

**INVESTIGATING THE  
CONTRIBUTION OF LAND TENURE  
REGULARIZATION ON LAND  
DISPUTE RESOLUTION: THE CASE  
OF POLYGAMY AND LAND RIGHTS  
IN RWANDA'S NORTHERN  
PROVINCE**

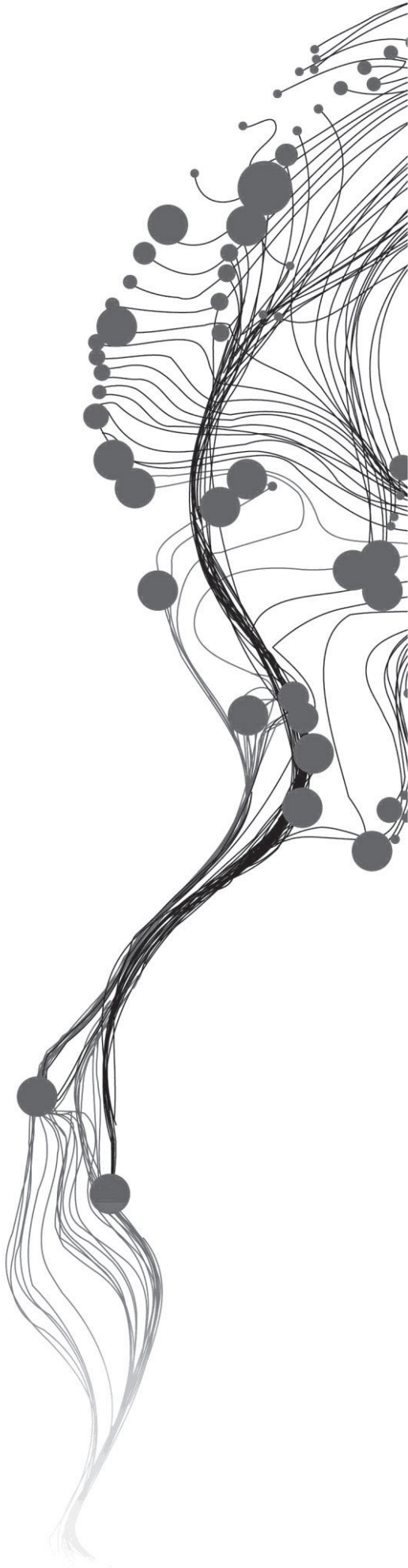
FRANCOIS NTAGANDA

March, 2014

SUPERVISORS:

Ir. E.M.C. Groenendijk

Dr. R. M. Bennett



# **INVESTIGATING THE CONTRIBUTION OF LAND TENURE REGULARIZATION ON LAND DISPUTE RESOLUTION: THE CASE OF POLYGAMY AND LAND RIGHTS IN RWANDA'S NORTHERN PROVINCE**

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Specialization: Land Administration

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## ABSTRACT

In many countries, land have been become a major source of conflict because most of activities are done on the land. However, there are two ways or tools to solve land disputes. First is the formal way and second is the informal way. The formal way is established by the law such court or the judicial system. The informal systems are disputes resolution mechanisms, customary justice, religious justice. The key actors in those mechanisms are also differentiate. In formal system, there are judges and local leaders in informal systems. Every systems has a advantages and disadvantages. This research focuses on the contribution of land tenure regularization on land disputes resolution: The case of polygamy and land rights in Rwanda.

In Rwanda context, polygamous land disputes are resolved through two ways. On the one hand, there is a formal systems. Those institutions are set up by the law and some internal regulations. On the others hand, polygamous land disputes can be also solved by the informal institutions which are recognised by the local leaders but not support by the national laws. However, the choice of one of the tools depends on the particular situation and the context within this polygamous land disputes can occur. The most important situations are financial issues, education level, culture etc. What remains unclear is that many land disputes especially polygamous land disputes were not adequately dealt with by Rwanda's land tenure regularization program.

The general aim of this study therefore is to investigate the contribution of land tenure regularization on land dispute resolution: The case of polygamy and land rights in Rwanda's Northern Province. The study is based on a case study approach. Some data collection and analysis were used in this study. Quantitative and qualitative methods. The study analyses the weakness and advantages of formal and informal institutions. However, some parties prefer to use informal institutions which is not recognised by law to resolve their disputes and others use the formal way to settle their disputes. In this regard, there is a need for alternative justice systems with flexible mechanisms.

