

MEDIATING LAND CONFLICT IN BURUNDI

THIMNA BUNTE AND LAURELINE MONNIER



MEDIATING LAND CONFLICT IN BURUNDI:

A Documentation and Analysis Project

Thimna Bunte and Laureline Monnier

A report based on desk research and fieldwork funded by the Swedish International Development Cooperation Agency (Sida), conducted by the African Centre for the Constructive Resolution of Disputes (ACCORD), within its partnership with the Department of Peace and Conflict Research (DPCR) at Uppsala University, Sweden.



ACCORD

The African Centre for the Constructive Resolution of Disputes (ACCORD) is a non-governmental organisation working throughout Africa to bring creative African solutions to the challenges posed by conflict on the continent. ACCORD's primary aim is to influence political developments by bringing conflict resolution, dialogue and institutional development to the forefront as an alternative to armed violence and protracted conflict.

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Table of Contents

LIST OF TABLES	5
LIST OF ACRONYMS AND ABBREVIATIONS	6
EXECUTIVE SUMMARY	8
Mediating Land Conflict in Burundi: A Documentation and Analysis Project	8
Recommendations	10
INTRODUCTION	15
Context	15
Mediating Land Conflict in Burundi: A Documentation and Analysis Project	16
Report outline and highlights	17
PART I: REPATRIATION, REINTEGRATION, RECONCILIATION AND LAND ISSUES IN BURUNDI	18
Section 1: Theoretical framework: triple-R peacebuilding challenges in relation to the repatriation, reintegration and reconciliation processes	18
Repatriation	18
Reintegration	19
Reconciliation	21
Section 2: Needs assessment: post-conflict peacebuilding challenges in relation to repatriation, reintegration and reconciliation in Burundi	23
Conflict context and history	23
Refugees, repatriation, reintegration and reconciliation in Burundi	25
<i>Burundian refugees and their repatriation</i>	25
<i>Reintegration of returnees</i>	26
<i>Reconciliation in Burundi</i>	28
Land issues	29
<i>Importance of land</i>	29
<i>Dimensions of the land crisis 1: structural background factors</i>	30
<i>Dimensions of the land crisis 2: returnees and land occupation and expropriation</i>	30
<i>Types of land expropriation and disputes</i>	31
<i>Factors influencing the type and outbreak of land disputes</i>	32
Conflict resolution mechanisms and institutions	34
Conclusion part I	37
PART II: MEDIATING LAND CONFLICT IN BURUNDI: ANALYSIS AND EVALUATION OF ACCORD'S LEGAL AID CLINIC PROJECT	38
Section 3: Presentation of ACCORD's work and intervention	38
Legal Aid Clinic Project	39
<i>Background and aims</i>	39
<i>Target group and areas of implementation</i>	39
<i>Activities</i>	40
<i>Sensitisation and listening missions</i>	40
<i>Mediation missions</i>	41

<i>Legal assistance</i>	42
<i>Capacity-building workshops</i>	42
Implementation	43
Is ACCORD reaching its objectives?	43
<i>Sustainable conflict prevention, management and resolution</i>	43
<i>Social reintegration and reconciliation</i>	44
Section 4: Evaluation of ACCORD's Legal Aid Clinic Project	45
I. Sustainable conflict prevention, management and resolution	46
<i>Direct impacts of ACCORD mediation: sustainable solutions to land conflicts</i>	47
<i>Do mediation missions lead to satisfying consensus and solution of land conflicts?</i>	47
Data on land conflict and mediation outcomes	47
Women	49
Geographical variability	49
The role of mediators	50
<i>Are mediated solutions implemented and sustainable?</i>	51
Data	51
Legality of mediated solutions	52
Types of mediated solutions and non-land solutions	52
<i>Do CBWs raise awareness about different types of solution for land disputes ?</i>	53
<i>Do mediation missions have positive socio-emotional effects on beneficiaries?</i>	54
<i>Do mediation missions and CBWs contribute to confidence building?</i>	55
<i>Do CBWs and mediation missions lead to raised awareness about legal rights and conflict resolution procedures, institutions and mechanisms?</i>	55
<i>Do those who benefit from CBWs and mediation missions develop and apply skills in conflict prevention, management and reconciliation methods?</i>	57
<i>Do CBWs contribute to an increase in the efficiency, competence and accountability of the judicial system and Bashingantahe?</i>	58
II. Reintegration of returnees and reconciliation	61
<i>Do mediation missions improve social reintegration?</i>	62
<i>Do mediation missions and CBWs foster interpersonal and intergroup understanding?</i>	62
<i>Do mediation missions lead to economic reintegration?</i>	64
<i>Do mediation missions and CBWs lead to political reintegration?</i>	65
III. Future expectations	66
Conclusion part II	68
CONCLUDING DISCUSSIONS AND RECOMMENDATIONS	70
Land and repatriation, reintegration and reconciliation processes	70
Evaluation of ACCORD's Legal Aid Clinic Project	71
Recommendations	72
REFERENCES	76
APPENDICES	79

List of tables¹

- Table 1: Mediation outcome
- Table 2: Conflict in relation to return
- Table 3: Main incompatibility
- Table 4: Satisfaction with solution* mediation outcome cross-tabulation
- Table 5: Mediation outcome
- Table 6: Implementation of solution
- Table 7: Solution type
- Table 8: Socio-emotional effects e) difference in alleviation after sharing with ACCORD compared to sharing with others* mediation outcome cross-tabulation
- Table 9: Use of conflict management methods a) before workshop* use of conflict management methods b) after workshop cross-tabulation
- Table 10: Interpersonal understanding a) awareness of reasons for other party's behaviour before mediation* interpersonal understanding b) awareness of reasons for other party's behaviour after mediation cross-tabulation
- Table 11: Beneficiary category* perception of potential of mediation for intergroup understanding cross-tabulation
- Table 12: Mediation outcome* economic reintegration d) income after mediation cross-tabulation
- Table 13: Expectations from ACCORD in the future

1 The asterisks in the tables of this report are symbols for the levels of statistical significance:
* = 90 % significance level, ** = 95 % significance level, *** = 99 % significance level

List of acronyms and abbreviations

ACCORD	African Centre for the Constructive Resolution of Disputes
ASF	<i>Avocats Sans Frontières</i> (Lawyers without Borders)
CBW	Capacity-building workshop
CNDD	<i>Conseil National pour la Défense de la Démocratie</i> (National Council for the Defence of Democracy)
CNDD-FDD	<i>Conseil National pour la Défense de la Démocratie: Forces pour la Défense de la Démocratie</i> (Forces for the Defence of Democracy)
CNRS	<i>Commission Nationale de Réhabilitation des Sinistrés</i> (National Commission of Rehabilitation of Victims of War)
CNTB	<i>Commission Nationale des Terres et autres Biens</i> (National Commission on Land and other Properties)
CPCP	<i>Commission Pour la Consolidation de la Paix</i> (Commission for the Consolidation of Peace)
DRC	Democratic Republic of the Congo
Frodebu	<i>Front pour la Démocratie au Burundi</i> (Burundi Democratic Front)
GDP	Gross domestic product
ICG	International Crisis Group
IDP	Internally displaced person
MAE	<i>Ministère de l'Agriculture et de l'Élevage</i> (Ministry of Agriculture and Cultivation)
MATE	<i>Ministère de l'Aménagement du Territoire et de l'Environnement</i> (Ministry of the Management of the Territory and Environment)
MdJ	<i>Ministère de la Justice</i> (Ministry of Justice)
MoU	Memorandum of Understanding
MRRDR	<i>Ministère de la Réinsertion et de la Réinstallation des Déplacés et des Rapatriés</i> (Ministry of Reintegration and Resettlement of Displaced and Repatriated Refugees)
MSNDG	<i>Ministère de la Solidarité Nationale, des Droits de la personne humaine et du Genre</i> (Ministry of National Solidarity, Human Rights and Gender)

MTE	<i>Ministère des Travaux publics et de l'Équipement</i> (Ministry for Public Works)
NGO	Non-governmental organisation
Sida	Swedish International Development Cooperation Agency
SRD	<i>Société Régionale de Développement de Rumonge</i> (Regional Company for the Development of Rumonge)
UCDP	Uppsala Conflict Data Program
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNOPS	United Nations Office for Project Services
Uprona	<i>Union pour le Progrès National</i> (Union for National Progress)
WFP	United Nations World Food Programme

Executive summary

The African Centre for the Constructive Resolution of Disputes (ACCORD) has been active in Burundi since 1995, playing a second-track diplomacy role in the Arusha peace negotiations that led to the Arusha Peace and Reconciliation Agreement for Burundi in 2000. As a third party advocating the inclusion of civil society in the peace process, it subsequently engaged in the promotion of peace, reconciliation and effective governance as well as the facilitation of a National Dialogue on Mechanisms for Transitional Justice. In November 2004, ACCORD established its Legal Aid Clinic Project, supported by the United Nations High Commissioner for Refugees (UNHCR). The Legal Aid Clinic Project's objective is to "provide the local population, and specifically the returning refugees, with assistance to deal with the challenges faced by both the welcoming communities and the returnees in the repatriation process" (Theron and Sachane, 2009:5).

Mediating Land Conflict in Burundi: A Documentation and Analysis Project

Mediating Land Conflict in Burundi: A Documentation and Analysis Project was an assessment and evaluation project undertaken by ACCORD between July 2009 and February 2010. The purpose of the project was twofold. First, it explored how land conflict mediation addresses or relates to other more long-term challenges for peace in Burundi – principally, the utilisation of land and increasing access to sustainable livelihoods. In this context, emphasis was put on the triple-R challenges of the repatriation and reintegration of returnees, and reconciliation between different Burundian societal groups. Second, the project documented and analysed ACCORD's land conflict mediation practice in the two Burundi provinces of Bururi and Ruyigi. To this end, the following two questions were answered:

- In what ways do the activities of ACCORD Legal Aid Clinics contribute to the sustainable resolution of land disputes? What are the different types of solutions found? Are they sustainable?
- What effect does ACCORD's mediation work have on the reintegration of returnees and the reconciliation process in Burundi?

Following the established C-I-R-O evaluation method proposed by Warr, Bird and Rackham (1970), the objective was to collect data and information related to:

- the **C**ontext of post-conflict peacebuilding challenges in Burundi
- the **I**nput to this situation given by ACCORD
- the **R**eactions by the beneficiaries and partner organisations
- in order to analyse the **O**utcomes of ACCORD's activities.

To this end, two research missions were conducted in August and September 2009 in the provinces of Ruyigi, Bururi and in the Burundian capital, Bujumbura. Bururi and Ruyigi were two regions specifically affected by violent massacres in 1972 and 1993 respectively.

They are also relevant regions for ACCORD's land conflict mediation work, and for Burundi's post-conflict challenges in terms of repatriation and reintegration of refugees. During two research missions, a total of 159 people were interviewed, among whom were beneficiaries of ACCORD mediation and capacity-building workshops (CBWs), representatives of government and administrative agencies, the judiciary and ACCORD's partner organisations. In order to fulfil the first purpose of addressing long-term challenges for peace, qualitative data was collected through in-depth interviews and focus-group discussions. The data was analysed qualitatively. For the second purpose – namely to evaluate ACCORD's impact on the resolution of land conflicts – qualitative data was complemented with quantitative data collected through questionnaires and the latter analysed statistically. In a few instances, this data was complemented with results of Osgood scaling exercises.

Part I of this report highlights the multiple challenges that Burundi experiences in terms of the repatriation and reintegration of refugees, as well as reconciliation between different societal groups. It underlines the importance of land tenure for triple-R, while outlining critical structural factors – notably, shortage of land and fast population growth – that affect not only returnees, but the majority of Burundians. It finds that in the context of these challenges Burundi's state institutions – though involved in the repatriation process – lack resources and efficiency to address Burundi's various triple-R challenges adequately. Moreover, land disputes are not appropriately resolved, due to overlapping and problematic traditional and legal regulations as well as inefficient conflict resolution institutions and mechanisms.

Part II of this report first presents how ACCORD addresses triple-R challenges through its Legal Aid Clinic Project by means of listening and sensitisation missions, mediation missions, CBWs and legal assistance. Its activities in Ruyigi and Rumonge are then evaluated, assessing the effects on the sustainable resolution of land disputes, and on the reintegration of refugees and reconciliation. The analysis shows that ACCORD reaches most of its stated objectives; its Legal Aid Clinic project contributes to the sustainable resolution of land disputes on an individual level. Moreover, ACCORD's mediation missions and CBWs contribute to the sustainable resolution of land disputes. Where successful, mediation results in the division, compensation or restoration of the original conditions before exile, and most beneficiaries are satisfied with these solutions.

The work of the Legal Aid Clinic Project while meeting the needs for local level, individual solutions, is operating within a broader environment where land shortage and high population growth and density present serious challenges to sustainable peace. Mediation-based solutions to land disputes contribute to durable individual solutions, but sustainability on a national level is questionable. The study found a lack of awareness and acceptance of solutions not involving land. (Here, it should be noted that while ACCORD's other operations address reconciliation and reintegration more comprehensively, these activities were beyond the scope of this study, which focused on the role of land mediation only). Mediation and CBWs have important social, emotional and institutional impacts, directly contributing to local conflict management capacity and a mediation culture.

At an individual level, they prevent violent expressions of anger, build confidence and raise awareness about property rights, legal institutions and conflict resolution mechanisms. When seen in isolation from ACCORD's other work in Burundi, the Legal Aid Clinic Project also contributes to improve the lives of returnees in financial terms, but does not facilitate social and political integration. This in part is due to the limitations of land, which although at the centre of individual preferences, is not a sustainable solution to many livelihood challenges, and thus to Burundi's long-term social and political integration.

The general success of the Legal Aid Clinic Project activities highlights ACCORD's contribution to the conflict resolution work of Burundian institutions – the government, the National Commission on Land and other Properties (CNTB), the judicial system and the *Bashingantahe* – members of Burundian traditional conflict resolution tradition (singular, *Mushingantahe*). Despite differing mandates, powers and roles, these institutions and the work of local and international NGOs are relevant and necessary for Burundi's long-term peace. While these institutions are often confronted with judicial pluralism, lack of resources, inefficiency or corruption, the authors found that ACCORD acts as a complement and fills a gap in services provided by them. Moreover, ACCORD's mediation leads to the sustainable resolution of land disputes at an individual level, and addresses the social and emotional challenges characterising the repatriation process. ACCORD also fosters local ownership of mediation processes by spreading knowledge and skills in conflict management and legal matters, thereby filling an important post-conflict gap. Positive socio-emotional effects, as well as capacity building and raised awareness, directly contribute to the spread of local capacities in conflict management. Other institutions dealing with land conflict – such as the *Bashingantahe*, the judicial system and administrative authorities – are generally perceived as relevant despite the challenges they experience.

Recommendations

Mediating Land Conflict in Burundi: A Documentation and Analysis Project makes a contribution to the work of a wide range of actors in post-conflict peacebuilding, triple-R and land tenure issues – in particular, the government of Burundi, ACCORD and other local and international government and non-governmental organisations (NGOs). The research sheds light on specific areas of the ACCORD Legal Aid Clinic Project's work, by documenting and highlighting successes and areas that require further development and improvement.

The concluding pages of the two parts of this report outline recommendations for the actors involved in the post-conflict peacebuilding process in general, and for ACCORD in relation to its Legal Aid Clinic Project. The recommendations partly reflect the structure of this report – which starts with general recommendations concerning the triple-R of Burundi's post-conflict peacebuilding challenges and land issues, and concludes with recommendations concerning ACCORD's Legal Aid Clinic Project and its activities in Burundi.

1. To foster reintegration and reconciliation in Burundi, an integrated approach is needed that joins government efforts with the work of local and international partner organisations. Specifically, closer cooperation between the government and

other organisations, such as ACCORD, will contribute to the development of alternative solutions to land conflict and lead to improvements in the workings of the judicial and administrative systems. The government, supported by partner organisations, should lead the reintegration and reconciliation project and resolve land disputes in an equitable manner. An integrated approach should be underpinned by policies informed by rigorous analyses and dialogue. Moreover, there is a need for greater and improved cooperation and collaboration between all the actors involved in reintegration and reconciliation processes. Meetings between them will facilitate relationship building, networking, exchange of valuable information and the development of common strategies, and will reduce duplication and competition.

Government and NGO staff could also benefit from training missions by ACCORD—seminars leading to the exchange of different principles and experiences could be fruitful, notably for sharing good governance approaches, and improving efficiency and accessibility. Facilitating such exchanges and thereby clarifying different roles, capacities and potentials may further contribute to strengthening mutually complementing activities and relationships.

2. The resolution of land disputes, reintegration and reconciliation are closely linked, and there is need for a comprehensive strategy to address Burundi's long-term land challenges. In the context of land shortage and high population growth and density, land disputes is a key challenge to reintegration and reconciliation. Alternative and durable institutional and policy solutions are needed to resolve the land issue in the country. The creation of a functioning and up-to-date national land register is essential. This will facilitate the resolution of disputes and prepare the ground for change. Parallel to this, a realistic approach to the distribution of land titles needs to be developed, clearly defining ownership, while providing access to mechanisms for appeals and dispute resolution. As part of this process, judicial reforms and clarity about a number of legal issues are needed – among them clarity about the issues of property, the 30 years law and the legality of agreements negotiated by the different organisations in the field. These reforms are crucial in order to resolve the land issue in a durable manner. The distribution of land titles should take into account the different laws and backgrounds of the people concerned. This is particularly necessary if the dispute includes former refugees, who may not have had the possibility to acquire land titles before fleeing. In cases where the land in question cannot be regained, alternative solutions are needed, such as monetary compensation or the allocation of state-owned land to returnees.

3. To resolve the long-term land question, there is a need to develop and implement land conflict solutions beyond land, diversify the economy and create alternative livelihoods. Different parts of this report identify the need for alternative solutions that do not only solve individual land disputes in the short term, but which contribute to a solution for Burundi's general land challenge. The combination of land shortage and high population growth and density necessitates the development of non land-based solutions. This is a complex and sensitive task, considering the traditional, cultural and economic importance of land. As suggested, monetary compensation may be a viable

option, creating opportunities and new sources of income, and benefiting the economy. A number of important factors would contribute to the development of a diverse economy and alternative livelihoods – inter alia the creation of new markets, the development of infrastructure for manufacturing, investment in urban development and fostering growth in foreign direct investment. In this, NGOs such as ACCORD can make key contributions to skills transfer, capacity building and networking, from local to national level. Specifically, all vulnerable families – not just returnees – need to receive financial support, and education must become more accessible for everyone.

