benefit women, not just by securing their rights but by strengthening their ability to make or influence decisions within the household and about the management of their land. At the same time, the approach involves substantial risks of eroding women's customary rights and

¹⁴² The consortium and its partners could also experiment with other ways to further reduce the costs of registering transactions. An idea could be to allow land holders to notify the SFC of a sale by means of a toll-free line or SMS service.

¹⁴³ Lavigne Delville, P. 2010. Sécurisation foncière, formalisation des droits, institution de régulation foncière et investissements, Pour un cadre conceptuel élargi. Land Tenure Journal, n. 1. This contribution provides a clear explanation as to why there is no direct link between legal documents and tenure security : « *Des documents juridiques peuvent être un puissant outil de sécurisation foncière, s'ils sont légitimes et donnent une validation juridique à des droits ayant fait l'objet d'une validation sociale préalable. Et si les institutions de gestion foncière sont fiables. Toutefois, si les registres ne sont pas actualisés, si le titre a été obtenu de façon illégitime, si les institutions de gestion foncière sont inefficaces ou corrompues, si le recours à la justice est impossible ou inéquitable, alors la sécurité apportée par la formalisation juridique des droits est en partie affaiblie, voire inexistante* »

confirming their statutory rights on paper is no guarantee that they will be able to exercise these. Registration of women's land rights is contentious both at the local level, with substantially divergent views observed within communities, and at the national level, where political priorities aren't necessarily fully aligned with principles enshrined in the constitution and international treaties. In significant measure, this situation is explained by a lack of legal certainty and consequent normative confusion. It will be essential that the new LAND-at-Scale program articulates a clear and detailed ToC for registration of women's land rights, which should serve to provide clarity both internally and externally.¹⁴⁴ Development of such a detailed ToC should involve consultation with a broad range of local and national stakeholders to foster buy-in for the approach.

Focus on the short and long-term – The focus of the ToC should not be limited to recording women's land rights during LTR. As suggested, it will be important to ensure that support is available for women after registration to allow them to exercise and defend their recorded rights. In addition, following LTR new generations of women will marry and thus be entitled to matrimonial property rights and/or a right of *igiseke*, or will need to inherit land when their father or husband passes away. These women will encounter the same challenges in seeing these rights recorded as are faced during the LTR process. If these challenges are not addressed, it is highly likely that in the years following LTR the level of protection offered to women will deteriorate. The ToC of the new LAND-at-scale project will therefore also have to adopt a longer time horizon with regards to the issue of women's land rights. Concretely, this means that it should set out a dual objective of ensuring that the LTR process recognizes and records all pre-existing land rights held by women (short-term) and that these rights are indeed secured and strengthened in practice (long-term).

Focus on statutory and customary rights – It is strongly recommended to focus the strategy on securing both women's statutory and customary land rights. As we have seen, women's ability to exercise statutory rights to matrimonial property is often limited. This is because these rights depart in important respect from customary principles. Women's customary rights to the land of their biological family continue to be of importance in practice. These rights often function as an insurance against hardship, making them of particular relevance to vulnerable women and their families. The goal of the strategy, which should also be reflected as an outcome in the LAND-at-scale project results framework, should therefore be to ensure that the LTR process recognizes and records all statutory and pre-existing customary land rights capable of being compared with ownership or a derived right held by women.

Do not ignore undivided family land – As explained above, prior LTR projects have adopted the approach of registering undivided family land, that is, land where the final partition has not taken place according to customary rites, in the name of the descendants of the last known rights holder. Though this practice is not intended to be discriminatory, it does disproportionately affect women, as their rights are mostly acquired through custom and generally pertain to family land. In Mabanda and Vugizo, 63% of parcels held by women were registered in the name of the family, against 39% for men.¹⁴⁵ Registration in the name of the family does not mean that a woman's land is wholly unprotected, since it should avoid encroachment by third parties. Still, given that the main challenge that women face in exercising their land rights stems from interference by male relatives, protection is not complete. For these reasons it is recommended the new LAND-at-scale puts focus on women's rights to undivided family land. **How?** By building on prior projects in Makamba to develop (1)

¹⁴⁴ The ToC should also clearly state the principles and/or values on which the approach is based, discuss their legal basis, and define clearly what in the context of this LAND-at-scale project would be unacceptable outcomes.

