PROXIMITY JUSTICE IN RWANDA

MEDIATION IN RWANDA: CONCEPTIONS AND REALITIES OF ABUNZI JUSTICE
(2011-2014)

Vol.3

Study authored by Ruben De Winne and Anne-Aël Pohu with the support of the team of RCN Justice & Démocratie in Rwanda.
This study and its publication were undertaken with the financial assistance of the Embassy of the Kingdom of Sweden in Rwanda.

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### Abbreviations used

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>CES</td>
<td>Cell Executive Secretary</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
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<tr>
<td>EDPRS</td>
<td>Economic Development and Poverty Reduction Strategy</td>
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<tr>
<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
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<tr>
<td>IDLO</td>
<td>International Development Law Organisation</td>
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<tr>
<td>ILPD</td>
<td>Institute of Legal Practice and Development</td>
</tr>
<tr>
<td>ILPRC</td>
<td>Improving the management of Land by strengthening the Prevention and Resolution of land Conflicts</td>
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<tr>
<td>IRR</td>
<td>Internal rules and regulations</td>
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<tr>
<td>JCMR</td>
<td>Community justice in Rwanda project</td>
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<td>MAJ</td>
<td>Access to Justice Bureaus</td>
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<tr>
<td>MINALOC</td>
<td>Ministry of Local Government</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>NWC</td>
<td>National Women’s Council</td>
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<tr>
<td>OGRR</td>
<td>Official Gazette of the Republic of Rwanda</td>
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<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>OL</td>
<td>Organic Law</td>
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<tr>
<td>PC</td>
<td>Primary Court</td>
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<tr>
<td>RCN J&amp;D</td>
<td>RCN Justice &amp; Démocratie</td>
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<tr>
<td>SEC</td>
<td>Sector Executive Secretary</td>
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<tr>
<td>Kinyarwanda terms</td>
<td>English Translation</td>
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<tr>
<td><em>Abajyanama b’ubuzima</em></td>
<td>Community health workers</td>
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<td><em>Abunzi</em></td>
<td>The members of the mediation committee. Singular: <em>Umwunzi</em></td>
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<tr>
<td><em>Akagoroba k’Ababyeyi ou Umugoroba w’Ababyeyi</em></td>
<td>Parents’ forums</td>
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<tr>
<td><em>Gacaca</em></td>
<td>In Kinyarwanda, literally ’justice on the grass’, inspired by traditional justice practices</td>
</tr>
<tr>
<td><em>Imidugudu</em></td>
<td>Villages and lowest administrative level. Singular: <em>umudugudu</em></td>
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<tr>
<td><em>Inama ngishwanama</em></td>
<td>Informal gathering of elders</td>
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<tr>
<td><em>Inama Njyanama y’Umudugudu</em></td>
<td>Village Council</td>
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<tr>
<td><em>Inama y’umuryango</em></td>
<td>Family council</td>
</tr>
<tr>
<td><em>Inteko y’Abaturage</em></td>
<td>Citizens’ forum</td>
</tr>
<tr>
<td><em>Inteko z’Abaturage</em></td>
<td>The semi-traditional <em>Gacaca</em>. Still active today</td>
</tr>
<tr>
<td><em>Inyangamugayo</em></td>
<td>Mediators chosen by the community for their integrity and wisdom</td>
</tr>
<tr>
<td><em>Itorero</em></td>
<td>National civic education program to promote unity, the culture of volunteerism and other Rwandan values</td>
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<tr>
<td><strong>Comite Nyobozi y’Umudugudu</strong></td>
<td>Village executive committee</td>
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<tr>
<td><strong>Komite z’Abunzi</strong></td>
<td>Mediation committees</td>
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<tr>
<td><strong>Ubupfura</strong></td>
<td>Nobility</td>
</tr>
<tr>
<td><strong>Umuganda</strong></td>
<td>Community work in the general interest, compulsory for all Rwandans</td>
</tr>
<tr>
<td><strong>Umunani</strong></td>
<td>Share of land or property given by parents to children during the parents' lifetime</td>
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</tbody>
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The administrative organization of Rwanda

Rwanda is subdivided into the following administrative units:

1. Provinces and the city of Kigali;
2. Districts;
3. Sectors;
4. Cells;
5. Villages.

As of 1 January 2006, Rwanda has five provinces (Eastern, Southern, Northern and Western Provinces and the city of Kigali), headed by governors and by a mayor in Kigali. The provinces are in turn subdivided into 30 districts, each headed by a mayor. These districts are divided into sectors with an executive secretary, the sectors being made up of cells, also headed by an executive secretary. Finally, the cells comprise ‘villages’, headed by a village leader.

Map of the 15 districts in which RCN Justice & Démocratie has monitored the functioning of the Abunzi committees

Abunzi committees

Article 159 of the 2003 Rwandan Constitution set up mediation committees (or Abunzi), with the aim of providing a mandatory mediation framework for cases involving matters defined by law prior to the filing of a case with the court of first instance. The Abunzi committees, which exist in every cell and sector, are elected by their community. Their role is to act as mediators in both civil and criminal cases up to a certain value, before these cases can be brought before the formal courts.
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INTRODUCTION

Set up ten years ago, the Komite z’Abunzi or mediation committees, currently play a central role in settling local conflicts in Rwanda. Based on traditional mediation practices, the mediation committees today are a mandatory preliminary mechanism used for resolving a large number of disputes before cases are referred to the formal courts. Firmly established throughout the country, with 2,564 mediation committees in operation, the Abunzi embody the face of proximity justice in Rwanda. By establishing such a conflict resolution mechanism, which is *a priori* free, accessible and participatory, the post-genocide government has shown its commitment to facilitating access to justice for all the country's citizens. The legislature drew on the example of Ward Tribunals and Local Council Courts in Tanzania and Uganda, two of Rwanda's neighbours, in its efforts to promote decentralized restorative justice, delivered by non-professional judges. It should be noted that not all the countries in the subregion have succeeded in developing such a successful pre-judicial model\(^1\). While this complementarity between modern and traditional justice does exist elsewhere, it is put to particularly good use in Rwanda,

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where it stems from a broader vision and political framework, which will be analysed in this study.

For the first time since the Abunzi were established, an in-depth analysis is undertaken of the committees' historical roots and of the political agenda behind their mandate and functioning. Current official policy on the Abunzi and development of the legal framework are analysed so as to determine the role the mediation committees are expected to play: are they intended to relieve pressure on the official court system or rather to ensure access for all to equitable, high-quality justice? Or do they reflect a more complex political model in which the citizen, who administers justice, is involved in maintaining the social order? The issues covered in the first chapter establish the context in which the analysis was conducted. The observations made during monitoring of the Abunzi committees are drawn upon to examine the extent to which they contribute to ensuring that Rwandan citizens enjoy access to fair, high-quality justice.

Previous research conducted by RCN Justice & Démocratie

RCN Justice & Démocratie (RCN J&D) is an international non-governmental organization (NGO) that has been working for 20 years to help rebuild and develop the justice sector in Rwanda. Our activity has gradually evolved, from rebuilding judicial institutions immediately after the genocide to proximity justice, land rights and gender issues. It is for this reason that RCN J&D has, since 2007, been supporting the Abunzi committees, which have become the local conflict resolution body par excellence. The Abunzi are volunteers, ordinary members of the community elected for their integrity and for their ability to mediate. They are not normally highly educated: before they take up their duties, few will have received any training.

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2 As of February 2015, RCN Justice & Démocratie is active in six countries: Rwanda, Burundi, Democratic Republic of Congo, Chad, Senegal and Belgium.
in the laws and procedures they are expected to apply. In close partnership with the Rwandan Ministry of Justice and local organizations, RCN J&D has accordingly engaged in Abunzi capacity building and, in parallel, intensive monitoring of their functioning. Thanks to this observation and analysis ('research'), RCN J&D is able to improve its capacity building approach and thus contribute to the search for solutions to problems and best practices ('action').

To date, this 'action research' approach has led to three publications on the Abunzi. Two studies conducted in 2009\(^3\) and 2010\(^4\) dealt with ways of managing local land disputes and with changes in the practice of customary law respectively. In 2011\(^5\), the third study brought together the monitoring findings on the functioning of the Abunzi committees and made concrete recommendations for improvement. The present publication, which covers the 2011-2014 period, follows on from the previous three studies. However, it aims to go further by combining observation of practice with new analysis.

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\(^4\) RCN Justice & Démocratie and International Development Law Organization (IDLO), (2010). *Legal Empowerment and Customary Law in Rwanda: Report of a Pilot Project Concerning Community Level Dispute Resolution and Women’s Land Rights*, Kigali, [http://rcn-ong.be/ Publications?-lang-fr](http://rcn-ong.be/Publications?-lang-fr). This report presents the findings of a pilot project conducted between 2009 and 2010 in the districts of Rulindo and Gakenke (Northern Province). The aim of the project was to implement the recommendations arising from the previous study. The effectiveness of mediator training was also assessed.

of the historical roots of the mediation committees and the political significance of their establishment.

Establishment of the Abunzi committees: the political context

Sustainable peace cannot be built overnight. It cannot be imposed from the top down; peace is by its very nature an ongoing process. After 1994, the peace and reconstruction process of Rwandan society faced enormous challenges, which could only be met with extraordinary measures, especially as far as justice was concerned. To set the country on the path of development, major reforms were needed in all state sectors.

It was decentralization that spearheaded the post-genocide government's official development policy. Through this policy, the state aimed among other things at involving the population in local-level decision-making. At the same time, the authorities sought to gradually empower the Rwandan people in a range of different areas (local administration and security, health services, community work, justice, etc.), while reinforcing the omnipresence of the state with close supervision of these new civic responsibilities. A dual trend has thus emerged: on the one hand, decentralized administration and citizen empowerment; and on the other hand, the ever stronger presence of central government in citizens' lives.

Another main feature of post-genocide government policy has been promotion of the principles of reconciliation and national unity. This has given rise to official political discourse that holds out promise of a unified Rwanda, where the people live in harmony. Conflict management by the population itself reflects this ideal, and the establishment of Abunzi committees based on the principles of
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mediation and reconciliation fits in perfectly with Rwanda's national reconstruction policy.

Conception of the Abunzi committees

This political vision of unity and reconciliation does not in itself explain the Rwandan government's decision to choose a mediation-based means of local conflict resolution. Confronted with a staggering number of alleged perpetrators of genocide and with the rapid increase in court backlogs for common-law offences, the Rwandan justice system had to re-invent itself at the beginning of the twenty-first century. The post-genocide government found solutions at the heart of everyday Rwandan life; traditional solutions that were formalized and controlled by the state apparatus. It is in this way that Rwandan proximity justice has emerged over the last two decades: close to the population, which is itself a participant, but within a strict top-down framework. Drawing inspiration from popular traditional justice mechanisms known as 'Gacaca', the authorities set up Gacaca Courts in 2001 to deal with most of the genocide-related litigation. Following this first experience of 'modernizing' popular courts, the Rwandan legislature introduced mediation committees, made up of village volunteers, to deal with ordinary local-level disputes. In line with its broader political reforms, the government thus aimed to create a decentralized, participatory and inexpensive means of delivering justice.

Officially set up in 2004, the Abunzi committees have since evolved and taken on a central role in proximity justice. Ten years after the committees were established, RCN J&D aims to examine their history so as to better understand their present role in the Rwandan justice system and to identify the challenges they face for the future.

The first chapter deals with the historical and cultural roots of mediation in Rwanda. It also explains the political background to the
mediation committee system and the political context in which it operates today. The second chapter analyses the proximity justice chain, identifying the existing local conflict resolution mechanisms, their respective roles and the interaction between them. Various obstacles in the way of access to justice are examined, in particular the large number of local mechanisms that may influence, contradict or control one another, thus complicating the mediation committees' work. The third chapter focuses on the functioning of the mediation committees, giving a detailed account of the advantages of the system as well as the challenges the mediators face in their everyday work.

Methodology

The study is based on two main research methods. For the first chapter ('Reconciliatory justice in Rwanda: between tradition and political pragmatism'), documentary research led us back to a period in Rwandan history when mediation was not yet laid down in written form; indeed, it was for this reason that field research had to be carried out. For the more recent period, direct reference could be made to official documents, such as the 2003 Constitution and preparatory process; the various Organic Laws and preparatory work on the Gacaca Courts and mediation committees; official statements and political strategies; minutes of the consultation meetings organized by the Rwandan President between 1998 and 1999, etc. However, this documentary research method has its limitations: what is written down on paper may be informative but may also be incomplete. Thanks to its twenty years' experience in Rwanda, RCN J&D hopes to paint an accurate, if not exhaustive, picture of the context in which proximity justice has evolved since 1994.

The second part of this publication (Chapters 2 and 3) places greater emphasis on how the mediation committees operate in practice and how they comply with the political objectives assigned to them.
(Chapter 1). This analysis is based mainly on the monitoring undertaken from February 2011 to February 2014 by RCN J&D and its partner organizations in close collaboration with the Ministry of Justice, at national level, and with the Access to Justice Bureaus (MAJ) at local level. Various monitoring methods were used to provide a holistic approach to the reality on the ground. These methods, which are listed below with the respective samples used, were in most cases applied in 15 of Rwanda's 30 districts:

- **In situ** observation of mediation committee sessions at cell (132 with the ILPRC project and 46 with the JCMR project) and sector (38) level. Number of districts: 15;
- Individual interviews with litigants on their perception of mediation committees (27 with the JCMR project and 90 with the ILPRC project). Number of districts: 15;
- Individual interviews with litigants after mediation sessions (113). Number of districts: 3;
- Individual interviews with members of the community on their perceptions of cell mediation committees (80). Number of districts: 15;

These activities are part of a mediation committee support programme, divided into two projects: one pilot project implemented in three districts of Eastern Province, followed by a nationwide project, implemented in fifteen districts spread through the country's five provinces. The first, *Community justice in Rwanda: an engine for reconciliation in Rwanda* (hereafter *JCMR*), was financed by the Ministry of Foreign Affairs of the Kingdom of Belgium (January 2011-December 2012). The second project, *Improving the management of land by strengthening the prevention and resolution of land conflicts* (hereafter *ILPRC*), is being financed by the Swedish Embassy in Rwanda (October 2012-August 2015). Through this programme, half of the country's mediation committees have received training and material support.

This analysis draws mainly on the data collected as part of the baseline study conducted by RCN J&D between September and December 2013 in 15 of the country's 30 districts as part of the ILPRC project. Reference to the study will be made as follows: 'RCN Justice & Démocratie, *Findings of the ILPRC baseline project – September 2013-February 2014*, Kigali, 2014'. Additional data comes from the findings of the JCMR project monitoring. When reference is made to the data arising from this project, relevant details of the methodology used will be provided.
✓ Group or individual interviews with the mediation committees and representatives of the village authorities. Number of districts: 3;
✓ Individual interviews with local authorities (20 interviews with cell executive secretaries; 10 interviews with sector executive secretaries or civil status officers, with MAJ staff (14) and with Primary Court judges (10). Number of districts: 15;
✓ Discussion groups with members of the community (audience or witnesses at mediation sessions) on the work of the mediation committees (10). Number of districts: 15;
✓ Data collection comprising the decisions, judgments and registers of cell and sector committees and Primary Courts (20 sector committee decisions and 40 cell committee decisions; 14 cell committee registers; 60 Primary Court judgments). Number of districts: 15.

A further source of data frequently used in this study is the report on a workshop held on 16 and 17 June 2014 with representatives from RCN J&D, Arama and Imbaraga8 to discuss the findings of the 2013 baseline study9.

A final source of data came from the reports written by RCN J&D training consultants on the mediation committee training run between September 2013 and May 2014 as part of the ILPRC project, during which the Abunzi had the opportunity to share their experiences.

The objective analysis drawn from observation of the mediation committee sessions and reading of the decisions, registers and

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8 Arama and Imbaraga, two Rwandan NGOs, were the operational partners for the ILPRC monitoring project. At the June 2014 workshop, they were each represented by their directors and by two members of their monitoring teams.

9 Reference to this document will be made as follows: ‘RCN Justice & Démocratie, (2014). Report on the in-house workshop held on 16 and 17 June 2014 with partners ARAMA and Imbaraga on the findings of the Abunzi monitoring – 2013 baseline study’.
judgments was thus supplemented by the subjective perceptions of disputing parties, community members and proximity justice actors. The picture is completed with analysis of legislation and official strategies, draft laws and political statements, in addition to information supplied by the Ministry of Justice and discussed at the Justice, Reconciliation, Law and Order Sector forum.

One methodological limitation should however be underlined: the observation sample was by its very nature partial and cannot be generalized to the country's mediation committees as a whole. The percentages given in the study should thus be treated as indicative. Monitoring offers a reliable insight into the opportunities offered by these justice mechanisms but also highlights the constraints faced by both the committees and the citizens who use their services.

It should also be noted that collection of the data used as the basis for analysis was completed in early 2014. Since that time, changes and improvements to the functioning of the Abunzi committees will no doubt have been observed as a result of the training provided in 2014 and 2015\(^\text{10}\) and the constant efforts made by the Ministry of Justice and MAJ staff to monitor and improve mediation practices throughout the country.

\(^\text{10}\) Between March 2014 and February 2015, RCN Justice & Démocratie organized training for 1 070 mediation committees in 15 of the country's 30 districts: 3 545 cell Abunzi and 733 sector Abunzi (of whom 51% were women). The cell and sector executive secretaries also attended these training sessions, which focused on three main areas: mediation and conflict resolution techniques (definition, conflict analysis and role of the Abunzi committee); functioning of the mediation committee (organization, competence and procedures); management of land disputes (customary practices, laws) and women's rights (land rights, inheritance rights, etc.). MAJ officials were also trained as trainers to enable them, when available, to run these sessions along with RCN staff. This capacity building for mediation committees also included significant material support, with the distribution of copies of the legislation and basic tools (standard forms for summonses, decisions, etc.) needed for the proper functioning of the committees.
CHAPTER 1
RECONCILIATORY JUSTICE IN RWANDA: BETWEEN TRADITION AND POLITICAL PRAGMATISM

In Rwanda, the wise men of yesteryear are still part of society today. The *Inyangamugayo*, who for centuries settled conflicts in their communities, have passed on their task to the mediation committees. Rwandan policymakers have drawn upon this legacy to justify establishing conflict resolution mechanisms that come under state authority but have strong social and historical legitimacy.

This chapter examines how the post-genocide government succeeding in shaping a 'modernized' conflict resolution system to political ends, while drawing on traditional Rwandan practices. The first section of the chapter describes how the *Gacaca* evolved. The second section analyses the factors that led the authorities to set up the *Abunzi* committee system. The chapter ends with an analysis of
how the mediation committees have evolved within the country's legislative framework and official political discourse, from their creation in 2004 to the present day.

1.1. Evolution of mediation in Rwandan culture

The system of mediation committees was introduced in the 2003 Constitution, formalizing traditional practices *de facto*. To understand the place of these mediators in Rwandan society and in current political discourse, it is necessary to retrace the historical development of the *Gacaca* by going back several centuries. The first part of this section will focus on the wise men who settled disputes on the hillsides in a spirit of reconciliation (1.1.1). An analysis will then be made of the impact on these traditional *Gacaca* of the introduction of a Western justice system under colonial rule (1.1.2.), and of how they subsequently evolved in the post-independence system (1.1.3.). Finally, the revival of the model in the post-genocide context will be examined (1.1.4.).

1.1.1. Traditional Gacaca

The existence of conflict resolution mechanisms, rooted in the local community and based on the practice of mediation, goes back to the pre-colonial period\(^ {11}\). Disputes between neighbours or family members were thus resolved within the community by the *Gacaca*, the literal meaning of which in Kinyarwanda is 'justice on the grass'. Community members were chosen as mediators on the basis of their integrity and their wisdom ('*Inyangamugayo*'). It is likely that the term 'Abunzi', meaning 'mediators, conciliators, those who bring people together', was already used during this period\(^ {12}\) to refer to the

\(^{11}\) Before 1897, when Rwanda was colonized by Germany.

\(^{12}\) See the account given by a man born in 1928, who is currently an Umwunzi, quoted in DOUGHTY K., (2011). *Contesting Community: Legalized Reconciliation Efforts in the Aftermath of Genocide in Rwanda*, Publicly accessible Penn
members of a similar conflict resolution body. In this traditional conflict resolution system, the community participated in reconciling its citizens. No formal laws or procedures existed for discussion of the case or for reaching a decision. The customs of the time were handed down orally, and there can therefore be no certainty about the types of dispute the Gacaca handled. However, the Gacaca were always the lowest level of the justice system. There seems accordingly to be a consensus that they dealt with the vast majority of civil disputes, both within and between families, particularly in matters of land, property and inheritance; pastoral conflicts; household and family disputes, particularly when marriage-related; and disputes following breach of contract. The Gacaca may even have had criminal jurisdiction, although the literature does not agree on its scope: was it confined to minor offences such as theft or bodily harm or did it extend to more serious offences such as murder? Criminal jurisdiction may have varied over time and from one community to the next. There seems however to be general acceptance that more serious conflicts, or disputes unresolved at Gacaca level, were settled by community leaders, by representatives of the king, or by the king himself.

'Urujya kujya iBwami, rubanza mu Bagabo'
(Rwandan proverb, which means 'Before a case is brought to the King, it must first be heard by the wise men.')

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15. Ibid., pp. 15-16.

Reconciliatory justice in Rwanda

Gacaca justice was based on values such as respect, integrity and 'Ubupfura' or 'nobility of heart'. It was not punitive justice. The objective was to compensate for harm or damage suffered and to restore community cohesion. The compensation paid by the offender was means-based so as not to inflict an economic loss that would have affected the community as a whole. Finally, it was not only the individual offender who was held responsible but also members of the family and clan\textsuperscript{17}.

1.1.2. Gacaca under colonial rule

Very little documentation exists on the pre-1994 Gacaca. This ancestral practice that originated in the pre-colonial period is known to have continued under colonial rule\textsuperscript{18} and then after independence in 1962\textsuperscript{19}. These events did however have an impact on the place of the Gacaca in the justice system. When the Belgians took power, they set up a justice system based on the Belgian model, formalizing Rwandan justice with the establishment of a Western-style judiciary and the introduction of the primacy of written law. Gacaca justice subsequently found itself supplanted for the most part by this 'formal' justice, with mediation practices receiving much less recognition. Traditional bodies saw their powers limited by the colonial authorities, particularly in criminal matters. The Gacaca lost much of their legitimacy during this period:

\begin{itemize}
  \item \textsuperscript{17} RCN Justice & Démocratie, Bulletin No. 41, \textit{op. cit.} Available online. See also MOLENAAR A., \textit{op. cit.} p. 14.
  \item \textsuperscript{18} Rwanda was colonized by Germany in 1885. Belgium took over power in 1916 and was awarded a League of Nations mandate to govern the country after the First World War. On 1 July 1962 Rwanda officially became independent.
\end{itemize}
as Rwandans became accustomed to the new justice system, they turned less to traditional conflict resolution practices\(^\text{20}\). And yet the *Gacaca* survived the colonial period and continued to operate.

1.1.3. After independence: establishment of semi-traditional Gacaca

Following independence in 1962, the first Rwandan government sought to modify and control the *Gacaca*: the authorities were mistrustful of a justice system linked to Tutsi domination under colonial rule\(^\text{21}\). It was then that the *Gacaca* lost much of their traditional nature: they were placed under the supervision of state administrative officials, who could also take on the role of *Inyangamugayo*. Procedures became less flexible, with witness statements and *Gacaca* decisions recorded in writing, and sessions held on fixed days. Despite not being taken into account by any written law, the *Gacaca* became a *de facto* semi-traditional institution, acting as a 'barrier' by limiting disputing parties' direct access to the formal judicial system\(^\text{22}\). The cases dealt with have been found to deal mainly with assault and battery; land issues (boundary demarcation and encroachment); inheritance; civil responsibility; debt repayment; contracts; theft; and family disputes. In fact, the semi-traditional *Gacaca* had virtually the same powers over the same types of dispute as the traditional *Gacaca*. They thus continued to play an essential part in conflict resolution, not only in rural areas where traditional justice had a central role, but also as an alternative to the overburdened formal courts: in urban areas, where they were tending to disappear\(^\text{23}\), the *Gacaca* served mainly to settle disputes between shopkeepers\(^\text{24}\). As a result, the government found itself


\(^{22}\) INGELAERE B., *op. cit.*, p. 21.


obliged to maintain and even use the *Gacaca*, despite some mistrust\(^\text{25}\). As for the population, they took a pragmatic attitude to the *Gacaca*: 'many people attend as they feel they should be present in case they in turn are involved in a dispute and have need of the *Gacaca*\(^\text{26}\). Villagers\(^\text{27}\) consequently attended *Gacaca* meetings, even though they were not legally obliged to, as they considered it in their long-term personal interest.

Before turning to the creation of *Gacaca* Courts to handle genocide cases, it is important to note that the semi-traditional *Gacaca* also survived the events of 1994. They thus continued to deal with minor disputes among the community, as before – and this with the tacit support of the authorities\(^\text{28}\). In a few instances, they even handled disputes concerning the restitution of goods stolen during the genocide. In fact, the semi-traditional *Gacaca* continued their activities throughout the country until the mediation committees were set up in 2004\(^\text{29}\). And they are still active today under the name of *'Inteko z'Abaturage'* (see p. 81).