4. ACCORD should expand its work in Burundi. ACCORD's mediation missions and CBWs contribute to the sustainable resolution of land disputes, and the Legal Aid Clinic Project could be expanded to other areas where land disputes threaten peace. Mediation missions, CBWs and legal assistance are urgently needed in other regions of Burundi, where ACCORD could duplicate its impact. ACCORD could work with other organisations and the government, and develop synergies with other projects in Burundi. Many beneficiaries of workshops would benefit from more in-depth capacity building, many more could become beneficiaries of workshops in the first place, and beneficiaries of failed mediation would definitely benefit from continuous follow-up. An additional way to expand ACCORD's reach would be to provide greater support to the beneficiaries of CBWs in their own conflict resolution work, and to support the local initiatives that they create as a result of the training they received.

5. Concerning all the activities of the Legal Aid Clinics, but notably the sensitisation, listening and mediation missions, ACCORD staff should create and regularly update a database of all dispute cases handled – both successful and unsuccessful. A database should contain details of and reasons for successes and failures, with data on beneficiaries. It will, among other things, facilitate follow-up on all cases, for the purpose of evaluation and to assist beneficiaries, should the need arise. While monitoring is important to ensure sustainability, ACCORD only does this on an ad hoc basis at present, and should seek funding to implement regular monitoring systems and processes.

Concerning the mediation process as such, several recommendations can be stressed.

6. There is a need to clarify the role and mandates of mediators. This recommendation and the practical questions it raises apply to ACCORD and to other land conflict management organisations. The research suggests that the extent to which mediators should propose possible options for two parties in a mediation, or provide them with a specific recommendation, requires further consideration. Are mediators supposed to facilitate the possibility for dialogue and encourage the beneficiaries to find the solution they themselves find best? Or should ACCORD mediators suggest which solution they themselves find most suitable? A suggestion, however, risks putting pressure on the beneficiaries to follow the mediator, whether or not they themselves are convinced that this is the best solution. However, having dealt with numerous cases, mediators could make firm recommendations about which option would be most successful. ACCORD subscribes to

presenting possible options to beneficiaries, leaving them to make the choice that best suits them. Clearly, both levels of intervention have their advantages, and further investigation is recommended. At the same time, the need to clarify the role of mediators more generally is highlighted in the report.

7. ACCORD could place a greater focus on psychological processes affecting returnees and receiving communities, to reduce violent expressions of emotion.

ACCORD mediators may want to explore other possibilities for using mediation to generate beneficial socio-emotional impacts. ACCORD mediations already involve the presence of a counsellor. Analysis shows that mediation has therapeutic qualities, with many mediation beneficiaries feeling alleviated and supported through mediation. However, this is mainly demonstrated when the mediation process is successful. Socio-emotional impacts can be felt throughout the mediation process, if beneficiaries are able to express their opinions and frustrations and hope to find a solution. One possibility, for example, would be to extend the Legal Aid Clinic Project by providing psychosocial support to beneficiaries of failed mediation after they have been referred to other institutions. This would entail working closely and cooperating with organisations with similar mandates, and perhaps even with those who deal specifically with psychological aspects of reintegration and reconciliation.

8. Sensitisation missions should be intensified to reduce confusion about the mandates, processes and capacities of the judicial system, the administrative authorities, the Bashingantahe and ACCORD.

Many beneficiaries of failed mediation express a lack of understanding and information, and frustration about referrals to other organisations. Clear and accessible information about the different organisations and their mandates are essential, as is information about referral processes. Those who are being referred to other organisations after failed mediation should be briefed on reasons for the referral and provided with information on the institution that will be dealing with the case from then on. Much of this will be facilitated by well-structured provision of information during the sensitisation missions before mediation and through ongoing contact with beneficiaries after mediation and referral. Clarification of mandates and managing expectations will also ensure that conflicting parties approach the institution most likely to resolve the conflict in the most efficient and equitable manner.

9. Mediation missions have the potential to facilitate interpersonal and intergroup understanding and reconciliation.

The logical assumption that mediation fosters interpersonal understanding cannot be confirmed in the data. However, a significant number of beneficiaries of both mediation and CBWs believe that mediation has the potential to facilitate intergroup understanding. Despite talking during the mediation sessions, many did not feel they really understood the other party's reasoning and behaviour. Empathy could, however, be generated by the way in which mediation is conducted, and by encouraging beneficiaries during mediation to share experiences and reasons for different forms of behaviour. Moreover, further development of plans to integrate mediation at a group level to facilitate intergroup understanding and reconciliation could yield positive results – by fostering dialogue between groups

of returnees and residents in localities where there are tensions, reintegration and reconciliation will be facilitated. It remains to be analysed whether the Legal Aid Clinic Project's activities and efforts are adequate mechanisms contributing to the social reintegration of returnees and reconciliation, or whether there is need for other mechanisms, or enforcement of existing ones through ACCORD or other organisations.

10. Stakeholders in mediation and other actors should receive further information on the legality of solutions found through mediation, while there is further scope to assist parties to an agreement with implementation, and for agreements to be systematically monitored to ensure sustainability.

The research indicates that there is confusion on the part of some important stakeholders and non-legal project staff about the extent to which ACCORD's mediated agreements are legally binding. ACCORD should ensure that all stakeholders are aware that solutions are recognised by Burundian law (Article 33 of the Civil Code), which stipulates that voluntary agreements between parties that do not violate any laws are protected by law. Violations of agreements become matters for civil action, and therefore enforcement and implementation are beyond the scope of ACCORD's work. The organisation has taken steps to legitimise the agreements further and ensure they receive recognition by the government and local administration. For instance, the ACCORD operation in Burundi signed a Memorandum of Understanding (MoU) with the CNTB in June 2010, and one of the provisions of the MoU is that the CNTB will register the solutions reached by parties through the project. While the power for implementing agreements lies with the parties that have recourse to the law, ACCORD does provide support and advice when parties face challenges. Finally, the research suggests that more funding will assist ACCORD to formalise a systematic monitoring of agreements, which presently are done on an ad hoc basis because of limited resources.

Introduction

Context

Since its independence in 1962, Burundi has experienced several phases of ethnic conflicts and massacres between ethnic Hutus and ethnic Tutsis. Two of the worst massacres occurred in 1972 and 1993, causing more than 800 000 Burundians to flee the country and become refugees in Tanzania, the Democratic Republic of the Congo (DRC), Rwanda and other neighbouring countries. Several hundred thousand people were displaced inside Burundi's borders. The civil war following the clashes in 1993 lasted more than a decade; the Arusha Peace and Reconciliation Agreement in 2000 led to its resolution and a transitional government between 2001 and 2005. Since then – and notably since the 2005 elections – the government has faced different post-conflict transition challenges, including the repatriation and reintegration of returning refugees, who make up about one-sixth of Burundi's population.

The African Centre for the Constructive Resolution of Disputes (ACCORD) has been active in Burundi since 1995, playing a second-track diplomacy role in the Arusha peace negotiations that led to the Arusha Peace and Reconciliation Agreement for Burundi in 2000. As a third party advocating the inclusion of civil society in the peace process, it subsequently engaged in the promotion of peace, reconciliation and effective governance as well as the facilitation of a National Dialogue on Mechanisms for Transitional Justice. In November 2004, ACCORD established its Legal Aid Clinic Project, supported by the United Nations High Commissioner for Refugees (UNHCR). The objective of the Legal Aid Clinic Project is to “provide the local population, and specifically the returning refugees, with assistance to deal with the challenges faced by both the welcoming communities and the returnees in the repatriation process” (Theron and Sachane, 2009:5).



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- In what ways do the activities of ACCORD Legal Aid Clinics contribute to the sustainable resolution of land disputes? What are the different types of solutions found? Are they sustainable?
- What effect does ACCORD's mediation work have on the reintegration of returnees and the reconciliation process in Burundi society?

Following the established C-I-R-O evaluation method proposed by Warr, Bird and Rackham (1970), the project aimed at collecting information and data on:

- the **C**ontext of post-conflict peacebuilding challenges in Burundi
- describe the **I**nput to this situation given by ACCORD
- the **R**eactions by the beneficiaries and partner organisations
- in order to analyse the **O**utcomes of ACCORD's activities.

To this end, two research missions were conducted in August and September 2009 in the provinces of Ruyigi and Bururi, and in the capital, Bujumbura. Bururi and Ruyigi were two regions specifically affected by violent massacres in 1972 and 1993 respectively, and are relevant regions both in terms of ACCORD's land conflict mediation work and for Burundi's post-conflict challenges in terms of the repatriation and reintegration of refugees. During two research missions, a total of 159 people were interviewed, among whom were beneficiaries of ACCORD mediation and capacity-building workshops (CBWs), representatives of government and administrative agencies, the judiciary and ACCORD's partner organisations. In order to fulfil the first purpose of addressing long-term challenges for peace, qualitative data was collected through in-depth interviews and focus-group discussions. The data is analysed qualitatively. For the second purpose – namely to evaluate ACCORD's impact on the resolution of land conflicts – qualitative data was complemented with quantitative data collected through questionnaires, and the latter analysed statistically. In a few instances, this data was complemented with the results of the Osgood scaling exercises.

Report outline and highlights

This report provides an overview of the main results of the Mediating Land Conflict in Burundi: A Documentation and Analysis Project. In its first part, theories about post-conflict peacebuilding challenges are outlined, notably focusing on the triple-R challenges of repatriation, reintegration and reconciliation of refugees. Subsequently, a needs assessment provides an overview of the situation in Burundi concerning those named challenges. Finally, an analysis of the qualitative data collected during field research in Burundi complements and qualifies the theory and needs assessment with its new results.

The first part highlights the multiple challenges that Burundi experiences in terms of the repatriation and reintegration of refugees, as well as reconciliation between different societal groups. It underlines the importance of land tenure for triple-R, while outlining critical structural factors – notably, shortage of land and fast population growth – that affect not only returnees, but the majority of Burundians. It finds that in the context of these challenges Burundi's state institutions – though involved in the repatriation process – lack resources and efficiency to address Burundi's various triple-R challenges adequately. Moreover, land disputes are not appropriately resolved, due to overlapping and problematic traditional and legal regulations as well as conflict resolution institutions that lack capacity and efficiency.



ACCORD's mediation team in Ruyigi

The second part of this report initially presents how ACCORD addresses those challenges through its Legal Aid Clinic Project. Its activities in Ruyigi and Rumonge are then evaluated, assessing the effects on the sustainable resolution of land disputes and on the reintegration of refugees and reconciliation in society. The analysis shows that ACCORD reaches most of its stated objectives – its mediation missions and CBWs indeed contribute to the sustainable resolution of land disputes on an individual level. However, a sustained impact at national level is yet to be reached. Positive socio-emotional effects, as well as

capacity building and raised awareness, contribute directly to the spread of local capacities in conflict management. Other institutions – such as the *Bashingantahe*, the judicial system and administrative authorities – are generally perceived to be more problematic than mediation, but considered relevant both today and in the future. The effects of ACCORD's activities on social, economic and political reintegration of returnees are limited. However, most of those interviewed are optimistic that mediation can contribute to intergroup understanding and foster reconciliation.

The two main parts of this report are followed by a concluding discussion, summarising the primary findings and setting them in a broader perspective of Burundi's post-conflict challenges. Finally, general recommendations for Burundi and particular recommendations for ACCORD's work are inferred from the analyses, outlining fields of opportunities for fostering peaceful development in Burundi.

Part I: Repatriation, reintegration, reconciliation and land issues in Burundi

Section 1: Theoretical framework: triple-R peacebuilding challenges in relation to the repatriation, reintegration and reconciliation processes

Within the literature, researchers emphasise the importance of the repatriation, reintegration and reconciliation processes in post-conflict peacebuilding. They argue that these processes are essential steps in achieving sustainable peace and development in war-torn societies. Nevertheless, scholars state that there are several issues related to the concepts of national reconciliation and the repatriation and reintegration of refugees that need to be addressed.

According to the United Nations (UN) and concerned governments, three different “durable solutions” are available to resolve the refugee problem. These options are local integration and settlement of the refugees in the country of asylum, third-country resettlement, and voluntary repatriation of the refugees to their countries of origin. Depending on the context, the best-suited solution is chosen and implemented under the supervision of the UNHCR, which has the task of assisting recognised refugees (Rogge & Akol, 1989; Wood, 1989). The repatriation of refugees is understood by many states as being the ideal solution. However, various issues and costs are associated with it (Rogge & Akol, 1989; Adelman, 1998; Black & Koser, 1999; Kibreab, 2003).

Repatriation

First, Adelman (1998) emphasises existing pitfalls around repatriation strategies. He explains that it is difficult to develop strategies that are dependent on many unclear factors at the time of planning. Furthermore, it is only one of many objectives of peace agreements. In addition, it is argued that the application of repatriation is facing a dilemma. The best conditions for the repatriation of refugees are the transformation of the political

scene and the durability of the peace agreement. However, these conditions are created only when the refugees have been repatriated. Moreover, the government must ensure security at a national level for the refugees to return – but refugees, in their turn, may destabilise the security in the country by exacerbating the conflict.

A second issue in relation to the repatriation process is based on the conceptualisation of the term and the meaning assigned to it. Several scholars (Black & Koser, 1999; Kibreab, 2003) stress that it has been assumed that repatriation means the refugees' return "home", as well as a return to stability in the country. Nevertheless, the country situation may have changed radically during the refugees' exile, and the concept of home can have different meanings to refugees. Black and Koser (1999) and Purdeková (2008) argue that home may carry negative associations as a result of war and being in exile. External factors can alter the country and make home suddenly unfamiliar and threatening for refugees. What does home mean? It does not have to represent homecoming. Exile can lead both to detachment from the homeland, and to a longing and reimagining of the home and nation. All of these factors determine the experience of return and integration.

Third, returning refugees can encounter economic difficulties linked to their repatriation. Refugees have often become self-reliant in their host countries, and repatriation can be a risky choice for them. It is difficult to abandon a secure economic situation in exchange for the unknown. Refugees need to decide if they want to repatriate or not. They ask themselves if returning to their countries is a viable option, or if they will have to start over after their arrival. Another economic challenge for refugees is related to the possibility of repatriating their personal belongings. In several repatriation processes, refugees had to leave their assets behind, or these might be confiscated at the borders by hosting authorities. Finally, refugees that have been reliant on basic support from humanitarian agencies in the host countries often experience a decrease in their standard of living and economic opportunities after their return (Rogge & Akol, 1989).

Finally, difficulties related to the repatriation of refugees can be political in nature. Governments often see repatriation as the best available solution; however, it does not mean that they are ready for the refugees' return. The return of refugees can be understood as a threat, because they may be perceived as politically hostile to the government in place. Moreover, they may not be welcomed home, because their return creates additional costs and burdens for the government. In addition, it is possible that the government and the refugees do not share the same perception regarding the viability and safety of repatriation. As a consequence, misunderstandings and tension can arise (Rogge & Akol, 1989).

Reintegration

In the past, the concept of reintegration was mostly understood as the return and the re-establishment of exiled populations in their country of origin. Reintegration was defined as the refugees' attainment of self-sufficiency and reintegration within the socio-economic structures of society (UNHCR, 1998). However, according to UNHCR (1998), this definition of the term, based on economic factors, is not sufficient for grasping the complete meaning of reintegration. It is essential that refugees feel secure in various dimensions –

as in the human, physical, legal, social and psychological domains – in order to complete a reintegration process. In addition, reintegration is part of the broader processes related to the peace process, such as peacebuilding, national reconciliation and protection. These processes are interrelated, and reintegration alone cannot succeed without the implementation of the other elements (UNHCR, 1998).

As a consequence, reintegration can be defined through different types of reintegration – including social, political and economic reintegration. Where social reintegration points mostly to relations with family and community members, economic reintegration comprises perspectives to build up a self-sustainable livelihood. Political reintegration can include the “commitment of individuals to peaceful democratic political expression”, as well as their attitude towards political processes and participation in political decision-making (Mvukiyehe, Samii & Taylor, 2006:29).

According to Fischer (2004), the repatriation and reintegration of refugees and internally displaced persons (IDPs) has become one of the most important issues on the international community’s agenda, attracting the attention of many different actors. These processes are perceived as crucial tools to achieve durable peace. Moreover, several scholars argue that specific factors can explain the importance of repatriation and reintegration within the peace process. First, there cannot be any hope of a return to normalcy until the majority of displaced or exiled populations are able to reintegrate themselves into their societies of origin. The voluntary return of refugees and IDPs represents an improvement in the situation and, as a result, public confidence in the ongoing peace process can increase. Second, the peace process may be disrupted if refugees and IDPs cannot reintegrate themselves within their country or communities of origin. The repatriation and reintegration processes play an essential role in validating the post-conflict political authority. Furthermore, the repatriation and reintegration of refugees may be a precondition for positive peace, when exiled populations are the cause of armed conflict and instability in the country. The return and the separation of the refugees from the military are understood as an important phase in the transition from war to peace. Finally, the reintegration of refugees and IDPs can contribute to the economic recovery of the country, and the repatriation of refugees can even be a prerequisite to attain economic stability. As a consequence, the return of displaced populations can bring crucial financial, human and social capital to the countries of origin (Fischer, 2004; UNHCR, 1998).

The processes of the return and reintegration of refugees are challenged, however, by interrelated problems based on physical, political, economical and social factors (Rogge & Akol, 1989; Black & Koser, 1999; Stein, 1997; UNHCR, 1998; Kibreab, 2003; Fischer, 2004; Adelman, 1998; Neryl, 1999). Moreover, several scholars state that the nature and scale of the repatriation have a direct impact on the nature of the reintegration process (Stein, 1997; UNHCR, 1998).

First, refugees who have returned to war-torn countries often encounter physical issues, as land mines and the destruction of their home or land (Black & Koser, 1999). Second, problems of governance and lack of preparation for the repatriation can influence the reintegration process (UNHCR, 1998; Fischer, 2004). In addition, the return and

reintegration of displaced people may create economic competition between the refugees and residents of the country. This is especially true within post-conflict countries where resources and employment opportunities are scarce. Competition can result in the creation of tension between the different groups, and even in a renewed outbreak of war (Fischer, 2004; Black & Koser, 1999; UNHCR, 1998). Furthermore, if property claims are unresolved before the repatriation of the refugees, the reintegration process cannot be successful. It is essential to clarify the issue about property rights and restitution through legal reforms and compensation models (Fischer, 2004; Kibreab, 2003).

Another difficulty in implementing the reintegration of refugees is to avoid unfair treatment between different groups in society. Assistance provided by institutions and organisations should not focus solely on one specific group, such as the refugees. Goods or services should be distributed as equally as possible to the population. Discriminating in favour of specific groups creates exclusion and tension, which could escalate rapidly into conflict. Nevertheless, it is difficult for third parties to treat refugees and residents in a fair manner, because they do not possess sufficient resources to assist everybody. Furthermore, the objectives of their mandates often do not include the achievement of equity (Fischer, 2004; Adelman, 1998).