¹⁴⁵ Veldman and Wennink, 2019a, supra, footnote 10.

protocols for assisting the population in partitioning family land and in registering the result at the municipal land bureau, (2) a template for a will, that land holders can use to indicate how an eventual partition is to be undertaken and (3) a template for a family land management contract that recognises the rights of all children. These tools can help to ensure that daughters are not chased off their *igiseke* land after their father's death, or that widows are left destitute by the husband's family.

Raise awareness around women's rights - The impact studies reviewed in this report show how important it is not to approach the recording of women's land rights as a purely technical or administrative matter. To get a large number of families to agree to record women's customary rights and, importantly, to enable women to exercise their matrimonial property rights, once recorded, it is essential to engage extensively with communities beforehand. **How?** On the substance: Awareness raising should address women's land rights specifically and not be limited to discussing LTR in general. It should also pay due attention the risks of disenfranchisement and weakening of women's land rights that is inherent in LTR, rather than only emphasizing the benefits of registration. The various options that exist to protect women's rights (including in the case of undivided land) need to be clearly explained. Particularly with regards to the right of *igiseke*, it must be clearly messaged that options exist to protect the woman's right that don't diminish the right of her father or brothers. On who to target: Awareness raising should target both men and women and provide safe spaces for women to exchange and ask questions. On the timing: Starting awareness raising well before LTR will be of the essence; women need to have the opportunity to reflect on the information received, to exchange with the members of their family, and to seek support or further information before LTR operations start.

And actively build consensus - It is strongly recommended to go beyond raising awareness by actively seeking to build consensus within communities around the need and, crucially, appropriate ways to protect women's rights during and after LTR. If a decision about the recording of a woman's right is left to be taken by the immediate stakeholders in the land at the moment of registration, the risk that it will remain unprotected is significant. **How?** By organizing community dialogues about this at an earlier moment, when the matter can be discussed more on the basis of principle, resistance to the registration of women's land rights can be overcome. Such debates should allow communities to assess risks of LTR for women, examine elements of both customary and statutory law that are meant to protect women from such risks, agree that women's situation should not suffer because of LTR, and identify appropriate ways of providing protection against these risks through LTR. A pilot, involving the organization of such community dialogue sessions, was undertaken in the context of the project in Mabanda and Vugizo, suggested that this approach can make it easier for women to have their rights recorded.¹⁴⁶ By building on prior projects: The approach of the pilot, which is documented and includes a series of tools, can be used as a basis for this aspect of the LAND-at-scale project¹⁴⁷

Provide legal aid services – Awareness raising and community dialogue will not guarantee protection of all woman's land rights. As suggested, given their disadvantaged status in Burundian society and the issues at stake, women will need support to be able to claim, exercise and defend their rights. Before, during and after LTR they will need access to legal assistance (advice) to help them ensure that their right is recorded and given protection. And where they find themselves

¹⁴⁶ Ibid.

¹⁴⁷ IDLO. 2017. Rapport sur les résultats du projet pilote à Rurambira visant à sauvegarder les droits coutumiers préexistants des femmes. Available with the author.

frustrated in these efforts or where these rights are violated, they will need access to legal aid. **How?** First-line legal assistance and legal aid can be provided by paralegals or legal clinics. To ensure proper treatment of more complex cases and cases where protection of a woman's right is met with forceful resistance, linking first-line service providers with qualified lawyers able to give expert advice and take over a case, where necessary, will be important.

Develop capacities and tools – Prior LTR projects in Burundi were predominantly driven and implemented by men and it will be important to address this to ensure balanced project outcomes. **How?** Firstly, it will be important that the gender balance is respected in the composition of the teams of the organizations implementing the new LAND-at-scale project (the consortium) and of their implementing partners (including notably organizations involved in providing mediation or legal aid services), as well as in the selection of the staff and members of institutions who will support the process on the ground (including notably the SFCs and CRC). Within the team set-up of the consortium partners provision should be made for a senior gender expert to advise project management on gender issues throughout project implementation. In addition, the gender expert should develop and oversee the implementation of: (1) a training program (including a manual) on gender, (2) a training program and related tools on awareness raising and community dialogues and (3) clear operational guidelines on recording of women's land rights for the above mentioned actors. Capacity development of actors involved in resolving disputes concerning women's land rights should also be considered.