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africaine 40, 1990, pp. 33 and 37.
REYNTJENS F., *op. cit.*, pp. 33-34 and 39-40; MOLENAAR. A, *op. cit.*, pp. 19-20 and
It should be noted that the term 'villager', used throughout this study, refers to the inhabitant of a village, namely the smallest administrative unit in Rwanda. A village is therefore not only a rural phenomenon but also applies to urban centres. It is important, however, to remember that 81.1% of Rwandans live in the countryside (World Bank, 2010).
INGELAERE B., *op. cit.*, p. 22.
1.1.4. Post-genocide Gacaca Courts, or the end of a mediation approach

If the Rwandan justice system needed the semi-traditional Gacaca to relieve the pressure on the formal courts, this tendency was further reinforced after 1994. Extraordinary solutions were needed to deal with the huge number of genocide cases and to meet the monumental challenges facing the justice sector: not only were more than 100,000 people, suspected of having taken part in the genocide, awaiting trial in overcrowded prisons, but the judicial system itself had been almost entirely wiped out. The judicial infrastructure had been destroyed. The judges and trained court officials had – for the most part – been killed, taken part in the genocide or left the country. At the end of 1995, despite considerable efforts by the Rwandan government to rebuild its justice system with the help of the international community, only 50 of the 147 Canton Courts, 6 of the 12 Courts of First Instance, and none of the 4 Appeal Courts were operational. There was a shortage of resources at all levels, not only to organize the genocide trials within a reasonable timeframe but also to ensure continuity in the workings of 'everyday' justice for common law offences. Exceptional measures were therefore taken,

33 The exact figure varies, but according to several sources, it would have taken more than a century for the ordinary courts to deal with all the genocide cases at the working rhythm of the late 1990s. See *inter alia* MOLENAAR. A, *op. cit.*, p.22.
both at the international level, with the setting up of the International Criminal Tribunal for Rwanda (ICTR), and at the national level, with the introduction of specialized chambers. To find possible solutions to the staggering backlog of cases the authorities also turned to Rwandan conflict resolution practices, namely the traditional *Gacaca*.

The term *Gacaca Courts* was deliberately chosen by the Rwandan government to highlight their differences from the traditional *Gacaca*: their powers were similar to those of a conventional court, and their proceedings were strictly regulated by law. Based upon the traditional model, the *Gacaca Courts* were formally set up by the Organic Law of 2001. The courts were established to achieve three specific objectives: to fill the gap left by the ordinary justice system; to eradicate the culture of impunity; and finally to rebuild national unity and encourage reconciliation through a participatory justice system.

According to official reports, between 2005 and 2010, the many

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35 In 1996, with Organic Law No. 08/1996 on the organization of prosecutions for offences constituting the crime of genocide or crimes against humanity committed since 1 October 1990, the Rwandan government introduced specialized chambers within the Courts of First Instance and military courts that were given exclusive jurisdiction over these offences. See MOLENAAR A., *op. cit.*, pp. 21-22 and INGELAERE B., *op. cit.*, p. 23.


38 Organic Law No. 40/2000 of 26/01/2001, setting up *Gacaca Jurisdictions* and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, and December 31, 1994, hereafter referred to as the '2001 Organic Law on the Gacaca'.


40 After the adoption of the 2001 Organic Law, a pilot phase began in 2002: administrative reorganizations took place and in 2004 a new Organic Law replaced the 2001 legislation. It was only in 2005 that the first *Gacaca* Court trials were finally held. In 2010, the final closing ceremony was held for the
citizens elected as *Inyangamugayo* judges settled almost two million cases related to the genocide that had occurred in their communities. The most serious cases were handled in parallel by the ordinary courts and the ICTR. The other members of the community were supposed to play an active part, as witnesses, in the *Gacaca* Court proceedings. As in the past, the hearings were held in public; unlike the traditional and semi-traditional *Gacaca*, however, all Rwandans were obliged by law to 'participate in the *Gacaca* Court proceedings'. This measure was intended to encourage active participation by the population: preliminary discussions on setting up the *Gacaca* Courts (between 1998 and 1999) referred to 'justice which makes the people actively participate in searching for offences, prosecuting and punishing criminals'. As in the traditional *Gacaca*, the judges were called *Inyangamugayo*. However, the role was no longer exclusively held by wise old men: all 'upright' villagers over the age of 21, including women, could become judges in the *Gacaca* Courts.

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41 Article 29, Organic Law No. 16/2004 of 19/06/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1st, 1990 and December 31, 1994, OGGRR special issue of 19 June 2004.

42 While this legal obligation was initially very strictly enforced by the local authorities, with fines even being imposed on people who had not taken part in previous meetings, it was applied less and less over time, mainly for practical reasons. Complaints had been filed about participation being mandatory, but it was the fact that more and more of the *Gacaca* Court hearings were taking place in the same geographical area that made it impossible to force people to attend every hearing. See INGELAERE B., *op. cit.*, pp. 203-204.

43 Republic of Rwanda, Office of the President of the Republic, *Report on the Reflection Meetings held in the Office of the President of the Republic from May 1998 to March 1999, Kigali, 1999*, pp. 49 and 51. See also the 2004 Organic Law: 'Considering that such crimes [the crime of genocide and others] were publicly committed in the eyes of the population, which thus must recount the facts, disclose the truth and participate in prosecuting and trying the alleged perpetrators'.

44 Article 10, last paragraph, 2001 Organic Law on the *Gacaca*. 
The *Gacaca* Courts may have had their roots in tradition but they clearly differed in many ways from the traditional *Gacaca*: in their composition, their strong community involvement and accessibility, their jurisdiction (criminal cases, in particular the prosecution of offences constituting the crime of genocide), their primarily punitive purpose, and their incorporation in a formal legal system. While the traditional *Gacaca* sought primarily to maintain social harmony by reconciling disputing parties, the *Gacaca* Courts were above all a judicial mechanism that served to prosecute and try those accused of genocide. The Courts ended up sharing only a few features with the existing traditional institution, leading some researchers to classify them as an 'invented tradition'\(^{45}\).

In conclusion, conflict resolution at the local level in Rwanda has for centuries been entrusted to certain upright members of the community. The *Gacaca*, which in their original form go back to the pre-colonial period, retained their importance even after being subordinated to a formal justice system under colonial rule, or placed under the active supervision of the local authorities. Rwandan society is accordingly very familiar with this means of conflict resolution based on reconciling the parties concerned. Moreover, the central government, aware of the advantages they offered, made active use of the *Gacaca* after independence: semi-traditional *Gacaca* helped relieve the under-performing justice system. After 1994, the judiciary was incapable of dealing with all the litigation arising from the genocide. The country's political leadership thus took the pragmatic step of turning the former *Gacaca* into conventional courts. This particular form of justice carries with it a political dimension: set up on the hills by the villagers, who became real judges, the *Gacaca* Courts were established by law and closely supervised by the post-genocide government.

\(^{45}\) INGELAERE B., *op. cit.*, p.20.
The following section examines the extent to which this political dimension also influenced the setting up of the mediation committees.

1.2. Mediation in the age of development: pragmatism serving the people or the state?

The mediation, or Abunzi, committees were set up in 2003 in the first Constitution of the post-genocide era. A genuine innovation, the establishment of this local-level conflict resolution mechanism was not, however, coincidental. This section examines the general arguments that led the political authorities to set up the Abunzi committees (1.2.1.), before going on to study the political and historical factors that influenced the committees' final structure (1.2.2.).

1.2.1. Arguments that led to the creation of a local-level mediation body

Strengthening the regular justice system

In addition to handling the genocide litigation, the Rwandan justice system was also confronted with many common law cases and an acute shortage of resources to deal with them. In 1995, Rwanda had only six judges with a law degree; thirteen other judges had received only partial training. At the end of the 1990s, during reflection meetings organized by the Rwandan President, the political leadership pointed out that 'any Rwandan who brings a matter before justice is undertaking to forget his other works and run after


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The justice employees. By 2002, the number of qualified judges had increased exponentially: 66 judges had a law degree and 203 had received 'another form of training'. And yet a clear shortage of qualified judicial officials persisted. The ordinary justice system therefore needed to be strengthened while taking into account the scarcity of available resources.

Limited means to meet overwhelming needs

Already fragile before 1994, the country's economic situation weakened further after the genocide. The Rwandan government had to contend with an acute lack of funding to carry out its major national reconstruction projects, including rebuilding the justice sector. In 1996, the justice sector budget amounted to only 1.1% of the total state budget. By 2002, this percentage had risen to 3.1%. To rebuild the sector, investment was needed: to reconstruct buildings, purchase furniture, office supplies and other materials, and train staff. In addition to these exceptional expenses, the staffing and operational costs of the judiciary as a whole would take up a large part of the state budget for the years to come. The post-genocide government thus saw that the judicial system would have to be reformed.

50 See also Republic of Rwanda, Parliament, Chamber of Deputies (2004). Explanatory Note, Draft Organic Law No. ... of ... on the organisation, competence and functioning of the mediation committee, Compendium of Explanatory Notes, 44-435.
Judicial reform aimed at streamlining the functioning of the court system

Initial efforts focused solely on rebuilding the judiciary, through programmes aimed at getting judicial infrastructure back into operation and at staff capacity building. In parallel, a reform of the judicial system was launched, steered by the Rwanda Law Reform Commission. The reform, which was completed in 2004, included a new Organic Law on the organization of the courts. In 2004 and again in 2006, the number of courts and judges was reduced: from 147 Courts of First Instance (Canton Courts), only 50 of which were operational in 1995, to 106 in 2004 (District Courts), and 60 in 2006 (Primary Courts). These successive reforms as well as the reduction in the number of judges and registrars, already considered inadequate, led to fears that the justice system would become even slower. A creative solution was clearly needed to complement the various reforms.

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53 Ibid., p. 7: government policy in the judicial sector had three main long-term components, namely to develop infrastructure, a judicial and organizational base for effective functioning of the system, and human resources capacity.
54 Ibid., p. 8.
55 Prime Minister’s Decree No.53/03 of 27/07/2001 on the establishment, organization and functioning of the Law Reform Commission. OGGR, No. 24ter of 15/12/2001.
62 See also Republic of Rwanda, Parliament, Chamber of Deputies (2004). Explanatory Note, Draft Organic Law No. ... of ... on the organisation,
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Rwandan tradition: source of inspiration or means of justification?

During the reflection meetings held at the end of the 1990s, the political leadership did not overtly state how the ordinary justice system was to be rebuilt\(^\text{62}\). They merely gave some indications on the way forward. As with the genocide litigation, they advocated examining the way disputes were settled in Rwanda in the past, returning to the example of the traditional Gacaca\(^\text{63}\). This vision was endorsed a few years later in the Preamble to the 2003 Constitution, which stated that 'it is necessary to draw from our centuries-old history the positive values which characterized our ancestors that must be the basis for the existence and flourishing of our Nation'\(^\text{64}\). The Explanatory Note to the draft of the first law on mediation committees in 2004 takes up this historical reference, mentioning that mediation, commonly known as 'Gacaca', is a mechanism rooted in Rwandan culture\(^\text{65}\). It seems therefore that the legislature wished to use a historical and cultural argument to justify incorporating a mediation-based conflict resolution mechanism into the modern justice system.

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\(^\text{62}\) Only concrete measures to combat corruption and incompetence within the justice system were proposed. More generally, it was requested that sufficient resources be allocated to the justice system to enable it to help in rebuilding a country governed by the rule of law. Representatives from the judiciary who attended the meetings emphasized their expectation of judicial reform, which they considered a priority. See Republic of Rwanda, Office of the President of the Republic, (1999) *Report on the Reflection Meetings held in the Office of the President of the Republic from May 1998 to March 1999*, Kigali, p. 70.


\(^\text{64}\) Preamble to the Constitution of the Republic of Rwanda of 04 June 2003, Point 8, available online: http://democratie.francophonie.org/IMG/pdf/Rwanda.pdf

A policy of gradual citizen empowerment

During this period, the political leadership also advocated the active participation of the population in the administration of justice. The post-genocide government was aware of the importance of decentralization in reconciling the Rwandan population. The National Decentralization Policy adopted in 2001 aimed at involving the population in local decision-making processes. The National Policy did not however give any concrete specifications as to how this gradual empowerment of Rwandan citizens would apply in relation to the justice system. In 2004, the Prime Minister finally announced that mediation committees would enable Rwandans to play a more active role in resolving their own disputes. The Abunzi committee system, like the Gacaca Courts, was thus part of a broader decentralization process, launched some years previously.

Heeding the population’s wishes?

In 2001, a Constitutional Commission was tasked with drafting a new Constitution. The population was consulted during the process, its views providing input for the preliminary draft. According to the

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69 Ibid., p. 7. See also the words of the former Minister of Justice, Mr Karugarama, quoted in New Times, (23 February 2013). Access-to-Justice project launched in Ngoma district, available online: http://www.newtimes.co.rw: 'Karugarama said the idea was to decentralise justice and make it affordable and accessible by every resident of Rwanda'.  
Preface to one version of the draft Constitution, the population had expressed the wish for the Gacaca to be revived:

‘[...] "mediation committees" are hereby created in each sector [...]. It constitutes a revival and promotion of the Gacaca tradition as per the wishes expressed by the population during the course of consultation’ 72.

Could the population be expected to express any other opinion on what was, after all, a theme (or idea) that had already been developed and promoted by the authorities for several years 73? In a 2002 judicial sector assessment, the first signs of the establishment of a local mediation body can already be seen: according to this study, at that time the Ministry of Justice had the specific objective of promoting alternative mechanisms for dispute resolution (such as arbitration and the Gacaca) 74. Moreover, the traditional Gacaca model had already been put forward by the political leadership between 1998 and 1999 75. The concept of a conflict resolution
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mechanism is therefore likely to have been proposed by representatives of the Constitutional Commission, rather than put forward proactively by the ordinary citizens who attended the public consultations.

Furthermore, the wording 'revival of the Gacaca tradition' corresponds to the projection of an ideal somewhat divorced from the reality: in its semi-traditional form, the Gacaca 'tradition' was in fact still operational when the Constitution was drafted, and the Constitutional Commission well able to draw inspiration from it.

It is also worth noting that during the same period the Law Reform Commission was drafting new laws to reorganize the justice sector. It can be assumed that this Commission was behind the first Organic Law on mediation committees in 2004. The Commission was made up of various justice sector professionals such as judges, lawyers, academics and Ministry of Justice officials. The idea of the mediation committees is therefore very likely to have been proposed and developed by the Commission.

Dialogue, unity… and pragmatism

In the same Preface, the drafters of the Constitution describe two objectives for the new Abunzi committees. The first is 'to promote the spirit of dialogue and reconciliation among Rwandans as well as to reinforce the unity of the Rwandan community'. Relieving pressure on the ordinary courts is only mentioned in second place, and rather as a consequence of the establishment of the committees:

'In this light, no case will be filed before district jurisdictions unless the parties concerned have submitted it before the mediation

not only for truth finding, but also to try crimes. The active participation of the population in this process was deemed indispensable.' REYNTJENS F. (1985), Pouvoir et droit au Rwanda. Droit public et évolution politique, 1916–1973, Royal Museum for Central Africa, Belgium.
Given the sorry state of the ordinary justice system at the time and the policies in force on streamlining public finance management, one would have expected the second objective to be given greater prominence, in the same way as decentralization of the justice system\textsuperscript{77}. The legislature thus seems to be using socio-political factors to justify setting up the mediation committees, with relieving pressure on the formal courts regarded as a secondary benefit. And yet analysis of the context in which the Abunzi committees were set up has shown the crucial importance of reducing court congestion for the functioning of justice in Rwanda. This last argument is also the only one to have been included by the legislature in 2004: in the Explanatory Note to a draft of the law on mediation committees, no argument is advanced concerning 'reconciliation' or 'unity'. The committees are instead assigned a screening function for cases submitted to the ordinary courts, the legislature considering that settlement of such disputes by the courts is not the best approach\textsuperscript{78}.

Finally, the general notion of introducing a conflict resolution mechanism that was based on the Gacaca, decentralized and drawing on active citizen participation, can be seen to have emerged naturally from the socio-political context of the post-genocide years: the ordinary justice system was not capable of resolving the large number of common law disputes, and lack of resources made it essential to opt for a justice system that streamlined staffing and operational costs. However, the mediation committees are, on paper at least, more than just an economic measure: they are also the practical embodiment of ideological and political concepts. They

\textsuperscript{76} Republic of Rwanda, Final version of the draft Constitution of 2003.
\textsuperscript{77} Rwandapedia, Abunzi, \url{http://rwandapedia.rw/explore/abunzi#sthash.f3qTPsAq.dpuf},
\textsuperscript{78} Republic of Rwanda, Parliament, Chamber of Deputies (2004). Explanatory Note, Draft Organic Law No. ... of ... on the organisation, competence and functioning of the mediation committee, Compendium of Explanatory Notes, 44-435.
reflect the desire to create a decentralized, reconciliatory and participatory justice system that offers every Rwandan citizen equitable access to affordable justice. The next section looks beyond this general rationale to examine the specific reasons that led the legislature to establish the Abunzi committees.

1.2.2. Political and historical factors that shaped the mediation committees

The mediation committees make their first official appearance in the first post-genocide Constitution\(^79\). In a specific section of the chapter on judicial power, distinct from the section on 'the courts', Article 159 of the Constitution entrusts the mediation committees with the task of 'mediating between parties to certain disputes involving matters determined by law prior to the filing of a case with the court of first instance.' The mediation committees thus offer a creative, tradition-based solution, designed to overcome the limitations of the ordinary justice system. A first Organic Law, adopted in 2004, set out details of the organization, jurisdiction, competence and functioning of the mediation committees\(^80\). This subsection examines the new conflict resolution mechanism: in what ways did it resemble or differ from the model of the traditional or semi-traditional Gacaca? Why were certain characteristics retained while others underwent substantial modifications?

**Upright members of the community**

The 2003 Constitution and the various Organic Laws on mediation committees set out three prerequisites for obtaining the status of Abunzi committee member: the mediator must be a person of

\(^{80}\) Organic Law No. 17/2004 of 20/06/2004 determining the organisation, competence and functioning of the mediation committee, OGRR no special of 8/7/2004, hereafter referred to as '2004 Organic Law'.
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integrity; must be a resident of the committee's cell; and must be acknowledged for his or her mediating skills. Mediation is no longer reserved for 'the elders': the minimum age is set at 25 years. Women are also eligible, a legal quota stipulating that at least 30% of the mediators must be women. While these 'persons of integrity' are called 'Abunzi' rather than 'Inyangamugayo', there are many similarities between the two. First, integrity was the qualification not only for being an Inyangamugayo in the traditional Gacaca but also for the Inyangamugayo of the Gacaca Courts. This criterion was accordingly also chosen by the legislature for the Abunzi. While women and young people were by custom excluded from the traditional and semi-traditional Gacaca, the law on the Gacaca Courts allowed them to be Inyangamugayo. It followed logically that this should continue to be the case when the Abunzi committees were established: Rwandan society had lost many 'elderly wise men' during the genocide and therefore had to rely on women and young people to rebuild the country. In addition, the 2003 Constitution included a 'gender' perspective, notably through the setting of quotas to ensure that women were included in various decision-making bodies. Finally, the Inyangamugayo always resided within the Gacaca Court's jurisdiction. This criterion of proximity was also applied to the Abunzi: as community members responsible for settling local disputes, they have a better knowledge of the context of the dispute, the parties in conflict and community customs.

81. Article 4, Presidential Order No. 43/01 of 16/08/2006 establishing regulations on electing mediation committee members. OGRR, special issue of 16/08/2008, hereafter referred to as '2006 Presidential on electing mediators'.


83. It is important to underline the fact that the Abunzi are intended to apply customary law. See Article 16, first paragraph, 2004 Organic Law.
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Mediation as a priority

The mediation committees provide a ‘framework for reconciliation’: their 'main aim ... is to help litigants reach an amicable agreement'. Reconciling the disputing parties is therefore given priority over imposing a decision even though the law stipulates that the mediators must settle the dispute when mediation fails. This priority given to mediation goes back to the traditional Gacaca, whose objective was to compensate for the damage caused to community cohesion and restore social harmony by reconciling the disputing parties. At the end of the 1980s, the semi-traditional Gacaca were still considered 'an important instrument for mediating between families and neighbours and a means of reducing discord and establishing social harmony'. While the creation of the Gacaca Courts did aim at reconciling the population, their main objective was to prosecute and try alleged genocide perpetrators as quickly as possible: unlike the traditional Gacaca, the issue of guilt was central to the functioning of these courts.

In 2004, when the mediation committees were set up, the legislature chose to move away from the rationale adopted for the Gacaca Courts and return to the previous model. The Abunzi are first and

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85 Organic Law No. 16/2004 of 19/06/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1st, 1990 and December 31, 1994. OGRR special issue of 19/06/2004.
87 See 2004 Organic Law on the Gacaca: 'Considering the necessity to eradicate for ever the culture of impunity in order to achieve justice and reconciliation in Rwanda and thus to adopt provisions enabling rapid prosecutions and trials of perpetrators and accomplices of genocide, not only with the aim of providing punishment, but also reconstituting [...] Rwandan society ...'.
88 INGELAERE B., op. cit., p. 25.
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foremost mediators, rather than judges, operating at the local level. This choice can be explained in historical and sociological terms. We must remember that when the mediation committee system was being developed between 2003 and 2004, barely ten years after the genocide, Rwandan society was still in the process of reconstruction: literacy rates were low and the social fabric damaged. Villagers were unlikely to have been capable of settling the civil and criminal disputes in their community as 'permanent lay judges'. This may have been possible in the case of the Gacaca Courts' Inyangamugayo but it was still an exceptional and temporary solution. It was also necessary to avoid confusion between the Inyangamugayo mandate as judge and the Abunzi mandate as mediator. By creating two distinct functions, the legislature ensured that the population would be able to distinguish between them.

Finally, this choice of a mechanism based on the principles of mediation and reconciliation is consistent with the official political discourse that promoted reconciliation and national unity, making Rwandan citizens responsible for managing their own conflicts.

Hierarchy among conflict resolution bodies

Although the appointed 'mediator' must be 'a person of integrity ... acknowledged for their mediating skills', this is no guarantee that mediators will have sufficient knowledge to deal with all the disputes submitted to them. A mediator will not necessarily have had the benefit of much schooling, let alone legal training. To forestall any negative effects of such shortcomings, three main measures were taken. First, the competence of the mediation committees is confined to certain types of litigation, the value of which does not exceed a specific amount (see p. 72). Secondly, the mediators are

89 DOUGHTY K., Our goal is not to punish but to reconcile: Mediation in Post-Genocide Rwanda, American Anthropologist 2014, 116 (4), p. 4.
authorized to come to a decision to settle the conflict in cases where mediation fails. Thirdly, a party who is not satisfied with the decision taken may file an appeal.

This limitation of powers and the existence of an appeals process are reminiscent of the traditional *Gacaca*, where the most serious conflicts and disputes that had not been resolved were settled by community leaders, representatives of the king, or the king himself. This hierarchy continued with the semi-traditional *Gacaca*, the Canton Courts playing the role of the higher instance. Finally, the *Gacaca* Courts had their own hierarchical structure with courts at both cell and sector level.

Throughout the history of the *Gacaca*, it was at the level closest to the community that the population and the wise men first tried to settle disputes that came under their jurisdiction. It was only when they did not succeed that the disputes were sent up to the next level. This traditional model was reintroduced into the *Abunzi* committee system, but this time with a formalized structure.

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90 Organic Law No. 16/2004 of 19/06/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1st, 1990 and December 31, 1994. OGRR special issue of 19/06/2004.

91 Article 20 of the 2004 Organic Law specifies that the party who is dissatisfied with the decision can submit the case to the competent court, namely the Town and District courts, which became the Primary Courts in 2008. With the 2010 reform of the mediation committee system, a hierarchical structure within the system was introduced: the cell mediators continue to handle disputes at the first degree, while the sector mediation committees deal with cases on appeal. The legislature thus added a supplementary stage before the appeal to a formal court.


Incorporation into the state structure

When they were set up, the mediation committees were incorporated into the state structure. As discussed above, the same process occurred as the Gacaca evolved. Under the post-independence regime, the Gacaca were first placed under the supervision of the local authorities. At that time, it was the sector councillor who organized and presided over the Gacaca hearings. After the genocide, the procedure for the Gacaca courts was similar but more sophisticated, and at the national level. An Organic Law governed their organization, competence and functioning while government agencies at the national and local levels supervised the Law's enforcement. If the state wishes to control the functioning of local conflict resolution bodies (which began with the semi-traditional Gacaca), and if it wishes to determine their competence and operating procedures (which formally began with the Gacaca Courts), it is also obliged to set up an organizational structure. Through the establishment of the Abunzi committees, the Rwandan legislature created and put in place a local conflict resolution body.