Social issues are a final factor in enabling the completion of the reintegration process. First, exile transformed the refugees' social attitudes and behaviours. Refugees may have acculturated themselves to their host country, entered criminality or be traumatised by their experiences of the war. Second, their original home areas may have changed through physical destruction, governmental policies or other external factors. Finally, returning second-generation refugees may experience language barriers or difficulties in integrating in the school system of the country of origin. As a consequence, important problems of readjustment can arise, both for returning refugees and their communities (Neryl, 1999; Rogge & Akol, 1989). According to Black and Koser (1999), reintegration also depends on the existence and extent of the refugees' social networks.

According to UNHCR (1998), an effective approach to resolve the challenges related to reintegration are based on two different principles – namely state responsibility and international solidarity. Governments need to act and create conditions favouring the return, reintegration and reconciliation of the population. Moreover, they need to respect international human rights, humanitarian and refugee laws. The second principle posits that the international community needs to provide support for reintegration and reconstruction processes in post-conflict countries.

Reconciliation

Reconciliation is, within the literature, an often-used term. It remains a vague concept, however. It is understood as the high end of the stability-of-peace spectrum; a technique that goes beyond the achievement of negative peace and the settlement of a conflict's material stakes. Reconciliation entails the restoration of social relations and the healing of hearts and minds at all levels in society. Often, the term is defined as a space for dialogue between conflicting parties, which creates new understandings and the recognition of the

“other”. Furthermore, reconciliation aims at strengthening non-violent conflict resolution mechanisms in society (Lerche III, 2000; Purdeková, 2008; Halpern & Weinstein, 2004; Salomons, 2002). According to Lederach (in Halpern & Weinstein, 2004), reconciliation represents the confluence of four elements – namely truth, mercy, justice and peace.

Purdeková (2008) explains that creating sustainable reintegration and reconciliation is not possible without resolving specific issues related to negative and positive peace. According to the author, there is a gap between the return of refugees and durability. Durability of peace is not simply achieved by the return of displaced persons – it has to be created. Purdeková argues that the key is stability, whereby reconciliation is its determinant: “If conflict lies at the core of the nexus, and if reconciliation lies at the core of stability of return, then identifying the ingredients for successful reconciliation is the central challenge” (Purdeková, 2008:11).

According to Lerche III (2000), the author Montville argues that true healing can only be achieved through reconciliation, which involves a sequence of three steps. The first phase is acknowledgement, when oppressors publicly tell in detail what they have done. Acknowledgement contributes to victims’ healing and facilitates dialogue. The next step, contrition, sees the aggressors taking responsibility for past actions, expressing remorse and asking directly for forgiveness. The last phase, forgiveness, is based on the success of both previous steps. Within this phase, the victim – in time – voluntarily forgives the oppressor for past injuries.

Reconciliation is understood as an essential goal determining the stability of peace; nevertheless, its implementation has raised many questions and issues.

First, Halpern & Weinstein (2004) refer to Lederach and explain that emphasising forgiveness and mercy can be problematic. Not everyone agrees about the necessity of forgiveness when rebuilding social ties in society. Moreover, the concept of forgiveness is based on the past rather than the future, and it does not provide any psychological support in transforming existing perceptions about the “others”. One of the essential elements of reconciliation is the development of empathy between the former warring parties. The authors argue that an empathic connection must occur in order to achieve reconciliation. Without the existence of empathy, only coexistence or cohabitation can be attained. The authors emphasise the importance of the individual level and stresses that reconciliation can only happen when one individual regains empathy for another. Moreover, the relationship of empathy to re-humanise the other is based on the need for individual initiative, social context and social processes over time.

Another essential problem related to the reconciliation process is its ambiguous results at national level and the fact that it faces important short-term trade-offs between peace, the capacity to provide justice, and the expression of the truth. Decisions need to be made in post-conflict societies on how to deal appropriately with justice and truth. However, the strict forms of the former are likely obstacles to the speaking of the latter (Lerche III, 2000; Mendéz, 2001). On the one hand, justice in the form of court verdicts for perpetrators may be essential for the openness of victims towards reconciliation. This approach,

however, may render the search for peace difficult, because distributing amnesties to politicians or rebel leaders is often a prerequisite for ending war and violence (Mendéz, 2001). Truth-telling, on the other hand, is seen as one of the key elements of justice and is often considered as being necessary for reconciliation, and as having a healing effect. Nevertheless, truth-telling may bear the risk of retraumatisation (Bronéus, 2008) and can also lead to renewed violence, either against the witnessing victim or against the perpetrators (Samii, 2009):

For countries just emerging from a struggle against oppression and tyranny the first challenge is whether to blindly forgive past oppressors or hunt them down and punish them. Often there seems to be a choice between reconciliation or justice, instead of attaining a balance between the two (International Institute for Democracy and Electoral Assistance, 1998b, cited in Lerche III, 2000:2).

Justice in itself is not a problematic objective, but whether the attainment of justice always contributes to reconciliation is anything but evident. Truth, too, is a good thing; but as the African proverb reminds us, 'truth is not always good to say' (Ignatieff, 1996, cited in Lerche III, 2000:2).

The impossible trade-offs between peace, justice and reconciliation make the reconciliation process difficult to implement. However, According to Mendéz (2001), reconciliation should not be the main focus of any policy of truth and justice and become the element that validates or invalidates all aspects of the policy. Truth, justice and reconciliation are all objectives, and no one of them should be viewed as instrumental to the others. The author further explains that the goal should be to determine which elements of truth, justice and clemency measures are compatible with one another. The most appropriate combination depends on the context and the free and rational choices made by local actors.

Section 2: Needs assessment: post-conflict peacebuilding challenges in relation to repatriation, reintegration and reconciliation in Burundi

Conflict context and history

Burundi is a small landlocked country in Africa's Great Lakes Region with almost seven million inhabitants, 85% of whom belong to the ethnic Hutu, 14% to Tutsi and 1% to Twa (Loevslett, 2009:2). As in other post-colonial states in the Great Lakes Region, ethnic differences were reinforced by the centralised colonial system introduced by Belgian colonisers following the German protectorate, giving strong powers to the Tutsi elites during the nineteenth and twentieth centuries (Loevslett, 2009). Burundi was administrated through indirect rule by the German East African administration from 1899 until 1916, when Belgium occupied the area. Under a 1923 League of Nations mandate, Belgium controlled Burundi as a territory with Rwanda, (Ruanda-Urundi). As in Rwanda, Belgium built up Burundi's Tutsi-dominated kinship and social groups within a ethnic hierarchy. Ruana-Urundi was a UN Trust territory following World War II, under Belgian authority. After independence in 1962, a Tutsi-dominated aristocratic hierarchy tried to

keep and even reinforce its power through a constitutional monarchy under King Mwami Mwambutsa IV. Linked to the mainly Tutsi monarchy, the Union pour le Progrès National (Union for National Progress) (Uprona) kept power at state level, strongly limiting the access of the Hutu population to political and economic power. The monarchy was abolished in 1966, paving the way for the installation of a military regime controlled by the Tutsi-dominated army. Massacres of both Hutu and Tutsi against each other recurred several times during the coming decades of dictatorship and popular dissent. Of particular importance was the “armed repression of Hutus on the verge of genocide” (UCDP, 2009), following a Hutu uprising against a Tutsi sub-clan of Bururi taking power in 1972, where military forces killed between 150 000 and 200 000 Hutus (Loevslett, 2009; Oketch, 2004). Consequently, several hundred thousand Hutus fled to neighbouring Tanzania.

In 1987, President Buyoya staged a bloodless coup. The subsequent anti-Hutu pogroms stimulated radicalisation and extremism within the Hutu communities in refugee camps abroad. In particular, the *Parti pour la Libération du Peuple Hutu* (Party for the Liberation of the Hutu People) (Palipehutu) was established clandestinely; a party from which the Forces Nationales de Libération (Forces for National Liberation) (Palipehutu-FNL) split in 1991.

In 1990, Burundi entered into a democratisation process and introduced a multiparty system, which culminated in elections in 1993. When Melchior Ndadaye, a Hutu of the *Front Démocratique du Burundi* (Burundi Democratic Front) (Frodebu), became president, some 50 000 Hutus repatriated spontaneously from Tanzania (Theron & Sachane, 2009). However, a few months after his election, members of the Tutsi-dominated army assassinated Ndadaye and some of his ministers. Subsequent massacres of Tutsis by Frodebu activists were followed by equally brutal retaliation against Hutus, claiming around 100 000 civilian victims (HRW, 2006; Loevslett, 2009). On the one hand, this led to a second wave of refugees into neighbouring countries, mostly Tanzania. On the other hand, it led to a power-sharing arrangement between Uprona and Frodebu. In the aftermath of the 1993 happenings, many Frodebu members had joined the newly established *Conceil National pour la Défense de la Démocratie* (National Council for the Defence of Democracy) (CNDD) with its armed wing *Forces pour la Défense de la Démocratie* (Forces for the Defence of Democracy) (CNDD-FDD).

In 1994, the failure of the power-sharing government led to violent conflict between the government, CNDD and Palipehutu-FNL – a conflict which lasted 14 years and claimed around 300 000 lives, displacing more than 1.2 million people (Jooma, 2005:2). In July 1996, Buyoya reclaimed “power in a coup”, and governed in coalition with “the powerful Tutsi military establishment” (UCDP, 2009). For the first time, multiparty negotiations took place, with Tanzanian president Julius Nyerere as mediator. When Nelson Mandela took over the role of mediator in 1999, the active rebel groups – CNDD-FDD and Palipehutu-FNL – were also included in the negotiations. The two groups, however, did not sign the Arusha peace and reconciliation agreement that resulted out of the negotiations in 2000. Despite the continuous fighting of the two rebel groups, a transitional government – which included Hutus and Tutsis – was formed in 2001. In 2003, the presidency was handed over by former President Buyoya (Tutsi) to former Vice President Domitien

Ndayizeze (Hutu), and the CNDD-FDD joined the Arusha Agreement. Elections in 2005 ushered in CNDD-FDD leader Pierre Nkurunziza as president. In 2008, the last active rebel group, Palipehutu-FNL, signed a ceasefire agreement and, in January 2009, transformed into a political party, the FNL.

Burundi held a series of elections in 2010 for representatives to its Colline Councils; Communal Councils and their Electoral College; the National Assembly; and the country's presidency. Pierre Nkurunziza won the presidential election as an uncontested candidate. The National Assembly includes deputies (candidates directly elected) and senators (representatives of the Communal Council Electoral College). The 2010 elections are viewed by many observers as the culmination of Burundi's conflict process.

Refugees, repatriation, reintegration and reconciliation in Burundi

Burundian refugees and their repatriation

Of a population of more than 6.9 million people (CIA Factbook, 2009), the UNHCR counted around 281 592 Burundian refugees in bordering countries and around 100 000 IDPs in January 2009 (UNHCR, 2010). At the time of writing, an estimated 483 626 Burundians were part of the "population of concern" (UNHCR, 2010). In the case of Burundian refugees, predominantly two of the three solutions to a refugee crisis mentioned in the theory presentation above were common: integration in the country of asylum, and voluntary repatriation. They also experienced various elements of the emotional, political and economic challenges and dilemmas outlined above.



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Road in Rumonge, Burundi

One of the biggest waves of refugees and IDPs was created in 1972, when an estimated 300 000 people fled the country following massacres by the Burundian army of the Hutu elite class under the rule of Michel Micombero (ICG, 2003a). In 1993, massacres subsequent to the assassination of President Ndadaye caused another refugee crisis, creating 400 000 refugees and internally displacing 880 000 people (UNHCR-WFP, 2007; Theron & Sachane, 2009). During the following 12 years of civil war, there was a steady flow of refugees, mainly to the neighbouring countries of Tanzania, DRC and Rwanda (Van Leeuwen, 2009). With hundreds of thousands of refugees staying in Tanzania for more than three decades, this represents one of the most protracted refugee situations worldwide (UNHCR, 2008). Since 2002, over 485 000 refugees in Tanzania, Rwanda and the DRC received assistance by the UNHCR for their return to Burundi (Spindler, 2009). Nevertheless, in 2005, 800 000 Burundians were still living outside their home country as refugees (UNOPS, UNDP & CNTB, 2007). After elections in 2005, with a slight stabilisation of the situation and hope for the peace process, many refugees repatriated voluntarily (Redmond, 2005). In 2008, the Tanzanian government asked around 220 000 Burundi refugees, who had been in the country since the 1972 violence and were situated mainly in the regions of Rukwa and Tabora, to choose between applying for citizenship and returning home. According to the UNHCR, 165 000 “applied for naturalisation, while another 55 000 opted to return to Burundi” (Spindler, 2009). The repatriation process from Tanzania was supposed to be completed during 2009, whereas political instability delayed repatriation operations for Burundi refugees in the DRC. According to the UNHCR, more than 6% of Burundi’s population are former refugees (UNHCR, 2010). Despite concerns by human rights organisations about refugees being forced to return instead of voluntarily leaving, the refugees are assisted medically and economically by the UNHCR through returnee packages and awareness raising about health and other issues (Amnesty International, 2009; UNHCR, 2010).

Reintegration of returnees

However, refugees face a substantial number of complex challenges upon their return. The reintegration of returnees into their home villages and *collines* is a difficult endeavour, with issues spanning the “reconstruction of homes and infrastructures, the creation of health and education facilities and achieving a stable peace, as well as reintegrating hundreds of thousands of returning refugees and internally displaced people” (Redmond, 2005).

In terms of economic reintegration, thousands of returning refugees were provided with an aid kit by the UNHCR, intended to provide them with a first stock of funds to create a living. However, due to significant cuts in UNHCR funds in 2005, neither all of the planned construction of homes, schools and health centres nor income-generating activities could be implemented (Redmond, 2005). In addition, considering the extreme population density of 250 to 400 persons per square kilometre and the shortage of land, refugees often have no possibility of settling down and sustaining themselves economically (Ntampaka & Mansion, 2009; Theron & Sachane, 2009). On the one hand, this is a serious issue concerning landless returnees, such as second-generation refugees (82% of 2008 returnees were born in Tanzania, according to the UNHCR, 2010). On the other hand, restitution

of land and property for returnees is one of the key factors of social and economic reintegration. If restitution of land does not happen, “one could witness a situation whereby people are physically back in their own country but are unable to participate in the country’s economic and political life. This could result in the repatriation merely being a relocation process in which refugees who returned home simply become IDPs” (El Abdellaoui, 2005).

There appears to be a lack of non-economic dimensions of reintegration in Burundi’s reintegration processes. In a country marked by ethnic conflicts like Burundi, where social networks and trust in a democratic political system are essential for a peaceful future, it is disconcerting that no information can be found on the dimensions of social, emotional and political reintegration. This confirms the tendency to overemphasise the economic dimension of reintegration, as alluded to in the theory section. If the state and international actors ignore the social, emotional and political dimensions of reintegration, this can contribute to future challenges in terms of reintegration, reconciliation and security in the country. Nevertheless, where reintegration programmes were implemented, they often were successful. For instance, a UNHCR report in 2006 underlines the unproblematic integration of refugee children and youth into local schools – often the first school these children attend. Even in terms of educational development, reintegrated children do not seem to suffer any major backwardness in comparison to their fellow pupils, according to the UNHCR (2006).



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Returnee from Tanzania

Reconciliation in Burundi

In light of their past experiences during conflict, integration of refugees may also be a sensitive issue in terms of ethnic differences and the need for reconciliation. With regard to society as a whole, reconciliation concerns the treatment of perpetrators and people responsible for massacres and genocidal violence most of all, but should also take into account the needs of the local civilian population.

The Arusha Peace and Reconciliation Agreement (hereafter: Arusha Agreement) assigned part of the responsibility to promote reconciliation to the Sub-Commission of Land, but also emphasised the need for a National Truth and Reconciliation Commission and an International Judicial Commission of Inquiry (Arusha Peace and Reconciliation Agreement, 2000, Protocol IV, Chapter I, Article 8). In this regard, meetings with UN legal experts and the Government of Burundi took place to draft a respective framework of institutions appropriate for reconciliation and justice. In 2006, for example, the government released around 3000 detainees and political prisoners who received “‘provisional immunity’ but will eventually be held accountable for any crimes they are accused of by the special court or a truth and reconciliation commission” (HRW, 2006; Oketch, 2004:14). Their release was met with some scepticism and fear by victims and human rights organisations that demand prosecution and fair trials for perpetrators of severe war crimes, crimes against humanity or genocide (HRW, 2006). However, at the time of writing, decisions on how to deal appropriately with justice and truth in post-conflict Burundi in general still remain outstanding.

Such decisions, as outlined in the theory section, need to be taken in the context of a trade-off between justice and truth – with strict forms of justice being a likely obstacle to the speaking of truth. In the framework of the Wartime and Post-conflict Experiences in Burundi Project, Cyrus Samii (2009) analyses Burundians’ views on impunity for perpetrators, and whether conflict experiences should be forgotten or handled through truth-telling. 61% of Burundians interviewed demanded conditional pardons only for those combatants specifically asking for it, whereas 69% were supporters of forgetting the past rather than truth-telling (Samii, 2009). The results of Samii’s analysis show that, on the one hand, people who are in support of recent political changes also support a strategy to forgive and forget past happenings. On the other hand, those who are dissatisfied with the political changes would prefer strict justice and truth processes (Samii, 2009).

At community level, reconciliation becomes a challenge in the context of the return of refugees and IDPs. Returnees and hosting communities display a need for reconciliation among each other, but this is hampered by widespread land disputes upon the arrival of the returnees. That said, returnees and welcoming communities have different experiences concerning land issues. Returnees often return home and find their land occupied by others, or divided or sold by their family members. Some members of the welcoming community, on the other hand, have lived on and cultivated the returnees’ land for many years, sometimes after returning from exile themselves. Thus, as will become clear further in this report, a judgement that, in many cases, the returnees are the victims and the welcoming community are the occupiers is too simplistic. Moreover, experiences

influencing reconciliation can, furthermore, be linked to issues of “ethnicity; gender; social status; the time of return of the refugee; and the place of asylum” (Theron & Sachane, 2009). As one final dimension, reconciliation involves issues between the state and its citizens, both in terms of returnees and the local communities. This is due to the state and rebel movements both violating citizen’s rights in various ways and promoting a culture of impunity. Hence, reconciliation and reintegration should not ignore the state dimension (Theron & Sachane, 2009).



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People on their way to the fields

Land issues

Importance of land

One key factor for successfully repatriating and reintegrating returnees and promoting reconciliation between different groups of society is the possibility for returnees to achieve independent and sustainable livelihoods. For 90% of Burundi’s population, land is the principal source of income (UNOPS, UNDP & CNTB, 2007) – and the availability of land may be one of the conditions influencing a refugee’s decision to return (Ntampaka & Mansion, 2009). Yet, land is not only limited to being a key economic factor, but also has socio-cultural, political and environmental significance (UNOPS, UNDP & CNTB, 2007). In Burundi in particular, land has a high symbolic cultural and identity-giving value (Hilhorst, 2008; CPCP, 2008) and is, therefore, an important consideration in all dimensions of repatriation, reintegration and reconciliation.