**Key words:** Land tenure regularisation, Dispute land resolution, Polygamous land disputes.

**Dedicated to my wife:**

**Beatrice Dusabimana**

**and my Kids:**

**Claude Izere, Karl Imanzi, Karla Gaju, Pamella Gwiza and Kenny Ganza**

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## LIST OF ACRONYMS

ADR : Alternative Dispute Resolution

ADRM: Alternative Dispute Mechanisms

ADRS: Alternative Dispute Resolution System

FGD: Focus group discussion

LTR: Land Tenure Regularization

LTRP: Land Tenure Regularization Program

MAJ: Maison d'accès à la justice

MDGs: Millennium Development Goals

NGO: Non - Government Organization

NLC: National Land Centre

OLL: Organic Land Law

RNRA: Rwanda Natural Resources Authority

RISD: Rwanda Initiative for Sustainable development

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# 1. INTRODUCTION

## 1.1. Background

In recent years, land disputes has become a global concern due to the belief that it has a major impact on the people especially the underprivileged and the poor (Herrera & da Passano, 2006). Land dispute is defined as a social phenomenon involving two or more parties contesting over rights in land or landed property (Wehrmann, 2008). This simply means that the land disputes occur between different classes such as individuals and local institutions, communities and government as well as communities and individual persons (Wright, 1961). Among the reasons for these disputes are competing demands for land.

Competing demands over land can stimulate disagreements especially when the object contested for and the parties involved belong to different groups and have different interests (Clover & Eriksen, 2009). These multiple demands over the land often lead to disputes. Land disputes have negative consequences on the economy, society, as well as spatial and ecological development (Payne, 2002). Inefficient means of dealing with these disputes often pose disastrous effects on individuals, groups and even the entire nation thereby making it difficult for people to access their land rights besides the loss of lives arising from violent land conflicts in extreme cases (Motta, 2012).

Conflicts are an integrated part of human interaction and one must learn to manage them and come up with innovative and creative ideas to resolve them (Hoffman, 2004). The existence of formal and alternative justice systems have afforded people the choice of systems to resolve their land conflicts. Each of these system are characterized by their own approaches to conflict management. However in conflict management, the choice of an appropriate process depends on the particular circumstances and the context of the conflict. One of the informal- or customary system used in resolving land disputes over the years is the Alternative Dispute Resolution (ADR), which has been described to not often work in certain circumstances (Morasso, 2011).

Besides the operation of institutions and policies for resolving land disputes in a country, a number of countries have attempted to carry out land adjudication and recordation of existing land rights under a comprehensive land tenure regularization (LTR) programme. Land tenure regularization encompasses the identification of physical boundaries of land rights with a view to granting a benefiting party with legitimate and secure land tenure (Sagashya & English, 2006). However, it has been observed that the persistence of land disputes over the years has constituted an impediment to the actualization of key tasks in LTR. This accounts for the reason why land dispute resolution has become an integral aspect of LTR in recent times (Payne, 2011).

Within the Rwandan context, the National land policy of 2004 and the Organic land law of 2005, made provisions for the settlement of land disputes. The Organic Land Law specifically established a number of land commissions, to specifically deal with land disputes. Following the commencement of Rwanda land reform in 2004, the government embedded land dispute resolution as part of the entire LTR programme (Sagashya & English, 2006).

In their study, Sagashya and English (2006) identified polygamy as one of the causes of land disputes as compiled from the report of public consultation on the Organic Land Law. In view of this issue of

polygamy, this study was conducted to investigate the extent to which LTR has contributed towards resolving land disputes arising from polygamous family institutions in Rwanda.

Conducting this research in the Northern province of Rwanda, this research will focus on three areas for data collection and analysis which are: evolution of land dispute resolution mechanism for polygamous family institutions; the role of Land tenure regularization in dispute resolution process - aimed at understanding the process specifically to regularise all land rights and alternative dispute resolution mechanism - which is aimed at understanding how conflict related to polygamy land disputes could be resolved.

## **1.2. Research problem**

In Rwandan context, land disputes are predominant. Thus because of many causes such as ownership and polygamy and inheritance. During systematic land registration through land tenure regularization program, some disputes have been changed and become more complex than before 2009. Mechanisms to deal with these disputes are sometimes expensive and take time to come up with better results.