Adapting and formalizing traditional practices does however raise several questions: does the incorporation of the Abunzi committees into the state structure bring them closer to or further away from the Rwandan people? Are the population's expectations really taken into account? Is this institutionalization not simply another example of the social engineering that had become the State's modus...
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operandi in its relations with the Rwandan people? The answer is twofold: on the one hand, the introduction of new criteria, such as gender equality, into the traditional system is undoubtedly positive. Some commentators, however, fear that the trend towards standardization, professionalization and Westernization of the justice system makes justice less accessible. In setting up the mediation committees, the legislature undoubtedly had the intention of bringing justice closer to the people; but had it considered that its citizens might feel lost when faced with a justice system that was at the same time formalized and based on traditional practices? In any event, the legislature opted to set up a uniform nationwide system subject to a legally prescribed written procedure. Furthermore, while it is true that the introduction of a 'modern' justice system goes back to the colonial period and that the population was already familiar with this, it was nevertheless noted in the 1980s that the vast majority of disputes continued to be settled by the semi-traditional Gacaca rather than by the formal courts. Although in most cases the Gacaca decisions did not comply with the provisions of statutory law, the parties rarely appealed against them to the formal courts.

Recent history thus shows that the Rwandan people were attached to a conflict resolution system that was relatively un-formalized. It may be wondered whether in 2004 the population was ready to abandon this arrangement in favour of a new and more institutionalized system. It is the concrete experience of the population that will be the true indicator of whether the state has been mistaken in its social engineering approach, or whether it has satisfactorily addressed Rwandans' real expectations.

create short-term solutions to certain social problems, without necessarily giving society time to develop its own solutions.

97 INGELAERE B., op. cit., p. 255.
99 Ibid., pp. 36-39.
Demarcation of powers

Traditionally, the Gacaca dealt with the vast majority of civil disputes within the family or the community. These disputes could involve property, inheritance, cattle, marital relationships, breach of contract, etc. The traditional Gacaca even dealt with some criminal cases such as theft or bodily harm. The types of dispute heard by the semi-traditional Gacaca were broadly similar to those handled by the traditional Gacaca. In 2004, when it came to defining the powers of the mediation committees, the legislature seems to have been influenced by the types of case handled by the traditional and semi-traditional Gacaca; the Abunzi were thus given broadly similar powers in both civil and criminal matters. Article 7 of the 2004 Law stipulates that the mediation committees are competent to examine any civil case relating to:

1° lands and other immovable assets whose value does not exceed three million Rwandan francs;

2° cattle and other movable assets whose value does not exceed three million Rwandan francs;

3° non-implementation of a contract where the value of the matter at issue does not exceed three million Rwandan francs unless the contract refers to work or insurance, or specifies the litigation will be settled by an arbitration court;

4° family cases other than those related to civil status;

5° successions.'

Article 8 of the same law defines the competence of mediation committees in criminal cases. This competence continues to cover cases that generally arise from the 'fact that people are living in close
proximity: altercations in bars, public insults or defamation, fights, removing or displacing boundary stones; destruction, damage or theft of crops whose value does not exceed three million Rwandan francs; 'simple robbery' where the value of the stolen assets does not exceed three million Rwandan francs; adultery, etc. The Explanatory Note for a draft of the 2004 Law states that the mediation committees can deal with these types of offence as they are matters that clearly do not concern the population at large [...] and do not constitute a breach of the peace.

Going beyond the previously mentioned sociological argument according to which the mediation committees have *ratione materiae* competence (subject matter jurisdiction) appropriate to the knowledge and background of their members, it is also apparent that this competence was defined on the basis of the practices of the traditional and semi-traditional Gacaca.

One may nevertheless wonder whether the *ratione summae* competence accorded (jurisdiction regarding the amount involved in a case) is in fact consistent with the knowledge of the 'average' mediator. The *Abunzi* were given competence in disputes involving movable and immovable assets whose value does not exceed three million Rwandan francs. While it may be difficult to determine what this sum corresponds to in the mind of the 'average mediator', there is good reason to question such a mediator's familiarity with three million Rwandan francs, as can be seen from several indicators. For example, in 2004, the annual per capita GDP was 133,901 Rwandan francs, and in 2001, 60% of households had less than 0.5 hectares

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of land\textsuperscript{103}, the value of which is likely to have been well below three million Rwandan francs. In 2004, over half the Rwandan population lived in poverty\textsuperscript{104}, and in 2002, 80\% of the cases pending before the ordinary courts were for sums less than one million Rwandan francs\textsuperscript{105}. The 'average' mediator was therefore highly unlikely to have to deal with amounts such as three million Rwanda francs in his or her everyday life, just as it was rare for disputes concerning such amounts to occur at the local level.

Why therefore was the ceiling on the value of assets in disputes set at three million Rwandan francs? A technical/legal reason exists for this ceiling, since the same amount was established in the 2004 Law on the jurisdiction of the District and Town Courts in civil matters; in 2008, the Town Courts became the Primary Courts\textsuperscript{106}. Since any appeal against the decision of an Abunzi committee must be filed in the District or Primary Court, the mediation committees' jurisdictional ceiling cannot logically be higher than that of these


\textsuperscript{104} Republic of Rwanda, National Institute of Statistics of Rwanda, (2012). The evolution of poverty in Rwanda from 2000 to 2011: Results from the household surveys (EICV), Kigali, p. 14. As an illustration, only 46.7\% of households had a radio in 2005-2006 (p. 27 of the above report) and 6.2\% a mobile phone (see Republic of Rwanda, National Institute of Statistics of Rwanda, Rwanda’s Mobile phone penetration raised [sic] over past five years.


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courts. However, this argument only accounts for the mediation committees’ jurisdictional ceiling being limited to three million Rwandan francs. The legislature could have set the ceiling lower than this amount. It may legitimately be asked whether it is reasonable for the same standard to be applied to volunteer mediators and to professional judges. In fact, the legislature invested the mediators with broad *ratione summae* jurisdiction to enable them to settle as many local conflicts as possible. In this way, only complex technical cases or those with an exceptionally high value - a minority of disputes, such as insurance-related cases - were heard by the Primary Courts.

**Accessibility and community involvement**

One of the most obvious similarities between the *Gacaca* and the *Abunzi* committees was the tangible form they took: all these conflict resolution bodies met on the hills, within the communities at grassroots level. In 2003, mediation committees were set up at sector level, roughly corresponding to one committee for fourteen villages\(^\text{107}\), i.e. one committee for each area of around 17 km\(^2\)\(^\text{108}\). The legislature had therefore maintained its objective of making this conflict resolution mechanism highly accessible geographically. In addition to this proximity to the population, two other important criteria worth noting were the simplicity of the procedure for submitting a case and the low cost entailed\(^\text{109}\). The potential litigant

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\(^{107}\) Before the 2005 administrative reform, there were 1,545 sectors, which in fact corresponded to the present cells, namely 2,148 entities. A cell is made up of around ten villages (*Imidugudu*), and each village has around 150 houses or households.

\(^{108}\) The calculation is made as follows: if Rwanda has a total surface area of 26,338 km\(^2\) with 1,545 sectors, that gives an average surface area for each sector of 17 km\(^2\). Extending the reasoning, a citizen can be said to live approximately 3 km from his or her sector mediation committee. A similar calculation was made by USAID in USAID Land Project, (2012). *Abunzi Capacity Assessment*, Kigali, p. 11.

\(^{109}\) On this point, the Law and Internal Rules and Regulations remain vague: they specify only that it is the districts or the towns which cover the running costs of the mediation committees within their jurisdiction (Article 22 of the 2004
had simply to submit his or her request to the sector executive secretary, either orally or in writing. The accessibility of the Abunzi committees was thus strengthened by these three key characteristics, specific to traditional conflict resolution mechanisms.

Voluntary service

A system that is free and accessible to all does however need certain resources in order to function. As already mentioned, when the mediation committees were set up, the authorities wanted to reduce the judiciary's running costs. The prevailing policy was also to advocate active participation by the population in the delivery of justice. Finally, the Gacaca and their Inyangamugayo, who were not justice professionals but ordinary members of the community, had demonstrated their effectiveness. It was quite logical then for the legislature to make the citizen the central figure in the mediation committee, specifying explicitly that 'the mediation service is voluntary'. The Explanatory Note states that the mediators are not paid for this task and are not permitted to demand any remuneration from their clients. The main resource of the new system is therefore the Rwandan citizen, who receives no financial compensation for this work.

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Organic Law and Article 7 of Ministerial Order No. 122 of 18/10/2004 determining internal rules and regulations of the mediation committees, OGGR No. 20 du 15/10/2004, hereafter referred to as 'Internal Rules and Regulations, 2004'). In addition, the Explanatory Note for the draft 2004 Law states that the mediation committee must not demand any payment for handling cases.


111 Article 3, last paragraph, 2004 Organic Law.

112 Republic of Rwanda, Parliament, Chamber of Deputies, Explanatory Note, Draft Organic Law No. ... of ... on the organisation, competence and functioning of the mediation committee, Compendium of Explanatory Notes, 44-435.
This obligation imposed on citizens is rooted in the 2003 Constitution and is reflected in many concrete situations: at local authority level, the members of the village and cell executive committees and of the cell evaluation committee are described as 'carrying out their work voluntarily in the framework of self-development, good governance and social development'; a 2007 Law institutionalized the traditional practice of Umuganda, obliging every Rwandan aged between 18 and 65 to undertake community work in the general interest once a month; finally, the Inyangamugayo of the Gacaca Courts fitted naturally into this general trend by carrying out unpaid voluntary work. According to the National Itorero Commission, the state calls on the voluntary services of 59,368 community health workers (abajyanama b'ubuzima) and 65,000 polling officials. The spirit of volunteerism is thus omnipresent in Rwanda, and the state expects the citizen to work in the public interest in a whole variety of fields. This is also the case for the voluntary service offered by the Abunzi. But is every citizen ready to take on this sometimes challenging role, let alone on a voluntary basis? The citizen is 'empowered', but does this not lead to greater state ascendency and control over the population? By involving the citizen in the functions of governance, does the state not thereby find a means of insinuating itself into what was previously the private sphere? Although the system was not

113 Article 47 of the Constitution of the Republic of Rwanda specifies that 'all citizens have the duty to participate, through work, in the development of the country, to safeguard peace, democracy, social justice and equality and to participate in the defence of the motherland'.

114 Article 2, Presidential Order No. 57/01 of 15/10/2006 determining the structure and functioning of village, cell and sector, OGRR No. 23ter of 1/12/2006.


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established with this in mind, it is one of its potential consequences.

The choice of panel: three of the twelve elected mediators

While there are many similarities between the mediation committees and Gacaca, the method of appointing the Abunzi panel members differs from the Gacaca procedure. In its original 2003 version, the Constitution specified that on the first day of the hearing the parties should choose three of the twelve committee members to whom to submit their dispute\textsuperscript{119}. These members are elected by the population for a term of two years\textsuperscript{120}. The three panel members thus vary from one dispute to another, according to the choice made by the parties. This is an innovation in relation to traditional and semi-traditional Gacaca procedures. While the Inyangamugayo of the Gacaca Courts were elected by the population, they only had to reach a certain quorum in order to be able to meet. This quorum was set at five\textsuperscript{121}, seven\textsuperscript{122} and nineteen\textsuperscript{123} Inyangamugayo. The legislature seems to have opted for formal election of the Abunzi so as to institutionalize the mediation committees, without however giving any further explanation on their composition.

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\textsuperscript{119} Former Article 159, paragraphs 2 and 3, Constitution of 2003. See also Article 13, 2004 Organic Law.
\textsuperscript{120} Former Article 159, paragraph 3, Constitution of 2003. In 2010, the term was extended to five years.
\textsuperscript{121} Article 5, Organic Law No. 10/2007 of 1/03/2007, modifying and complementing Organic Law No. 16/2004 of 19/6/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994 as modified and complemented to date. OGRR No. 5 of 1/03/2007.
\textsuperscript{122} Article 23, Organic Law No. 16/2004 of 19/06/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1st, 1990 and December 31, 1994. OGRR special issue of 19 June 2004.
\textsuperscript{123} Article 23, Organic Law No. 40/2000 of 26/01/2001 setting up 'Gacaca jurisdictions' and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994.
In conclusion, the mediation committees are undeniably rooted in traditional conflict resolution practices, but their formal framework and concrete structure distinguish them from the traditional *Gacaca*. This distinction can be seen from the perspective of historical continuity: the traditional *Gacaca* had changed considerably between the pre-colonial period and their reincarnation as the post-genocide *Gacaca* Courts. This change can then be considered to have followed a logical course with the establishment of the mediation committees. Like the *Gacaca* Courts, the mediation committees were set up by a political regime facing enormous challenges in the justice sector. A creative and realistic solution therefore had to be found, and it is in this sense that the mediation committees and *Gacaca* are similar: the two mechanisms were created to fill the gap left by the formal justice system. Their respective goals are, however, quite different: the *Gacaca* Courts were set up as an exceptional, temporary measure while the *Abunzi* committees were created with the longer-term objective of resolving local conflicts and relieving pressure on the ordinary courts. The next section examines official political discourse on changes to the legislation since 2004 and considers the effect of this on the mediation committees' legal framework.

1.3. **Development of mediation since 2004: Legislation and political discourse**

Between 2003 and 2004, promotion of the principles of reconciliation and decentralization, along with the need to relieve pressure on the justice system, led the legislature to establish the *Abunzi* committees. To enable the committees to carry out their mission effectively, their

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124 See also INGELAERE B., *op. cit.*, pp. 21-22: 'From observation of the type of disputes [the Abunzi committee] settles, the sort of penalties it can impose and the style of mediating, this activity resembles the gacaca in its features and scope as it existed before the genocide. However, this mediation committee has been almost totally formalized and incorporated into the machinery of state power as well.'
structure, jurisdiction and procedures were defined in great detail in a series of laws that will be analysed below in the context of the official political discourse underlying these legislative developments.

**1.3.1. Political discourse: promoting mediation and dialogue, or streamlining the functioning and costs of the justice system?**

To gain a better understanding of the development of mediation committee legislation, it is important to consider the political context in which it evolved.

*Between 2003 and 2004: official discussions and establishment of the Abunzi committees*

It was during this period that the mediation committees were set up. The legislature wanted to strengthen the spirit of reconciliation between Rwandans so as to promote national unity and reconciliation, as set out in Point 4 of the Preamble to the 2003 Constitution. The rule of law was to be founded on 'resolution of issues through dialogue'. The relieving of pressure on the formal justice system was seen as one of the consequences of the work of the Abunzi committees.

*Between 2008 and 2012: First Economic Development and Poverty Reduction Strategy*

In the following years, the case for relieving pressure on the ordinary justice system was given greater prominence. One of the Rwandan government's key strategic documents, *Economic Development & Poverty Reduction Strategy* for 2008-2012 (hereafter EDPRS1), indicated that 'to avoid further overburdening, the Justice Sector will further develop alternative justice mechanisms including the Abunzi'.

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125 Point 6, Preamble to the Constitution.
A more general paragraph on strengthening the rule of law mentions that special attention will be given to strengthening the mediation committee system\textsuperscript{126}.

From 2010 to 2017: the Official Government Programme

The official Rwandan Government Programme for 2010-2017 makes no specific mention of the mediation committees. The only implicit reference comes in the statement that ‘the Government will continue to consolidate decentralized, reconciliatory and participatory justice that protects people and eradicates the culture of impunity’\textsuperscript{127}. In terms of the actions described in the Programme, eradicating the culture of impunity refers solely to genocide cases. Reducing the number of cases brought before the formal courts is explicitly mentioned as a specific objective but is not linked to the mediation committees. No changes are introduced, and the Abunzi committees are no longer a key element of the political agenda.

From 2013 to 2018: Second Economic Development and Poverty Reduction Strategy

The second Strategy confirms the trend observed above. The justice sector occupies a very modest place in EDPRS 2; the Abunzi are scarcely mentioned. Significantly, the Strategy highlights the positive impact of the mediation committees' work on the court case backlog\textsuperscript{128} but adds nothing about their future. Improving access to justice is mentioned in relation to strengthening the rule of law.

\textsuperscript{126} Republic of Rwanda, (2007). Economic Development and Poverty Reduction Strategy 2008-2012, Kigali, p. 85, 4.149 and p. 82, 4.128: 'To strengthen the rule of law, emphasis will be put on reinforcing the capacity in the efficient administration of Justice in order to ensure universal and timely access to justice and the respect for human rights. Special attention will be given to clear Gacaca cases, to clear the backlog in regular judicial cases, and strengthening of the Abunzi mediation mechanism.'


However, implementing the rule of law is essentially regarded as a prerequisite for the country's economic development: specific initiatives for the justice system focus mainly on anti-corruption measures and strengthening security\textsuperscript{129}.

Political leadership discourse

When EDPRS 2 was being developed, Rwandan political leaders gave their views on the Abunzi committees, with a focus on reducing the backlog for the ordinary courts. The Rwandan President set the tone: 'The Abunzi system of justice has taken root and citizens play a major role in this program that is based on Rwandan historical tradition. This system has been key in reducing cases that would have otherwise gone to courts of law'\textsuperscript{130}. Two successive Justice Ministers later echoed the President's words, calling for a change of attitude among the population. In 2012, Mr Karugarama, Minister of Justice from 2006 to 2013, announced the government's quantitative objectives for Abunzi justice: 'The government wants over 90 percent of cases to be settled by community mediators...'\textsuperscript{131} He added that the mediation committees should enable higher legal officers to concentrate on other development projects in the Ministry of Justice. Addressing residents of a rural community in Kigali, he discouraged them from going through the courts, stating that 'this business of taking your cases to courts is a waste of time where you move from court to court yet it could be solved by mediators'. His successor, Mr Busingye, Minister of Justice since May 2013, repeated this injunction to the citizens of Rwanda: 'We want the community to change the mindset and to understand that conflicts can be resolved at community level because litigation consumes resources'\textsuperscript{132}. One of the

\begin{thebibliography}{9}
\bibitem{129} Ibid., xiii and pp. 81-82.
\bibitem{130} Republic of Rwanda, Office of the Prime Minister, (2013). President Kagame presented the state of the Nation, 1 January 2013.
\bibitem{131} New Times, (28 June 2012). Public urged to make good use of mediators.
\bibitem{132} New Times, (9 December 2013). Reforms to expedite delivery of justice. See also New Times, (11 February 2014). Court fees increase rational and New Times, (18
initial arguments in favour of creating mediation committees was thus reaffirmed: limiting the costs and resources needed to try cases in the ordinary courts. Recently, the Minister even tried to calculate the savings made, thanks to the work of the mediation committees: the average cost of litigation in the ordinary court system is estimated at 300,000 Rwandan francs per case\textsuperscript{133}. Given the constantly rising cost of formal justice, the Minister pointed out that alternative means of dispute resolution were becoming imperative\textsuperscript{134}. In its Volunteerism Policy Paper, the National Itorero Commission calculated that a mediator worked an average of 50 days per year at a hypothetical rate of 3,000 Rwandan francs per day\textsuperscript{135}. With 30,768 mediators nationwide, this would amount to a cost of 4.6 billion Rwandan francs per year to the state budget, slightly more than the National Public Prosecution Authority budget for 2013-2014\textsuperscript{136}.

The Minister of Justice recently acknowledged the role played by the Abunzi in building a peaceful and harmonious society\textsuperscript{137} as well as the accessibility of their services to the majority of the population\textsuperscript{138}. Yet it is the economic argument that dominates official political discourse

\textsuperscript{133} New Times, (8 September 2014). \textit{Community mediators’ role in solving conflicts hailed.}
\textsuperscript{134} Ibid.
\textsuperscript{137} New Times, (9 December 2013). \textit{Reforms to expedite delivery of justice.}
on the contribution made by the mediation committees. In March 2014, this was confirmed once again during the eleventh Leadership Retreat, an annual meeting of Rwanda's political leaders organized by the Office of the President and the Office of the Prime Minister. One of the resolutions adopted reflects this priority in the mediation committees' mandate: 'To streamline the functioning of the Mediation Committee (Abunzi) and the Citizens' Forums (Inteko z’Abaturage) and ensure their efficient collaboration in citizen dispute resolution with the aim of reducing the number of claims filed before Courts of law.' Ideological' arguments have thus given way to pragmatic arguments to do with clearing court backlogs and reducing the operational costs of the justice system. The reversal of priorities compared to 2003 is striking.

A third factor has also come into play in the last few years: the authorities' promotion of 'home-grown solutions' or 'Rwandan solutions', meaning local solutions tailored to problems specific to the Rwandan context; the work of the mediation committees fits perfectly into this approach.

1.3.2. Developments in mediation committee legislation

The previous paragraph summarized how the objectives of mediation committees have evolved in official strategies and recent political discourse. It is now a question of establishing which objective will prevail so as to determine the direction in which the government

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140 This process was launched immediately after the genocide, notably during the drafting of the 2003 Constitution. On this subject, see GASAMAGERA W., op. cit., p. 9.
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aims to develop the system in concrete terms. If the main objective is to promote the spirit of dialogue, the committees' mediation mandate needs to be intensified. Furthermore, the state would be well advised to invest in strengthening the mediation committees' technical capacities so that they are genuinely able to 'promote the spirit of dialogue', not only when a dispute arises but also as a preventive measure. If, on the other hand, the committees' work is aimed mainly at relieving pressure on the courts, the policy option would then be to broaden their mandate to enable them to handle disputes that are normally brought before the formal courts. The previous analysis suggests that it is the second hypothesis that reflects the reality; this will be confirmed by examining the legislation that governs the functioning of the mediation committees.

The structure of the mediation committee system

2003-2004: Establishment of sector-level mediation committees

In 2003, the new Constitution introduced mediation committees in each of the country's sectors (a total of 1,545). Any party dissatisfied with the decision reached by the Abunzi could file an appeal with the District or Town Court. In an approach aimed at promoting 'the spirit of dialogue', a mediation body close to the community makes particular sense: the disputing parties submit their case to the mediators, whom they know well and who themselves are familiar with the context of the dispute; if mediation fails at this level, it is unlikely that dialogue will suffice to settle the dispute. If, however, the aim is to prevent direct access to the formal courts, then the establishment of a single level of mediation is not effective: the parties can bring the case to court after only one attempt at mediation and within a relatively short space of time, since the

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mediators have only ten days after the complaint is registered to submit their conclusions. Consequently, the litigant wishing to have his case heard by an ordinary court is unlikely to be discouraged by this preliminary step which, in practical terms, adds only ten days before the case is submitted to an ordinary court.

2006: Establishment of cell-level mediation committees

In 2005, Article 159 of the Constitution, relating to the mediation committees, was amended. Shortened and simplified, the Article no longer mentions the level at which the mediation committees are established. The 2006 Organic Law on mediation committees, adopted after the administrative reform of 2005, introduced them at cell level. The number of committees thus increased from 1,545 (number of sectors before 2005) to 2,148 (number of cells established after the 2005 reform): this reduced the average size of jurisdiction of the mediation committee, thus facilitating citizens' access to a committee in their own area. While the single level of mediation – now at the cell level – was maintained, the deadline for the mediators to submit their conclusions went from ten to thirty days – starting from the date on which the complaint was registered, thus extending the time period before a case could be submitted to a formal court.

2010: Establishment of two mediation bodies, at different levels

The Organic Law on the mediation committees was amended for the second time in 2010; it is this version that is currently in force. In 2010, the system of the single cell-level mediation body was discontinued with the creation of sector-level committees that act as

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143 Article 15, second paragraph, 2004 Organic Law.
144 2006 Organic Law.
145 Article 20, 2006 Organic Law.
146 Organic Law No. 02/2010 of 9/06/2010 on organisation, jurisdiction, competence and functioning of the mediation committee, OGRR No. 24bis of 14/6/2010, hereafter referred to as '2010 Organic Law'.

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appeal bodies\textsuperscript{147}. There are now 2,564 mediation committees: 2,148 at cell level and 416 at sector level. The cell committees continue to handle disputes in the first instance. However, after their decision, it is no longer possible to file an appeal with a formal court: instead, the appeal must be submitted to the sector mediation committee. The procedure for gaining access to the formal court system has thus been lengthened by one stage and now operates as follows:

- The cell mediators have one month to submit their decision after the complaint has been registered\textsuperscript{148} (as was already the case in 2006);
- After this month has elapsed, any party that is not satisfied with the decision has one month to appeal to the sector committee;
- Once the case has been referred to it, the sector committee has one month to settle the litigation\textsuperscript{149}.

The maximum time period that must elapse before a litigant can refer a case to the formal courts has therefore been considerably lengthened, with the possible consequence that this may discourage litigants from doing so. In addition to this statutory period, the procedure is also time-consuming for litigants in terms of their everyday work/activities. Furthermore, while no fee is charged for submitting a case to the Abunzi committees, the litigant may have transport, communications, photocopying and other expenses, which are increased by the new appeals system. It is also important to stress the following point: mediation is unlikely to succeed at sector level if it has previously failed at cell level\textsuperscript{150}.

\begin{flushright}
\textsuperscript{147} Article 2, second paragraph, and Article 26, first paragraph, 2010 Organic Law.
\textsuperscript{148} Article 20, last paragraph, 2010 Organic Law.
\textsuperscript{149} Ibid.
\textsuperscript{150} During our 2013 monitoring activities, we observed that 24.4\% of the cases submitted to cell mediation committees resulted in successful mediation compared with only 12\% of cases submitted to the sector committees. The chances of mediation succeeding are therefore twice as high at cell level. See
\end{flushright}
Material jurisdiction of the mediation committees

2003 Constitution and 2004 Organic Law

The 2003 Constitution stipulates that the issue of competence is to be determined by law. The 2004 Organic Law accordingly sets out the competence of the mediation committees: civil competence in five areas\(^{151}\), and criminal competence in seventeen areas\(^{152}\). A value of three million Rwandan francs is established as the ceiling for both civil and criminal matters with the exception of inheritance cases, for which no ceiling is set.