Disputes about land can heighten existing tensions between different groups of society, notably if used as a means by political actors to mobilise solidarity and support. Moreover, if land issues are not adequately addressed, this may lead to violent expressions of frustration – the risk of which is especially high during elections (Theron & Sachane,

2009). Land conflicts, however, are common throughout Burundi's history, and have been dealt with through traditional dispute resolution mechanisms such as the *Bashingantahe*, which will be outlined later in this report. Due to a higher pressure on land when waves of refugees return to their homes, land issues amount today to 80% of the cases dealt with at the *Tribunaux de Résidence* (Residential Courts) (ICG, 2003a).

Dimensions of the land crisis 1: structural background factors

Jean-Paul Kimonyo distinguishes between two dimensions of the land crisis in Burundi. On the one hand, the crisis is stimulated by the return of refugees whose land has been occupied in their absence. On the other hand, there is a broader land crisis, affecting not only refugees but also the rest of the population. Programmes focusing on land issues in relation to repatriation often neglect the fact that there is an overall shortage of land in Burundi (Kimonyo, 2006). The shortage of land as a structural background factor of the Burundi land crisis has its origin in an imbalance between the fast population growth of 3.4% annually, and the availability of land and its means of cultivation (Ntampaka, 2006; Jooma, 2005). Some 90% of the population depends on land. However, "land-based activities constitute less than half of the total gross domestic product (GDP) of Burundi and opportunities for non-land-based work are limited overall and almost non-existent in rural areas" (2009:10). Thus, with an average of 0.5-0.7 hectare per household today, the rising population density will reduce the possibility of access to land and continue to contribute to the steady fragmentation of farmland. This will lead to even more overexploitation, resulting in high levels of soil degradation and weak agricultural productivity (Kimonyo, 2006), increasing the number of land disputes (ICG, 2003a; CPCP, 2008; Ntampaka, 2006). Some analysts argue that this dynamic places the urban elite, who are not dependent on land, "in a position to 'buy' out the rural poor" (Jooma, 2005:9), further entrenching inequalities. Structural issues such as these lead Mathjis van Leeuwen to conclude that land disputes are normal and not just "a temporary problem related to returnees" (Van Leeuwen, 2007:2). Programmes focusing on land conflict mediation should, therefore, not only focus on land conflicts in relation to returnees, but also take into account the "vulnerable" population as a whole, who experience challenges in terms of land disputes (Van Leeuwen & Haartsen, 2005) and who also struggle to hold onto land, in the context of structural factors.

Dimensions of the land crisis 2: returnees and land occupation and expropriation

The return of hundreds of thousands of refugees is regarded as a trigger or proximate reason for the rise and intensification of land disputes in Burundi. However, throughout the last decades, returnees, IDPs and the local population have experienced land expropriation of various kinds. One very typical example is that refugees return home and find their land occupied by others. If the people cultivating the land seized the land shortly after the refugees left, knowing that the refugees are the original owners of the land, the case is regarded as land spoliation. In many cases, however, the occupiers may have bought the land from former neighbours or family members of the refugees, not knowing who the

original owner was. Sometimes, the occupiers have been refugees or IDPs themselves, searching for a new living base and therefore using land that is not cultivated. In other cases, the state expropriated the land while the owners were in exile.

One of the factors contributing to developments in 1993 and subsequent civil war was land disputes, following a rushed repatriation process that could not be facilitated by adequate conflict resolution mechanisms. Incidents of land appropriation contributed to returnees and IDPs being regarded with high suspicion by the local population (Jooma, 2005; ICG, 2003a; Van Leeuwen, 2009). Yet, there are interesting differences in studies that assess the importance of the land issue for returnees. A study by the UNOPS, UNDP and CNTB (2007), for example, claims that only 15% of all returnees experience land conflicts. In contrast, Kamungi, Oketch and Huggins claim that 90% of the problems that returnees experience involve land disputes (Kamungi et al., 2004).

Types of land expropriation and disputes

Due to the very protracted refugee situation and the complex development of legal regulations of land distribution, generalisation about the causes and nature of land issues is not possible per se (Van Leeuwen, 2007). Neither is there information or estimates on the total number of land disputes related to returnees. In a quantitative study on land disputes, CED Caritas lists 43 514 conflicts in 20 municipalities. However, the study states explicitly that this number may not include all cases of land conflicts by that time and, thus, the true number may exceed the CED Caritas list. The region with the highest number of conflicts – 11 996 land disputes – was counted in the municipality of Rumonge (UNOPS, UNDP & CNTB, 2007). Apart from regional differences, the types and scenarios of land occupations and expropriations as well as land disputes are numerous (Ntampaka, 2006).

There are several ways of categorising land disputes. One useful categorisation is according to who is involved, leading to the following four different but overlapping types of land disputes (Hilhorst, 2008):

- *Land disputes between neighbours* happen regularly and are mostly limited to land boundary disputes. They may occur more often when many refugees return, but they do occur on a regular basis in ordinary situations.
- *Conflicts within families* happen in many families with no refugee background, but they can also arise when refugees and IDPs return home (Van Leeuwen, 2007:14). Possible scenarios and conflict issues include disagreements related to inheritance and the division of land between family members; disputes resulting from polygamy or divorce; and recuperation conflicts, if the land of a refugee had been sold by the family staying behind (Ntampaka, 2006). Particularly during the 1980s, the government implemented parastatal development programmes, such as the *Société Régionale de Développement de Rumonge* (Regional Company for the Development of Rumonge) (SRD), leading to the expropriation of privately owned land (Van Leeuwen, 2007; ICG, 2003a).

- *Disputes between farmers and the state or other organisations* occur when land has been expropriated by the state for private use of state authorities or development projects (Kamungi et al., 2004), for example, or where occupants have been granted land titles that the original owners never received – for instance, when the occupant has cultivated the land for 30 years or more.
- Finally, *conflicts between returnees and the welcoming community* is the only category including the problem of returnees and IDPs, but it can include all the dimensions previously outlined. It is also the category containing the highest number of cases analysed in this report. Apart from all the foregoing scenarios, it includes situations where the returnee finds their land occupied upon return, where the first occupant has sold the land to a second occupant, or where a returnee who finds their land occupied cultivates someone else's land. These cases are especially vulnerable to conflicts involving land titles based on the 30 years rule in the 1986 Land Code, which states that persons who have cultivated land for 30 years or more gain legal ownership of that land. Within this type of dispute, it is reasonable to distinguish between three groups of particularly vulnerable people: women, returnees who left in 1972, and returnees who left in 1993 (Theron & Sachane, 2009).

Factors influencing the type and outbreak of land disputes

In many of the abovementioned scenarios, several persons or families hold legitimate claims to the same piece of land according to different legislations. This is due both to the evolution of legal land tenure in contradictory and inadequate ways for local and traditional circumstances, as well as the overlap of traditional customary and positive (written) law. The resulting complex “judicial pluralism” often leads to inadequate or unclear judgments in land disputes (Ntampaka, 2006; Ntampaka & Mansion, 2009).

Traditionally, land in Burundi is allocated either by the king or by the family father to his sons. Women are, thus, generally excluded from owning land (Ntampaka & Mansion, 2009). Also, customary law does not build upon a concept of “property” in the sense of private property belonging to an individual. Rather, what is owned is the right to use and cultivate land, and the family chief can redistribute the right of usage according to his will. Thus, positive law – which bestows or removes specific privileges upon an individual or group – introduced in Burundi did not generally take root in Burundian society, which does not see the need to replace a functioning and legitimate system that has endured for centuries, with time- and cost-intensive bureaucratic procedures (Ntampaka & Mansion, 2009). However, positive law is today of extreme importance, notably for returnees to be able to recover their land.

Two laws passed in 1976 were meant to encourage refugees to return, by emphasising their rights to regain their land and property. In reality, the cases brought to court most often lead to the land being divided between both parties, which amounts to a partial legalisation of land occupation (ICG, 2003a; Van Leeuwen, 2007; Van Leeuwen, 2009). As already mentioned, parastatal development programmes during the 1980s led to further expropriation of land (Van Leeuwen, 2007).

One important and highly contested legal act is the 1986 Land Code – which is in the process of being revised. Originally it required all land to be registered with the state, which was granted the right to interfere and decide in land issues – even concerning private property (Kamungi et al., 2004). Moreover, it stated that, irrespective of the conditions under which the land was taken, occupiers of land and property for 30 years or more were entitled to legal ownership. Thus, returnees who had left the country due to massacres during the 1960s and 1970s continue to have difficulty reclaiming their land, because the occupiers of their land are the legal owners, according to the 1986 Land Code (ICG, 2003a; Van Leeuwen, 2007).

In 2000, the Arusha Agreement recognised the challenges related to land and property issues, and the importance of addressing these issues for conflict resolution (Jooma, 2005). Protocol IV, Article 8 of the Agreement emphasises that all refugees and victims should be granted the right to recoup their land and property and, in cases where this is impossible, receive appropriate and fair compensation and indemnification (Van Leeuwen, 2007; CPCP, 2008). This includes the possibility of the distribution of state-owned land to returnees and victims. In order to facilitate these processes, a sub-commission was to be established under the *Commission Nationale de Réhabilitation des Sinistrés* (National Commission of Rehabilitation of Victims of War) (CNRS), responsible for the examination of land issues and disputes and possibilities of the redistribution of land (Jooma, 2005).



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Men carrying sugar cane

In addition to the complexity of the judicial regulations, the reach of the justice system is limited due to institutional weakness, long distances to rural areas, limited budgets and allegations of corruption. Moreover, Burundians are often not aware of their legal property rights and existing legal institutions, reducing their ability to assess the legitimacy of their claims (Hilhorst, 2008). Refugees who have been away from their property for a longer period of time, and second-generation refugees, have particular difficulties in reclaiming their land. In particular, there are differences between refugees from 1993 – who often can

reclaim and regain their land (even though they meet with other substantial problems) – and those who left in 1972, and whose land and property has been occupied or redistributed systematically over more than three decades (Kamungi et al., 2004). The latter returnees often lack knowledge about legal rights and institutions they can address. Further, whether the disputed land is considered private or state owned may have an impact on how the issue is dealt with (Hilhorst, 2008). In particular, the registration of land through *certificats de possession* (land titles) by the occupant has serious consequences, and the risk of dispossession for returnees who fled before they received their respective land titles (Jooma, 2005). In addition, even though the importance of ethnicity in land conflicts is disputed (Van Leeuwen, 2007), ethnic dimensions may play a role, where judgments are biased towards a certain ethnic group. Finally, the status and gender of the people involved in land disputes has a big impact on the process and its outcomes. Traditionally, women in their various roles (as wives, widows, daughters, sisters) are particularly vulnerable, due to their very limited land ownership rights. Additionally, there are a number of other vulnerable groups such as orphans, children of former or second wives, or landless people (for instance, members of the Batwa ethnic group) who have difficulties in having their right to land respected (Van Leeuwen, 2007).

Conflict resolution mechanisms and institutions

There are several institutions with assigned responsibilities concerning land issues. The different tasks and mandates, however, often overlap and are not clearly distributed between the institutions (Ntampaka, 2006; Kamungi et al., 2004). Responsible ministries are the *Ministère de l'Aménagement du Territoire et de l'Environnement* (Ministry for the Management of the Territory and Environment) (MATE), the *Ministère de l'Agriculture et de l'Élevage* (Ministry of Agriculture and Cultivation) (MAE), the *Ministère des Travaux publics et de l'Équipement* (Ministry for Public Works) (MTE), the *Ministère de la Solidarité Nationale, des Droits de la personne humaine et du Genre* (Ministry of National Solidarity, Human Rights and Gender) (MSNDG) and the *Ministère de la Justice* (Ministry of Justice) (MdJ) (Ntampaka, 2006).

In 1994, the *Ministère de la Réinsertion et de la Réinstallation des Déplacés et des Rapatriés* (MRRDR) was established, with the particular responsibility for “humanitarian assistance, voluntary return, resettlement and reintegration” (Jooma, 2005:3). The distribution of competencies and responsibilities between the MRRDR and the CNRS – Burundi’s fourth commission on returnees and land, established in 2003 following Article 3 of Protocol IV of the Arusha Agreement – is unclear. The CNRS was supposed to be independent of the government, with its tasks comprising the equal distribution of land for IDPs and refugees, their sustainable repatriation and reintegration, as well as particular support for vulnerable persons (ICG, 2003b; Jooma, 2005). The successor of the CNRS is the *Commission Nationale des Terres et autres Biens* (National Commission on Land and other Properties) (CNTB), established in 2006 for four years under the auspices of the vice president. The CNTB is responsible for identifying and redistributing illegally occupied land, notably in relation to land disputes involving returnees (Ntampaka & Mansion, 2009; CPCP, 2008). However, these commissions were met with scepticism and have not been allocated enough resources to follow up their mandate adequately (Van Leeuwen, 2007:4).



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Tribunal Residence in Cendajuru

Apart from a Supreme Court and Courts of Appeal, Burundi's jurisdictions include the *Tribunaux de Grande Instance* (Regional Courts) and the *Tribunaux de Résidence* (Residential Courts). Land issues are the responsibility of the *Tribunaux de Résidence* and comprise around 80% of their cases. In the event of an appeal, a case is first transferred to the *Tribunaux de Grande Instance*, and thereafter to the Supreme Court (Ntampaka & Mansion, 2009). Since bringing a case of land dispute to court often takes more time and financial resources than many Burundians possess, many feel excluded from access to the judicial institutions of the state.

Since 2005 and Article 37 of the law on the Organisation of Communal Administration (*loi n°1/016 du 20 avril 2005 portant organisation de l'administration communale*), the communities and local administration also have a right to mediate and intervene in land conflicts, together with the *Bashingantahe* – traditional “councils of nobles”. This regulation allows for direct appeal to the *Tribunaux de Résidence* (Ntampaka, 2006) and, hence, enables more direct access to the judicial system of the state. This more direct access is, however, challenged by the tribunals' limited resources, which make field visits to the conflict sites impossible, and by its very slow procedures. The results of a recent study show that local administrations deal with 48% of land disputes, whereas 28% are submitted to the *Tribunaux de Résidence*. The highest percentage (60%), however, are dealt with and resolved by the *Bashingantahe* and other social conflict resolution mechanisms (Ntampaka, 2006).

The *Bashingantahe* originally consisted of the “most respected community members on a hill. Their traditional roles included the settlement of local disputes, the reconciliation of individual persons and families, the authentication of land transaction, and to represent the local population to the authorities” (Van Leeuwen, 2007:5). They were established in the

seventeenth century during Burundi's monarchy, giving respected men of the communities the responsibility of being the "true guardians of social peace" (Ntahombaye, Gahama, Ntabona & Kagabo, 1999:13). However, the *Bashingantahe* lost their significance and independence due to marginalisation during the colonisation period (Van Leeuwen, 2007; ICG, 2003a). During the 1980s, they were re-established and cases of dispute were first channelled through *Bashingantahe* – who know the local situation and circumstances of the conflicts better than judges of the tribunals – before being referred to the tribunals in case of appeal. The tribunals apparently confirm more than 60% of the *Bashingantahe* judgments (Université de Burundi et al., 2007). Moreover, they are regarded cheaper but also less vulnerable to mismanagement in comparison to other mechanisms (Van Leeuwen, 2007). However, the respect widely granted to *Bashingantahe* has diminished since the conflict process, when some *Mushingantahe* showed signs of flawed practices and became more and more attached to state regulation and land titles. With the introduction of a judicial system, the *Bashingantahe* is further disadvantaged due to the fact that its decisions are neither legally binding nor does it contain an enforcement mechanism (Van Leeuwen & Haartsen, 2005). The *Bashingantahe* thus eroded to being a costly extra step before coming to a trial at one of the tribunals (Van Leeuwen, 2007; Université de Burundi et al., 2007). There are some that argue that corruption is in fact a big obstacle to the just treatment of land disputes in general, and is prevalent in most institutions dealing with them. *The Tribunaux de Résidence*, in particular, have been accused of being open to bribes in order to advance the case in one's own interests, according to Van Leeuwen (2007).



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PeaceVillage - Butaganzwa

In addition to the official bodies, there are other mediation projects. The Catholic Church, for instance, established a Commission for Justice and Peace in 1997, which – in contrast to the *Bashingantahe* – does not enjoy legal recognition but provides free advice, engages conflicting parties and raises awareness about specific land issues (Van Leeuwen, 2007). According to the UNOPS, UNDP and CNTB report, 16% of land disputes are resolved without third parties being involved, 41% by *Bashingantahe*, 35% by *Tribunaux de Résidence*, 6% through mediation by NGOs and 2% by *Tribunaux de Grande Instance* (UNOPS, UNDP & CNTB, 2007).

Conclusion part I

This needs assessment sheds light on the multiple challenges that Burundi experiences in terms of the repatriation and reintegration of refugees, as well as reconciliation between different societal groups. Moreover, it underlines the importance of land tenure for triple-R, in terms of economic security and cultural identity. The outlined structural factors – notably, shortage of land and fast population growth – make land issues a common part of Burundi society as a whole. Hence, in line with Van Leeuwen's argument, land disputes are challenges that are not only related to the return of refugees, but are the concern of the majority of Burundians, and have some of their origins in severe structural problems (Van Leeuwen, 2007). Projects dealing with the resolution of land disputes should, therefore, not only focus on returnees.

However, the return of several hundred thousand refugees – in particular, after the closure of camps in Tanzania – intensifies the challenge. In the spirit of peacebuilding, the resolution of land disputes in connection to refugees' repatriation is, therefore, the short-term priority of several government and non-government projects, including those run by ACCORD. The target population is over 800 000 refugees who fled the country since the 1970s, and who are – or have been – repatriating during the last two decades (ICG, 2003b). At the time of the study, ACCORD focused on land disputes in Bururi, Rutana and Ruyigi provinces.²

2 ACCORD initially focused on land disputes in Bururi, Rutana and Ruyigi. Since the beginning of 2011, ACCORD has a physical presence in the provinces of Bubanza, Bururi, Makamba and Rutana. ACCORD moved from Ruyigi to Bubanza due to an increased demand to address the growing repatriation of refugees from the DRC.

Part II: Mediating land conflict in Burundi: analysis and evaluation of ACCORD's Legal Aid Clinic Project

Section 3: Presentation of ACCORD's work and intervention

ACCORD has monitored developments in Burundi since its creation in 1992. The first direct involvement, however, started in the period between 1995 and 2000 with two objectives. First, ACCORD sought to gain a nuanced and intricate understanding of conflict and peace dynamics in Burundi. Second, ACCORD aimed at building confidence between itself and stakeholders in the peace process, such as civil society organisations and political actors. The latter enabled ACCORD to “play a second track diplomacy role in the Arusha peace negotiations” (Theron & Sachane, 2009), which culminated in the Arusha Agreement in 2000.