In 2009, Rwanda started systematic land registration through land tenure regularization. This program has been seen as a pro-poor program to settle land disputes and also not as expensive as the litigation process. Parties in disputes choose the way to resolve their disputes based on their preference and experience.

Land tenure regularization has two systems. On the one hand, there is a systematic land registration which is based on regularizing all existing land rights, and on the other hand there is a sporadic system which is based on demand. Rwanda has adopted the systematic land registration. One of the objectives of land tenure regularization is to resolve or to minimize the land disputes (Republic of Rwanda, 2004). *What remains unclear is that many polygamous land disputes were not adequately dealt with by Rwanda's land tenure regularization program. Investigations into citizens' preference for the various mechanisms for resolving polygamy land disputes will help in developing methods for resolving these remaining disputes.*

This research will focus on investigation of land tenure regularization on land dispute resolution in the case of polygamous land disputes.

## **1.3. Conceptual framework**

The general concept framework of this thesis is to investigate the contribution of land tenure regularization on land dispute resolution: The case of polygamy and land rights in Rwanda. There is a land dispute when one or two parties are in disagreement for a piece of land or a parcel. However, for analytical purposes, it is better to determine first the actors in the disputes and second the tools to resolve those disputes. In this framework, actors are individuals (Husband and wife's). Also, there are many ways or tools to solve the land dispute which are alternative dispute mechanism and land tenure regularization. In this case, the polygamous land dispute, land tenure regularization and dispute resolution mechanism are the key concepts.

Land tenure regularization and dispute resolution mechanism are the main tools for resolving polygamous land disputes. Thus because they are flexible and produce acceptable results for the parties as well as more suitable in the long term.

Both LTR and DRM can help parties in disputes to solve their disputes especially in the case of polygamous land disputes. Land tenure regularization can use adjudication committees as a method while ADR uses

mediation. Both adjudication and mediation are effective, can reduce backlog and do not take long time for the results. It seems that the LTR and DRM provides better solutions than litigation. Figure 1-1 shows the relationship between LTR and DRM versus polygamous land disputes.

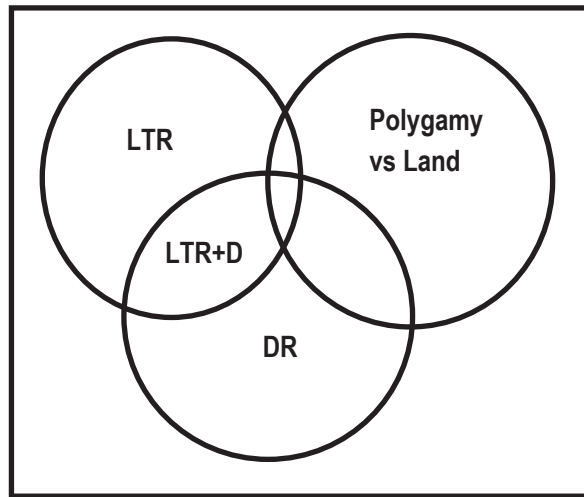


Figure 1-1: Conceptual framework

#### 1.4. Research objectives and questions

A case study approach is adapted and focused on the contribution of land tenure regularization for land dispute resolution in Musanze and Gicumbi districts both in Northern Province, Rwanda. The methodology is explained further in Chapter four.

##### 1.4.1. Research objectives

The main objective of this research is to assess the situation and resolution of polygamous family land related dispute as a contribution for development of adequate approach or methods to resolve polygamous family land disputes.

To achieve the overall objective, following sub- objectives are defined:

1. To describe the evolution of alternative mechanisms for resolving polygamous family land disputes in Rwanda;
2. To assess the effectiveness of land tenure regularization towards resolving polygamy family land disputes; and
3. To propose alternative dispute resolution mechanisms or other tools that can contribute to resolve polygamous family land disputes.

##### 1.4.2. Research questions

The overarching question is: How does land tenure regularization contribute to resolving polygamous land disputes? In order to operationalize the research objectives, the following research questions have been formulated as shown in table 1-1.

Table 1-1 Specific objectives and Research Questions

**Specific objective 1:** To describe the evolution of alternative mechanisms for resolving polygamous family land disputes in Rwanda.