Moreover, litigation on commercial contracts, as opposed to employment or insurance contracts, is not explicitly excluded from the competence of the mediation committees\(^{153}\). This is likely to have been an oversight by the legislature: since commercial disputes were already submitted to the formal courts\(^{154}\) (and not to the semi-traditional Gacaca), the practice must have been taken for granted.

The parties to a contract are also authorized to submit their dispute to an arbitration court, thus enabling them to bypass the Abunzi committees\(^{155}\).

2006 Organic Law

The new Organic Law adopted in 2006 retained the same five areas of civil competence with the following modifications:

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\(^{151}\) Article 7, 2004 Organic Law.

\(^{152}\) Article 8, 2004 Organic Law.

\(^{153}\) Article 7 (3), 2004 Organic Law.


\(^{155}\) Article 7 (3), in fine, 2004 Organic Law.
- the ceiling for competence in cases relating to cattle and other movable assets was lowered from three million to one million Rwandan francs\(^\text{156}\);

- the same applied to breach of contract, where the value of the matter at issue could no longer exceed one million Rwandan francs;

- administrative contracts and commercial contracts were explicitly excluded from the mediation committees' mandate (as well as insurance contracts) while 'labour [contracts] whose value does not exceed one hundred thousand Rwandan francs' were included\(^\text{157}\);

- the competence of the Abunzi committees in successions was fixed at a ceiling of three million Rwandan francs\(^\text{158}\).

The modifications made in the 2006 Organic Law mainly concern clarifications to the wording of the original articles. However, the reasons for the modifications to some of the amounts are not clear. If the legislature wished to limit the competence of the Abunzi committees, these amendments were unlikely to have any major practical consequences since 80% of cases pending before the courts in 2003 concerned amounts of less than one million Rwandan francs\(^\text{159}\).

A more significant change was made concerning the mediation committees' criminal competence: the list was shortened from seventeen to thirteen offences. The following offences were removed:

\[^{156}\text{Article 8 (2), 2006 Organic Law.}\]
\[^{157}\text{Article 8 (3), 2006 Organic Law.}\]
\[^{158}\text{Article 8 (5), 2006 Organic Law.}\]
\[^{159}\text{Ligue des droits de la personne dans la région des Grands Lacs, L’impact du rôle des conciliateurs sur la justice rwandaise au niveau de la base, Kigali, 2008, p. 24.}\]
- personal/family matters:
  o adultery (Article 8.10 of the 2004 Organic Law);
  o desertion from the marital home, child neglect or abandonment (Article 8 (11) of the 2004 Organic Law);
- aggressive acts:
  o verbal or written threats on persons or their property (Article 8 (5) of the 2004 Organic Law);
  o simple assault and injury (Article 8 (9) of the 2004 Organic Law);
- fraudulent behaviour:
  o extortion by means of written or verbal threats, revelations of defamatory facts (Article 8 (13) of the 2004 Organic Law);
  o swindling where the value of the object of offence does not exceed three million Rwandan francs (Article 8 (14) of the 2004 Organic Law);
  o lies (Article 8 (15) of the 2004 Organic Law).

The following offences were, on the other hand, added to those within the competence of the mediation committees:

- 'hiding stolen goods, where the value of the stolen thing does not exceed one million Rwandan francs' (Article 9 (7) of the 2006 Organic Law);
- 'recovering a movable asset belonging to another person or having it by hazard and keeping it or fraudulently giving it to a person other than the owner, where the value of that asset does not exceed one million Rwandan francs' (Article 9 (10) of the 2006 Organic Law);
- 'any type of assault to a person or intentionally throw on her or him rubbish or any other thing of dirtying nature without causing injury or physical harm' (Article 9 (13) of the 2006 Organic Law).
Finally, the following further changes were made:

- 'simple robbery where the value of stolen assets does not exceed one million Rwandan francs' Article 9 (6) of the 2006 Organic Law (instead of three million Rwandan francs in the 2004 Organic Law);
- the ceiling for competence in breach of trust cases was set at one million Rwandan francs while breach of trust committed against financial institutions was explicitly excluded (Article 9(9) of the 2006 Organic Law).

In 2006, the legislature seems to have chosen to exclude offences of a purely personal or family nature. Furthermore, by removing acts of violence – which cause physical harm to the individual – from the mediation committees' mandate, the legislature made the choice of having such cases examined by professional judges.

In short, the legislature seems to have decided to limit the criminal jurisdiction of the mediation committees to litigation between individuals, one of whom has caused damage to the goods or reputation of the other or to the trust between them.

**2010 Organic Law**

In the Organic Law adopted in 2010, the mediation committees remain competent to hear the six civil matters established in 2006. For employment contracts, they are declared to be competent for 'employment obligations concluded between individuals if they have a value of less than one hundred thousand Rwandan francs'\(^{160}\) while in 2006 the committees could handle labour contracts between individuals, the value of which did not 'exceed' one hundred thousand Rwandan francs. For the day-to-day functioning of the mediation committees, this reformulation does not represent any

\(^{160}\) Article 8 (4), 2010 Organic Law.
major change. The added value of this wording lies rather in its clarification of the legislature's intention: the Abunzi committees are competent to deal with disputes between employee and employer when these are individuals.

In addition, the 2010 Organic Law clarifies the concept of 'administrative contract', which was also included in the 2006 Organic Law: it is now a question of 'central government [...] contractual obligations'\textsuperscript{161}. By excluding this type of contract as well as insurance contracts, commercial contracts and 'complaints involving the State, State-owned structures or associations or companies with legal personality whether private or public'\textsuperscript{162}, the legislature clarified its decision to entrust the mediation committees only with disputes between individuals.

A further important modification in the 2010 Organic Law relates to the fact that parties to a contract can no longer exclude such contracts from the competence of the mediation committees\textsuperscript{163}. The mediation committees' competence now having become the rule, individuals can no longer bypass them to take cases directly to the ordinary courts. In criminal matters, the 2010 Organic Law contains the same thirteen types of offence, with some modifications to the wording of the provisions. The most important change concerns the increase in the ceiling set for some offences from one million to three million Rwandan francs (larceny\textsuperscript{164}, concealment of goods\textsuperscript{165}, breach of trust\textsuperscript{166}, and discovering and keeping a movable asset belonging to another person\textsuperscript{167}), further extending the remit of the Abunzi committees for criminal matters.

\textsuperscript{161} Article 8 (3), 2010 Organic Law.
\textsuperscript{162} Article 10, last paragraph, 2010 Organic Law.
\textsuperscript{163} Article 8 (3), 2010 Organic Law.
\textsuperscript{164} Article 9 (6), 2010 Organic Law.
\textsuperscript{165} Article 9 (7), 2010 Organic Law.
\textsuperscript{166} Article 9 (10), 2010 Organic Law.
\textsuperscript{167} Article 9 (11), 2010 Organic Law.
In 2013, a new revision of the legal framework for the mediation committees was undertaken by the Ministry of Justice. Several parliamentary sessions of Chamber of Deputies and Senate committees led to modifications in the draft law of 24 April 2013, without a definitive text being agreed upon. It is therefore this draft version along with the Explanatory Note of 15 March 2013 which will be discussed here in order to understand the changes currently envisaged to the functioning and mandate of the mediation committees.

The greatest changes in the draft law concern the mediation committees' material and territorial jurisdiction in criminal matters; their civil jurisdiction remains unchanged.

The draft law proposes extending the committees' criminal jurisdiction in two ways. First, the ceiling set for the offences the committees are competent to handle is to be raised from three million to five million Rwandan francs. The *ratio legis* of this increase remains unclear since no information on the subject is given in the Explanatory Note. In terms of the average rate of inflation, which stood at around 10% between 2004 and 2014, such an increase seems logical; however, the criterion for establishing the new ceiling is not mentioned. It is worth reiterating that, in 2004, three million Rwandan francs represented an enormous sum of money for the majority of the population. In proportional terms, five million

168 This date is given in the title of the electronic file passed on to RCN J&D by the Ministry. This document has not (yet) been published but is available online: [http://www.parliament.gov.rw/uploads/tx_publications/DRAFT_ORGANIC_LAW__ON__ABUNZI__...pdf](http://www.parliament.gov.rw/uploads/tx_publications/DRAFT_ORGANIC_LAW__ON__ABUNZI__...pdf)

169 This document has not (yet) been published by the Ministry of Justice but is also available online. [http://www.parliament.gov.rw/uploads/tx_publications/EXPLANATION__NOTE__-ABUNZI.pdf](http://www.parliament.gov.rw/uploads/tx_publications/EXPLANATION__NOTE__-ABUNZI.pdf)
Rwandan francs is just as huge in 2014: in 2011, 44.9% of Rwandans lived below the poverty line with annual household consumption of less than 118,000 Rwandan francs (around 200 US Dollars)\textsuperscript{170}. Over the last few years, the underlying idea has remained the same: to include as many local-level disputes as possible in the competence of the mediation committees\textsuperscript{171}.

The second extension of the Abunzi committees' criminal jurisdiction concerns five new offences. The Explanatory Note gives no indication of the reasons for four of these being included or reintroduced into the Law, namely fraud (included in 2004 but withdrawn from the 2006 Organic Law), making off without payment\textsuperscript{172}, night disturbance, and blackmail (very similar to the 2004 Law's 'extortion by means of written or verbal threats, revelation of defamatory facts', another provision withdrawn in 2006). These modifications do however remain consistent with the legislature's decision in 2006 to confine the committees' competence to disputes between individuals.

The fifth type of offence concerns damage to the property of others, but the context of the offence is very specific: the draft law proposes conferring competence on the mediation committees for 'looting and damaging of property which was not tried by Gacaca Court committed between October 1, 1990 and December 31, 1994

\textsuperscript{170} As an illustration, according to the latest official statistics available (2010-2011), 60.1% of households had a radio, compared with 46.7% in 2005-2006, and 45.2% had a mobile phone (compared with 6.2% five years earlier). See Footnote 104.

\textsuperscript{171} Concerning the most common subjects of dispute submitted to the mediation committees, see DOUGHTY K. (2011), \textit{Contesting Community: Legalized Reconciliation Efforts in the Aftermath of Genocide in Rwanda}, Publicly accessible Penn Dissertations, Paper 333, 249: 'Items under debate in Abunzi cases typically reflected the rhythm and business of everyday life—a sack of homemade charcoal, a weighing scale used by a woman to sell flour and sugar, ten dollars-worth of chipped glass soda bottles, a cell phone, a pig, a bicycle, or parts of a house. In the context of economic scarcity, it was often worth fighting for a single animal or a few dollars'.

\textsuperscript{172} Offence consisting in 'obtaining credit by fraud', for example not paying for a meal or for accommodation.
regardless [of] the value of the property looted or damaged or the fact that they were committed by civilians, gendarmes or soldiers.\footnote{This corresponds to the third and last category of crimes of genocide, as defined in Article 11 of Organic Law No. 10/2007 of 1/03/2007, modifying and complementing Organic Law No. 16/2004 of 19/6/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994 as modified and complemented to date, OGRR No. 5 of 1/03/2007. For information, crimes in the first category come within the jurisdiction of the Intermediate Court, and crimes in the second category are in the jurisdiction of the Primary Court (see Articles 4 & 5 respectively of Organic Law No. 04/2012 of 15/06/2012 terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction. OGRR special issue of 15/06/12).}

In the Explanatory Note, no technical legal justification is given for adding this competence to deal with part of the outstanding litigation from the \textit{Gacaca} Courts. The reason for this is clear: since the Organic Law of 2012 terminating \textit{Gacaca} Courts assigned this competence to the mediation committees\footnote{Article 6, Organic Law No. 04/2012 of 15/06/2012 terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction. OGRR special issue of 15/06/12.}, the Organic Law on the mediation committees had in turn to be modified to include this point. The Explanatory Note does not specify whether such litigation is still common (this is difficult to ascertain) or why it is the mediation committees, rather than the formal courts, that should be competent to deal with this kind of offence.

One may legitimately wonder whether the \textit{Abunzi} committees are the best equipped to deal with these purely criminal cases. Handling of the post-genocide litigation was originally entrusted to the \textit{Gacaca} Courts, whose duties were to punish, not to mediate. Is mediation, as practised by the mediation committees, a realistic option for such cases?

The answer was given in the 2012 law terminating \textit{Gacaca} Courts: in these cases, mediation must not even be attempted since 'offenders
shall be ordered to pay compensation\textsuperscript{175}. Twenty years after the events, the mediators must therefore automatically order compensation for a property looted or damaged during the genocide. This is no insignificant matter, and one that seriously calls into question the mandate and indeed designation of the mediation committees, whose function is to reconcile disputing parties.

\textit{The territorial jurisdiction of the mediation committees}

\textbf{2004 Organic Law and 2004 Internal Rules and Regulations}

The 2004 Organic Law does not address the territorial jurisdiction of the mediation committees. However, the Internal Rules and Regulations (IRR) of 2004 give some information on this point, specifying that there is no limit to the territorial jurisdiction of an \textit{Abunzi} committee: "The mediation committee where the defender is resident or where the disputed property is situated has jurisdiction to deal with the dispute." In addition, when there are several defendants, the plaintiff may choose to submit his or her complaint to the mediation committee where one of the defendants is resident.\textsuperscript{176}. The territorial jurisdiction of the mediation committees is thus defined on a geographical basis. In the absence of any official legislation, it is difficult to know whether this type of jurisdiction applied to the practices of the semi-traditional \textit{Gacaca}. However, most of the disputes handled by the semi-traditional \textit{Gacaca} are reported to have concerned residents from the same sector or area\textsuperscript{177}. The legislature seems accordingly to have started from that premise:

\textsuperscript{175} Article 6, \textit{in fine}, Organic Law No. 04/2012 of 15/06/2012 terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction. OGRR special issue of 15/06/12.

\textsuperscript{176} Article 9, paragraphs 2 and 3, 2004 Internal Rules and Regulations.

the mediation committee was to handle only local disputes, and the competent Abunzi committee would be determined when several jurisdictions were involved.

However, these provisions do not reflect the current reality and may complicate the work of the mediation committees. In concrete terms, if two parties are resident in sector A (or even in two different sectors: for example, the defendant in sector B and the plaintiff in sector C), and if their dispute involves a plot of land in sector D (which may be at the other end of the country in relation to sectors B and C), the plaintiff may choose between the Abunzi committee in sector B (where the defendant lives) or in sector D (where the plot of land is located). In accordance with the 2004 Organic Law and IRR, the parties need not necessarily live in the same sector for their dispute to be submitted to the mediation committee. Two difficulties arise from this practical example: if the plot of land is located in sector D at the other end of the country, the sector D mediators do not know the two parties as they are not resident there. There is accordingly less chance of mediation succeeding. If the plaintiff lives in sector C and has to submit his or her case to the sector B committee, where the defendant is resident, the plaintiff does not necessarily know either the mediators or the customs of sector B. While the legislature does not appear to be aware of potential practical problems such as these, the provisions do extend the jurisdiction of the Abunzi committees, thereby strengthening the Rwandan authorities' rationale of limiting access to the formal courts.

2006 Organic Law

Like the 2004 Organic Law, the 2006 Organic Law provided no specifications on the territorial jurisdiction of the mediation committees; the provisions of the 2004 IRR were not therefore amended.
2010 Organic Law

It was only when the 2010 Organic Law was passed that the mediation committees' territorial jurisdiction was finally clarified. Article 10 of the 2010 Organic Law states that 'the services of Mediators are sought only if the plaintiff and offender reside or are domiciled within the territorial jurisdiction of the Mediation Committee' and specifies that 'such claims [when the two parties are not domiciled or do not reside within its jurisdiction] shall be submitted to competent organs', namely the formal courts, the police or the prosecution service. In theory, this provision places a clear restriction on the territorial jurisdiction of the mediation committees even if the Article may not change matters in practice.

The 2013-2014 revision of the Organic Law

The draft law of 2013 seems to advocate a return to the 2004 state of affairs by establishing the jurisdiction of the mediation committees on a geographical basis:

'... Mediation Committee shall be competent with due consideration to the following:

1° The Mediation Committee of where the defendant resides;

2° The Mediation Committee of where the complaint resides upon consultation with the defendant;

3° The Mediation Committee in the Jurisdiction of the claim;

4° The Mediation Committee of where the offence was committed; [...]'

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178 See also Article 10, second, third and fourth paragraphs, Ministerial Order No. 82/08.11 of 2/05/2011 determining internal rules and regulations of the Mediation Committees, OGRR No. 19 of 9/5/2011, hereafter referred to as 'Internal Rules and Regulations, 2011'.

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The provisions of the 2010 Organic Law, according to which 'the services of Mediators are only sought if the plaintiff and offender reside or are domiciled within the territorial jurisdiction of the Mediation Committee' has been deleted. This seems to suggest that the legislature no longer wishes to limit the territorial jurisdiction of the Abunzi committees. This interpretation is borne out by the Explanatory Note, which states that the draft law is intended to increase the mediation committees' territorial jurisdiction. The same risks arise as those identified above: for example, it will be legally possible for a cell committee to handle a case where the plaintiff resides or is domiciled in a cell that is in a different sector, district or even province from that of the defendant. This geographical distance may not only restrict citizens' access to proximity justice but also affect the quality of mediation, as it will be more difficult to obtain reliable testimony, or relevant factual evidence, to justify the mediators' conclusions. It will however lead to a reduction in the number of cases submitted directly to the ordinary courts.

**Working methods**

**Detailed procedures**

The Organic Law of 2004 set out the working methods of the mediation committees. No fundamental changes to procedures were introduced in the 2006 and 2010 Organic Laws. Provision is made for the submission of cases to the mediation committees; the choice of a panel of three mediators by the parties; the measures to be taken in the absence of one of the parties summoned; the procedures for conducting hearings, for the mediation or the issuing of a decision; the items to be included in the minutes; the procedures for enforcing the decision, etc. The Abunzi committee procedures have been formally regulated so as to harmonize local conflict resolution efforts and ensure better control of social practices.
Day-to-day practice will determine whether or not this formalization promotes access to justice, which some researchers seriously question\(^\text{179}\).

**Length of the mediators' term of office**

The 2003 Constitution and subsequent 2004 Organic Law specified that the mediators' term of office was two years\(^\text{180}\). While this mention disappeared from the revised version of the Constitution in 2005, the length of the mediators' term of office did not change in the 2006 Organic Law\(^\text{181}\). It was in 2010 that the term of office was extended from two to five years\(^\text{182}\). This extension was justified by the goal of streamlining the functioning of the mediation committees: ensuring the replacement and training of over 30,000 *Abunzi* every two years would require considerable resources. Furthermore, in five years, mediators would be expected to improve their mediation skills and knowledge of the laws and customs. It is, however, important to remember that mediators who regularly give of their time, on a voluntary basis, to sit on the mediation committee may well lose their motivation if the term of office becomes too long.

**Supervision of the mediation committees**

Another significant change in the 2010 Organic Law was the setting up of a Secretariat responsible for coordinating the activities of the mediation committees within the Ministry of Justice\(^\text{183}\). Before 2010, the Ministry of Justice was responsible for policy, financing and planning the operations of the mediation committees, but the committees were under the direct supervision of the Ministry of

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\(^{180}\) Article 3, second paragraph, 2004 Organic Law.  
\(^{181}\) Article 4, second paragraph, 2006 Organic Law.  
\(^{182}\) Article 4, second paragraph, 2010 Organic Law.  
\(^{183}\) Article 31, 2010 Organic Law.
Local Government\textsuperscript{184}. In the 2010 Organic Law\textsuperscript{185}, the coordination Secretariat was made responsible, among other things, for monitoring and evaluating the work of the mediation committees; organizing training for mediators; and ensuring close cooperation with local authorities\textsuperscript{186}. Following a recent administrative reorganization of the Ministry\textsuperscript{187}, this Secretariat has been replaced by new entities, which have been assigned the various tasks for which the Secretariat was previously responsible. A new Access to Justice Coordination Unit continues to supervise the committees' functioning at the administrative level, but responsibility for monitoring their work and training their members has been given to one of its components, the Access to Justice Bureaus (MAJ). While the creation of the Access to Justice Coordination Unit and the gradual establishment of the MAJ, on the periphery of the justice system, testifies to the government's resolve to harmonize and supervise the functioning of the mediation committees, it is questionable whether the resources they have been allocated are sufficient.

Despite their devoted staff and the additional human resources recently provided, the central level bodies have a very small number of employees. As for the MAJ, they face an enormous amount of work in each district and are staffed by only three officials, one of

\textsuperscript{184} DOUGHTY K., (2011). \textit{Contesting Community: Legalized Reconciliation Efforts in the Aftermath of Genocide in Rwanda}, Publicly accessible Penn Dissertations, Paper 333, p. 117. See also Ligue des droits de la personne dans la région des Grands Lacs, \textit{op. cit.}, p. 53: 'At MINALOC level, this institution (i.e. the mediation committee) is being forgotten and is less of a priority in their Action Plan.'

\textsuperscript{185} It should be noted that the 2010 Organic Law has been undergoing major revision since 2013. At the time of publication of this study, the revision was still underway.

\textsuperscript{186} Article 31, second paragraph, Points 2, 3 and 4, 2010 Organic Law. By 'local authorities', which is the legal terminology, one should understand 'executive secretaries' as well as civil status officers, good governance officers, etc.

\textsuperscript{187} An Access to Justice Department oversees various services that deal with citizens' access to justice. These include the Community Justice Division, which incorporates the Access to Justice Coordination Unit.
whom is responsible for supervising an average of around 85 Abunzi committees and around a thousand mediators.\textsuperscript{188} In the light of these figures, it may reasonably be argued that the capacity of the systems currently in place is not commensurate with the challenges they face.

It is clear from the foregoing that the development of mediation committee legislation seems to reflect an apparent contradiction between what was the cornerstone of their establishment, namely their mediation mandate, and the ever-increasing 'judicialization' of their functions. This significant increase in their responsibilities does in theory enable them to resolve a large number of disputes that were previously handled by the courts and tribunals. However, an assessment is needed of whether there has indeed been a real reduction in the number of cases brought before the formal courts after (and because of) the establishment of the mediation committees.\textsuperscript{189}

\textbf{1.3.3. Additional factors for analysis}

The prevailing political discourse and the ways in which mediation committee legislation has evolved have highlighted the streamlining of resources allocated to proximity justice. In this sub-section, a brief analysis will be made of factors that confirm this hypothesis.

\textsuperscript{188} Expected to be reduced to around 700 per district in 2015 with a reform reducing the number of Abunzi in each committee from 12 to 7.

\textsuperscript{189} Over and above an objective analysis of the official statistics to determine the proportion of cases submitted to the Abunzi rather than to the ordinary courts, such a study should take into account the many subjective parameters involved in the litigant's choice of one or the other level of the justice system. And would it be possible to establish, for example, whether the thousands of cases submitted to the Abunzi today would previously have been taken to the Primary Court ..., or whether referring a case to the Abunzi does not, through a ripple effect, lead to a larger number of cases being dealt with by the formal courts on appeal?
Limited financial resources for ensuring the effective functioning of the mediation committees

One indication of the importance the state attaches to a given sector lies in the financial resources that sector is allocated. The 2011-2012 Budget Execution Report reveals that 500,000 Rwandan francs (around 830 USD) was budgeted for the Abunzi, but that nothing was actually spent. The absence of any narrative report makes it difficult to understand these doubly surprising figures. On the one hand, this ridiculously low amount would not even have been sufficient to finance the former Secretariat (now the Coordination Unit). And on the other hand, the fact that no expenditure was reported remains unexplained. Nor was the 2005 and 2006 budget provision, which was higher (20.1 million and 7.8 million Rwandan francs respectively) spent\textsuperscript{190}. Furthermore, the mediation committees are not mentioned in the narrative budget reports for fiscal years 2010-2011\textsuperscript{191} and 2012-2013\textsuperscript{192}. The justice sector paragraphs focus – in very general terms – on the Gacaca Courts and the operational costs of the Ministry of Justice, formal courts, prisons, ILPD\textsuperscript{193}, etc. It is not until the Budget Execution Report for the fiscal year 2013-2014 that the first figures on the Abunzi appear: against the budget line 'Mediation (Abunzi) Committees' in the chapter on the Ministry of Justice, 29,201,072 Rwandan francs was spent, 1,200,000 Rwandan francs for communications expenses and 28,001,072 for transport and travel expenses\textsuperscript{194}.