From 2001 to 2005, ACCORD worked to enhance the organisation as an impartial third party in Burundi and to strengthen the conflict management capacity of stakeholders. After the signing of the Arusha Agreement, this engagement centred on “the inclusion of all stakeholders to ensure peace consolidation” (Theron & Sachane, 2009). Accordingly, activities included the training of armed movements for negotiations and conflict management, as well as capacity building, to support their transformation into political parties. In addition, with the aim of “making a contribution to the political climate” (Theron & Sachane, 2009), CBWs in conflict management were conducted in different sectors of society, including civil society. One of the primary objectives of ACCORD's commitment was to involve civil society in the peace and reconciliation process. During this period, ACCORD opened its office in Bujumbura, in 2003.

ACCORD increased its involvement in the promotion of peace, reconciliation and effective governance between 2006 and 2008. One part of this engagement was presenting the Africa Peace Award to Burundi “for the outstanding achievement of settling years of civil war through a negotiated settlement and the successful democratic election of a new government in 2005” (Theron & Sachane, 2009:6). In the framework of an MoU between ACCORD and the government of Burundi for the period between 2006 and 2010, ACCORD facilitated the National Dialogue on Mechanisms for Transitional Justice to “give an opportunity to the population of Burundi to express themselves on the transitional justice process taking place in Burundi, as well as to create awareness of the different mechanism of transitional justice at the grassroots level” (Theron & Sachane, 2009:7). Meanwhile, ACCORD continued with capacity-building training sessions for government officials, administrative authorities and civil society, covering conflict management, legal matters and reconciliation.

Legal Aid Clinic Project

Background and aims

With the situation in Burundi improving after the Arusha Agreement, various post-conflict challenges came to the fore. As outlined in the needs assessment, these challenges included the management of general land disputes, with respect to the waves of refugees returning to Burundi. Hence, ACCORD established its Legal Aid Clinic Project in November 2004, supported by the UNHCR. The project's overall objective is to "provide the local population, and specifically the returning refugees, with assistance to deal with the challenges faced by both the welcoming communities and the returnees in the repatriation process" (Theron & Sachane, 2009:5).

The principal objectives of the Legal Aid Clinic Project are to:

- "contribute to reconciliation and non-violent conflict resolution at a community level"
- ensure "a sustainable repatriation of refugees"
- assist "with the reintegration of returnees into communities," and
- assist "with the protection of returnees" (Theron & Sachane, 2009:12).

The project aims to fulfil these objectives through the achievement of its immediate objectives, namely to:

- "inform returnees and local communities about their social, economic and political rights
- provide returnees and local communities with support networks to help them overcome challenges
- provide mediation and facilitation services to returnees and local communities to address any potential conflicts appropriate for mediation before they must be addressed to authorities
- reinforce the capacity of the population in terms of conflict management, so that they can themselves prevent and peacefully transform conflict that may arise
- promote a culture of reconciliation and peaceful cohabitation among returnees and local communities
- promote dialogue between returnees and local communities
- strengthen the relationships between various groups in communities through confidence building and developing skills in communication, mediation and negotiation
- contribute to the protection of returnees and other vulnerable groups through legal and/or judicial assistance" (Theron & Sachane, 2009:12).

Target group and areas of implementation

ACCORD recognises the importance of including all stakeholders in peace processes and peacebuilding. With the challenges experienced by returnees manifesting primarily

at community level, ACCORD's Legal Aid Clinic Project focuses on solutions at the local level. The main groups supported include returnees (both former refugees and former IDPs), the local welcoming/receiving communities – namely community leaders of various kinds (e.g. women, youth, media, religious leaders, political bodies), *Bashingantahe* and local or regional administrative authorities. However, the demand and need for services offered by ACCORD and other organisations far exceeds the ability and resources of the Legal Aid Clinic Project. In addition, with ACCORD being a neutral and impartial organisation, its activities are limited to those that do not necessitate taking sides in conflicts.

To this end, sensitisation and listening missions and mediation missions are undertaken “almost daily into *collines* and returnee transit camps” (Theron & Sachane, 2009:15). At the time of the study, the missions conducted by the Ruyigi office include missions into the *collines* of Gitega (Gitega Province), Itaba (Gitega Province), Gisuru (Ruyigi Province), Kinyinya (Ruyigi Province), Nyabitsinda (Ruyigi Province), Butaganywa (Ruyigi Province) and the transit camp of Nyabitare. The office in Rutana covers *collines* of Bukemba, Gihaaro and Gitaga communes (Rutana Province). The communes of Rumonge (Bururi Province), Mabanda (Makamba Province), Nyanza-Lac (Makamba Province) and the transit camp of Mabana are destinations of the Rumonge office missions.

Activities

To fulfil the outlined objectives, ACCORD engages in the following four activities:

Sensitisation and listening missions

The aim of sensitisation missions is to “familiarise the population with ACCORD as an organisation, and more specifically, with the objective of and the services offered by the project” (Theron & Sachane, 2009:15). The completion of sensitisation is followed by the start of listening missions, where cases suitable for mediation and those appropriate for referral to other institutions are identified. Whether cases require intervention by the judicial and administrative authorities or partner organisations depends on several factors, such as the nature and location of the case as well as beneficiaries' willingness to proceed. For cases not appropriate for mediation but nevertheless emotionally loaded, the listening missions also provide the opportunity for parties to share experiences and challenges with trained ACCORD staff, in order to avoid a more violent outbreak at a later stage. Cases involving the state as one side of the conflict are categorically referred to other institutions.

Sensitisation and listening missions thus serve a number of purposes: as preparation for successful mediation and to familiarise the population with ACCORD; to select cases suitable for mediation; to provide information about options of referral, legal rights and procedures; and to provide a space to share experiences and challenges. Once the sensitisation and listening missions have been successfully completed, selected cases are taken forward for mediation (hereafter: “mediation missions”).



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Mediation session under the Legal Aid Clinic Project, Rumonge, Burundi, 2009

Mediation missions

As outlined, ACCORD only mediates appropriate cases. That said, one of ACCORD's objectives is not to compete with other mechanisms of conflict resolution but rather to complement them and support them in their work. Accordingly, the aim of the mediation missions is "to offer an alternative conflict mitigation mechanism for vulnerable groups to not only ensure justice is done, but in addition to promote the peaceful cohabitation of parties to the conflict, since parties reach their own agreement avoiding the situation where you have a winner and a loser. If the mediation is successful it tends to result in the promotion of reconciliation between the parties, and assists in building relationships" (Theron & Sachane, 2009:17). Important in this objective is the fact that the parties to the mediation find their own solution, as opposed to a judgment handed down by a court.

The process of the mediation missions is as follows: the party submitting the case first receives information on different mediation and judicial processes available for resolving the case. If the beneficiaries wish to enrol in a mediation mission, they agree that ACCORD will invite both sides to the conflict to a mediation table and assist them to find their own solution through dialogue. The solution is a mutually agreed upon outcome of the mediation process, which culminates in a signed contract by all parties to the conflict. These agreements are protected under the law of Burundi (Article 33 Civil Code), which stipulates that voluntary agreements between parties, which do not violate any laws, are protected by law.³

³ ACCORD has also taken steps to legitimise the agreements further and ensure they receive recognition by the government and local administration. The ACCORD operation in Burundi signed an MoU with the CNTB in June 2010; one provision is that the CNTB will register the solutions reached by parties through the project (Razia, 2011).

Legal assistance

The legal assistance provided by ACCORD and its partner organisation *Advocats Sans Frontières* (ASF) aims to protect returnees and raise awareness about legal rights and procedures. Since ACCORD is an impartial and neutral organisation, its services in terms of legal assistance can only cover advice on beneficiaries' legal rights and different legal procedures. For some cases, claiming legal rights requires legal representation, which cannot be provided by ACCORD – and, in most of the cases, is not affordable by the parties concerned. Therefore, ACCORD signed a partnership agreement with ASF in 2006 starting in the provinces of Bururi and Makamba. Since then, ACCORD has submitted 268 cases to ASF; of these, 36 land and 19 sexual violence cases have been submitted to the legal system with the support of advocates and 277 cases received legal assistance (ACCORD Mid-year report 2009).

Capacity-building workshops

ACCORD's CBWs in conflict management and reconciliation aim to improve “the ability of community leaders and local administrative authorities to identify disputes, assess the situation and design appropriate responses before dispute situations develop into violent conflict” (Theron & Sachane, 2009:19).

Moreover, the objective of CBWs in legal matters (including land law, family law and human rights law) is to “reinforce the capacity of community leaders and local administrative authorities to function effectively within the legal system when needed, as well as to ensure they respect Burundian legislation and act accordingly” (Theron & Sachane, 2009:19).



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Interviewees in Mayengo

In addition to raising awareness and developing skills in conflict management, reconciliation and legal matters, the workshops aim to contribute to confidence building in communities.

The workshops usually run over three days and are conducted in Kirundi – the language most widely known in the country. The CBWs comprise conflict management and reconciliation modules, as well as legal modules on relevant legislation. The target population is composed primarily of community leaders, representing “women, youth, media, religious, returnees, internally displaced persons, demobilised combatants, *Bashingantahe* and local administrative authorities” (Theron & Sachane, 2009:19).

Implementation

Since November 2004, the implementation phase of the Legal Aid Clinic Project has been ongoing and developing, with legal aid clinics established in Bururi, Ruyigi and Rutana provinces and projects established in Makamba, Gitega and Cankuzo provinces.

According to the Bujumbura office, 8 719 conflicts were registered between 2005 and June 2009. Of these, 6 122 (70.2%) cases involved returnees – 2 705 (44.2%) of whom left Burundi in 1972, and 3 417 (55.8%) of whom left following events in 1993. For these cases, 2 725 sensitisation and listening missions and 3 647 mediation missions were conducted. 1 080 (29.6%) of the mediation missions succeeded and were mainly implemented – with the most common solutions being division of land, restitution of land and compensation – while 1 228 (33.7%) mediation missions unsuccessful, and the remaining cases are yet to be completed. Another 2 960 cases were referred to *Tribunaux de Résidence* or *Bashingantahe*. ACCORD further noted 664 cases where mediation conducted by former participants of the CBWs succeeded.

Is ACCORD reaching its objectives?

Sustainable conflict prevention, management and resolution

As outlined in the needs assessment, land scarcity, population growth and poverty are structural factors that heighten the risk of land conflicts in Burundi. Combined with waves of returnees, these factors lead to disagreement about family or land boundary issues, often paired with occupants’ refusal to leave the land. In some cases, the occupants already have received land titles for the property concerned. In such cases, the outcome is often land conflicts that risk escalating into violence. This is exacerbated by legal pluralism, which results from traditional and written laws that often contradict each other. This complexity creates confusion and leads to a lack of knowledge about legal rights and responsible institutions on the part of parties in a dispute. Moreover, litigation is expensive, and costs attributed to alleged corruption seem to contribute to further inaccessibility of the legal system.

In the broadest sense, the objective of ACCORD’s Legal Aid Clinic Project is to intervene in these dynamics in order to contribute to a sustainable resolution of conflicts. Being involved in mediation rather than development, ACCORD’s projects have only limited

reach concerning the structural factors of land scarcity, population growth and poverty. However, ACCORD can raise awareness about alternative possibilities of conflict resolution and solutions not involving land (for example, non-agricultural income opportunities), and has the potential of intervening in background and proximate factors that lead directly to conflict.

Thus, it can be argued that **ACCORD's legal assistance, capacity-building workshops, sensitisation and listening missions, and mediation missions lead to sustainable conflict prevention, management and resolution (hypothesis one).**

Based on the presentation of ACCORD's Legal Aid Clinic Project, this general intervention hypothesis can be broken down to the following sub-hypotheses:

- Mediation missions lead to *satisfying consensus and solutions* of land conflicts.
- Mediation missions lead to the *implementation of solutions*.
- Mediation missions lead to *sustainable solutions* of land conflicts.
- CBWs lead to raised *awareness of different solutions to land disputes*, including non-land solutions.
- Mediation missions lead to a feeling of recognition of and understanding for the beneficiaries' experiences and claims, contributing to *psychological or emotional alleviation* and prevention of their potential violent expression.
- CBWs and mediation missions lead to *confidence building*.
- CBWs and mediation missions lead to raised *awareness about legal rights and conflict resolution procedures, institutions and mechanisms*.
- CBWs and mediation missions lead to *raised awareness and knowledge* as well as developed and applied *skills in conflict prevention, management and reconciliation methods*.
- CBWs lead to *increased efficiency, competence and accountability of other institutions*.

Social reintegration and reconciliation

The needs assessment also emphasised the link between the resolution of land conflicts and the reintegration of returnees and reconciliation processes. Here, it is assumed that problems within the family and community, confrontations between conflicting parties and scepticism against returnees lead to weak social reintegration and a lack of reconciliation and mutual understanding. Further, a lack of economic self-reliance and income possibilities impede the economic reintegration of returnees. Similarly, a lack of awareness about political processes and peaceful democratic means of expression hampers returnees' political reintegration.

ACCORD aims to assist returnees in reintegration, and society as a whole in its reconciliation process. Thus, it can be argued that **ACCORD's mediation missions and capacity-building workshops lead to social, economic and political reintegration of returnees (hypothesis two).**

Again, this general intervention hypothesis can be divided into several sub-hypotheses:

- Mediation missions lead to the *improvement of social reintegration* interaction between community members and returnees.
- Mediation missions and CBWs lead to interaction and exchange, entailing awareness about the other's experiences and challenges, thus *fostering interpersonal and intergroup understanding*.
- Mediation missions entail solutions leading to an increase in *income sources and possibilities*.
- Mediation missions and CBWs lead to an *increase in participatory political activity*.

The objective of this research project evaluation is to test these hypotheses. The following section outlines the results and analysis of the research.

Section 4: Evaluation of ACCORD's Legal Aid Clinic Project

"To provide the local population, and specifically the returning refugees, with assistance to deal with the challenges faced by both the welcoming communities and the returnees in the repatriation process" (Theron & Sachane 2009:5) – this is the stated objective of ACCORD's Legal Aid Clinic Project. The purpose of this section is to evaluate the work of the Project, and to assess whether their activities lead to the desired effects. Examining whether the hypotheses proposed in the previous section hold serves to find answers to the two sets of questions stated in the introduction:

- In what ways do the activities of ACCORD Legal Aid Clinics contribute to the sustainable resolution of land disputes? What are the different types of solutions found? Are they sustainable?
- What effect does ACCORD's mediation have on the reintegration of returnees and the reconciliation process in Burundian society?

To this end, the data collected through 89 questionnaires during interviews with beneficiaries of mediation and of CBWs is statistically analysed. Moreover, the analysis is complemented and qualified by an analysis of qualitative data. In order to remain transparent, different sections clearly indicate on which dataset they build upon.

General results of the qualitative analysis show that all participants of in-depth interviews and focus-group discussions are satisfied with ACCORD's land conflict mediation project. Many respondents, especially the members of the *Bashingantahe* and the beneficiaries of mediation missions, value ACCORD's presence and support, arguing that the organisation makes a significant contribution to conflict resolution and peacebuilding at a community level. Many respondents reported fewer disputes in their communities since ACCORD started its mission and, by all accounts, ACCORD staff are competent, well-trained and specialised in several areas, such as conflict resolution, social affairs and legal matters.

The **main results of the quantitative analysis** demonstrate that ACCORD's Legal Aid Clinic Project contributes significantly to the resolution of land disputes. Even though

the proposed solutions need to be complemented by non-land-based solutions in order to contribute to a long-term sustainable solution of Burundi's land challenges as a whole, they do at present lead to the sustainable resolution of a significant number of individual conflicts. Moreover, mediation missions and CBWs have important positive socio-emotional effects on the beneficiaries; these activities also contribute to capacity building and raise awareness about legal institutions and conflict resolution mechanisms. The effects of ACCORD's Legal Aid Clinic Project activities alone⁴ on reintegration and reconciliation are limited, however. Social and political reintegration is not directly facilitated by mediation or CBWs, but economic reintegration is partly supported. However, most interviewees are of the view that there is potential for ACCORD to make a greater contribution to reintegration and intergroup reconciliation.

In the following section, the results of the analyses are presented, in relation to the respective hypotheses outlined above.

I. Sustainable conflict prevention, management and resolution

Mediation for me means peace.

(Returnee in Rumonge, beneficiary of mediation)

As outlined in the previous section, with its legal assistance, capacity-building workshops, sensitisation and listening missions, and mediation missions, ACCORD aims at sustainable conflict prevention, conflict management and conflict resolution.

The quantitative analysis shows that more than half of all mediations are successful, and beneficiaries of successful mediation are generally very satisfied with the agreed solutions. Most solutions involve the division, compensation or restoration of the original conditions before exile. Having agreed to a solution, most are also implemented in practice, and hold without resumption of conflict or referral to other institutions. A possible solution in this type of mediation is that ACCORD and other institutions in land mediation could play a more active role in suggesting options/possible solutions to parties than stated in its definition of and approach to mediation. There is also need to invest knowledge and consideration of non-land solutions to conflict by the staff in the field offices. Yet, in light of the needs assessment and qualitative analysis, non-land solutions are and will be crucial to resolve specific land conflicts and Burundi's general land problem sustainably.

Participants of mediation missions report a decrease of anger and feelings of relief after mediation, since they develop courage to share experiences and feelings with others. This can be an important psychological step to prevent violent expressions of emotions and reactions to certain experiences. Mediation missions and CBWs also contribute to confidence building and lead to an increased awareness about property rights and legal institutions and mechanisms. In addition, participants of CBWs report an increase in knowledge of legal matters and conflict resolution than before the workshops; they also make use of the conflict management tools taught. However, the interviewees do not perceive a significant increase in the quality of existing institutions, such as Bashingantahe

4 ACCORD's other operations address reconciliation and reintegration more comprehensively, but were beyond the scope of this study.

and the judicial system – even though some of their staff members also participated in ACCORD CBWs.

In what follows, these findings are outlined in more detail.

Direct impacts of ACCORD mediation: sustainable solutions to land conflicts

Do mediation missions lead to satisfying consensus and solution of land conflicts?