Support legislative and policy reform - Finally, it is recommended that the ToC of a new LAND-at-scale project includes an (immediate) outcome area around advocacy legislative and policy changes regarding women's land rights. This should both help to overcome obstacles encountered in the field in recording women's rights and allow for lessons learned and solutions found in the field to be replicated nationally. **How?** Topics that advocacy efforts could focus on include more stringent ways of requiring spousal consent for transactions involving land, mandatory joint registration of matrimonial property rights and equal inheritance rights for women. Given the fact that the current political climate that does not support the protection of women's right, this is an effort to be undertaken cautiously, over the longer term and in partnership with national and international civil society organizations. The creation of a coalition or a platform for exchange on such matters could be contemplated. The government's obligation to report on SDG 5.a can and should be used to give momentum to these efforts, even if expectations should not be raised too high in the current context. SDG 5.1 has a specific target to "undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws".

ANNEX 1: Initial Access to Justice actor mapping

Organisation	Reasons to involve in the process of formulating the ToC
ASF	<p>Relevant to outcome area 1 and 3:</p> <p>Their work on improvement of access to justice/rule of law in the provinces of Muinga and Ngozi, including;</p> <p>Training and support of ‘facilitateurs communautaires’ through their partners APDH and AFJ on matters such as land rights, conflict management and human rights, to enable them respond to the population’s need for information and advice.</p> <p>Coordination of and information sharing between formal and informal justice actors and participation in community forums on innovative and effective practices for improving good governance</p>
Action Aid	<p>Relevant to outcome area 1 and 3:</p> <p>Have established a network of facilitators and mediators in 3 provinces (Karuzi, Rutanga, Ruyigi) who adopt a “reflect” approach when assisting families to solve their problems.</p> <p>Facilitate the recording of land for most vulnerable groups of women (divorced, widows, unofficially married women, unmarried women, Batwa) by lobbying with local politicians, municipal /sectoral administration, police, bashingantahe.</p> <p>Women leaders assisted to form associations with rotating micro-credits and micro-projects around food security.</p> <p>Advocate for equal inheritance rights targeting female leaders and decision-makers by informing them about the challenges rural women face when trying to access land.</p>
Cordaid	<p>Relevant to outcome area 1 and 3:</p> <p>Assist the government in the implementation of its legal aid strategy by supporting paralegals in 3 provinces (Bubanza, Makamba and Cibitoke) to strengthen access to justice for the most vulnerable groups, including IDPs, repatriates, minors</p> <p>Work on the accountability of judges and decision-makers.</p>
IOM/DRC	<p>Relevant to outcome area 1 and 3:</p> <p>Work in provinces Muinga, Ruyigi, Cankuzo and Makamba, including awareness raising on access to HLP rights.</p> <p>Possibly tool development and capacity building of SFC on HLP rights, and awareness raising on the process in refugee camps / ahead of</p>

	<p>repatriation. However, usually people are referred to legal aid providers after initial emergency support.</p>
Oxfam/Novib	<p>Relevant to outcome area 1 and 3:</p> <p>Their work with local women’s organisations in the provinces Makamba, Rutana, Karuzi, Cibitoke and Ngozi that includes research with a strong advocacy component aimed at shifting the cultural norms in favour of women’s access to land, by advocating for inter alia modifications of the land certificate to also include the option of joint registration of matrimonial property and registration of user rights to land.</p>
UN Women in collaboration with UNDP	<p>Relevant to outcome area 1 and 3:</p> <p>Their work with women leaders ‘mediators’ (5-10 per colline/community) who collaborate with local decision-makers and the different actors in conflict resolution and management.</p> <p>Establishment of ‘groupement de production’ to enable women leaders to support each other and to free up time for this work as part of the “noyaux de base collinaire”.</p> <p>UNDP’s capacity development work of paralegals.</p>
VNG International	<p>Relevant to outcome area 2 and 3:</p> <p>For their experience with ‘ateliers de réflexion’ at the municipal level to enhance the legitimacy of recording user rights and to negotiate the ToR/selection criteria for ensuring an inclusive representation at the local decision-making level.</p>

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