\textsuperscript{193} \textit{Institute of Legal Practice and Development}, based in Nyanza.
No information is given on the types of communications, transport and travel covered by these expenses, but they are unlikely to be directly linked to the work of the mediation committees, as the amounts are insufficient to cover the needs of the 2,564 Abunzi committees in operation nationwide. Were these sums used to cover the expenses of Justice Ministry officials, in particular the coordination Secretariat and subsequently the Access to Justice Coordination Unit? These officials carry out field visits to monitor and evaluate the mediation committees' work. In the Ministry of Finance and Economic Planning’s 2014 and 2015195 budget projections, the Abunzi committees are allocated the same budget of 29,201,072 Rwandan francs without any specification as to whether this sum is to cover Abunzi capacity building or solely the expenses of Ministry of Justice officials.

An important point should however be made here: although specified in neither the various Organic Laws on the mediation committees nor the IRR, the government has made provision for health insurance coverage for each of the Abunzi, as well as five of their dependants196. The unit cost of such coverage is 3,000 Rwandan francs per year, making a total annual cost of 18,000 Rwandan francs per mediator, i.e. a total budget of almost 554 million Rwandan francs (around 743,000 USD)197. The fact that this amount is not directly included in the Budget Reports listed above can be explained online:


Republic of Rwanda, Ministry of Finance and Economic Planning, ANNEX II-5: 2013/16 Budget by agency, Programme and sub-programme, Kigali, 2014, p. 10, available online:


196 Based on 12 mediators per committee.
by the fact that the mediators' health insurance coverage is paid for out of the district budgets\textsuperscript{198}.

**Referral to informal conflict resolution bodies**

A further factor that demonstrates the trend towards limiting citizens' access to the formal justice system can be seen in everyday local authority practices. As previously explained, several informal conflict resolution bodies exist at the level of the family, the village, etc. To settle their dispute, litigants first submit their dispute to the nearest authority before – if the dispute is not resolved – taking their case to a body higher up the 'social ladder'\textsuperscript{199}. This practice is encouraged by the local authorities, especially by the cell executive secretaries. However, as Secretary of *Abunzi* committee, the cell secretary is mandated to record requests submitted to the conciliators committees\textsuperscript{200}. This dual mandate leads to confusion, and the cell authorities, which come under the Ministry of Local Government, would have received instructions from their line Ministry to encourage systematically citizens to submit their disputes to local, informal conflict resolution bodies before taking them to the mediation committee\textsuperscript{201}. Concretely, litigants are regularly compelled to go through these preliminary steps. It should be noted that the Organic Law on mediation committees makes no provision for this. The practice is thus unlawful, extending *de facto* the conflict

\textsuperscript{198} See the 13 02 05 JRLOS COSTING document, forwarded by the Justice Sector Coordination Secretariat in the Ministry of Justice. It seems that the Ministry of Justice is in charge of both transferring and supervising the use of the funds. See Republic of Rwanda, Ministry of Finance and Economic Planning, *2014-2015 Districts’ Earmarked Transfer Guidelines*, p. 5ff.

\textsuperscript{199} This 'staircase' principle is reported in RCN Justice & Démocratie, (2009). *Proximity justice in Rwanda. Modes of land dispute management*, Kigali, p. 52.

\textsuperscript{200} New Times, (10 February 2014). *New court fees stir public debate*.

resolution process and making citizens ultimately less inclined to take their case to the formal courts.

*Increase in formal court fees*

The Rwandan government recently decided to increase formal court fees. In early 2014, the Council of Ministers approved a ministerial decree setting the fee for filing a case with a Primary Court at 50,000 Rwandan francs whereas previously these costs amounted to two thousand francs\(^{202}\). Considering the disproportionate nature of the increase, this decision caused controversy.\(^{203}\) Indeed, the fixed amount seems disproportionate to the increase in the cost of living and the evolution of the economic situation. The decision once again highlights the government's resolve to streamline the operating costs of the formal courts by making litigants shoulder more of the burden. In terms of access to justice, it entails significant negative effects. Given the high costs, many defendants will be discouraged or simply unable to access the formal courts.

This chapter has highlighted the dual political discourse surrounding the establishment of the *Abunzi* committees: while the Rwandan government drew on traditional practices to set up a conflict resolution body rooted in the population's everyday lives, the institutionalization of the mediation committees was primarily justified by the limitations of the formal justice system when it came to dealing with the large number of local disputes. In recent years, official political discourse has increasingly emphasized this second objective: the mediation committees have demonstrated their ability to relieve pressure on the formal justice system, even without the

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\(^{202}\) For the decision in principle, see Republic of Rwanda, Office of the Prime Minister, Statement on Cabinet decisions of 17 January 2014. For the exact amounts, see *inter alia* New Times, (10 February 2014). *New court fees stir public debate.*

\(^{203}\) See in this regard the government statement quoted in New Times, (10 February 2014). *New court fees stir public debate.*
financial resources required for the functioning of the ordinary courts. In an approach aimed at streamlining the state budget, the conclusion seems clear: encourage the population to submit their cases to the mediation committees. The following chapters will consider the extent to which this policy affects Rwandan citizens' access to high quality proximity justice.
Chapter 2
Interaction between the Various Local Conflict Resolution Bodies

The first chapter discussed the Rwandan government's efforts to ensure that as many local-level disputes as possible are settled outside the formal court system. The mediation committees were explicitly set up, and supported in this respect by the political leadership, to make an active contribution to this policy. The mediators, or Abunzi, are not however the only local-level body whose task is to settle local disputes. Several other bodies, both formal and informal, work towards this goal and influence one another. This chapter seeks to analyse the interaction between these bodies and to understand the impact of this on the population's access to justice. After examining the Abunzi committees and other grassroots conflict resolution bodies (A.), the analysis will focus on the interaction between them and the challenges this interaction poses for the functioning of the mediation committees (B.\(^\text{204}\)).

\(^\text{204}\) For further details, see RCN Justice & Démocratie, (2009). Proximity justice in Rwanda. Modes of land dispute management, Kigali, in particular section 1.4 'Legal, pre-judicial, administrative and informal systems'.

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2.1. Current key players in local conflict resolution

2.1.1. Mediation committees

**Mandatory mediation**

The mediation committee is a mandatory mediation mechanism before a case can be filed with the courts of first instance. It was set up by the first post-genocide Constitution of 2003 and is currently governed by the Organic Law of 2010. It is competent to examine a number of civil and criminal cases, mostly up to a fixed monetary ceiling. Unlike the other local conflict resolution bodies listed below, the functioning of the mediation committee is governed by legislation, and its decisions are legally binding.

**Structure and competence of the mediation committees**

Today, each cell and each sector of the country has a mediation committee. These 2,564 committees are each made up of 12 members of the community, known for their integrity and their mediation skills. They are elected for five years. In 2014, under the existing Law, the mediation committee may only handle disputes between parties resident or domiciled within the same cell. The sector mediation committees are responsible for handling appeals against cell committee decisions. The material jurisdiction of the mediation committees extends to both civil and criminal matters (see p. 51ff.). The value of the case disputed may not exceed a certain amount, namely three million Rwandan francs (around 3,700 EUR), except in cases relating to cattle, other movable assets and breach of contract, where the ceiling is one million Rwandan francs (around 205 It is important to point out that if the new Organic Law, currently under discussion in Parliament, is adopted, this number may be reduced to seven Abunzi per mediation committee.

206 The last elections were held in 2010.

207 Article 10, 2010 Organic Law.
Interaction between the various local conflict resolution bodies

1,200 EUR). The new draft law currently circulating is likely to increase these ceilings (see p. 32ff.).

**Submitting a dispute to the mediation committee: the procedures involved**

Citizens who wish to have a case examined by the mediation committee must first submit it to their cell executive secretary. This official registers the case on the cause list of the cell mediation committee, if the case is considered to fall within the committee's competence. The litigation must be settled by the committee within one month of the day on which the case is registered. In practice, the mediators meet once a week to deal with the cases registered on the list. The two parties are summoned to the hearing at which their case will be considered. In principle, the hearings are open to the public. The parties agree on three mediators to examine their case. When the parties fail to agree, each of the parties chooses one mediator, and the two mediators chosen select the third. When examining the case, the mediators hear claims from each of the parties and from any witnesses. They may have recourse to advice from any person who can shed light on the matter. During the hearing, an advocate may assist the party who so required but may not represent or plead for him or her.

To settle the dispute submitted to them, the Abunzi first try to conciliate the two parties. It is only in case of non-conciliation that they take a decision 'in all honesty' (en leur âme et conscience). This decision must be in accordance with the Laws and local customary

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208 Ibid.
209 Article 20, last paragraph, 2010 Organic Law.
210 Ibid., first paragraph.
211 Article 18, second paragraph, 2010 Organic Law.
212 Article 20, second paragraph, 2010 Organic Law.
213 Ibid., third paragraph.
practices (provided they are not contrary to the written Law)\textsuperscript{214}. In criminal matters, the mediators may not pronounce penalties\textsuperscript{215}.

When a solution to the dispute is found, either through mediation or decision, the mediation committee records the minutes of the proposed settlement, which includes the mediation decision and the grounds for the decision\textsuperscript{216}.

As with the judgments delivered by an ordinary court, the mediators' decision may be executed voluntarily, failing which 'forced execution' may be necessary. In the case of compulsory enforcement, the interested party requests the President of the Primary Court to append an enforcement order to the mediation minutes. The President of the Primary Court can only refuse to do so if the decision or its enforcement is contrary to public order. In that case, the President informs the Abunzi committee in writing so that the mediators who took the decision reconsider it, taking into account the breached rules of public order\textsuperscript{217}.

The enforcement order is only appended if the decision cannot be appealed against\textsuperscript{218} or if the decision has not previously been appealed against. Since such cases have in fact occurred, the following rule – which has developed in practice – was recognized by the Ministry of Justice in 2013: a certificate of non-appeal issued at sector level must be presented to the Primary Court before the enforcement order can be appended. The Ministry of Justice has produced a model certificate despite there being no legal basis for this practice to date\textsuperscript{219}. Any party that is not satisfied with the decision of the mediation committee can therefore appeal within one

\begin{itemize}
\item Article 21, first paragraph, 2010 Organic Law.
\item Ibid., second paragraph.
\item Article 22, 2010 Organic Law.
\item Article 24, last paragraph, 2010 Organic Law.
\item Ibid., third paragraph.
\item It is important to note that the new Organic Law, currently under discussion in Parliament, makes provision for this procedure.
\end{itemize}
month, either to the sector mediation committee when the decision was made by a cell *Abunzi* committee\(^\text{220}\), or to the Primary Court when the decision was made on appeal by a sector *Abunzi* committee\(^\text{221}\).

### 2.1.2. Local authorities

This publication often refers to the 'local authorities', a broad concept which can change over time. It includes, first of all, administrative authorities such as the sector and cell executive secretaries, who are public servants paid by the State. Also included are elected community bodies with a certain amount of authority such as the village executive committees. Several of these local authorities play a role in community conflict resolution, with or without a legal remit.

*The village executive committee or 'Komite Nyobozi y'Umudugudu'*

The village executive committee is made up of five members elected by the village council\(^\text{222}\). These five members are the head of the village, the member in charge of social and civil affairs, the member in charge of security and 'people entering and going out of the village'\(^\text{223}\), the member in charge of information and education of the community, and the member in charge of development\(^\text{224}\). This committee is regarded as an administrative body whose members

\(^{220}\) Article 26, 2010 Organic Law.

\(^{221}\) Article 27, 2010 Organic Law.

\(^{222}\) Article 6, second paragraph, Presidential Order No. 105/01 of 10/07/2014 determining the organisation and functioning of the administrative organs of the village, OGRR No. 30 of 28/07/2014, hereafter referred to as '2014 Presidential Order on the administrative organs of the village'.

\(^{223}\) Exact wording used in the Presidential Order. In practice, this member of the village executive committee must be informed of any visitors staying in the village and must enter this information in the visitors' register.

\(^{224}\) Article 8, 2014 Presidential Order on the administrative organs of the village.
work on a voluntary basis. Its duties and functioning are governed by a Presidential Order. The village executive committee is mainly responsible for public awareness and security matters. One of the committee's specific duties is 'to fight against violence and injustice within families', but conflict resolution is not explicitly mentioned as being one of its obligations. Nor is it an obligation of the head of the village, who is, among other things, responsible for promoting a culture of concord and good relations among the village's residents, and for fighting against violence and injustice. In practice, however, it is clear that the village executive committee, notably the head of the village, plays a particularly important role in resolving conflicts (see p. 83-84).

The village council or 'Inama Niyana N'y'Umudugudu' is intrinsically linked to the village executive committee since they are the two organs that administer the village. The council is made up of all village residents aged at least eighteen years. As the village's supreme organ, the council takes all decisions related to village affairs. Among its specific duties, the

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225 Article 9, 2014 Presidential Order on the administrative organs of the village.
226 Before the 2014 Presidential order, the committee's mandate was governed by Presidential Order No. 57/01 of 15/10/2006 determining the structure and functioning of Village, Cell and Sector, OGRR No. 23ter of 1/12/2006, and by Presidential Order No. 28/01 of 06/7/2009, modifying and complementing this Order, OGRR special issue of 30/7/2009, hereafter referred to as '2009 Presidential Order'.
227 Public awareness activities focus mainly on programmes for family planning; preventing and combating epidemics; subscribing to health insurance; regular school attendance, etc.
228 Article 10, 2014 Presidential Order on the administrative organs of the village.
229 Article 10 (13), 2014 Presidential Order on the administrative organs of the village.
231 Article 11 (5), 2014 Presidential Order on the administrative organs of the village.
232 Commonly known to the community as 'Inteko rusange y'abaturage'.
233 Article 4, 2014 Presidential Order on the administrative organs of the village.
234 Article 5, 2014 Presidential Order on the administrative organs of the village.
235 Article 6, 2014 Presidential Order on the administrative organs of the village.
village council must ensure security and resolve conflicts between residents. However, the Presidential Order indicates neither the nature of such conflicts – between individuals, between families, civil, criminal, administrative? – nor the practicalities of resolving them, with the exception of village council decisions: these must be taken by consensus or, when there is no consensus, by an absolute majority of those present. As for their validity, the decisions taken must not be in contradiction with laws, regulations or decisions taken by superior organs. As far as conflict resolution is concerned, the village council is also competent to take corrective action: 'without prejudice to the sanctions provided for by laws, the Village’s Council, based on the faults and misbehaviour or any unworthy attitude from a resident of the Village, shall administer sanctions in a family setting, aiming at calling upon him/her to mend their ways after reprimanding and providing them with advice. These sanctions are initiated by the executive committee and approved by the village council.

The village council and executive committee have therefore been given an official role in dealing with wrongdoing and conflict resolution. The Law does not however indicate the procedural standards that apply here, nor is any mention made of interaction with other conflict resolution bodies. Even more importantly, the definitions of competence and potential sanctions remain very vague. When taken together, these issues raise a concern: that the village executive committee and village council might claim very broad corrective powers, which would overlap with the mandate of other conflict resolution bodies, given the absence of procedural standards setting out how disputes should be handled.

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236 Article 3 (2), 2014 Presidential Order on the administrative organs of the village.
237 Article 18, 2014 Presidential Order on the administrative organs of the village.
238 Article 7, 2014 Presidential Order on the administrative organs of the village.
239 Article 24, first paragraph, 2014 Presidential Order on the administrative organs of the village.
240 Ibid.
The sector and cell executive secretaries

A law passed in 2013 assigns specific duties to the sector executive secretary, considered to be the sector's 'manager'\textsuperscript{241}. One of these duties consists in ensuring that the judgments of the courts and decisions of the mediation committees are enforced\textsuperscript{242}. While conflict resolution is not part of their mandate, sector executive secretaries do play an administrative role in relation to the Abunzi committees.

This 2013 Law remains very general, however, when it comes to the cell executive secretaries, who are responsible for collecting information and raising public awareness to encourage the population to participate in sustainable development initiatives. More specific duties are given in a 2014 Presidential Order, which lists their responsibilities\textsuperscript{243} and appears to assign the cell executive secretary a role as 'super administrator', in charge of cell administration, civil status related functions, record-keeping and reporting. As is the case with the sector executive secretary, conflict resolution is not listed as one of the cell executive secretary's functions, but he or she also plays an administrative role in the Abunzi committee system.

2.1.3. Informal village-level bodies

A number of local bodies formed around the core units of family and village have gradually assumed some responsibility for conflict resolution. They are still active today, without the law explicitly

\textsuperscript{241} Article 196, Law No. 87/2013 of 11/09/2013 determining the organisation and functioning of decentralized administrative entities, OGRR special issue of 30/10/13.

\textsuperscript{242} Ibid.

\textsuperscript{243} Article 2, Presidential Order No. 170/01 of 23/12/2014 determining the responsibilities of the Executive Secretary of Cell, OGRR No. 52 of 29/12/2014.
assigning them this role or organizing the way in which they operate. They include the family council and village elders.

**The family council or 'Inama y’umuryango'**

Family involvement in conflict resolution in Rwanda is not new, going back even before the traditional *Gacaca*. The family council brings together members of the same family, in the 'extended' sense of the term. The Civil Code describes it as 'an institution within the family responsible for ensuring the safeguard of interests of the family members'\textsuperscript{244}. The family council is given an advisory function in matters of filiation\textsuperscript{245} and civil status\textsuperscript{246}. Its only competence in settling disputes relates to the right of each spouse to exercise a profession, industry or trade without the consent of the other: any spouse who considers this activity to be of a nature to inflict serious harm on his or her moral or material interests or those of minor children has a right of appeal to the family council\textsuperscript{247}. The family council is an informal grouping, whose organization and frequency of meetings vary from one family to another\textsuperscript{248}. The Civil Code does not in fact specify how the family council should operate, indicating solely that it functions and is organized in accordance with common practice and custom\textsuperscript{249}. The family council has, however, been observed to play a diminishing role in the settling of land disputes.

\begin{footnotesize}
\begin{enumerate}
\item Article 455, first paragraph, Law No. 42/1988 of 27/10/1988 instituting the Preliminary Title and First Book of the Civil Code.
\item Article 301, first paragraph, Law No. 42/1988 of 27/10/1988 instituting the Preliminary Title and First Book of the Civil Code.
\item Ibid., Article 437ff.
\item Ibid., Article 213.
\item Article 455, second paragraph, Law No. 42/1988 of 27/10/1988 instituting the Preliminary Title and First Book of the Civil Code.
\end{enumerate}
\end{footnotesize}
The family council after the 1999 Law on Successions

The Successions Law of 1999 refers to another type of family council that differs from the so-called 'traditional' family council: in this case, the council is not necessarily made up of members of the same family, and its role is defined by law (no longer by custom in a narrower 'family' framework). This family council is competent to allocate part of the succession of the deceased to the needy parents of the latter when the widower or widow does not fulfil his/her duty of assistance to them. In practice, however, this council can be seen to play a wider role in settling family disputes.

The elders

Members of local communities known for their wisdom and their integrity traditionally play an important role in Rwandan society. This was the case with the Inyangamugayo in the Gacaca Courts, where the concept of Inyangamugayo was institutionalized. Wise and eloquent individuals continue nonetheless to play a part in resolving local disputes. They are still called Inyangamugayo, in keeping with tradition, but should not be confused with the Inyangamugayo judges of the Gacaca Courts. Today's Inyangamugayo have no written mandate and are not therefore obliged to follow any formal procedures. These elders may also meet as a group, as is the case, for example, with the 'Inama ngishwanama'. This is an informal group of elders who can be asked to give advice, rather than to settle disputes in the strict sense of the term. It is a spontaneous, informal gathering. More often than not, however, the elders are involved in conflict resolution through the village councils or Abunzi committees.

250 Article 70, Point 5, Law No. 22/99 of 12/11/1999 to supplement Book One of the Civil Code and to institute Part Five regarding matrimonial regimes, liberalities and successions, OGRR No. 22 of 15/11/1999.
Interaction between the various local conflict resolution bodies

Parents' forums or 'Umugoroba w'Ababyeyi'

Another body that may involve itself in conflict resolution has recently been set up. Commonly known as 'Umugoroba w'Ababyeyi', parents' forums bring together village parents – mothers, in particular – one evening a week or month. The meetings cover issues such as women's rights, children, nutrition, education, etc. If a couple is involved in a family dispute, this may be resolved at the meeting. People's stories are then broadcast on radio with an explanation of how the family dispute was settled.

Citizens' forums or 'Inteko z'Abaturage'

While 'Inteko z'Abaturage' is still a new term in conflict resolution, it covers long-standing popular practices such as the citizens' forum. These assemblies are an opportunity not only to share information but also to resolve certain disputes. The term 'Inteko y'Abaturage' is being increasingly used in policy documents on conflict resolution and marks a trend towards institutionalization of these community gatherings.

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251 See the Ministry of Health message on Twitter, 15 August 2013: " Akagoroba k'ababyeyi" is a platform where mothers come together to share ideas on social & economic issues & knowledge on fighting malnutrition", [https://twitter.com/rwandamoh/status/36825305332805248](https://twitter.com/rwandamoh/status/36825305332805248)

252 These meetings should be distinguished from those of the village council (Inama njiyanama y'Umudugu), which is the organ that administers the village and is made up of all village residents aged at least 18 years. This is laid down by law. The Inteko y'Abaturage, on the other hand, is a community gathering with a particular role in resolving disputes. The forums are attended by the village authorities, and may also include higher level authorities and any other interested outside party. The dispute may involve inhabitants of neighbouring or more distant villages, which justifies residents of the other village being able to participate; this is not the case for the village council, which is limited to village residents. However, in practice, the two roles are often combined through a single gathering: the village council may meet to deal with administrative issues, then transform itself into an Inteko y'abaturage to hear a case submitted by a resident on condition that the defendant is also present. To date, the functioning of the Inteko y'abaturage as a conflict resolution body is not governed by any law. The Inteko y'abaturage exist at different local authority levels (village, cell, sector, district).
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assemblies. As an illustration, we can quote one of the resolutions adopted at the 11th Leadership Retreat of March 2014: 'To streamline the functioning of the Mediation Committee (Abunzi) and the Citizens' Forums (Inteko z'Abaturage) and ensure their efficient collaboration in citizen dispute resolution with the aim of reducing the number of claims filed before Courts of law'.

In practice, to have a dispute settled by the 'Inteko y’Abaturage', a case should first be submitted to the authorities. It will then be discussed at the assembly with public participation. This way of working is reminiscent of the functioning of the semi-traditional Gacaca (see p. 14-15). The case can also be directly submitted to the 'Inteko y’Abaturage', where it will be dealt with immediately, provided the two parties are present.

Churches

Finally, the role played by churches and religious communities in resolving disputes should be noted, although this particular case has not yet been documented by RCN J&D.

2.1.4. The National Women's Council (NWC)

The National Women's Council is an independent national organ under the supervision of the Ministry of Gender and Family Promotion. The NWC operates at grassroots level with district, sector, cell and village councils. The NWC is composed of all women who are at least 18 years of age. It is a forum for advocacy and social mobilization on issues affecting women in order to build their

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254 Law No. 02/2011 of 10/02/2011 determining the responsibilities, organization and functioning of the National Women’s Council, OGRRR special issue of 11/02/2011.

255 Ibid., Article 3.
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capacity and ensure their participation in the development of the country in general, and the development of women, in particular\(^{256}\). While the NWC's main role is to promote women's rights, its women council members may also participate in conflict resolution, among the women themselves or with their spouses\(^{257}\). This role in conflict resolution is not however explicitly set out in law.

2.2. Challenges facing the citizen: the multiplicity of local conflict resolution mechanisms

Very few formal links exist between the various conflict resolution bodies. The law establishes a functional link between mediation committee and executive secretary, and the Primary Court has oversight of *Abunzi* committee decisions. Apart from these cases, the law does not provide for any links between the different bodies. Nevertheless, a collaborative mechanism does often exist between them in practice. This section looks at the interaction between the various mechanisms, examining the reasoning behind people's choice of one or another body, and seeks to determine whether the multiplicity of options available has an impact on citizens' access to the *Abunzi* committees.

2.2.1. Relations between the various local conflict resolution bodies: interaction or hierarchy?

In many villages, functional and hierarchical links have been observed between the various community conflict resolution bodies. They may either collaborate or intervene in turn, in a quasi-hierarchical order, to find a solution to a given dispute.

\(^{256}\) Ibid., Article 5.
**Functional links**

In most villages, there is collaboration between the various local conflict resolution bodies. The elders and members of the NWC and village executive committee complement each other and may work together as a team to settle disputes. Or the family councils may take the initiative, working with the village committee to find a solution to a dispute, sometimes with support from members of the NWC. The village committee may also be asked to endorse decisions taken at family council level. The initiative may come from the head of the village who, before agreeing to examine a case submitted, will often require parties to seek a solution among themselves or through the family council. The head of the village may also attend the family council, even if the dispute is considered an internal family matter. It is important to remember that, before their election to the mediation committees, many Abunzi had already held responsibilities within the community, often as member of the village committee or as cell leader. In practice, this connection helps encourage collaboration between 'equals'.

The functioning of the mediation committees can however also be influenced more negatively by the local authorities: indeed, it is common practice in Rwanda for citizens to keep an ordinary, non-

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259 This 'power of endorsement' by the village head, as a form of official authority, has an implicit basis in the 2006 Presidential Order, which gives the village committees the following roles: 'Promote a harmonious family relationship [...]’ and 'fight against domestic violence and injustice'. See Articles 10 (Points 12 and 13), 2006 Presidential Order.