Data on land conflict and mediation outcomes

The quantitative data indicates that ACCORD’s mediation leads to successful resolution of conflicts. In the focus-group discussions conducted with ACCORD staff in Ruyigi, it was recorded that 60% of land disputes and 80% of other types of conflicts have been resolved. The quantitative analysis of all questionnaires completed by beneficiaries of mediation shows a higher success rate, which nevertheless confirms the positive trend. Of 53 mediation cases where data is available through the questionnaires, 20 (37.7%) are unsuccessful mediation or mediation attempts, while 28 cases (52.8%) were resolved. In 1.9% of cases, the mediation is still ongoing, and in 7.5% of cases, mediation had not started by the time of research (see Table 1). In comparison to the total number of cases benefiting from ACCORD mediation between 2005 and June 2009, this sample includes a higher percentage of successful mediation than is presented in ACCORD’s work. Further, out of 51 cases, only six cases (11.8%) of conflicts experienced by interviewees were not in relation to refugees returning to their occupied land, whereas 45 cases (88.3%) were partly or mainly in relation to refugee return (see Table 2). Since many returnee-related conflicts are also about family or other social issues, to what extent the conflicts experienced by the interviewees were in relation to land was also analysed. In this sample, the overwhelming majority (90.4% out of 52 cases captured in the questionnaires) involved land, 1.9% were partly related to and 7.7% were not related to land. Accordingly, in 88.9% of 54 cases, land was the main incompatibility in the conflict, while 3.7% related to family issues and 7.4% to other issues (see Table 3). As expected, the beneficiaries of successful mediation are satisfied with the solution, and are significantly more satisfied with the mediation outcome than beneficiaries of unsuccessful mediation (see Table 4).

Table 1: Mediation outcome

		Frequency	Percent	Valid percent	Cumulative percent
Valid	No	6	10.9	11.8	11.8
	Partly	14	25.5	27.5	39.2
	Yes	31	56.4	60.8	100.0
	Total	51	92.7	100.0	
Missing	3	3	5.5		
	System	1	1.8		
	Total	4	7.3		
Total		55	100.0		

Table 2: Conflict in relation to return

		Frequency	Percent	Valid percent	Cumulative percent
Valid	No	6	10.9	11.8	11.8
	Partly	14	25.5	27.5	39.2
	Yes	31	56.4	60.8	100.0
	Total	51	92.7	100.0	
Missing	3	3	5.5		
	System	1	1.8		
	Total	4	7.3		
Total		55	100.0		

Table 3: Main incompatibility

		Frequency	Percent	Valid percent	Cumulative percent
Valid	Land	48	87.3	88.9	88.9
	Family issues	2	3.6	3.7	92.6
	Other	4	7.3	7.4	100.0
	Total	54	98.2	100.0	
Missing	System	1	1.8		
Total		55	100.0		

Table 4: Satisfaction with solution* mediation outcome cross-tabulation^a

Count		Mediation outcome		Total
		Failed	Successful	
Satisfaction with solution	Not at all	5	0	5
	Rather yes	0	1	1
	Yes	4	27	31
Total		9	28	37

a. *MedSplit* = .00

Women

The needs assessment mentioned that women are traditionally not entitled to own large pieces of land. Consequently, one would expect women to have a more difficult position in land conflicts than men. In the cases analysed, however, gender has no impact on the likelihood of mediation success. Thus, gender does not influence the mediation outcome.

Geographical variability

ACCORD staff from all regions consider conflicts in the Bururi region more difficult to resolve than those in Ruyigi region. It is argued that the longer refugees are in exile, the longer their land has been occupied, with the occupants possibly having received land titles in that time. Consequently, a land dispute between a returnee and a resident will be more difficult to resolve if a long time passed since the refugee left Burundi. This view was not supported by the analysis of the dataset, however. Curiously, we find that beneficiaries who spent 10 years or more in exile had higher chances of finding a successful solution to their conflict than those who spent less than 10 years in exile (see Table 5). It is not clear which factors led to this result, and this phenomenon requires further investigation. The sample size could be a factor, or unknown mitigating circumstances may play a role.

Table 5: Mediation outcome

Year 10	Frequency	Percent	Valid percent	Cumulative percent		
.00	Valid	Failed	15	51.7	51.7	51.7
		Successful	12	41.4	41.4	93.1
		Ongoing	1	3.4	3.4	96.6
		Not started	1	3.4	3.4	100.0
		Total	29	100.0	100.0	
1.00	Valid	Failed	5	19.2	20.8	20.8
		Successful	16	61.5	66.7	87.5
		Not started	3	11.5	12.5	100.0
		Total	24	92.3	100.0	
	Missing	4	1	3.8		
	System	1	3.8			
	Total	2	7.7			
	Total	26	100.0			

Note: If the time of refuge was 10 years or longer, the variable is coded 1.00, if the time of refuge was shorter than 10 years, the variable is coded .00.

The role of mediators

An analysis of the qualitative and quantitative datasets raises issues around the role of the mediator in the process. ACCORD's approach to mediation includes – as a characteristic of mediation and to ensure sustainable solutions – that the beneficiaries find their own solutions. However, focus-group interviews and questionnaire-based interviews show that ACCORD mediators play a more active role by providing various options that have worked in the past for moving forward – but without suggesting one particular way forward. It may be prudent to clarify or even reconsider the role and limitations of mediators. ACCORD may wish to consider whether its mediators should be more or less involved in proposing appropriate options, while keeping in mind that suggestions may put pressure on parties to accept and limit themselves to the options presented by ACCORD staff, whether or not they themselves are convinced that this is the best solution. The sense from the research was that this may need further consideration, and a more clear institutional understanding needs to be developed with regard to the role of the mediator, which balances organisational objectives with the realities of mediation. It would be wise to study the lessons from similar mediations as part of this process. That said, positive outcomes from mediation, as described by the interviewees, include:

The improvement of the situation is due to the fact that we do things together, we meet, and together we win.

(Community leader in Ruyigi, beneficiary of CBW)

Mediation helps the people to understand that there can be an understanding, and not only one winner and one loser.

(Returnee in Rumonge, beneficiary of mediation)

In light of the above evidence, the **first hypothesis** outlined in the presentation of ACCORD’s work and goals – namely that **mediation missions lead to satisfying consensus and solution of land conflicts** – is supported by the analysis of the collected data. Even though these are positive results showing that ACCORD mediation missions often lead to satisfying consensus and solutions to land conflicts, the reasons for unsuccessful mediation should be analysed further. Notably for cases of shorter times in exile, more analysis is needed to explain the anomaly and improve the rate of success of ACCORD’s mediation. Moreover, the process of mediation, and the role and limits of the mediator, require further discussion and research.

Are mediated solutions implemented and sustainable?

Data

The sustainability of solutions requires that they are fully implemented. In the conflicts analysed, 82.1% of successfully mediated solutions are implemented, and 85.7% of mediation beneficiaries are very satisfied with the implementation. However, 17.9% of the found solutions are not at all or only partly implemented (see Table 6).

Table 6: Implementation of solution^a

		Frequency	Percent	Valid percent	Cumulative percent
Valid	No	1	3.6	3.6	3.6
	Partly	4	14.3	14.3	17.9
	Yes	23	82.1	82.1	100.0
	Total	28	100.0	100.0	

a. Mediation outcome = successful

One way to improve implementation is for beneficiaries to draw on personal social support structures for assistance. ACCORD emphasises that solutions should be implemented with the help of persons close to the beneficiaries, but most beneficiaries do not report receiving any from, for instance, neighbours or friends. Thus, while solutions are generally implemented, there possibly is scope for the process to be improved. While the powers for implementing agreements lie with the parties who have recourse to the law, ACCORD does provide support and advice when parties face challenges. However, it relies on the parties to be accountable, given that cases are voluntarily brought to ACCORD for mediation, and the ACCORD stance is that they should be voluntarily implemented.

Legality of mediated solutions

Beneficiaries argue that one way would be for ACCORD to enforce solutions that would lead to implementation, but this can only be done through legal channels. Solutions are recognised by Burundian law (Article 33 of the Civil Code), which stipulates that voluntary agreements between parties that do not violate any laws are protected by law. This means that violations of agreements become matters for civil action, and therefore enforcement and implementation are beyond the scope of ACCORD's work. That said, ACCORD in Burundi took steps in 2010 to legitimise agreements further when it signed an MoU with the CNTB in June 2010. One of the provisions of the MoU is that the CNTB will register the solutions reached by parties through the project.

One issue that may hamper successful implementation relates to perceptions about mediated solutions – the qualitative analysis shows there is confusion among interviewees (beneficiaries, stakeholders and some non-legal project staff) about the legality of mediated agreements. This may lead to non-implementation if parties “give up”, feeling that they have no recourse to the law.⁵ Some non-legal ACCORD staff also feel that mediation efforts are often fragile, and have questioned the durability of agreements – according to some, parties to an agreement can change their mind at any time, even though contracts should be understood as legally binding. There was a sense that the next generation may question and oppose agreements and, if so, the mediation process may failed in the long term.

That said, the presented analysis of the questionnaires supports the **second hypothesis** that *mediation missions lead to the implementation of solutions*. The implementation process may be improved, while stakeholders and beneficiaries should receive information on the legal status of mediation-based agreements.

Types of mediated solutions and non-land solutions

The fact that there is a consensus about an adequate solution and its implementation is not the only factor that ensures sustainability. The type of solution also plays an important role, for sustainability, and for land issues in Burundi in general. Three types of solutions are typical for ACCORD mediation. Division of property is the most common solution (39.3% of successful mediation), with compensation for lost property (28.6%) and a return to the original conditions before the refuge (21.4%) (see Table 7). In 92.6% of successfully mediated cases and in more than half of all mediated cases, there is no resumption of conflict after mediation – and, in most, no referral to other institutions after mediation. However, in 88.9% of unsuccessful cases of mediation, the conflict was still ongoing at the time of the interview. Nevertheless, a majority of beneficiaries of mediation and CBWs are optimistic that mediated solutions hold.

5 The cost of litigation may also prevent parties who are aware of their legal rights under the mediated agreements reached, to seek to enforce implementation.

Table 7: Solution type^a

		Frequency	Percent	Valid percent	Cumulative percent
Valid	None	1	3.6	3.6	3.6
	Original conditions before return	6	21.4	21.4	25.0
	Division	11	39.3	39.3	64.3
	Compensation	8	28.6	28.6	92.9
	Other	2	7.1	7.1	100.0
	Total	28	100.0	100.0	

a. Mediation outcome = successful

These significant results show that **successful solutions mediated by ACCORD lead to sustainable solutions in terms of conflict termination (hypothesis three)**. The actual process of mediation as such, however, does not have appeasing influences on conflicts.

Do CBWs raise awareness about different types of solution for land disputes?

A broader concern – as highlighted in the needs assessment – is that the above types of mediated solutions, while successful, are not adequate for tackling Burundi's long-term land shortage. It has been shown that Burundians farm increasingly smaller plots of land – many smaller than half a hectare. Hence, solutions that are not bound to land will be of utmost importance for a sustainable solution process to Burundi's land challenge in the long term.

The significance of land to Burundians and the focus on land-related solutions to conflict are highlighted by the results from interviews with beneficiaries of CBWs on conflict management and legal matters. When asked to identify possible solutions to conflict, the three above solution types (see Table 7) are also the ones proposed by the interviewees who were beneficiaries of CBWs. All of them report an increase in knowledge about different solutions to land conflicts. This finding is interesting as such, since this is the case for beneficiaries of CBWs on conflict management and those on legal matters. However, when asked to propose a solution to a complicated example conflict, none of the interviewees were able to name any solutions that would not involve land. This also was the case when they were specifically asked to name solution types that go beyond land, such as other types of income-generating activities. This outcome is not surprising, considering the importance of land in Burundian society.

Thus, while solutions found through ACCORD mediation do indeed resolve individual land disputes in the short term, they ignore the long-term perspective of solutions to land conflicts that are necessary to resolve Burundi's land challenges sustainably as a whole. The fourth hypothesis, that capacity-building workshops lead to raised awareness about different types of solution for land disputes, is supported to a certain extent, this but does not yet contribute to the spread of knowledge about and implementation of non-landbased solutions.

Do mediation missions have positive socio-emotional effects on beneficiaries?

The positive effect of ACCORD mediation is not only limited to the solution and implementation of land disputes. Mediation may also have important socio-emotional benefits for the beneficiaries, especially in the case of successful mediation. The **fifth hypothesis** is that ***mediation missions lead to a feeling of recognition of and understanding for the beneficiaries' experiences and claims, leading to an alleviation of emotions and prevention of a potential violent expression of them.*** The results of the questionnaires demonstrate that, generally, mediation beneficiaries feel significantly less angry after mediation than before. They feel more alleviated and have more courage to share their experiences and feelings after mediation.

In the words of some interviewees:

Of course I was angry, because they ate and we were hungry.

(Returnee in Rumonge, beneficiary of mediation)

Instead of being angry at the returnee, I am happy to see how he as my neighbour now can build a house on a new piece of land.

(Community member in Rumonge, beneficiary of mediation)

Additionally, the majority of interviewees report significant differences between the alleviation after sharing with ACCORD and after sharing with other community members. That ACCORD mediation helps finding a solution is often mentioned as a reason for this. One interviewee noted:

The quality difference between talking to ACCORD and talking to friends is that ACCORD's solutions are more effective where the rest of the population is helpless.

(Returnee in Ruyigi, beneficiary of mediation)

The result is similar for male and female beneficiaries; thus, male and female participants experience a similar decrease of anger, increase of alleviation and possibilities and courage to share their experiences and feelings.

Beneficiaries of unsuccessful and successful mediation, however, seem to experience these effects in different intensities. Where mediation is unsuccessful, beneficiaries naturally often continue being angry and feel somewhat less relieved than beneficiaries of successful mediation (see Table 8). As with satisfaction about the solution, a successful solution thus also contributes to the beneficiaries' well-being, while the mediation process as such has some impact in socio-emotional terms. Usually, feelings of relief and decrease of anger are important aspects to prevent potential violent expressions of emotions and reactions to certain experiences. It is a positive result that ACCORD beneficiaries feel generally relieved. The research indicates that more could be done to provide socio-emotional support through the process of sharing of experiences and mediation, so as to extend the benefits to unsuccessful mediation.

Table 8: Socio-emotional effects e) difference in alleviation after sharing with ACCORD compared to sharing with others* mediation outcome cross-tabulation^a

Count		Mediation outcome		Total
		Failed	Successful	
	Not different at all	2	0	2
	Somehow different	1	3	4
	Very different	11	15	26
Total		14	18	32

a. MedSplit - .00

Do mediation missions and CBWs contribute to confidence building?

One contribution to alleviation after mediation may also be through the fact that beneficiaries feel supported, and that they have learned about more tools and institutions that can help them with their land issue. The data analysis shows that both CBWs and mediation missions do, indeed, contribute to confidence building. Thus, the beneficiaries feel more empowered to defend their rights after the workshops/mediation than before. Men and women feel equally capable to do so. But beneficiaries of mediation generally feel more able to defend their rights than beneficiaries of CBWs. This is balanced by the fact that beneficiaries of CBWs experienced a higher increase of confidence than beneficiaries of mediation. Thus, after the mediation/CBW, the beneficiaries of both categories have reached a rather similar level of confidence. Therefore, participants of both activities feel more empowered – the increase in confidence is, however, higher for participants of CBWs than for beneficiaries of mediation. The fact that, as the **sixth hypothesis** states, **CBWs and mediation missions lead to confidence building**, contributes to a general encouragement and empowerment of beneficiaries, enabling them to take useful and necessary steps in case of conflict.

Do CBWs and mediation missions lead to raised awareness about legal rights and conflict resolution procedures, institutions and mechanisms?

Knowledge builds confidence and, therefore, participants of CBWs and mediation should receive and understand their legal rights and the various mechanisms or bodies through which conflicts can be resolved. Although the lawyers in the ACCORD field offices provide legal advice and conduct training on legal issues, the qualitative results reveal some challenges concerning the beneficiaries' understanding and awareness about different conflict resolution institutions – such as the *Bashingantahe*, administrative authorities, judicial system and ACCORD mediation. Most of all, many beneficiaries get confused between

the institutions and do not understand their differences. According to ACCORD staff, the public often confuse ACCORD with other organisations specialising in the same area, such as the *Bashingantaha*. This reportedly complicates its (ACCORD's) mission and lead to inefficiencies. A second challenge reported by staff is when parties do not respond to their invitation. This is often because people view an invitation to mediation from ACCORD as a summons to court and only reply on a second or third invitation. This affects ACCORD's ability to provide fast and effective mediation services to prevent violent conflict.

Nevertheless, all the beneficiaries of CBWs interviewed for the qualitative analysis report that they gained knowledge and skills through the workshops, dramatically improving their mission. They feel more capable of resolving conflicts and they learned how to refer people to the right organisations or institutions. Complementing the latter, the results of the quantitative analysis report that CBWs in conflict resolution and legal matters are also perceived as beneficial and necessary in terms of increased knowledge and awareness. Even more so, they show that beneficiaries of mediation gain significant knowledge about legal rights and legal institutions. Thus, both beneficiaries of mediation and of CBWs feel more aware about property rights and legal institutions and processes after the mediation or workshops than before. Beneficiaries of successful mediation generally prove more aware about property rights and legal institutions than beneficiaries of unsuccessful mediation, but both perceive a significant increase of knowledge. This is an important result, since it shows that successful mediation has a positive impact on the level of knowledge of the beneficiaries – and, no matter what the outcome, this empowers community members to identify appropriate institutions to deal with issues and to defend their rights more generally.

Mediation makes that the people are calm, not excluded, have access to their rights and opens their hearts for cohabitation.

(Community leader in Rumonge, beneficiary of CBW)

Both beneficiaries of CBWs in conflict management and legal matters show similar levels of awareness. However, a comparison between beneficiaries of mediation and beneficiaries of CBWs shows that beneficiaries of mediation generally have a higher level of knowledge before mediation than beneficiaries of CBWs before the workshops. This may be due to the fact that beneficiaries of mediation often are informed about the different possibilities they have to claim their rights before they seek support by ACCORD, whereas beneficiaries of CBWs may not have been confronted with such a need beforehand. Yet, the increase of knowledge is higher for participants of CBWs than those of mediation, meaning that they learn more during the course of their workshop than the mediation beneficiaries during the mediation process. Balancing the original difference, the results show that the level of knowledge after the CBWs is similar to the level of knowledge after the mediation. This learning experience is not influenced by the time returnees spent in exile, even though there is a difference in the level of knowledge about property rights between those who spent 10 years or more in exile and those who spent less time in exile before the mediation.

The **seventh hypothesis**, stating that **CBWs and mediation missions lead to raised awareness about legal rights and procedures as well as increased awareness of different institutions and mechanisms** existing for conflict resolution, is thus supported by both the qualitative and the quantitative analysis. The qualitative analysis shows, however, that many Burundians do not know the difference between the various institutions. More extensive sensitisation missions that focus on the general public may be needed to explain the work of different institutions, and not only to beneficiaries of CBWs and mediation.

Do those who benefit from CBWs and mediation missions develop and apply skills in conflict prevention, management and reconciliation methods?

Knowledge of rights and institutions, and skills in conflict management only have lasting value if they are applied. In the focus-group interviews, ACCORD staff in Ruyigi and Rumonge claimed that the sensitisation, listening and mediation missions and CBWs have important impacts on the population. They often experience that people who have been trained support others and become drawn into the resolution of conflicts within their own community. Moreover, according to the staff, people from the entire region come to ACCORD and ask for assistance, even from areas where ACCORD does not operate.