- a. Who are the major actors in polygamous family land disputes?
- b. Which institutions exist to resolve those disputes and what role do they play?
- c. What are the process of resolving family land disputes in the context of polygamous homes from 1999 to 2013?



**Specific objective 2:** To assess the effectiveness of land tenure regularization towards resolving polygamous land dispute.

- a. To what extent is the adjudication of land rights participatory for all family member's?
- b. To what extent does the LTR program contribute to resolving family land dispute?

**Specific objective 3:** To propose alternative dispute resolution mechanisms or other tools that can contribute to resolve polygamous family land disputes.

- a. What are the indicators of effective ADR?
- b. What are the preferred mechanism of ADR in case of polygamous family land disputes?

**1.5. Structure of thesis**

This study is structured into seven chapters. Chapter one will be the introductory party and will covers the background, the significance, scope of the study, research objective and question. Chapter two will cover the general concepts in which the study will be based. Chapter tree will be based on LTR process in Rwanda. Chapter four will describe the methodology used to collect data. Chapter five will cover the data analysis and chapter six will discuss the findings. Finally, Chapter seven will provide conclusions and set of recommendations.

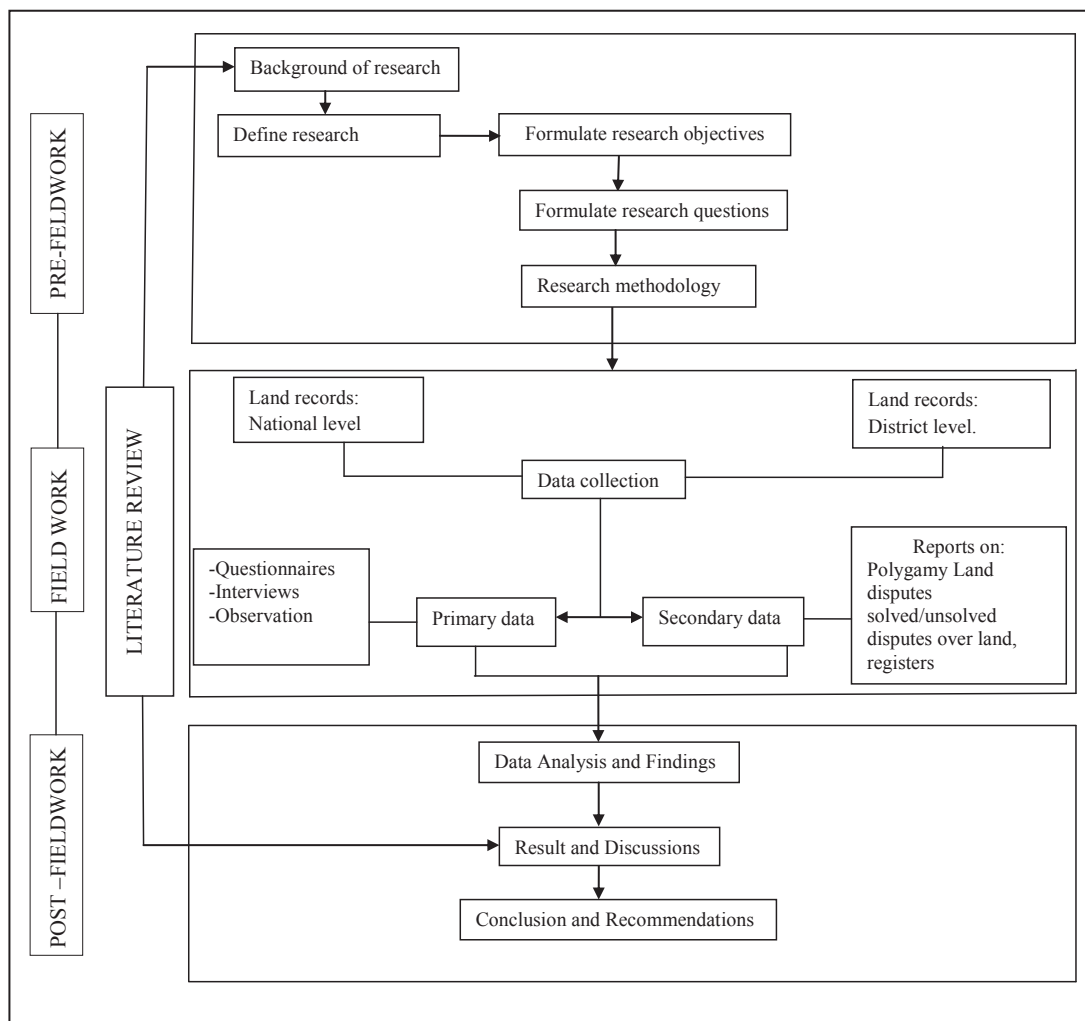


Figure 1-2: Research design

## 2. CONCEPTS OF LAND DISPUTE AND LAND DISPUTE RESOLUTION MECHANISMS

### 2.1. Introduction

This chapter aligns the objective of the study with existing literature. Specifically examined in this chapter include definitions and general concepts of land disputes, land dispute resolution mechanisms and customary conflict resolution arising from polygamous family institution.

### 2.2. The concept of land dispute and land dispute resolution mechanism

#### 2.2.1. Concept of Land dispute

Land dispute is defined as a social phenomenon involving two or more parties contesting over rights in land or landed property (Wehrmann, 2008). Underpinning the origin of land disputes are disagreements over boundaries, rights and obligations towards land, compensation for land acquisition, and subdivision and re-allocation of land rights. (Bar-Siman-Tov, 2004). The argument of these authors is that the failure of parties to reach an amicable resolution of their areas of disagreement over land matters is the root cause of land dispute.