261 RCN Justice & Démocratie, (2011). *Proximity justice in Rwanda. Functioning of the Mediation Committees*, Kigali, p. 19. A total of 50.1% of the mediators had already held positions of responsibility in their community before being elected Abunzi.
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official notebook, in which they have the local authorities write down decisions affecting them\textsuperscript{262}. It is these notebooks that they take to the mediation committees, MAJ or even the ordinary courts when they are seeking legal assistance. Normally, Abunzi have no obligation to take into account the information contained in those notebooks. But in practice they often require that they be submitted by the parties. Some executive secretaries also require them before the registration of the case\textsuperscript{263}.

**Hierarchical links**

No formal hierarchical links exist between the various bodies mentioned above. In practice, however, there is a hierarchy between the levels of family, village and cell, which determines the successive stages of the process litigants must go through when they wish to have their dispute settled. An example of the hierarchy between family council and village committee was observed in the following case: the head of one village refused to examine the case of a widow as she had not provided written evidence of a resolution being attempted at family level\textsuperscript{264}. This is not too problematic insofar as the executive committee and head of the village have only implicit authority to settle disputes: at this level, it is reasonable to demand that a solution must first be sought within the family.

However, a 'higher' level imposing the condition that a dispute must first be examined by a 'lower' level becomes more problematic when

\textsuperscript{262} It is common practice in Rwanda that citizens take an ordinary notebook, unofficial, in which they note the decisions taken by local authorities that affect them. With these notebooks they appear before the conciliators committees, the MAJ, or even the ordinary courts, when seeking legal assistance.


prior examination of the case is made a prerequisite for access to the mediation committee, as this is not required by law. When a case is referred to the mediation committee, some cell executive secretaries, who are responsible for registering the cases submitted to the Abunzi, have nevertheless been observed to ask the parties to find a solution to their dispute at village level before the case can be registered on the mediation committees' cause list. While it is true that the 2014 Presidential Order on the administrative organs of the village provides a legal basis for conflict resolution by the village authorities, in particular, by the village council, there is no implicit legal basis in this Order for a cell executive secretary to refuse to register a case on the mediation committees' cause list and send the parties back to the village level bodies.

2.2.2. Submitting a case to the mediation committee: a multi-stage preliminary process

*Main finding: It is rare for cases to be submitted directly to the mediators*

The tables below indicate the mediation bodies consulted by the parties interviewed (Table 1) before submitting their case to the mediation committees (Table 2). It is clearly rare for a case to be directly submitted to the mediation committees: only one of the eight interviewees had been able to submit a case directly to the Abunzi committee without consulting any other body.

In most cases, the dispute is first submitted to the village committee (78.1%), even though the committee has no explicit conflict resolution mandate. The cell executive secretary (59.4%)\(^{265}\) is also consulted, again despite the latter having no formal mandate to

\(^{265}\) It is important to note that this step relates to the dispute itself and not to the cell executive secretary's responsibility for registering cases on the mediation committee's cause list.
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resolve such disputes. It is less common for a case to be referred to the sector executive secretary – more distant than the other three bodies – or to the family council – no doubt for sociological reasons linked to the genocide\textsuperscript{266} (18.8% and 12.5% respectively).

Table 1: Mediation bodies consulted by parties before submitting their case to the cell mediation committees

<table>
<thead>
<tr>
<th>Body</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sector executive secretary</td>
<td>18.8%</td>
</tr>
<tr>
<td>Cell executive secretary</td>
<td>59.4%</td>
</tr>
<tr>
<td>Village committee</td>
<td>78.1%</td>
</tr>
<tr>
<td>Family council</td>
<td>12.5%</td>
</tr>
</tbody>
</table>

Source: Interviews with litigants after cell mediation committee hearings, Bugesera, Gatsibo and Kirehe districts, 2012\textsuperscript{267}

\textsuperscript{266} See RCN Justice & Démacratie (2009), Proximity justice in Rwanda. Modes of land dispute management, Kigali, p.101 Paragraph 176: 'We have identified two reasons for explaining why, in some places, the Inama y’umuryango (family councils) have lost their significant contribution to the resolution of land-related disputes. In general, this type of meeting is effective only if the parties know each other well, especially if they are part of the same family. In the areas where the majority of the population consists of refugees recently settled in the area, the parties are more likely to take their cases to the local authorities. But the Inama y’umuryango also seems to be under pressure in other regions. Many people told us that with all the things that happened, there are not many trustworthy people left in the village, honest men who could carry out the mediation'.

\textsuperscript{267} 21 interviews (between November 2010 and March 2011) and 32 interviews (September and November 2012) were organized with the parties after the mediation hearings.
Table 2: Stages before submission of a case to the Abunzi

<table>
<thead>
<tr>
<th>Stage Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>No prior referral - direct submission to Abunzi</td>
<td>3.1%</td>
</tr>
<tr>
<td>Family council, village committee, CES and SES</td>
<td>12.5%</td>
</tr>
<tr>
<td>Village committee, CES and SES</td>
<td>15.6%</td>
</tr>
<tr>
<td>Village committee and CES</td>
<td>21.9%</td>
</tr>
<tr>
<td>Village committee only</td>
<td>28.1%</td>
</tr>
</tbody>
</table>

Source: Interviews with litigants after cell mediation committee hearings, Bugesera, Gatsibo and Kirehe districts, 2012

Reasons for submission of cases to the local authorities prior to the mediation committees

As we have already seen, in seven out of eight cases, the plaintiff first submitted the dispute to the village authorities, despite not being obliged to do so by law. Several explanations can be put forward for this.

Above all, a de facto hierarchy seems to exist, deeply rooted in the minds of the population and indeed of the Abunzi, which prompts plaintiffs to consult various community bodies before submitting their case to the mediation committee. As a rule, the Abunzi will only agree to handle the dispute if the parties provide evidence (for example, in the form of their notebooks) that they have

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268 See RCN Justice & Démocratie, (2012). Summary of the data from the sector-level round tables on 'understanding and acknowledging the Abunzi committees' role in the community', which brought together mediation committees, village authorities and cell and sector executive secretaries between July and October 2012 in Bugesera, Gatsibo and Kirehe districts, unpublished. In six of the eight round tables organized at sector level, the participants stated that it was mandatory for the case first to be submitted to the local authorities before it was referred to the Abunzi – a claim which, it will be recalled, has no legal basis.

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already consulted the village or cell authorities.270 RCN’s 2009 study revealed that ‘this relationship [between the local authorities and the mediation committees] is perceived as a staircase, where the Umudugudu represents the first level […]. In fact, the Umudugudu committee gives “permission” to make appeal to cell level.271

Another more sociologically based explanation, lies in the specific role the various local authorities have always played in conflict resolution, even before the mediation committees were formally set up. After independence, the local authorities took effective control of the Gacaca, turning them into a semi-traditional or semi-administrative institution (see p. 14-15). Cell and sector officials acted as judges in local disputes, and the population grew accustomed to this. Having lost part of their prerogatives with the establishment of the Abunzi committees, some local authorities seem inclined to hold on to them in practice272. On this point, some officials (a minority) stated that they had not informed people of their right to direct access to the mediation committees with the aim of encouraging them first to submit their case to the local authorities273.


272 For example, in Kirehe, the cell executive secretary refused to forward the case to the Abunzi committee for fear that their decision would contradict his own. The local authorities do seem to have a certain amount of influence over the Abunzi, with some Abunzi urging parties to consult the village authorities first. See RCN Justice & Démocratie, (2012). Findings of the working groups, discussions and plenary sessions at the Kirehe district round table, 19 September 2012, Kigali, unpublished. See also RCN Justice & Démocratie, (2014). Report on global training in Rweru-Bugesera, Kigali, unpublished: ‘When a case is submitted to the Abunzi committee after a decision by an executive secretary, the latter regards this as an 'appeal', hence the fear of seeing this decision overturned by the mediators, whatever the case at hand. To avoid this, the executive secretaries choose to steer the case towards the sector authorities.’

273 RCN Justice & Démocratie, (2012). Findings of the working groups, discussions and plenary sessions at the Kirehe district round table, 19 September 2012, Kigali,
For this reason, the 'staircase' system is likely to continue, especially as the authorities are trying systematically to reduce the number of cases submitted to the ordinary courts (see Chapter 1).

Another factor to take into account is that some local authorities are more accessible than others. It seems logical for litigants to start trying to settle their dispute with the body that is closest to them geographically and offers the fastest solution. Even though the mediation committee operates at cell level, this is still further away than the family or the village. And even though the mediation committee has to deal with the case within one month of its submission, this is still longer than if it were handled immediately by the executive secretary. This goes some way towards explaining why it is more often women then men who refer a dispute to the village committee before submitting it to the mediation committee. Busy with household and family matters, women have greater difficulty travelling further afield. And financial considerations are an additional reason for starting off with the local authorities: the cost for this is minimal at all levels (no legal fees, no transport costs, etc.).

A final explanation derives from the local authorities' reliance on customary practices, often more familiar to the population than the current laws. Despite the training the authorities have received on women's rights, in particular, they continue to draw on local custom to settle disputes. Submitting a case to the local authorities can therefore be interpreted as a means of seeking a solution that will, above all, maintain family and community cohesion, though

unpublished.


Sometimes at the expense of legal rights. The respect and freedom of speech the parties are accorded, as well as the quality of the information gathering process, via neighbours and community members or field visits (land disputes, destruction of crops, etc.) are also greatly appreciated.\(^{276}\)

**Why then submit a case to the mediation committee?**

The public has been found to have greater trust in the mediation committees than in other local bodies.

*'The Abunzi manage to resolve cases that the village authorities couldn’t settle',*  
Male defendant, Bugesera district, September 2012.

While practice shows that the local authorities play an important role in settling disputes at the local level – a role generally appreciated by the community – they do nevertheless come in for some criticism: lack of appropriate skills, particularly in the case of land and matrimonial disputes; corrupt practices or extortion;\(^{277}\) and the fact that the decisions taken are not legally binding. While the proximity of the local authorities is appreciated, this can also lead to suspicions of bias or conflicts of interest where the village authorities are concerned.\(^{278}\)

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\(^{276}\) RCN Justice & Démocratie, (2012). *Findings of the focus group discussions on the effectiveness of the functioning of the following village bodies: NWC, elders, Umudugudu committees*, Kigali.

\(^{277}\) For example, beer had to be brought prior to the mediation, or to thank the committee when it enabled the dispute to be settled. In one case, a village committee demanded a fee of 2,000 Rwandan francs whenever parties submitted a case.

\(^{278}\) RCN Justice & Démocratie, (2012). *Findings of the focus group discussions on the effectiveness of the functioning of the following village bodies: NWC, elders, Umudugudu committees*, Kigali.
'The Abunzi do not impose any conditions. But at village level, each party has to pay 200 Rwandan francs before the field visit.'

Widow (defendant), Kirehe district, 2012.

This mixed though generally positive assessment of the local authorities contrasts with the great trust placed in the mediation committees. Most parties feel that the Abunzi make a greater contribution to resolving disputes than the local authorities. There seems to be a preference for the methods and procedures followed by the mediation committees. Moreover, the mediators are considered to be more impartial than the local authorities and better able to mediate and encourage dialogue.

'The Abunzi are people of integrity who respect the law whereas people push the local authorities to make decisions to suit their own interests',

Female plaintiff, Kirehe district, September 2012.

Finally, access to the mediation committees is, in principle, relatively straightforward. Even though the local authorities may have the edge over the Abunzi committees when it comes to factors such as accessibility and speed of mediation, the committees' strong points lie in the legal force of the mediators' decisions and the fact that they can be legally enforced, notably by a bailiff.

2.2.3. Prior submission of a case to the local authorities: an obstacle to access to justice?

As we have seen, cases are normally submitted to the cell mediation committees when the local authorities have failed to reconcile the disputing parties (see p. 88, Table 2). This means that the parties

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Interaction between the various local conflict resolution bodies

have already gone through several stages before their case is heard by the Abunzi, and that mediation has thus already failed.

When they first take their case to the local authorities, citizens' direct access to the Abunzi becomes more distant, both in space and in time. In practice, more steps need to be taken before submitting a case to the Abunzi committees than is laid down by law, which can be especially discouraging for women.

Moreover, if the disputing parties have not found a solution via the local authorities, whose aim a priori is also to reconcile the parties, it is highly unlikely that they will be inclined to attempt further mediation through the Abunzi committee. And yet it is at Abunzi level that mediation is best regulated and managed, and citizens should be able to have direct access to high quality justice.

Finally, the dispute may be interpreted, dealt with and 'resolved' in different ways by the various local bodies, leading to contradictory decisions, particularly between the local authorities and the mediation committees. Thus, when a mediation committee decision is contradictory to that taken by an executive secretary, enforcement of the committee's decision may become problematic when it has to be carried out by the executive secretary. Mediation committees may consequently be influenced by the decisions taken by the local authorities, which are normally recorded in the notebooks kept by the parties. The Abunzi must therefore keep in mind their role and their prerogatives, even if most of these local bodies operate at a lower administrative level, that of the village.

In conclusion, while some local institutions have a purely informal mandate rooted in tradition, they are nevertheless regarded as playing a key role in conflict resolution by both the population and the mediation committees themselves. These community bodies reduce the number of cases submitted to the mediation committees and, by extension, to the ordinary courts. However, abiding by this
system may lengthen the process for the parties and lessen the chances of successful mediation by the Abunzi. It should be recalled that there is no legal obligation to submit a dispute to any other body: the litigant has the right to submit the case directly to the mediation committee, thereby gaining access to an officially regulated conflict resolution mechanism.
CHAPTER 3
FUNCTIONING OF THE MEDIATION COMMITTEES: REALITY AND CHALLENGES

The first chapter traced the history of the Gacaca and showed how legislation and political discourse on the mediation committees has evolved. The second chapter analysed the challenges arising from the coexistence of a number of different community-based conflict resolution bodies. This third chapter examines the reality and functioning of the Abunzi committees: who are the litigants involved? What types of case are submitted? Does the system offer the Rwandan population high-quality justice services? After analysing a typology of disputes submitted to the mediation committees (3.1.), the advantages of the system (3.2.) and the challenges it faces (3.3.) will be examined, drawing on the data collected by RCN J&D and its partners during monitoring of the committees. Also covered will be the specific issue of women, both as litigants and as mediation committee members (3.4.).
3.1. Typology of disputes: parties and type of conflict

3.1.1. Parties involved in mediation committee hearings

Most disputes submitted to mediation committees involve parties who are very close: neighbours or members of the same family (see Table 3). It is very rare to find disputes between employer and employee or buyer and seller. It is also the case that most plaintiff sat cell level for a dispute on land are women (54%)\textsuperscript{281}.

Table 3: Relationships between parties at cell mediation committee level

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neighbours</td>
<td>48%</td>
</tr>
<tr>
<td>Employee / employer</td>
<td>1%</td>
</tr>
<tr>
<td>Seller / buyer</td>
<td>2%</td>
</tr>
<tr>
<td>Total family members</td>
<td>49%</td>
</tr>
<tr>
<td>Stepmother / children</td>
<td>2%</td>
</tr>
<tr>
<td>Half-brother / half-sister</td>
<td>3%</td>
</tr>
<tr>
<td>Brother / sister</td>
<td>14%</td>
</tr>
<tr>
<td>Parents / children</td>
<td>14%</td>
</tr>
<tr>
<td>Common law union</td>
<td>11%</td>
</tr>
<tr>
<td>Spouses (legally married)</td>
<td>6%</td>
</tr>
</tbody>
</table>

Source: Observation of mediation committee hearings, 2013 baseline study

3.1.2. Types of dispute submitted to the mediation committees

The majority of disputes brought before the mediation committees are land-related (see Table 4), which is not surprising: land is the most valuable resource for most Rwandans, and after the genocide the number of land-related disputes greatly increased. After that,

come destruction of assets, breach of contract and poor management of family property.

Table 4: Subjects of dispute in the cell and sector committees observed

<table>
<thead>
<tr>
<th>Subject</th>
<th>Cell</th>
<th>Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Destruction of assets (other than land)</td>
<td>6%</td>
<td>21%</td>
</tr>
<tr>
<td>Defamation</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Larceny / receiving stolen goods</td>
<td>3%</td>
<td>4%</td>
</tr>
<tr>
<td>Theft or extortion committed between spouses</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Killing / injuring animals</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Insults</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Illegal sale of land</td>
<td>1%</td>
<td>3%</td>
</tr>
<tr>
<td>Illegal purchase of land</td>
<td>2%</td>
<td>5%</td>
</tr>
<tr>
<td>Destruction or damage to crops</td>
<td>5%</td>
<td>4%</td>
</tr>
<tr>
<td>Removal or displacement of boundary markers</td>
<td>14%</td>
<td>14%</td>
</tr>
<tr>
<td>Theft of ctops</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Movable assets</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Debts</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Breach of contract</td>
<td>8%</td>
<td>13%</td>
</tr>
<tr>
<td>Partition of property</td>
<td>2%</td>
<td>8%</td>
</tr>
<tr>
<td>Poor management of family property</td>
<td>13%</td>
<td>16%</td>
</tr>
<tr>
<td>Succession</td>
<td>11%</td>
<td>13%</td>
</tr>
<tr>
<td>Umunani</td>
<td>13%</td>
<td>13%</td>
</tr>
</tbody>
</table>

Source: Observation of mediation committee hearings, 2013 baseline study

3.2. Real proximity justice, especially for women

The concept of 'proximity justice' covers all mechanisms characterized by their proximity to the local population, both physically and psychologically. With a strong presence throughout

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the country, the Abunzi committees have undeniably become the main proximity justice mechanism in Rwanda. Despite the great advantages they offer, they also face many challenges. Based on our monitoring data, this section will examine community perceptions and assessment of the mediation committees.

3.2.1. Justice that is close to the community: the strengths of the mediation committees

In Rwanda, the 2,564 mediation committees are based in each of the country's sectors (416) and cells (2,148). On average, citizens live around 2 km from their cell committee as opposed to 11.8 km from the Primary Court. Depending on the place of residence (urban or rural region) and financial means, the journey to the Court may take several hours. The geographical proximity of the mediation committees compared with the Primary Courts is particularly appreciated (81.1% of parties and 61.2% of members of the public interviewed).

Furthermore, as the mediation committees' services are free in principle, no fees are charged for registering the case or for appealing to the sector mediation committee. The fact that the service is free of charge is mentioned by 58.9% of parties and 55% of members of the public interviewed as being one of the strong points of the Abunzi committees compared with the Primary Courts.

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283 Article 26, last paragraph, 2010 Organic Law.
284 The question that parties and members of the public were asked was the following: what are the strong points of the mediation committees compared with the local authorities and the Primary Courts (no list of answers to choose from was given). By way of illustration, responses ranged from 21.1% (‘they have integrity’) to 41.1% (‘they are better at mediating’). These percentages have a relative value: there may be different reasons for few respondents citing mediators’ integrity as a strong point in comparison with the local authorities. For example, perceptions of the local authorities’ integrity may already be positive, while other factors may seem more important to mention. This no doubt explains why ’only' 58.9 and 55% of respondents mention the fact that the
The procedures followed by the mediation committees are also easy for the population to understand. In terms of proximity justice, this comprehensibility is just as significant as affordability or geographical proximity: 52.2% of parties and 45% of members of the public interviewed considered the simplicity of mediation committee procedures to be an advantage over the Primary Courts.

Lastly, 74.4% of parties interviewed see community participation\textsuperscript{285} as the main advantage of the Abunzi system in comparison with the Primary Courts. They appreciate the fact that their case is heard in a familiar environment by members of their own community rather than by unknown judges in a courtroom. At the more general level, this social and psychological proximity enhances the population's positive evaluation of access to justice.

\textbf{3.2.2. Length of proceedings: a proven advantage}

Mediation committees must, by law, give their decision not later than one month after the case is registered by the executive secretary\textsuperscript{286}. For the ordinary courts, the statutory period is six months\textsuperscript{287}. For the local authorities, whose competence is governed by Presidential Order, no statutory period exists. In principle, therefore, the mediation committees should settle cases more quickly than the ordinary courts. A total of 31.1% of parties and 41.2% of members of mediation committee procedure is free as being a strong point (e.g.: in comparison with the Primary Court, the geographical proximity of the Abunzi was appreciated by 81.1% of the parties interviewed).

\textsuperscript{285} This may be understood not only as the physical presence of members of the community at the Abunzi hearings, the fact that they are normally open to all, and the possibility for everyone to express their views, but also the 'immaterial' involvement of the community, in terms of trust and awareness.

\textsuperscript{286} Article 20, last paragraph, 2010 Organic Law.

\textsuperscript{287} Cf. Article 13, Law No. 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, OGRR No. 29 of 16/07/2012. It should be noted that, in practice, this six-month period is often exceeded because of a considerable backlog of cases in the ordinary courts. See \textit{inter alia} New Times (9 December 2014), \textit{Reforms to expedite delivery of justice}. 
the public interviewed cite speed of proceedings as one of the advantages of the mediation committees in relation to the Primary Courts or even the local authorities (34.4% of parties and 33.8% of members of the public).

This view is not however shared by all: 31.1% of parties and 10% of members of the public consider the slowness of the process, caused by numerous adjournments, to be one of the mediation committees' weaknesses compared with the Primary Courts. Moreover, 27.8% of parties and 13.8% of members of the public interviewed identify the time taken for the mediation to be settled and delays in committee proceedings (38.9% of parties and 32.5% of members of the public) as being the two main weaknesses of the mediation committees compared with the local authorities.  

Nevertheless, the mediation committees' registers show that the average case is processed in considerably less than the statutory one month period. Only certain cases take longer – sometimes much longer – than one month to process, which affects the public's opinions on the Abunzi committees' work. Of 26 cases analysed at cell level, the average processing time was 9 days. However, 3 of the 26 cases, took over a month to settle (38, 42 and 52 days respectively). At sector level, the average was 17 days, but 3 of the 16 cases analysed took longer to process than the statutory period (two cases took 49 days and one case 77 days).  

It should also be noted that when the data were collected, a pre-selection was made of general land-related cases and specific land cases, involving women plaintiffs. The analysis of the registers therefore excluded all other types of dispute.  

When the data were collected, a pre-selection was made of general land-related cases and specific land cases, involving women plaintiffs. The analysis of the registers therefore excluded all other types of dispute.
that a case may be settled within the statutory period but only after several adjournments. Such adjournments may also adversely affect perceptions of how long the Abunzi take to process a case.

While the speed at which justice is delivered by the Abunzi appears to be largely confirmed and appreciated, there is room for improvement when it comes to ensuring compliance with the statutory deadlines. In 2011, it had already been noted that 'the sometimes long, multiple proceedings many litigants have to go through [...] have an impact on their attitudes to the Abunzi: a number of litigants are resistant to the idea of reaching an amicable agreement and must bear their share of responsibility when mediation fails' 291.

3.2.3. Dialogue as the basis for mediation: still room for improvement

As already noted, the Abunzi committee system is based on the idea of conciling the two parties rather than merely ruling on a dispute. This implies both parties playing an active part in resolving their conflict: in order for a solution to be found, each party must enter into dialogue, not only with the mediators but also with the other party. This principle of dialogue is set out in the IRR, according to which it is the plaintiff who must first explain his or her problem, claims, and expectations from the mediators. The defendant may then reply to the plaintiff’s arguments. Finally, if necessary, each party may answer any further questions 292. In practice, this dialogue is

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292 Article 20, Points 8, 9 and 10, Internal Rules and Regulations, 2011.
appreciated: for the litigants (33.3%) and members of the public (38.8%) interviewed, it is one of the major benefits compared with the role played by the local authorities.\(^{293}\)

However, this appreciation of an environment conducive to dialogue does not necessarily mean that the parties are themselves ready to enter into dialogue: observation of mediation hearings showed that only 30.3% of parties at cell level and 7.9% at sector level actually negotiated directly with one another.\(^{294}\) And even though in 62.2% of cases observed at cell level the parties make compromise proposals, at sector level the figure goes down to 26.4%.\(^ {295}\) These figures show that dialogue between the parties, as the cornerstone of mediation committee functioning, could be improved further. The following section considers the broader challenges involved in improving the quality of justice delivered by the Abunzi committees.

### 3.3. Challenges and avenues for improvement

#### 3.3.1. Failure to comply with certain mediation committee procedures

The IRR and Organic Law of 2010 describe the steps to be followed when submitting a case to the mediation committee, the responsibilities of the bodies concerned and the procedure the committee must follow when hearing the dispute. In practice, however, not all these procedures are followed by the local authorities and mediation committees.

**Registration of the case**

When a litigant submits a case to the mediation committee, the cell

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\(^{294}\) Ibid.

\(^{295}\) Ibid.
executive secretary is required to register it on the committee's cause list, complete the preliminary forms and forward them to the *Abunzi* committee so that the parties may be summoned. In practice, executive secretaries often delegate this responsibility to the mediation committees, recommending litigants to apply directly to the committee, in particular to its chairperson, to have their case registered. It may also be the case that the mediation committee chairperson agrees to receive the cases submitted without any involvement at all from the executive secretary.

This non-compliance with procedures can be explained in two ways: on the one hand, the executive secretaries may have too heavy a workload, be unfamiliar with the legal procedures or not concern themselves with the work of the *Abunzi* committees. On the other hand, some mediators may be unaware of the role and competence of the local authorities in mediation.