This result is supported by the analysis of the questionnaires. All participants of CBWs feel that they learned a great deal about methods of conflict prevention, management and results through the CBWs. They also assert that they increasingly use the tools they learned about (see Table 9). As one of the interviewees claimed:

The capacity-building workshops prepare the hearts of people for mediation and enlightens us about good social relations.

(Community leader in Rumonge, beneficiary of CBW)

Table 9: Use of conflict management methods a) before workshop* use of conflict management methods b) after workshop cross-tabulation

Count		Use of conflict management methods b) after workshop		Total	
		Not very much	Sometimes	Very often	
Use of conflict management methods a) before workshop	Not at all	2	5	10	17
	Not very much	0	2	7	9
	Sometimes	0	0	4	4
	Very often	0	0	2	2
Total		2	7	23	32

This increase of knowledge about conflict management tools and their use is similar for participants of CBWs in legal matters and conflict management and reconciliation. The latter result is somewhat surprising, considering the fact that workshops about legal matters lead to the increased use of conflict management tools. Therefore, the results need to be interpreted with caution. Even though these results are generally very positive and show that **CBWs lead to raised awareness and knowledge as well as developed and applied skills in conflict prevention, management and reconciliation methods (hypothesis eight)**, it may be fruitful to assess how different workshop types vary in content, and to consider whether this distinction is useful. If so, the distinction should be clarified to the conductors of workshops.

Do CBWs contribute to an increase in the efficiency, competence and accountability of the judicial system and Bashingantahe?

The final hypothesis in the section on sustainable conflict prevention, management and solution, relates to an indirect impact of CBWs. ACCORD views its mission as a complement to, not substitute of, other institutions. The question is whether – beyond the obvious fact that it lessens the work load of other institutions – ACCORD’s work also has the potential to contribute to an improvement in the work of other organisations. In what follows, participants’ perceptions on general quality, but also a quality increase of other institutions resulting from ACCORD’s work, are analysed.

Interviewees’ views on the quality of *Bashingantahe*, the judicial system, administrative authorities and ACCORD mediation were captured quantitatively and qualitatively.

The qualitative data shows that the majority of the respondents believe that ACCORD's work has an impact at national level or that there is potential for future impact. Members of the *Bashingantahe* and the administrative authorities reported that their work has improved and that they have been able to assist more people, as a result of CBWs and mediation missions. Therefore, knowing that ACCORD is working in several regions, they expect to see an impact on conflicts at national level.

This impact at a national level, despite ACCORD's limited geographical focus, is likely to be quantitative (reducing actual number of cases to deal with) and qualitative (institutions deal with fewer cases and staff are better trained through CBWs). This is supported by perceptions that judges and *Bashingantahe* are becoming more efficient. Another finding from the qualitative analysis is that evidence of corruption has decreased. According to the interviewees, these changes may be linked to ACCORD's influence on their behaviour and expectations. Moreover, ACCORD was able to influence the treatment of women, such that several *Bashingantahe* members reported that women played more prominent roles within communities and are better able to defend their rights.

The statistical analysis of the questionnaires supports the qualitative analysis. A high number of beneficiaries of mediation believe that there is potential for CBWs to improve the work of the judicial system, administrative authorities and the *Bashingantahe*. In a more detailed analysis, beneficiaries of CBWs confirm that they perceive some actual increase in quality of all three institutions after they participated in ACCORD CBWs. In a comparison of the interviewees' perception of the different institutions, they reported an overall difference in quality between the institutions. Much work, however, remains to be done to educate more staff members of existing institutions in conflict resolution and legal matters. Still, some interviewees are optimistic:

To compare the qualities of the institutions before and after a capacity-building workshop is like comparing an illiterate to a literate person.

(*Mushingantahe* in Rumonge, beneficiary of CBW)

During the trainings, they [the tribunals] understood that we know about their illegal practices. I was even able to stand up, tell them what I dislike with [sic] them, and vice versa.

(*Mushingantahe* in Ruyigi, beneficiary of CBW)

In order to get a more differentiated picture of beneficiary perception of the quality of mediation, judicial institutions and administrations, eight interviewees who had experience with all mentioned institutions took part in Osgood scaling exercises. The interviewees were asked to evaluate mediation, the judicial system and the *Bashingantahe* to certain quality criteria. For this, they situated the different institutions on a 1-5 scale, where 1 signifies a rather negative extreme and 5 a positive extreme of the respective criterion. Through this exercise, the beneficiary perceptions of differences between the institutions on various quality levels such as relevance, bias,

corruption, accessibility, effectiveness, difficulty of task and future importance could be analysed.⁶

In most of the variable pairs, mediation is scored significantly higher than the judicial system, and the judicial system higher than *Bashingantahe*. Thus, mediation is, in general, considered better than the judicial system and a lot better than the *Bashingantahe*. Accordingly, whilst all three of the institutions are considered quite helpful, the *Bashingantahe* are, a lot more effective and more accessible than the judicial system but considered relatively more vulnerable to malpractice. The former may be due to the fact that the *Bashingantahe* live among the people and are easy to reach in the villages and collines, whereas one sometimes has to go long distances before reaching a *Tribunal de Résidence*. The results of the Osgood scaling exercises show concerns about the quality of the *Bashingantahe*, as mentioned in the needs assessment and as illustrated by the following comments by interviewees:

You would go to him and he would say: 'Before you talk I will need some beer.' This is because their belly is coming way before the case.

(Community member in Rumonge, beneficiary of CBW)

I would like all the institutions to be well paid so that they become less corrupt.

(Returnee in Ruyigi, beneficiary of mediation)

*How could we (*Bashingantahe*) have worked in a good way if all other institutions around us worked in a bad way?*

(*Mushingantahe* from Rumonge, beneficiary of CBW)

*Trainings are first and foremost needed for *Bashingantahe*, because they are less educated and sometimes want to allocate all power in the collines with themselves.*

(Administrative staff member in Ruyigi, beneficiary of CBW)

*Now the *Bashingantahe* are working on a good level, since we now know the limits of our competencies.*

(*Mushingantahe* in Ruyigi, beneficiary of CBW)

*ACCORD are the real *Bashingantahe*, they have an excellent morality.*

(Community member in Rumonge, beneficiary of mediation)

6 Osgood Scale exercises proved problematic in its application in rural Burundi. The reasoning of different degrees of many different quality dimensions possibly did not correspond to the general perception of quality in Burundi, nor to the level of education of the majority of the interviewees. Therefore, Osgood scaling exercises were only conducted with a very limited number of interviewees who showed the capacity to participate in this exercise during a previous interview. This selection bias is a clear limitation and needs to be taken into account in the analysis and generalization of the results of the Osgood scaling.

In terms of relevance, mediation and judicial system have similar scores, underlining that although ACCORD is viewed positively, it is seen as a complement and not a substitute for the judicial system and the *Bashingantahe*. Accordingly, also concerning future existence and importance of the respective institution, all three scored on a similar level. In only one variable pair – individual-communal – the *Bashingantahe* scored higher than mediation. Thus, the potential of group impact by the *Bashingantahe* is apparently considered higher than of mediation. On all those three latter levels, however, the results have to be interpreted carefully, since they do not receive statistical significance. This is also the case for the assessment of the level of difficulty, on which all three institutional mechanisms are, however, perceived as having quite difficult tasks.

II. Reintegration of returnees and reconciliation

When we came back, our land and property was occupied by a Tutsi, so we thought that all Tutsis are mean. Now we have understood that this is not true and that we can very well live together with very good relations between the two groups.

(Returnee in Rumonge, beneficiary of mediation)

The qualitative analysis underscored that repatriation without appropriate reintegration measures can constitute a danger for the peace process in Burundi. This is notably the case if the government and land commissions lack the resources and skills to ensure a smooth reintegration of returnees. In the spirit of the Legal Aid Clinic Project's overall objective of assisting returning refugees to deal with their challenges, ACCORD aims to facilitate the reintegration of returnees as well as foster reconciliation in Burundian society. The second main assertion outlined in the presentation of ACCORD's work is, therefore, that mediation missions and capacity-building workshops lead to social, economic and political integration.

This seems logical, taking into account that, as outlined in the needs assessment, land conflicts are often considered to be an obstacle for the successful reintegration of returnees. However, the results in terms of social, economic and political reintegration, as well as interpersonal understanding, are more challenging than the previous results on sustainable solutions to land conflicts. In the analysed sample, no effect of mediation on social reintegration into family and community can be observed. Neither can an impact of ACCORD activities on political interest and activity be proved. Successful mediation, however, has some positive effect on the beneficiaries' economic situation. Finally, even though the expectation that most beneficiaries of mediation feel more aware of the reasons for the other's behaviour after the mediation than before cannot be supported by the analysis, a majority of beneficiaries of both mediation and CBWs think that mediation has some potential for the facilitation of intergroup understanding. Thus, effort by ACCORD staff to conduct mediation in ways that facilitate interpersonal understanding is a pressing issue for consideration. Moreover, further development of plans to integrate mediation at a group level to facilitate intergroup understanding and reconciliation could yield positive results.

The following section outlines the different parts of the analysis in more detail.

Do mediation missions improve social reintegration?

It seems reasonable to assume that the resolution of land conflicts, and a conflict resolution mechanism that promotes understanding and consensus between the parties, facilitate the social reintegration of returnees. Accordingly, the majority of beneficiaries of CBWs expect mediation to facilitate the reintegration of returnees. Even though the majority of returnees (76.6%) generally felt welcome upon return to Burundi – and despite the impression that they feel more integrated into their families and communities after the mediation than before – no such effect can be statistically proved. Even when comparing successful mediation with unsuccessful cases, male with female beneficiaries, returnees who have been in exchange more or less than 10 years, and those who experienced family splits and those who did not, no such effect could be observed. A difference relating to ethnicity could not be analysed because the number of Tutsi respondents was too small. Thus, in the analysed sample, it can be determined whether ACCORD's mediation missions facilitated social reintegration into family and community. The **hypothesis that mediation missions lead to the improvement of social reintegration and peaceful interaction between community members and returnees** cannot be confirmed. It remains to be analysed whether ACCORD's activities and efforts are adequate mechanisms contributing to social reintegration of returnees, or whether there is need for the development of other mechanisms through ACCORD or other organisations.

Do mediation missions and CBWs foster interpersonal and intergroup understanding?

Mediation missions and CBWs present opportunities for individuals and different groups to meet and engage with each other. Therefore, the **second hypothesis** is that **mediation missions and capacity-building workshops lead to the interaction and exchange entailing awareness about the other's experiences and challenges, thus fostering interpersonal and intergroup understanding**. Respondents of in-depth interviews and focus-group discussions are of the view that ACCORD renews the ancient tradition of conflict resolution and reconciliation in Burundi, fostering peaceful cohabitation and mutual understanding. ACCORD thus (re)established the culture of mediation. The quantitative analysis qualifies these results; however, 58.1% of mediation beneficiaries do not feel more aware of the reasons for the other's behaviour after mediation than before (see Table 10). This is neither influenced by the mediation outcome nor by the fact that a beneficiary has participated in mediation or a CBW. The result is surprising, since many interviewees stated in reply to open questions that they are satisfied with the solution, adding that they now can "share a beer" together, reporting positive relationships.

During the mediation sessions, the participants experience satisfaction, which contributes to the durability of their relations. Their ongoing good relations that follow the mediation are the proof of their success.

(Community leader in Ruyigi, beneficiary of CBW)

Table 10: Interpersonal understanding a) awareness of reasons for other party’s behaviour before mediation* interpersonal understanding b) awareness of reasons for other party’s behaviour after mediation cross-tabulation

Count						
		Interpersonal understanding b) awareness of reasons for other party’s behaviour after mediation				Total
		Not at all	A little	Somewhat	Yes, very much	
Interpersonal understanding a) awareness of reasons for other party’s behaviour before mediation	Not at all	18	3	4	3	28
	A little	0	0	0	3	3
	Somewhat	1	0	2	4	7
	yes, very much	0	0	0	5	5
	Total	19	3	6	15	43

While ACCORD’s commitment to and engagement before and after the peace process demonstrates its support to reconciliation processes on different levels, there is the potential for mediation to facilitate intergroup understanding. As noted, a significant majority of beneficiaries of both mediation and CBWs (89.3%) believe that mediation even has some potential for the facilitation of intergroup understanding (see Table 11). Also,

Mediation has the potential to contribute to reconciliation. Since the hearts of human kinds are (sic) all the same, there is no difference.

(Community leader in Ruyigi, beneficiary of CBW)

Table 11: Beneficiary category * perception of potential of mediation for intergroup understanding cross-tabulation

Count		Perception of potential of mediation for intergroup understanding				Total
Beneficiary category	Beneficiary of mediation	No potential for facilitation of understanding at all	Rather little potential for facilitation of understanding	Some potential for facilitation of understanding	Great potential for facilitation of understanding	
	Beneficiary of mediation	2	4	42	4	52
	Beneficiary of capacity-building workshop	0	3	23	6	32
Total		2	7	65	10	84

Do mediation missions lead to economic reintegration?

Even if the results concerning social reintegration are inconclusive, qualitative analysis reveals that all interviewees are of the view that ACCORD’s missions have an important financial impact. This result is supported by the analysis of the questionnaires.

In contrast to assertions outlined in the needs assessment, 64.3% of interviewed returnees had not received a UNHCR Aid Kit upon return. A majority of beneficiaries of mediation have cultivation of land as their source of income and, for most, the source of income does not change from before to after the mediation. Also unexpectedly, 54% of mediation beneficiaries perceive no change of income or a decrease of income after mediation, whereas 46% perceive some or a significant increase of income after mediation. However, there is a statistically provable difference in income increase between beneficiaries of unsuccessful and successful mediation, whereby 75% of beneficiaries of unsuccessful mediation perceive no change or a decrease in income and 25% a modest or strong increase, compared to 40.7% of beneficiaries of successful mediation who perceive no change or a decrease in income and 59.2% who perceive a modest or strong increase (see Table 12). Interestingly, beneficiaries who have spent longer in exile experienced a greater increase in income after mediation than beneficiaries who were in exile for a shorter period.

Table 12: Mediation outcome* economic reintegration d) income after mediation cross-tabulation^a

Count		Economic reintegration d) income after mediation	Total			
				Less than before	The same	A bit more
Mediation outcome	Failed	5	10	4	1	20
	Successful	3	8	4	12	27
Total		8	18	8	13	47

a. MedSplit = .00

The hypothesis that *mediation missions involve solutions leading to an increase in resources and possibilities of income* only holds for mediation with a successful outcome. Whether this facilitates economic reintegration for returnees who regain their livelihood, or could lead to further conflicts due to grievances by the residents who previously occupied the land, remains to be further analysed.

Important for the interpretation of those results, however, is the following distinction between two different reasons behind the interviewees' responses. Both the qualitative and the quantitative analyses show that some of the respondents claim that there is an increase of income possibilities, because a successful mediation entails that the beneficiaries have more land to cultivate and, therefore, the possibility to provide for their families and earn some extra money. Some of the respondents would qualify their answer through saying that, in economic terms, there is often one side gaining from the mediation outcome, and the other side losing. This is mostly seen in cases where mediation leads to the division of land, with the occupant thus having less land at their disposal after the mediation, while the returnee has more than before the mediation. Moreover, the time spent on the mediation sessions could have been used to work on the fields. Still, an increase of income may not be high enough to contribute to the food security of a whole family:

The increase in income sources through mediated solutions is often marginal, since people fight over very small pieces of land.

(Community leader in Ruyigi, beneficiary of CBW)

However, there were quite a number of interviewees reporting a financial impact, even if it does not lead to an increase of income possibilities per se. Their argument is based on the reasoning that ACCORD mediation is offered for free.

Do mediation missions and CBWs lead to political reintegration?

The **final hypothesis**, that *mediation missions and capacity-building workshops lead to an increase of interest in participatory political activity* is not supported by the data. The majority of beneficiaries of mediation (77.4%), as well as of beneficiaries of CBWs (74.2%), do not report an increase of political interest and activity after mediation or CBWs. This is despite the finding that 47.4% believe political participation has some impact

on political decision-making, and 34.6% think it has a significant impact. Even though male beneficiaries are generally more politically interested than female beneficiaries, and beneficiaries of mediation more than beneficiaries of CBWs, there is no difference in the increase of political interest between male and female interviewees or beneficiaries of different ACCORD activities. ACCORD activities, thus, do not seem to facilitate and encourage an increased political interest and involvement, and thus political reintegration. Still, the fact that many beneficiaries show political interest, participate in elections and are of the view that elections do have some impact on political decision-making are promising signs for the peace process and increased democratic and popular participation.

III. Future expectations

All interviewees who participated in the Osgood scaling exercises are of the view that ACCORD has an important role to play in Burundi in future. In addition, the most important recommendation that has emerged from the qualitative analysis is that nearly all the participants of in-depth interviews and focus-group discussions believe that ACCORD should expand its scope and mobilise resources to deepen and extend its impact across Burundi. In order to do this, the organisation requires additional resources to open new offices and hire more staff, while resolving some of the logistical issues raised in the research. Another recommendation is that ACCORD should conduct more training sessions for staff and beneficiaries to build capacity. Some ACCORD staff expressed interest in doing internships at ACCORD's other areas of operations, while study tours were raised as a further route to capacity building.

These findings are in line with the most often-mentioned future expectations from ACCORD in the quantitative questionnaires (see Table 13). Here, the two main expectations raised are more mediation missions for other people (28) and more workshops for those who have not yet participated in training (29). Also, 16 people stated that there should be follow-up workshops for those who already participated in CBWs. Twelve beneficiaries want to undergo mediation. Thus, ACCORD's work not only receives popular support, but the beneficiaries would like to see ACCORD expand its work to more regions, and intensify its work in the regions in which it is already present.

As a conflict management organisation, ACCORD does not have a development mandate, nor does it have the financial capacity to provide monetary support to beneficiaries. Given the socio-economic environment, however, it is not surprising that many interviewees would like to receive financial or material support from ACCORD. This finding also corresponds with the quantitative analysis, in which 13 beneficiaries of CBWs would like to receive money for transportation costs to be able to conduct mediation in rural areas. In addition, financial (seven) or developmental assistance (three) was mentioned in 10 instances. While beyond its mandate, ACCORD may wish to investigate some of these suggestions further – for example, requests from some CBW beneficiaries for transport money to conduct mediation in rural areas. If carefully monitored and managed – perhaps in partnership with a local development organisation – this may contribute to extending ACCORD's reach and impact. Second, there was a suggestion that ACCORD's Rumonge

Table 13: Expectations from ACCORD in the future

	None	Another mediation	More mediation missions for other people	Another workshop	More workshops for those who already had a training	More workshops for those who have not yet had a training	Provision for transportation means for workshop beneficiaries	Money	Development	Other	Not Specified
Beneficiaries mediation	0	12	26	0	2	8	6	5	3	7	5
Beneficiaries CBWs	0	0	2	3	14	21	7	2	0	4	1
Total	0	12	28	3	16	29	13	7	3	11	6

office may want to consider the creation of a new project to create incentives for conflicting parties to cooperate and resolve conflicts. It was suggested that ACCORD could finance individual or collective development projects to improve the livelihoods of that population. ACCORD may wish to consider this suggestion more broadly, by working in partnership with local development organisations and investigating ways in which development projects could foster reconciliation and ensure the sustainability of agreements reached.