Dana (2000) further defines land dispute as a contest of claims to the ownership or use of the same piece of land irrespective of formal or customary rights likely to be vested in such lands. However, within the context of this research, we will consider land dispute as a situation whereby parties contest or lay claims to interest in the same parcel of land. In addition, the terms land conflict and land dispute have been used interchangeably to describe competing claims and contest over the same parcel of land.

#### 2.2.2. Concept of Land dispute Resolution Mechanism

Deininger (2012) defines land dispute resolution as a process whereby the causative factors of the dispute are addressed among relevant parties in order to forestall land rights of the parties in question. The process of land disputes resolution addresses the questions of party with the vested right, the type of land rights in question, and the modalities for managing and enforcing these rights (van der Molen, 2004). Many developing countries around the world have formal and informal institutions that deal with the resolution of land disputes according to their scale and jurisdiction. Each of these institution specifically have their own mechanisms for resolving these land disputes.

Access to the formal institutions like the Law court can make land dispute resolution to be expensive for the disputing parties. Moreover, it is possible to have land disputes of lower scales resolved outside the formal judicial system of litigation. This leads to the argument in favour of customary justice institutions which are less expensive to deploy and which might result to timely dispensation of justice among which include the resolution of land dispute.

The concept of land dispute resolution mechanism can be looked into a conceptual map of land dispute management. Ramírez (2002) developed a conceptual map for land conflict management. This map (Figure 2-1) signals the common concepts and categories of land disputes in the society. The conceptual map provides a link across the process and content of mechanisms for land dispute resolution. As a

systems thinking tool, this conceptual map indicates the dynamics associated with general and specific elements for analyzing land conflicts.

The conflict map further indicates the process looks into the general categories of dispute resolution and the substances which help to explain the progress of concepts from the generic- to the more situation-specific categories of dispute resolution.