When the mediation committee registers cases directly, it is the *Abunzi* themselves who decide whether or not a case falls within their competence. In practice, however, they often omit this preliminary analysis. In the event of an error, the whole process will be flawed from the outset, particularly in the enforcement phase, when the court may refuse the request to append the enforcement

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298 For information, 50% of cell authorities and 30% of sector authorities cite lack of time for registering cases as a difficulty they face in fulfilling their responsibilities to the mediation committees. RCN Justice & Démocratie, (2014). *Findings of the ILPRC baseline project – September-December 2013*, Kigali, available on request.

order. The decision cannot therefore be enforced, causing frustration for the parties who have wasted their time and possibly money, too. Furthermore, litigants may not be familiar with the procedures that apply, or with the competence of the mediation committees, and thus be unable to lay claim to their rights. Instead, they will insist that the case be handled by the mediation committee, even though the decision will end up not being 'enforceable'.

A further irregularity noted with the registration of cases is when mediation committees send out summonses to parties before the case is formally registered on their cause list. They register the case on the day it is heard\textsuperscript{300}. The registration date entered in the register is thus incorrect and correspondingly skews calculation of the statutory deadline of one month between registration and settlement of the case by the mediation committee.

**Summoning of the parties**

After receiving the forms, which should have been completed by the executive secretary, the mediation committee is required immediately to summon all the parties involved to attend the hearing. While the mediation committee is responsible for taking all necessary measures to ensure that the summonses reach the intended recipients\textsuperscript{301}, they may seek help from local authority bodies\textsuperscript{302}. In addition, the IRR require the summons to reach the recipient at least two working days before the day of appearance\textsuperscript{303}. In practice, however, this deadline is not always respected: a party may be summoned the same day as the hearing or the day before, as reported by 10.2\% of the parties interviewed at cell level and 18.2\%.


\textsuperscript{301} 2011. Article 12, Internal Rules and Regulations, 2011


\textsuperscript{303} *Ibid.*, Article 14.
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at sector level\textsuperscript{304}. Moreover, the summons may sometimes be delivered orally by the mediation committee because of lack of summons forms, or directly passed on by the plaintiff\textsuperscript{305}. When parties are not summoned according to the established rules or deadlines, there is a greater likelihood of one party not appearing at the hearing, causing the other party and the committee to waste time. The obstacles to summoning the parties are in fact mainly practical: lack of materials, in particular copies of the summons form, and the distance between the parties and the committees' offices, particularly at sector level\textsuperscript{306}.

The choice of mediators for the panel

Before the hearing begins, the parties either choose three of the committee's twelve mediators for the panel together, or each chooses one mediator and these two mediators choose the third\textsuperscript{307}. In practice, the second scenario is the most frequent (61.1\% of cell level hearings observed and 73.4\% at sector level)\textsuperscript{308}: this seems to indicate the parties' unwillingness to find a consensus before the mediation begins. At some committee hearings, this second option has become the norm, with the other no longer being presented to the parties\textsuperscript{309}. Litigants consider the mediator they have chosen to be the advocate or defender of their interests, which puts the Abunzi into a position far removed from the original concept of mediation. It

\begin{itemize}
\item \textsuperscript{304} RCN Justice & Démocratie, (2014). *Findings of the ILPRC baseline project – September-December 2013*, Kigali.
\item \textsuperscript{306} RCN Justice & Démocratie, (2014). *Report on the in-house workshop held on 16 and 17 June 2014 with partners ARAMA and Imbaraga on the findings of the Abunzi monitoring – Baseline study 2013*, unpublished.
\item \textsuperscript{307} Article 18, 2010 Organic Law and Article 17 Internal Rules and Regulations, 2011.
\item \textsuperscript{308} RCN Justice & Démocratie, (2014). *Findings of the ILPRC baseline project – September-December 2013*, Kigali.
\end{itemize}
may also be the case that mediation committees do not allow the parties a free choice of the three members of the panel, preferring to appoint the third mediator themselves, namely one who is literate\textsuperscript{310}. Even if this is well meant, the law and the rights of the parties are not being complied with, which may jeopardize the outcome of the mediation.

In some committees, the chairperson may systematically sit on the panel, which could be justified by his or her superior abilities, or privileged position on the committee. Similarly, it is often the same mediators who act as panel secretary\textsuperscript{311}. These tacit arrangements not only reduce the parties' freedom of choice, provided for by law, but also affect the proper functioning of the mediation committees: some Abunzi are never chosen. On the one hand, this can weaken mediators' commitment and motivation, and on the other hand, it may lead to suspicions of influence peddling by the parties and, more broadly, bring the whole system into discredit in the eyes of the community.

**Mediation procedure**

The mediation procedure is set out in detail in the IRR\textsuperscript{312}. This section will focus only on practical findings related to proper application or misapplication of the procedure. Does the panel chairperson briefly recall the duties of mediators? ask the parties to introduce themselves? explain the procedure for taking the floor? As a rule, these stages of the proceedings are better respected by panel chairpersons and secretaries at sector level\textsuperscript{313}: this is not surprising, as the 'best' cell mediators are often transferred to the sector


\textsuperscript{312} Op. cit. See Article 20, in particular.

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committees. It is however important for all those involved in the mediation process, especially the parties, to know the rules so as to improve their chances of success.

According to the IRR, if the panel manages to reconcile the two parties in the course of a mediation hearing, mediation minutes of agreement must be prepared. If the mediation fails, the three mediators on the panel withdraw for consultations and to make a decision. In that case, it is the panel chairperson who opens, presides over and concludes the discussion and who gives the floor to the other two mediators on the panel. In practice, it may happen that the panel does not withdraw for consultations (5.1% of cell level hearings observed and 13.6% at sector level) or, instead of doing so alone, may consult with the other members of the committee (13.1% of cell level hearings observed and 9.1% at sector level), especially with the chairperson or vice-chairperson, despite their having no voting rights if they are not members of the panel. Their influence on the decision-making may nevertheless partly undermine the parties' right to free choice of the mediators who will deal with their case.

At the end of the consultations, the IRR also require the panel chairperson to read the decision taken in public. If this is not possible, the chairperson must inform the parties of the date on which they will be notified of the conclusion. This must be done within ten working days. In all cases, including that of successful mediation, the decision must be made available in writing and signed within ten days of the decision being made. In practice, however, this

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315 Article 22, first paragraph, 2010 Organic Law.
318 Article 24, last paragraph, Internal Rules and Regulations, 2011.
319 Article 22, third paragraph, 2010 Organic Law.
deadline is not generally respected: the parties often have to wait three weeks (24.4% at cell level and 45.9% at sector level) or more (31.8% at cell level and 35.4% at sector level) to receive the minutes of the decision. The notification time is particularly long at sector level, where the committees are further away from the parties\textsuperscript{320}. These delays can not only have a negative impact on public opinion of the mediation committees' efficiency, but may also affect the degree of acceptance of the decision by the parties.

3.3.2. Poor quality of decisions and impact on their execution

The law provides no instructions on how the Abunzi should formulate their conclusions. Their decision must be in accordance with the laws and local customary practices (provided these are not contrary to the written law)\textsuperscript{321} and, more implicitly, must not be contrary to public order\textsuperscript{322}. A first criterion for assessing the conclusions consists in verifying the existence and quality of the statement of reasons given for the decision. The quality of the Abunzi conclusions (whether this is a settlement agreed between the two parties or a decision taken by the Abunzi) could also be analysed in light of the judgments handed down by the Primary Courts and referring to those conclusions. Another indicator concerns the execution of the decision: when decisions taken are in accordance with the law and customary practices and are well reasoned, they are better accepted by the parties and, in principle, enforced automatically.

\textsuperscript{321} Article 21, first paragraph, 2010 Organic Law.
\textsuperscript{322} Article 24, last paragraph, of the 2010 Organic Law states that the President of the Primary Court cannot refuse to append the enforcement order to the mediation committee's decision unless the decision or its execution is contrary to public order.
Functioning of the mediation committees

Primary Court review of mediation committee decisions

The law specifies that any party who is not satisfied with the decision of the mediation committee at sector level may appeal to the Primary Court, which will render a judgment on merits at the first and last instance. When the judges confirm the mediation committee's decision, it can be inferred that the decision is in accordance with the law. Of the 60 Primary Court judgments analysed\(^{323}\), only half of the mediation committees' decisions were upheld by the judges. In most cases, the decisions were overturned because of misapplication of the law, or misinterpretation of evidence or legislation by the mediation committees.

The Primary Court may also give its verdict on the quality of a mediation committee decision when the interested party is seeking an enforcement order. The President of the Primary Court must then decide whether or not to append the enforcement order to the decision\(^{324}\). In principle, the President may refuse to do so if the decision or its enforcement is contrary to public order\(^{325}\). In practice, Primary Courts refuse to append enforcement orders for reasons other than a potential risk to public order. The judges justify their refusal by explaining that the mediation committees' decisions are 'incomplete': for example, evidence missing, identification of parties incomplete, signatures of the parties or the mediators' seal missing, non-compliance of the decision with the law, lack of precision on the subject of the dispute, or the fact that the subject of the dispute does not fall within the jurisdiction or competence of the mediation committee. Public order is therefore very rarely invoked as a reason for refusal to append the enforcement order\(^{326}\). It is important to

\(^{323}\) These Primary Court judgments concerned appeals against a sector mediation committee decision. All the judgments analysed related to land disputes.

\(^{324}\) Article 24, second and third paragraphs, 2010 Organic Law.

\(^{325}\) Article 24, fourth paragraph, 2010 Organic Law.

note that the Primary Court judges generally have a moderate opinion of the quality of mediation committee decisions.

Another error made by mediation committees concerns the imposition of fines. According to the law, the mediators cannot pronounce penalties provided by penal law\textsuperscript{327}. Yet, it appears that some mediation committees impose fines (10,000 Rwandan francs, for example) in disputes of a criminal nature\textsuperscript{328}, which is absolutely against the law\textsuperscript{329}. In isolated cases, it has been observed that this sum has gone into the sector's coffers. While this type of penalty is illegal as part of a decision taken by the Abunzi, it should be noted that the parties themselves may agree on a compensation payment at the close of the mediation.

\textit{Lack of justification for mediation committee decisions}

According to the parties interviewed, the mediation committees' decisions are not usually well reasoned. A third of the parties stated that the mediators had not justified their decision, a third that they had not understood the decision, and over half that the conclusions reached by the mediation committee were unfair. The parties who did not understand the decision said that they did not know what each of them was supposed to do, who was the winning or losing party. Some parties also feel that the decision taken is not related to the subject of the dispute, or that the legislation and evidence referred to in the conclusions bear no relation to the dispute. Others claim that the decision mentions people who have no connection

\textsuperscript{327} Article 21, second paragraph, 2010 Organic Law.
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with the case.330

When the mediators do justify their decisions, they usually refer to the documents and other supporting evidence provided by the two parties. Evidence may on occasion be supplied by only one of the parties (31.1% of cell level hearings observed and 12% at sector level). And in some cases, no evidence is given to justify the decision (17.1% of cell level hearings observed; none at sector level). The mediators base their decisions only partly on evidence from field visits (24.8% of cell level hearings observed and 24% at sector level) or testimony (17.8% of cell level hearings observed and 16% at sector level). Reference to legislation is more common but is often too general (59.6% of cell level hearings observed and 60% at sector level) or not relevant to the dispute in question (14.7% of cell level hearings observed; none at sector level). And in some hearings, the Abunzi committees make more reference to customary practices than to the law.331

The above data show that justification of decisions is often of better quality at sector level. This may be explained by differences in the mediators' ability at the two levels but also by the greater documentary evidence available at sector level, after the case has previously been analysed by the cell committee. At cell level, decisions may not be well founded because of mediators' inability to identify key elements or to combine information to reach a decision, or because of a lack of legal knowledge.

This lack of justification results in reluctance to accept the committees' conclusions, especially by the party who feels 'wronged'

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by the decision. It also risks complicating enforcement of the decision as well as casting doubt on the sustainability of the conflict resolution: feelings of arbitrary treatment and mistrust may emerge towards the mediation committees. In terms of settling the dispute, the consequences may be catastrophic: only one third of the parties interviewed considered that the conclusion of the mediation or the decision taken had effectively contributed to achieving a lasting resolution to the dispute333.

Finally, when the points of agreement or disagreement between the parties are not clearly established by the cell mediation committee, the task of the sector committee on appeal will be made more difficult, as at this level it is only the points of disagreement between the parties that are examined.

Enforcement of mediation committee decisions

The law specifies that the mediators' decision may be executed voluntarily, at the request of the interested party, or that enforcement may have to be compulsory in the event that one of the parties refuses to comply with the decision. In the second case, the interested party submits a request, in writing or verbally, to the President of the Primary Court to append an enforcement order.

According to almost half the parties interviewed (45.2%), the mediation committees' decisions were not implemented334. And when they were, it was usually after an enforcement order. Voluntary execution occurs in only a minority of cases (20% of parties interviewed). The interested party generally requests the executive secretary to enforce the mediators' decision (40% of parties interviewed), or turns to the mediators themselves (40% of parties

Functioning of the mediation committees

Interviewed). However, even when the executive secretary and Abunzi support the 'winning' party, there is no certainty that he or she will be successful in having the decision enforced. As a rule, execution (both voluntary and compulsory) of a decision takes a long time (see Tables 5 and 6).

Table 5: Time between the mediation committee decision and its execution

<table>
<thead>
<tr>
<th>Amount of time between decision and execution</th>
<th>Parties whose decisions were executed %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 month</td>
<td>15,5%</td>
</tr>
<tr>
<td>Between 1 and 3 months</td>
<td>16%</td>
</tr>
<tr>
<td>Between 3 and 6 months</td>
<td>41,5%</td>
</tr>
<tr>
<td>Between 6 months and 1 year</td>
<td>20%</td>
</tr>
<tr>
<td>Over 1 year</td>
<td>7%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Interviews with litigants, Baseline study, 2013

Table 6: Time that has elapsed since the mediation committee decision (for parties whose decisions have not yet been executed)

<table>
<thead>
<tr>
<th>Time that has elapsed since the decision</th>
<th>Parties whose decisions have not yet been executed %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between 1 and 3 months</td>
<td>22%</td>
</tr>
<tr>
<td>Between 3 and 6 months</td>
<td>29%</td>
</tr>
<tr>
<td>Between 6 months and 1 year</td>
<td>38%</td>
</tr>
<tr>
<td>Over 1 year</td>
<td>11%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Interviews with litigants, baseline study, 2013

Ibid. It should nonetheless be noted that the mediators have no legal mandate to execute their own decisions.
The statutory deadline for compulsory enforcement of a mediation committee decision, as for ordinary court judgments, is three months. The tables above show that this deadline is not always respected. The period begins when the interested party requests an enforcement order from the court. The figures above should therefore be qualified by noting that the long enforcement times may also – at least partially – be attributable to the interested party. He or she may not know which body to apply to in order to have the decision enforced, may not be able to afford to travel to the court, or quite simply may not believe that the decision is enforceable (particularly if the 'losing' party is known not to have sufficient means). In all cases, the length of time it takes to enforce a decision is detrimental to the effectiveness of the system as a whole and to litigants' confidence. This lack of confidence in the system emerges clearly from interviews with the parties: when asked why the decision has not been executed, 40.5% of parties replied that they opposed its enforcement as they did not agree with the conclusion, while the same number of respondents (40.5%) stated that it was the other party that opposed enforcement because of disagreement with the decision. These figures do not shed a very encouraging light on the effectiveness of the committees' 'conciliatory' brief.

As far as the enforcement body is concerned, it should be stressed that 28.9% of parties interviewed at cell level and 11.1% at sector level had their decision enforced by the mediation committee itself, despite this not being part of the committee's mandate. The mediators often take a proactive approach to enforcing decisions 'for convenience' and 'to make life easier for the parties', thereby

336 Article 202, first paragraph, Law No. 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, OGRR No. 29 of 16/07/2012.
337 It should be noted that 19% of cases feature 'postponement of execution'. RCN Justice & Déconomie, (2014). Findings of the ILPRC baseline project – September-December 2013, Kigali.
338 Ibid.
satisfying a need to bring the case to a swift close. While the intention may be good, over and above the issue of competence, several problems arise. First, there is no separation between the body that settles the dispute and that which implements the decision, which may influence the mediation committee during both stages. Secondly, the risk of corruption may be increased, in particular when a debt is to be recovered. Finally, these multiple mandates further increase the mediators' workload, especially when a field visit is necessary to enforce the decision.

In principle, the decision should be enforced by the cell or sector executive secretaries or by Access to Justice Bureau (MAJ) staff. It is their task to read, interpret and implement the decision, although fundamental problems may complicate their work (Table 7).

Table 7: Types of difficulty mentioned by Access to Justice Bureau (MAJ) staff and local authorities interviewed on execution of cell and sector mediation committee decisions (the percentages indicate the number of times respondents mentioned the difficulty)

<table>
<thead>
<tr>
<th>Internal factors</th>
<th>MAJ At cell level (%)</th>
<th>At sector level (%)</th>
<th>Local authorities At cell level (%)</th>
<th>At sector level (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incomplete decision</td>
<td>9</td>
<td>22</td>
<td>30</td>
<td>40</td>
</tr>
<tr>
<td>Incomprehensible decision</td>
<td>64</td>
<td>64</td>
<td>55</td>
<td>60</td>
</tr>
</tbody>
</table>


340 Professional bailiffs also have the competence to enforce the decisions of the mediation committees. In practice, in comparison with executive secretaries and MAJ officials, it is very rare that they do so. For this reason, professional bailiffs were not included in the target population for this study.
Errors in decisions (measurement or size of fields, location, etc.) | 54 | 57 | 40 | 50

**External factors**

<table>
<thead>
<tr>
<th>External factors</th>
<th>18</th>
<th>21</th>
<th>25</th>
<th>30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insolvency of the 'losing' party, making enforcement difficult</td>
<td>45</td>
<td>43</td>
<td>25</td>
<td>20</td>
</tr>
<tr>
<td>Two decisions with enforcement orders for the same case</td>
<td>0</td>
<td>0</td>
<td>30</td>
<td>10</td>
</tr>
<tr>
<td>External pressure to ensure enforcement despite an appeal having been submitted</td>
<td>54</td>
<td>29</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Refusal of the losing party to allow the decision to be executed</td>
<td>27</td>
<td>21</td>
<td>25</td>
<td>10</td>
</tr>
<tr>
<td>Insecurity (subject to physical/psychological threats)</td>
<td>27</td>
<td>29</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td>No reimbursement of expenses (transport, etc.)</td>
<td>36</td>
<td>36</td>
<td>22</td>
<td>10</td>
</tr>
<tr>
<td>Enforcement order appended by the Primary Court while the case is under appeal at sector mediation committee level</td>
<td>36</td>
<td>36</td>
<td>22</td>
<td>10</td>
</tr>
</tbody>
</table>

*Source: Individual interviews with Access to Justice Bureau staff and local authorities*

The fact that many decisions are considered incomplete or incomprehensible can be explained by the mediation committees not having enough standard minutes forms that would help them to supply all the information necessary. And even when the forms are available, the mediators do not necessarily know how to complete them correctly.

One particular difficulty arises when decisions are enforced at cell level, even when one of the parties has appealed to the sector committee. In 2013, the Ministry of Justice attempted to overcome the problem by establishing a practice whereby the interested party must obtain a certificate of non-appeal at sector level before apply for the enforcement order.
When enforcing decisions, MAJ staff and the local authorities not only find problems with the quality of the decision but also note that the 'losing' party may quite simply not be able to afford to comply with the decision, or may refuse to do so. The local authorities may also come under pressure to enforce a decision even though an appeal has been filed. Lack of financial resources and a feeling of insecurity also affect the enforcement of decisions by the local authorities, who are not, it should be noted, professional bailiffs: they have many other duties and little time available for enforcing decisions. Nor does any framework exist for monitoring enforcement of decisions by MAJ staff and local authorities.

In conclusion, enforcement of mediation committee decisions is complicated in two key areas. First, the decisions are often incomplete, incomprehensible, or contain errors, making them difficult to enforce. Secondly, external factors may prevent proper enforcement of decisions. In all cases, it is the litigant who suffers.

### 3.3.3. Operational challenges: lack of resources

*Practical and logistical challenges and their consequences*

The mediation committees do not always work in the best of conditions: basic materials are not always available and meeting rooms unsuitable or non-existent, often leading to the hearings being held in the cell or sector office or in the executive secretary's office. Hearings may also regularly be held outdoors. Monitoring of the *Abunzi* revealed that some committees had no seal, ink, pens, standard notification, summons or minutes forms, or case registers. In addition, the different committees do not always use the same forms, even though the Ministry of Justice has developed

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342 RCN Justice & Démocratie, (September 2013). *Report on initial training in*
standard versions.

This lack of resources can have many negative repercussions on the mediation committees' work. First, it can affect compliance with procedures: for example, mediation committees that lack the necessary form are obliged to summon the parties orally even though the IRR specify that parties must be summoned in writing. Lack of resources may also lengthen or delay the conflict resolution procedure, for example in the case of a hearing being postponed because the room is not available.

Inadequate access to laws, legal documentation and textbooks on mediation leads to a low level of expertise in mediation techniques and poorly reasoned decisions. Lastly, it becomes more difficult, notably for the Ministry of Justice, to monitor the work of the mediation committees when their registers are not properly kept. The Ministry is aware of all these difficulties and makes every effort to distribute resources, particularly in partnership with NGOs such as RCN J&D.

But one of the most negative repercussions is the following: a lack of resources may sometimes lead mediation committees to request a (financial) contribution for handling the case. Around a quarter of the parties interviewed at cell level and half at sector level claim that the mediation committees requested a financial contribution for the purchase of materials, for the summons, for the field visits or –

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343 Nyamata, Musenyi, Ntarama and Rilima-Bugesera, Kigali, unpublished.
345 Article 12, fourth paragraph, Internal Rules and Regulations, 2011.

As part of the ILPRC project, besides organizing training, RCN J&D provided material support for the cell and sector mediation committees in 15 of the country's districts by distributing standard legal forms (summonses, notifications of decisions, minutes of decision, case registers) office supplies (storage trunks, office paper, files, hole-punchers, carbon paper, pens, folders, staplers and staples, notebooks, ink pads), Abunzi sashes and a full training kit (Abunzi guide, compendium of legal texts, etc.).
Functioning of the mediation committees

primarily – to obtain the minutes\textsuperscript{346}. It may even be the local authorities who ask parties to ‘make a contribution to the cost of the mediation’: in that case, it is the executive secretary who requires the parties to buy the paper for the mediation committee\textsuperscript{347}. The mediators on one committee asked for 30 000 Rwandan francs to conduct field visits, which were carried out by the twelve members of the committee rather than by the three members of the panel\textsuperscript{348}. Lack of resources affects the people’s right to have access to proximity justice that is fair and free of charge. Finally, the request for financial or material contributions from the parties taints the presumption of mediator impartiality: are these contributions really necessary for the performance of their duties, or do they reveal a form of corruption, however ‘benign’?

Mediator absenteeism

The absenteeism rate for Abunzi at a mediation hearing stands at around 30\% and is particularly pronounced for women\textsuperscript{349}. While the law specifies that mediators work on a voluntary basis, state health insurance coverage is provided for mediators and five family members. The voluntary nature of their duties means that time must be taken off work, depriving a proportionally large number of mediators of a source of income. Hence, it is not surprising that some mediators are absent from committee hearings. Apart from the voluntary nature of the work, a number of other factors contribute to absenteeism: the term of office is long (five years); mediators are not always elected willingly; health insurance payments may be delayed, and an Umwunzi with more than five dependents will not have all

\textsuperscript{347} Ibid. Cell authority interview, Nyanza.
members of the family covered by health insurance; there may be some distance between their place of residence and the venue for the mediation committee hearings, especially at sector level, and transport and communications expenses are not covered.

Absenteeism is even more pronounced during the main agricultural season, when there is a greater need for labour in the fields. Moreover, these 'persons of integrity [...] well known for their mediation skills' often have many other responsibilities, being actively involved in the community and frequently called upon for other duties (agronomists, primary teachers, health committees, youth committees, etc.). It should be noted that all these factors have an even greater impact on women, who have households to run and fewer financial resources. This point will be discussed in more detail below. Some women may also find it discouraging to be chosen less often for the Abunzi committee panels.

The absence of some mediators from the hearings has major implications for the mediation process: the parties' choice of mediators for the panel is limited; the workload of the most committed mediators increases; and hearings may be postponed, which increases the length of the process and can therefore result in the dispute lasting longer and the parties losing confidence in the committee.