Conclusion part II

In what ways do the activities of the ACCORD Legal Aid Clinic Project contribute to the sustainable resolution of land disputes? And what effect does ACCORD mediation have on the reintegration of returnees and the reconciliation process in Burundian society? The analysis has shown that ACCORD's mediation missions and CBWs contribute to the sustainable resolution of land disputes. Not only are consensus-based solutions found for a significant proportion of conflicts, but those solutions are also implemented. The mediation process as such, and the role ACCORD staff should play in finding solutions, require clarification. Importantly, conflicts very seldom continue or resume after ACCORD mediation.

Most solutions involve the division, compensation or restoration of the original (land-related) conditions before exile, and most beneficiaries express satisfaction with the solutions. Any durable solution to the conflicts must be cognisant of the value of land in Burundi. Alternative solutions, such as financial compensation, are still unlikely to be accepted by parties. Yet, due to the already-existing shortage of land, there will not be enough land to be distributed among an ever-growing population. Therefore, it is and increasingly will be a future imperative to seek solutions to Burundi's land challenges that go beyond the division or compensation of land. Thus, whilst the mediation-based solution of land disputes contributes to durable solutions in individual cases, it is argued that sustained level of impact at the national level is yet to be reached.

Beyond the direct impacts of ACCORD mediation on conflict resolution, mediation and CBWs have important influences in socio-emotional terms. Thus, beneficiaries describe a decrease of anger and feelings of relief after mediation, since they develop courage to share experiences and feelings with others. In this way, potential violent expressions of anger and frustration can be prevented, which is an important step towards sustainable conflict management. Also, the beneficiaries of both mediation and CBWs experience confidence building and increased awareness about property rights and legal institutions and conflict resolution mechanisms. Participants of CBWs state that they also use these tools in practice, contributing to a culture of mediation in Burundi. Thus, mediation beneficiaries are empowered through both courage and awareness, and beneficiaries of CBWs contribute to the spread of local capacities in conflict management. However, the interviewees do not perceive a significant increase in the quality of existing institutions such as the *Bashingantahe* and the judicial system, even though some of their staff members also participated in ACCORD CBWs. Generally, the judicial system – and notably the *Bashingantahe* – are perceived as experiencing more challenges than mediation by

ACCORD. All three of these institutions – the judiciary, Bashingantaha and ACCORD – are, nevertheless, regarded as relevant, both today and in the future.

Despite the underlying logic that the activities of the ACCORD Legal Aid Clinic Project contributes to the reintegration of returnees and reconciliation in Burundi, the analysis of the collected data does not support this assumption fully. In the sample, the beneficiaries of mediation, in particular, do not perceive that mediation has helped them in their social and political reintegration, but economic conditions had improved for many returnees after successful mediation. The logical assumption that mediation fosters interpersonal understanding cannot be confirmed in the data. However, a significant number of beneficiaries of both mediation and CBWs believe that mediation even has some potential for the facilitation of intergroup understanding.

In sum, this research has shown that most of the stated objectives of the ACCORD Legal Aid Clinic Project are achieved. Beneficiaries are informed and more aware about their social, economic and political rights, mediation leads to the sustainable resolution of land conflicts on an individual level, and capacity building does indeed take place in the population, contributing to a spread of a culture of mediation and the protection of returnees. Nevertheless, the stated principal objectives of fostering reconciliation and facilitating reintegration are only partly fulfilled. This finding, however, needs qualification – the Legal Aid Clinic Project is just one of ACCORD's interventions in Burundi. Many other ACCORD activities in the country contribute to reconciliation in different ways and on different levels.

Concluding discussions and recommendations

Burundi has experienced several challenges during the post-conflict period, including the repatriation and reintegration of more than 800 000 Burundians who fled the country during the massacres in 1972 and 1993, and the hundreds of thousands who were internally displaced. Many refugees need help to repatriate and reintegrate. Reconciliation is hampered by land conflicts caused by land shortage, by population growth and by waves of returning refugees. The overlap of traditional and written law makes it difficult to decide to whom the land legally belongs – to the current owners who are cultivating the land, or to the refugees who find their original property occupied upon return. Government agencies and the judicial system struggle to tackle those challenges, due to inefficiency and a shortage of resources.

This project investigated how land conflict mediation addresses or relates to these and other long-term challenges for peace in Burundi, including land use and sustainable livelihoods. The project also documented and analysed ACCORD's land conflict mediation practices in the two Burundi provinces of Bururi and Ruyigi. Answers to the following questions were sought: in what ways does the ACCORD Legal Aid Clinic Project contribute to the sustainable resolution of land disputes? What are the different types of solutions found, and are they sustainable? What effect does ACCORD's mediation have on the reintegration of returnees and the reconciliation process in Burundi? The detailed conclusions to these questions can be found in the Conclusions of Part I and Part II of this report.

Land and repatriation, reintegration and reconciliation processes

The first part of this report shed light on the multiple challenges experienced by the people of Burundi, notably in terms of the triple-R of the repatriation and reintegration of refugees and reconciliation between different social groups. It was found that Burundi faces similar general challenges to those of other post-conflict countries. State institutions, which lack resources and operate inefficiently, are involved in the repatriation process, which is nearly completed. However, this lack of capacity has led to poor planning, and the challenges refugees experience upon return are not adequately managed. This also seems rooted in several issues discussed that relate to other challenges experienced by the government, the CNTB, the judicial system and the collaboration between different partner organisations.

This report outlined the importance of land tenure for the triple-R challenges, both in terms of economic security and cultural identity. The structural factors of land shortage, coupled with high population growth and density, make land a key social, political, economic and cultural issue. Compounded with waves of refugees repatriating to Burundi, land disputes risk challenging the reintegration and reconciliation process – and therewith the country's post-conflict transition to durable peace. Returning refugees

often find their land occupied by others, and it is difficult to assess which conflicting party should be perceived as the legal owner. Traditional and legal conflict resolution mechanisms do exist, but have, in the past, produced a variety of overlapping and inappropriate legal developments. Besides, weak and under-financed institutions, that are not able to address this issue to develop adequate solutions, and often complicate the overall situation.

In order to move forward and achieve durable peace in the country, the government of Burundi should recognise and resolve issues related to the repatriation, reintegration and reconciliation processes. NGOs working to resolve land disputes should also assist in the reintegration of returnees more broadly, while being cognisant of the need to find a sustainable resolution to Burundi's land challenges. This includes the development of a culture of conflict resolution that creates win-win outcomes and thus contributes to the reintegration of returnees and reconciliation. Their work should also take into account structural background factors to the causes of land disputes, and encourage the development of alternative livelihoods to reduce land dependency.

Evaluation of ACCORD's Legal Aid Clinic Project

The second part of this report evaluated the activities of ACCORD's Legal Aid Clinics in Ruyigi and Rumonge, assessing their effects on the sustainable resolution of land disputes and on the reintegration of refugees and reconciliation in society. ACCORD's mediation missions and CBWs contribute to the sustainable resolution of land disputes. Where successful, mediation results in the division, compensation or restoration of the original conditions before exile, and most beneficiaries are satisfied with these solutions. Land shortage and high population growth and density present serious challenges to sustainable peace, and the study found a lack of awareness and acceptance of solutions not involving land. Mediation-based solutions to land disputes, therefore, contribute to durable individual solutions, but sustainability on a national level is questionable.

The study has found that mediation and CBWs have important social, emotional and institutional impacts, directly contributing to local conflict management capacity and a mediation culture. At an individual level, they prevent violent expressions of anger, build confidence and raise awareness about property rights, legal institutions and conflict resolution mechanisms. When seen in isolation from ACCORD's other work in Burundi, the Legal Aid Clinics also contribute to improve the lives of returnees in financial terms, but do not facilitate social and political integration. Those interviewed did not report an increase in interpersonal understanding, but nevertheless believed that mediation can be a tool to foster intergroup understanding and reconciliation.

Institutionally, mediation, the *Bashingantahe* and the judicial system are widely regarded as relevant to the present and future. Although members of the *Bashingantahe* and the judicial system participate in CBWs, the study did not find a significant improvement in the quality of these institutions. The contracts signed by parties after successful mediation are legal documents, but Burundian land laws mean that contracts may be challenged in court. It is likely that parties to a contract may need to take additional steps to ensure that the contracts are implemented.

Recommendations

These recommendations partly reflect the structure of this report – which starts with general recommendations concerning the triple-R of Burundi's post-conflict peacebuilding challenges and land issues, and concludes with recommendations concerning ACCORD's Legal Aid Clinics and their activities in Burundi.

1. To foster reintegration and reconciliation in Burundi, an integrated approach is needed that joins government efforts with the work of local and international partner organisations.

Specifically, closer cooperation between the government and other organisations, such as ACCORD, will contribute to the development of alternative solutions to land conflict and lead to improvements in the workings of the judicial and administrative systems. The government, supported by partner organisations, should lead the reintegration and reconciliation project and resolve land disputes in an equitable manner. An integrated approach should be underpinned by policies informed by rigorous analyses and dialogue. Moreover, there is a need for greater and improved cooperation and collaboration between all the actors involved in reintegration and reconciliation processes. Meetings between them will facilitate relationship building, networking, exchange of valuable information and the development of common strategies, and will reduce duplication and competition.

Government and NGO staff could also benefit from training missions by ACCORD – seminars leading to the exchange of different principles and experiences could be fruitful, notably for sharing good governance approaches, and improving efficiency and accessibility. Facilitating such exchanges and thereby clarifying different roles, capacities and potentials may further contribute to strengthening mutually complementing activities and relationships.

2. The resolution of land disputes, reintegration and reconciliation are closely linked, and there is need for a comprehensive strategy to address Burundi's long-term land challenges.

In the context of land shortage and high population growth and density, land disputes are a key challenge to reintegration and reconciliation. Alternative and durable institutional and policy solutions are needed to resolve the land issue in the country. The creation of a functioning and up-to-date national land register is essential. This will facilitate the resolution of disputes and prepare the ground for change. Parallel to this, a realistic approach to the distribution of land titles needs to be developed, clearly defining ownership, while providing access to mechanisms for appeals and dispute resolution. As part of this process, judicial reforms and clarity about a number of legal issues are needed – among them clarity about the issues of property, the 30 years law and the legality of agreements negotiated by the different organisations in the field. These reforms are crucial in order to resolve the land issue in a durable manner. The distribution of land titles should take into account the different laws and backgrounds of the people concerned. This is particularly necessary if the dispute includes former refugees, who may not have had the possibility to acquire land titles before fleeing. In cases where the land in question cannot

be regained, alternative solutions are needed, such as monetary compensation or the allocation of state-owned land to returnees.

3. To resolve the long-term land question, there is a need to develop and implement land conflict solutions beyond land, diversify the economy and create alternative livelihoods.

Different parts of this report identify the need for alternative solutions that do not only solve individual land disputes in the short term, but which contribute to a solution for Burundi's general land challenge. The combination of land shortage and high population growth and density necessitates the development of non land-based solutions. This is a complex and sensitive task, considering the traditional, cultural and economic importance of land. As suggested, monetary compensation may be a viable option, creating opportunities and new sources of income, and benefiting the economy. A number of important factors would contribute to the development of a diverse economy and alternative livelihoods – inter alia the creation of new markets, the development of infrastructure for manufacturing, investment in urban development and fostering growth in foreign direct investment. In this, NGOs such as ACCORD can make key contributions to skills transfer, capacity building and networking, from local to national level. Specifically, all vulnerable families – not just returnees – need to receive financial support, and education must become more accessible for everyone.

4. ACCORD should expand its work in Burundi.

ACCORD's mediation missions and CBWs contribute to the sustainable resolution of land disputes, and the Legal Aid Clinic Project could be expanded to other areas where land disputes threaten peace. Mediation missions, CBWs and legal assistance are urgently needed in other regions of Burundi, where ACCORD could duplicate its impact. ACCORD could work with other organisations and the government, and develop synergies with other projects in Burundi. Many beneficiaries of workshops would benefit from more in-depth capacity building, many more could become beneficiaries of workshops in the first place, and beneficiaries of failed mediation would definitely benefit from continuous follow-up. An additional way to expand ACCORD's reach would be to provide greater support to the beneficiaries of CBWs in their own conflict resolution work, and to support the local initiatives that they create as a result of the training they received.

5. Concerning all the activities of the Legal Aid Clinics, ACCORD staff should create and regularly update a database of beneficiaries and all dispute cases handled – both successful and unsuccessful.

A database should contain details of and reasons for successful and unsuccessful mediation, with data on beneficiaries. It will, among other things, facilitate follow-up on all cases, for the purpose of evaluation and to assist beneficiaries, should the need arise. While monitoring is important to ensure sustainability, ACCORD only does this on an ad hoc basis at present, and should seek funding to implement regular monitoring systems and processes.

Concerning the mediation process as such, several recommendations can be stressed.

6. *There is a need to clarify the role and mandates of mediators.*

This recommendation and the practical questions it raises apply to ACCORD and to other land conflict management organisations. The research suggests that the extent to which mediators should propose possible options for two parties in a mediation, or provide them with a specific recommendation, requires further consideration. Are mediators supposed to facilitate the possibility for dialogue and encourage the beneficiaries to find the solution they themselves find best? Or should ACCORD mediators suggest which solution they themselves find most suitable? A suggestion, however, risks putting pressure on the beneficiaries to follow the mediator, whether or not they themselves are convinced that this is the best solution. However, having dealt with numerous cases, mediators could make firm recommendations about which option would be most successful. ACCORD staff in land mediation usually outline different solutions that worked in the past and suggest different options, without showing a preference for any one. Clearly, both levels of intervention have their advantages, and further investigation is recommended. At the same time, the need to clarify the role of mediators more generally is highlighted in the report.

7. *ACCORD could place a greater focus on psychological processes affecting returnees and receiving communities, to reduce violent expressions of emotion.*

ACCORD mediators may want to explore other possibilities for using mediation to generate beneficial socio-emotional impacts. ACCORD mediations already involve the presence of a counsellor. Analysis shows that mediation has therapeutic qualities, with many mediation beneficiaries feeling alleviated and supported through mediation. However, this is mainly demonstrated when the mediation process is successful. Socio-emotional impacts can be felt throughout the mediation process, if beneficiaries are able to express their opinions and frustrations and hope to find a solution. One possibility, for example, would be to extend the Legal Aid Clinic Project by providing psychosocial support to beneficiaries of unsuccessful mediation after they have been referred to other institutions. This would entail working closely and cooperating with organisations with similar mandates, and perhaps even with those who deal specifically with psychological aspects of reintegration and reconciliation.

8. *Sensitisation missions should be intensified to reduce confusion about the mandates, processes and capacities of the judicial system, the administrative authorities, the Bashingantahe and ACCORD.*

Many beneficiaries of unsuccessful mediation express a lack of understanding and information, and frustration about referrals to other organisations. Clear and accessible information about the different organisations and their mandates are essential, as is information about referral processes. Those who are being referred to other organisations after unsuccessful mediation should be briefed on reasons for the referral and provided with information on the institution that will be dealing with the case from then on. Much of this will be facilitated by well-structured provision of information during the sensitisation missions before mediation and through ongoing contact with beneficiaries after mediation and referral. Clarification of mandates and managing expectations will also ensure that conflicting parties approach the institution most likely to resolve the conflict in the most efficient and equitable manner.

9. Mediation missions have the potential to facilitate interpersonal and intergroup understanding and reconciliation.

The logical assumption that mediation fosters interpersonal understanding cannot be confirmed in the data. However, a significant number of beneficiaries of both mediation and CBWs believe that mediation has the potential to facilitate intergroup understanding. Despite talking during the mediation sessions, many did not feel they really understood the other party's reasoning and behaviour. Empathy could, however, be generated by the way in which mediation is conducted, and by encouraging beneficiaries during mediation to share experiences and reasons for different forms of behaviour. Moreover, further development of plans to integrate mediation at a group level to facilitate intergroup understanding and reconciliation could yield positive results – by fostering dialogue between groups of returnees and residents in localities where there are tensions, reintegration and reconciliation will be facilitated. It remains to be analysed whether the Legal Aid Clinic Project's activities and efforts are adequate mechanisms contributing to the social reintegration of returnees and reconciliation, or whether there is need for other mechanisms, or enforcement of existing ones through ACCORD or other organisations.

10. Stakeholders in mediation and other actors should receive further information on the legality of solutions found through mediation, while there is further scope to assist parties to an agreement with implementation, and for agreements to be systematically monitored to ensure sustainability.

The research indicates that there is confusion on the part of some important stakeholders and non-legal project staff about the extent to which ACCORD's mediated agreements are legally binding. ACCORD should ensure that all stakeholders are aware that solutions are recognised by Burundian law (Article 33 of the Civil Code), which stipulates that voluntary agreements between parties that do not violate any laws are protected by law. Violations of agreements become matters for civil action, and therefore enforcement and implementation are beyond the scope of ACCORD's work. The organisation has taken steps to legitimise the agreements further and ensure they receive recognition by the government and local administration. For instance, the ACCORD operation in Burundi signed a Memorandum of Understanding (MoU) with the CNTB in June 2010, and one of the provisions of the MoU is that the CNTB will register the solutions reached by parties through the project. While the power for implementing agreements lies with the parties that have recourse to the law, ACCORD does provide support and advice when parties face challenges. Finally, the research suggests that more funding will assist ACCORD to formalise a systematic monitoring of agreements, which presently are done on an ad hoc basis because of limited resources.

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Appendices

(Available from the ACCORD website: <http://www.accord.org.za/publications/reports.html>)

- Methodology
- Interview Structures for Qualitative Analysis Part I & Part II
- Questionnaires and Coding for Quantitative Analysis Part II
- Results of Quantitative Analysis.

Mediating Land Conflict in Burundi: A Documentation and Analysis Project

This report is the outcome of an assessment and evaluation project undertaken by ACCORD between July 2009 and February 2010. The purpose of the report is twofold. First, it explores how land conflict mediation addresses or relates to other more long-term challenges for peace in Burundi – principally, the utilisation of land and increasing access to sustainable livelihoods. In this context, emphasis is put on the triple-R challenges of the repatriation and reintegration of returnees, and reconciliation between different Burundian societal groups. Second, the report documents and analyses ACCORD's land conflict mediation practice in the two Burundi provinces of Bururi and Ruyigi. It makes recommendations for the actors involved in Burundi's post-conflict peacebuilding process in general, and for ACCORD in relation to its Legal Aid Clinic Project.

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