3.3.4. Collaboration problems and interference

Nature of the collaboration between local authorities, MAJ, judges and mediation committees

Under the law, various bodies are competent to collaborate with the mediation committees. However, the mandate and roles of these

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The cell respondents were the executive secretaries and social economic development officers. The sector respondents were the executive secretaries and civil status officers.
Functioning of the mediation committees

bodies and the type of collaboration involved are quite different. Their involvement may be based on practice rather than on the law itself.
Table 8: Nature of the collaboration between (cell and sector) local authorities and mediation committees

<table>
<thead>
<tr>
<th>What is the nature of your collaboration with the Abunzi?</th>
<th>Cell authorities %</th>
<th>Sector authorities %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Making an office available for the hearing</td>
<td>85</td>
<td>80</td>
</tr>
<tr>
<td>Reception and registration of cases</td>
<td>80</td>
<td>90</td>
</tr>
<tr>
<td>Making office supplies available to the Abunzi</td>
<td>80</td>
<td>70</td>
</tr>
<tr>
<td>Storage of Abunzi materials</td>
<td>70</td>
<td>70</td>
</tr>
<tr>
<td>Giving the Abunzi technical advice</td>
<td>70</td>
<td>80</td>
</tr>
<tr>
<td>Organizing working meetings with the Abunzi</td>
<td>65</td>
<td>90</td>
</tr>
<tr>
<td>Enforcing the decisions made by the Abunzi</td>
<td>60</td>
<td>40</td>
</tr>
<tr>
<td>Forwarding summonses, notifications and minutes of decisions</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Monitoring the work of the Abunzi</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Ensuring the safety of the Abunzi during field visits</td>
<td>35</td>
<td>20</td>
</tr>
</tbody>
</table>

Source: Individual interviews with the local authorities

This table shows that the cell authorities do not always register cases, even though they are legally assigned this responsibility\(^{351}\). As previously mentioned, the local authorities sometimes delegate this duty to the mediation committees, not because of unfamiliarity with the law, but because of the many other tasks and responsibilities they have to discharge.

\(^{351}\) Article 5, second and third paragraphs, 2010 Organic Law.
Functioning of the mediation committees

Table 9: Nature of the collaboration between Access to Justice Bureaus (MAJ) and mediation committees

<table>
<thead>
<tr>
<th>Table 9: What is the nature of your collaboration with the Abunzi?</th>
<th>MAJ officials (for cell committees)</th>
<th>MAJ officials (for sector committees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training the Abunzi</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Giving the Abunzi technical advice</td>
<td>91</td>
<td>93</td>
</tr>
<tr>
<td>Giving the Abunzi legal advice</td>
<td>73</td>
<td>77</td>
</tr>
<tr>
<td>Lobbying various local authorities for improvements in Abunzi working conditions</td>
<td>73</td>
<td>71</td>
</tr>
<tr>
<td>Receiving and processing reports from the Abunzi</td>
<td>54</td>
<td>43</td>
</tr>
<tr>
<td>Organizing working sessions/workshops with the Abunzi</td>
<td>36</td>
<td>57</td>
</tr>
</tbody>
</table>

Source: Individual interviews with officials from the Access to Justice Bureaus

It is important to emphasize that the law does not give the MAJ any specific responsibility for training or supervising the mediation committees. Their competence for this derives from the internal structure of the Ministry of Justice. This does however raise a number of questions on the links that exist between the MAJ, which fall under the executive branch, and the Abunzi, which come under the judicial branch and should therefore have independence of action from the executive. This may be inferred from Article 60 of the Rwandan Constitution on the separation, independence and complementarity of the three branches of government – the executive, the legislature and the judiciary – and may be applied to the mediation committees on account of Article 159 (which deals with the Abunzi) coming under Section 4 of Chapter 5, which is entitled 'The Judiciary'.
Furthermore, Article 8 of the IRR is devoted to the principle of independence of the mediation committee: in theory, the committee may not be influenced by or receive orders from any other institutions, whether these be local administrative, central government or judicial authorities, or the mediation committee Coordination Unit. If MAJ supervision of the Abunzi continues, without any legal basis, the Abunzi could have the impression that, within the hierarchy, they report directly to the MAJ. According to the data collected, the MAJ already provide training, give legal and technical advice, and receive and process the mediation committee reports. While interaction and collaboration between the various proximity justice actors (including the MAJ) can only be beneficial to their functioning, it is crucial for the development of the mediation committees that they remain independent. It is in this way that the mediation committees will be able to fully play their democratic role by providing a mediation framework by and for the Rwandan people.

Table 10: Nature of the collaboration between Primary Court judges and mediation committees

<table>
<thead>
<tr>
<th>Table 10: What is the nature of your collaboration with the Abunzi?</th>
<th>PC judges (for cell committees) %</th>
<th>PC judges (for sector committees) %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Giving the Abunzi technical advice</td>
<td>71</td>
<td>70</td>
</tr>
<tr>
<td>Giving the Abunzi legal advice</td>
<td>71</td>
<td>50</td>
</tr>
<tr>
<td>Giving the Abunzi advice on cases where decisions are not in compliance with the law or with procedures</td>
<td>71</td>
<td>60</td>
</tr>
<tr>
<td>Appending enforcement orders</td>
<td>43</td>
<td>30</td>
</tr>
<tr>
<td>Organizing working sessions/workshops with the Abunzi</td>
<td>14</td>
<td>30</td>
</tr>
<tr>
<td>Speaking about the functioning of the Abunzi at Open Days</td>
<td>14</td>
<td>10</td>
</tr>
</tbody>
</table>

Source: Individual interviews with Primary Court judges
Functioning of the mediation committees

The collaboration between Primary Court judges and Abunzi from mediation committees consists mainly of technical support: as legal professionals who handle the decisions made by sector mediation committees on appeal, the judges are well placed to give the committees advice. However, no formal mechanism exists for supervision and monitoring of the mediation committees by the judges, nor is there any forum or occasion for encouraging exchange of views with the Abunzi. Yet, the judges could provide support and take on a mentoring role with the mediators to complement the work undertaken by the MAJ, who are mandated, de facto, by the Ministry of Justice to train and supervise the Abunzi.

Given that the judges are in a front-line position to observe the mediators' failings on the ground, this would be a real opportunity for Abunzi capacity building. Furthermore, the introduction of formal supervision mechanisms via the Primary Courts would enable the Supreme Court to assume its oversight functions as the country’s highest judicial body, while emphasizing the Abunzi committees' place as part of the judicial system, rather than the administrative authorities.

Such an approach would ultimately contribute to greater respect for the principles of good governance, the separation of powers, and the independence of the judicial system.

Difficulties in collaboration

The local authorities, MAJ officials and Primary Court judges experience a number of difficulties in their relations with the mediation committees. For the local authorities, the greatest

\[352\] While the figures obtained may seem relatively high, it should be noted that they include replies from judges who have already given the Abunzi advice at least once. In practice, it may be assumed that such technical support remains limited.

\[353\] This could, for example, include monitoring of the legal dimension of the mediation committees' activities as part of the work of the Supreme Court’s Inspectorate General.
challenge is to find the time to fulfil their duties to the mediation committees among all the other tasks assigned to them (see Table 11).

**Table 11: Difficulties encountered by local (cell and sector) authorities in fulfilling their duties to mediation committees**

<table>
<thead>
<tr>
<th>Table 11: What difficulties do you encounter in fulfilling your duties to the Abunzi?</th>
<th>Cell authorities %</th>
<th>Sector authorities %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multiple responsibilities</td>
<td>90</td>
<td>80</td>
</tr>
<tr>
<td>Lack of availability to provide an office or materials for the Abunzi</td>
<td>70</td>
<td>50</td>
</tr>
<tr>
<td>Lack of time to register cases</td>
<td>50</td>
<td>30</td>
</tr>
<tr>
<td>Priority given to performance contracts</td>
<td>50</td>
<td>10</td>
</tr>
<tr>
<td>Lack of time/means for case follow-up (forwarding summonses, notifications and minutes)</td>
<td>40</td>
<td>50</td>
</tr>
<tr>
<td>Lack of resources to organize meetings with the Abunzi</td>
<td>35</td>
<td>10</td>
</tr>
</tbody>
</table>

*Source: Individual interviews with the local authorities*

For MAJ officials and Primary Court judges, the main difficulty is coordination and communication (see Tables 12 & 13).

**Table 12: Difficulties encountered by MAJ officials in their collaboration with mediation committees**

<table>
<thead>
<tr>
<th>Table 12: What difficulties do you encounter most often in your collaboration with the Abunzi?</th>
<th>MAJ officials (for cell committees) %</th>
<th>MAJ officials (for sector committees) %</th>
</tr>
</thead>
<tbody>
<tr>
<td>No coordination mechanism for the various bodies that work with the Abunzi</td>
<td>82</td>
<td>79</td>
</tr>
<tr>
<td>Non-existence/weakness of communication channels/discussion forums</td>
<td>82</td>
<td>79</td>
</tr>
<tr>
<td>Lack of availability/means to organize regular meetings with the Abunzi</td>
<td>82</td>
<td>86</td>
</tr>
</tbody>
</table>
Functioning of the mediation committees

<table>
<thead>
<tr>
<th>Difficulty</th>
<th>PC judges (for cell committees)</th>
<th>PC judges (for sector committees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No transport available to facilitate monitoring of the Abunzi</td>
<td>82</td>
<td>86</td>
</tr>
<tr>
<td>No means of transport/communication made available to the Abunzi</td>
<td>73</td>
<td>86</td>
</tr>
</tbody>
</table>

Source: Individual interviews with Access to Justice Bureau staff

Table 13: Difficulties encountered by Primary Court judges in their collaboration with mediation committees

<table>
<thead>
<tr>
<th>Difficulty</th>
<th>PC judges (for cell committees)</th>
<th>PC judges (for sector committees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of availability/means to organize meetings with the Abunzi.</td>
<td>71</td>
<td>70</td>
</tr>
<tr>
<td>Lack of a regular forum for exchanging ideas on the competence and roles of the different actors in the mediation system</td>
<td>57</td>
<td>60</td>
</tr>
</tbody>
</table>

Source: Individual interviews with Primary Court judges

Local authority interference in the functioning of the mediation committees

At different stages in the procedure, local authority interference, particularly by the executive secretary, in the work of the mediation committee can be observed: this may be during registration of the case (for example, preliminary referral to other bodies), characterization of the facts, forwarding of summonses or notifications, or even during the taking of certain decisions. It is true that for their day-to-day running (need for materials, working space, etc.), the mediation committees are highly dependent on the local authorities. In the absence of any resource persons or proper operational support structure, the Abunzi turn to the local authorities for legal information or advice on carrying out their work.

While the MAJ are responsible for supervising the Abunzi, and while
some of their staff may run occasional training sessions for the mediators, it should be remembered that the MAJ operate at district level and have only three staff members per Bureau. Their capacity for supervision is accordingly very limited in practice, as is the case in the current system with the Primary Court judges.

This all inevitably leads to confusion in terms of separation of powers and independence of the justice system between the local authorities, who depend on the executive branch, and the mediation committees.

This tendency is exacerbated by the powers the local authorities previously exercised in the management of the justice process. The laws and customs that were current under colonial rule contributed to the amalgam of administrative power and judicial power; for decades after that, and up to the recent past, the préfets and bourgmestres, positions equivalent respectively to the current province governors and district mayors, were de facto invested with some functions of judicial police officer, like arrest (acting then through their subordinates). The fact that traces of this heritage remain in people's minds goes some way towards explaining the confusion that may exist over the boundaries of the authorities' power to act in justice matters, including among the general public; it may also account for the tendency of some local authorities to involve themselves or indeed interfere in this domain. This position of legitimate intervention, which persists at the public administration level, reinforces the resistance of some of its representatives to allowing the mediation committees fully to discharge their primary responsibility for conflict resolution.\(^\text{354}\)

\(^{354}\) In concrete terms, some local authorities see this as a loss of power, resources and a certain social status. See: RCN Justice & Démocratie, (2014). \textit{Report on the in-house workshop held on 16 and 17 June 2014 with partners ARAMA and Imbaraga on the findings of the Abunzi monitoring – Baseline study 2013, unpublished.}
The ensuing acts of interference lead to loss of public confidence in the mediation committees' ability to maintain their independence and to deal with cases impartially.

The problem was in fact acknowledged by the President of the Republic in a speech made at the mediation committees' ten-year anniversary celebrations on 17 October 2014 at Petit Stade (Remera) in Kigali. One of the action points from the synopsis of the speech was the following: 'local government authorities not to interfere in Abunzi work; instead they would themselves be involved as actors'.

3.3.5. Mediation versus judgment: the fundamental challenge

The law defines the mediation committee as an organ intended to provide 'a framework for mandatory mediation of disputes, prior to filing cases in courts hearing at first instance' specific cases. The ambiguity of the term 'mandatory mediation' is reflected in the procedure described by the law. As a result, even if the disputing parties do not feel ready to be reconciled, they are obliged to go through the mediation committee, which may subsequently give up its attempts to mediate and instead settle the case with a decision. This dual option, mediation or decision, presents litigants and mediators with significant challenges.

RCN J&D’s monitoring data reveal that in the majority of cases submitted to the mediation committees, the Abunzi do not succeed in reconciling the parties but instead have to make a decision: mediation succeeds in only 24.4% of cases at cell level and in 12% of cases at sector level. Interviews with the parties confirm these

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355 Republic of Rwanda, Ministry of Justice, Actions from H.E. Paul Kagame meeting with Abunzi held on 17th October 2014 (Excerpts from H.E. Speech), unpublished.
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observations: only one in twelve parties interviewed (at both cell and sector level) reported their case being settled through mediation.

As previously noted, it is rare for the disputing parties to submit their case to the mediation committee without having first sought a solution through another local conflict resolution body. These bodies try on principle to reach a mediated solution: in fact, they have no other option as they have no legal mandate to settle a conflict in any other way. When mediation fails at this level, the parties must go through the same process with the mediation committee. The desire for mediation must however come from the parties themselves; if, when they appear before the Abunzi committee, their resolve has been undermined by previous unsuccessful attempts, the mediators will have less latitude to reconcile the parties. It should be noted here that in any mediation mechanism there is a threshold beyond which the parties' commitment to finding a solution is no longer strong enough for mediation to succeed.

However, another phenomenon is worthy of mention: during the cell committee hearings observed, it emerged that the mediators often make a decision even when the parties appear to agree on mediation (60.6% of hearings observed at cell level). At sector level, this is less common (18.2%), the parties probably being less ready to be reconciled on appeal after mediation has failed at cell level. The cell hearing findings are nonetheless problematic: why do the mediators make a decision when the parties appear to agree on mediation? Taking a decision is likely to appear simpler to them. Yet, in their behaviour, the Abunzi tend to represent themselves as mediators rather than judges (85.6% of hearings observed at cell level and 76.3% at sector level), seeking to help the parties reach a common

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358 *Ibid*.
accord (83.3% of hearings observed at cell level and 78.9% at sector level) and to suggest possible mediation solutions (82.5% of hearings observed at cell level and 71.1% at sector level)\(^{360}\). These contradictory findings may originate from the parties, half of whom reported regarding the *Abunzi* as judges, especially at sector level\(^{361}\). This may stem from a preconception of the mediators as 'community judges', whose role is to take a decision rather than to mediate. This legacy of the *Gacaca* Courts is reinforced by the fact that many mediators sat as *Inyangamugayo* judges\(^{362}\).

It is regrettable that so few of the disputes brought before the mediation committees are resolved through mediation, particularly from a social viewpoint, as parties who are reconciled achieve a long-term settlement of their dispute. Conversely, when mediation does not succeed, the dispute may recur or escalate and ultimately affect the social cohesion of the communities involved.

Furthermore, unsuccessful mediation takes away the mediation committee’s main benefit, namely its ability to deliver conciliatory justice at community level, and shows up its shortcomings in terms of lack of practical resources and qualified personnel. As a result, confidence in the mediation committees declines, and people become more likely to turn automatically to the ordinary court.

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\(^{361}\) Ibid.

\(^{362}\) Methodological factors must however be taken into account here: for example, parties' perceptions may vary according to the time factor (do all parties have a clear recollection of what happened at the mediation committee hearings after a certain period of time?) and according to the outcome of the mediation (which may be considered favourable or unfavourable in relation to the parties’ vested interests). The presence of outside observers may also influence the attendance and behaviour of the mediators, particularly as regards the role assumed (mediator versus judge), the attitude taken to the parties, the importance given to procedures, the time allocated to attempting to reconcile the parties, etc.
system after taking their case to the Abunzi. In this way, one of the implicit objectives of the mediation committees being created, namely to relieve pressure on the ordinary courts, loses its force, resulting in judges ultimately dealing with cases that were not 'correctly' handled by the mediators.

3.4. *Abunzi* justice, a means of promoting the rights of women?

At the community level, women were long excluded from traditional conflict resolution, whether it be as judge, mediator or even litigant. This section examines how Rwandan women have been able to develop a more active role in conflict resolution since the end of the genocide (3.4.1.), and how they have found their place as litigants appearing before the mediation committees (3.4.2.).

3.4.1. The active role of women in conflict resolution: progress not without setbacks

In the traditional Gacaca, only men could become *Inyangamugayo*, and women were not authorized to take the floor\(^ {363} \). At local level, conflict resolution was the responsibility of men; and this was still true at the moment of the establishment of the post-genocide Gacaca Courts. At the beginning, the *Inyangamugayo* were mainly “elder men”. But a large number of them have been indicted and they were replaced by young people and women, thus breaking with tradition. In 2005, a third of the *Inyangamugayo* were women\(^ {364} \).

As a result, Rwandan women gradually became more and more involved in conflict resolution within the institutionalized traditional


Functioning of the mediation committees

justice system. Today, women can sit alongside men and take the floor. Many women have also become elders or heads of village\textsuperscript{365}. They are involved at every stage of conflict resolution as members of the Inama Ngishwanama\textsuperscript{366}: they ask questions in order to understand the dispute and facilitate mediation sessions. Women's participation in conflict resolution is however even more intense and active within the NWC and informal women's groups, such as socioeconomic self-help groups\textsuperscript{367}. As far as mediation committees are concerned, the 2006 Organic Law already required at least 30% of mediators to be women\textsuperscript{368}. Today, women's contribution to conflict resolution is fully acknowledged, as the following account illustrates:

\textit{‘The women [Abunzi] were very active. They wanted our mediation to succeed at all costs. They gave a lot of advice’}\textsuperscript{369}.

Despite these positive changes, women Abunzi face some specific challenges: they are more frequently absent from committee hearings (absenteeism rate: 37.3% of women compared with 23% of men at cell level; 32% of women compared with 27.7% of men at sector level)\textsuperscript{370} as they have various family and social duties and functions to fulfil, especially when they are of an age to have children\textsuperscript{371}. This can be compounded by a husband's lack of understanding of his wife's responsibilities, which may also lead to family disputes\textsuperscript{372}.

\textsuperscript{366}Spontaneous gathering of elders who advise on settling disputes, discussed in more detail on p. 80.
\textsuperscript{367}RCN Justice & Démocratie, (March 2013). JCMR project, Final Report, Kigali, p. 73.
\textsuperscript{368}Article 4, 2006 Organic Law. See also Article 4, 2010 Organic Law.
\textsuperscript{372}Ibid.
3.4.2. The situation of women in mediation committee hearings

Women litigants with greater awareness of their rights...

As previously discussed, women make up the majority of plaintiffs before the mediation committees at cell level for disputes related to land: cases concern women who are specifically claiming respect of land rights on the basis of laws of succession, administration and land management or laws concerning gender-based violence\textsuperscript{373}.

This high proportion of women plaintiffs reflects women's awareness of their rights and their commitment to proactively claiming or defending these rights, indicating a positive change in terms of legal empowerment. The dissemination of laws on equal rights between men and women seems to have contributed to the development of a 'legalistic reflex' among rural women\textsuperscript{374}.

...but still victims of discrimination

These encouraging figures should not however obscure another interpretation of the reasons for the large number of women plaintiffs: the persistence of customary practices unfavourable to women's access to land, prompting them to submit cases to

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\textsuperscript{374} Between 2011 and 2014, RCN Justice & Démocratie implemented a project in 15 districts aimed at improving respect for women's land rights, notably through building local NGO capacity in legal aid and advocacy, raising local community awareness on women's land rights and undertaking advocacy at the national level, based on extensive monitoring. This project, entitled \textit{Beyond Raising Awareness: Shifting the Social Power Balance to Enable Women to Access Land in Rwanda}, was funded by UN Women and co-financed by the Embassy of Sweden in Rwanda.
proximity justice bodies so as to protect or regain their land rights. This resistance is deeply rooted in society and may be reflected in Abunzi practices as well as in the public perception. Although the Abunzi are familiar with the principle of equality between the sexes, putting it into practice remains problematic as this goes against tradition\textsuperscript{375}. And mediation committee decisions in favour of women tend not to be well received by the losing parties (men and women) and by the community. Although widely known, the basis for laws that favour women's equal access to land continues to be poorly understood, reflecting a gender-based division of roles within the family and society\textsuperscript{376}.

In conclusion, while women were long excluded from traditional conflict resolution, today their involvement in the institutionalized system of traditional justice appears to be well established, both from an 'active' point of view, as key players in conflict resolution, and as women plaintiffs who know and claim their rights. Nonetheless, women as litigants face social resistance, and the Abunzi themselves sometimes seem doubtful about and reluctant to apply the principle of equality of the sexes.


CONCLUSION

With this book, RCN Justice & Democracy concludes a series of three publications on conflict resolution mechanisms in Rwanda, and in particular the *Abunzi* committees. The analysis resulting from this latest publication will help the reader to question the foundations and roots of the *Abunzi* system established by law in 2004.

During the last decade, expectations have gradually increased for Rwandan citizens to play a role in the life and management of the "community" under the control of local authorities, and the State at central level. Conflict resolution has not escaped this trend, and the use of an existing mechanism, inspired by ancient practices, has facilitated the support and participation of citizens in the delivery of justice services to the population. Today the *Abunzi* have become a symbol of local justice in Rwanda.

However, the functioning of *Abunzi* committees, which is regulated by a series of very specific laws and procedures, is considerably different from informal modes of justice found in Rwandan tradition.
Conclusion

Ultimately, this is a State institution, in which citizens are required to get involved.

While their mandate expands, with the intention to reduce pressure on the judiciary, the number of Abunzi is due to be reduced soon. Indeed, the system in place is exceptionally ambitious, and many challenges have emerged over the years, requiring adjustments to improve its quality and efficiency.

The legislative revisions of 2006 and 2010, and the review initiated in 2013 and still under discussion, illustrate the constraints and difficulties that Parliament seeks to solve. They show, above all, the will of the Government of Rwanda to strengthen and expand the mandate of this mechanism of justice, and cement its place in the local administration.

Regarding the constraints, the low level of qualifications of committee members, the limits of volunteering, and the challenges to organize effective support and oversight of the committees continue to pose challenges to the delivery of quality justice services by the Abunzi. The reduction from twelve to seven Abunzi per Committee in the forthcoming legislation is an example of the attempts being made to rationalize the functioning of these committees and improve the quality of conciliation by improving the profile and skills of conciliators.

In this sense, the measures to improve the system's effectiveness taken by the Government, especially the Ministry of Justice, are to be commended.

However, significant challenges remain.

Observations made by RCN J&D show persistent problems that should be considered by the Ministry of Justice in order to find
appropriate solutions:

- The initial qualifications of Abunzi, and their access to harmonized and sufficiently substantial trainings, remain a major challenge. Efforts should be made to finalize the drafting of a unique training curriculum, incorporating both legal and procedural elements but also sociological and ethical elements, which are inseparable when dealing with conciliation techniques. In addition to the acquisition of purely theoretical knowledge, practical exercises and scenarios should be given more prominence. Good coordination of all stakeholders involved in the training of committees is also a crucial aspect to consolidate;

- The supervision, coaching and monitoring of Abunzi committees, provided by MAJ, should be supported with additional resources: the high number of Abunzi committees is a major challenge for the MAJ who are expected to cover large areas with limited human and logistical resources;

- The link between Abunzi committees and primary courts, and in particular the coaching of committees by judges, could be strengthened: it would not only support the supervision conducted by the MAJ, but also restore the natural link between the judiciary and the Abunzi committees, that are the first level of formal justice in Rwanda;

- The independence of the committees from administrative and political authorities should be ensured, particularly through continuous clarification of the respective roles and mandates of local actors;

- The execution of the solutions agreed by the litigants, or of the decisions taken by the committees, should be subject to special monitoring and allocated specific resources since they represent the best chance for a durable resolution to conflicts handled by the Abunzi;
Conclusion

- Finally, there is the question of the multiplicity of dispute resolution mechanisms that exist at the local level, and their relationship with the Abunzi. These various arrangements can effectively contribute to the settlement of disputes between citizens. However, they should not be considered as preliminary steps to take, or conditional to accessing the Abunzi by litigants. As provided by law, any litigant may directly solicit the Abunzi Committee so that it can examine their case. Indeed, the Abunzi Committee is the only body that is empowered to conduct a compulsory conciliation process under Rwandan law.

This is particularly important regarding the specific responsibilities it entails in relation to other conflict resolution processes: on the one hand, it guarantees the legitimacy and the balance of the Abunzi system. On the other hand, it preserves the element of trust essential to any formal or informal dispute resolution mechanism.

While the Abunzi justice system offers to citizens local justice that is easily accessible, inexpensive, and anchored in the heart of communities, it must be careful not to become too rigid by an excessive formalism. The legitimate need for the State to regulate public order must find public buy-in when it aims at the same time at pacifying social relations. It is through this subtle balance of general and individual interests that the Rwandan reconciliation system can become a unique model and inspiration in other contexts.
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