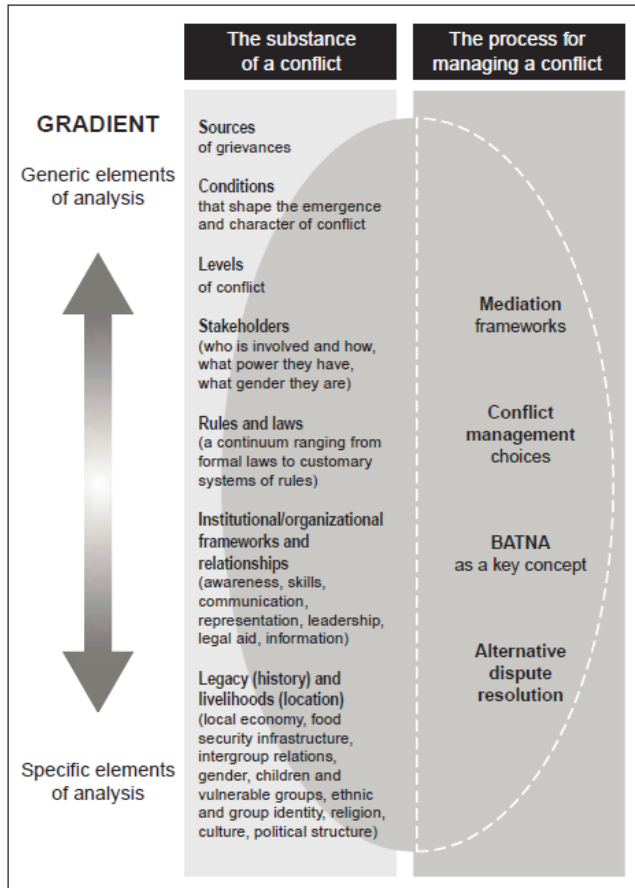


Figure 2-1: A conceptual map of conflict management ( source : Ramirez 2002)

Explanation of the conceptual map commences with the substance of the conflict which examines the interaction of components within the land dispute resolution mechanism. Categories of these substance include source of the conflict, the condition and magnitude of the conflict, stakeholders in the dispute, rules and regulations, institutional framework for conflict resolution, historical issues surrounding exercise of land rights, and sources of livelihood. The second part of the conceptual map in Figure 2-1 actually relates to the mechanisms for resolving these land conflicts comprising mediation, negotiation and the general concept of alternative dispute resolution (ADR), which has been christened as BATNA (Best Alternative to Negotiated Agreement). For the purpose of this research therefore, ADR has been adopted because it affords stakeholders the alternative of making choices for an amicable negotiating. It is within the contest of ADR that this research seeks to investigate the contribution of land tenure regularisation in solving polygamous land disputes.

## **2.3. Types of Land dispute and Land Dispute Resolution Mechanism**

### **2.3.1. Types of Land Dispute**

The causes and types of land disputes vary from country to country. With particular reference to China, the root causes of land disputes can be traced to problems of incoherent legislation and legislative framework, and failure of the state to actually accord recognition to customary land rights of its citizens let alone the claims over the control and ownership of customary lands (Pons-Vignon & Lecomte, 2004). On the other hand, Mayer (2010) identified two types of land disputes in Uganda to include subject versus subject related land dispute on the one hand, and family land disputes on the other hand. Furthermore, Ramsbotham et al. (2011) categorized land dispute into three types namely dispute over land distribution, contest for the grant of more secure land rights, and contests to gain more access to land.

In some cases, land disputes are evoked by the establishment of state projects, prevalence of privately owned lands with attendant consequences for socioeconomic changes, large scale land acquisition, land tilting projects and other related government policies (Fiadjoe, 2004). In short, land disputes can be categorized into the following types:

- Disputes over inheritance: this disputes are related to intra-family disputes;
- Disputes over land title: Kind of disputes to the activity in urban and rural area;
- Disputes over private lands: This kinds of disputes are related to ownership;
- Disputes over village lands: This are related specifically to farmers and livestock land.

Contributing to the emergence of land disputes include increase in competing claims over access to land which ordinarily should have been left for common use. This situation might arise when there is a gap in land laws and government compliance with the monitoring of how land rights are exercised by parties. Examined in the next subsection are the various types of land dispute resolution mechanism.

### **2.3.2. Types of Land Dispute Resolution Mechanism**

There are various and different mechanisms in the land dispute resolution. Generally, people look into the institutional dispute resolution when their disputes are not resolved well. There are two kinds of resolution mechanism: Consensual approach and non- consensual approaches. The first includes the mediation, conciliation, arbitration, etc while the second is through the court. The next points will discuss both of consensual and non- consensual approaches. P1 and P2 in the figure 2-2 below represent the parties while M represent the third party. The third party can be a Mediator or Arbitrator.

#### **2.3.2.1. Court**

The court is one of the institutions where land disputes can be resolved. Hensler (2003) argues that the jurisdiction for resolving most land disputes cases have often been vested in general courts notwithstanding the fact that these courts are saddled with pending civil and criminal cases.

In other words, Law courts have staff and material constraints to deal with litigations regarding land issues. With respect to Ghana, Wily (2003) found that there were about 26.000 cases of litigation on land matters as at the year 2003 of which some of them might take several decades to be resolved.

According to Rugadya (2009), the two distinct judicial systems that deal with the settlement of land disputes comprise customary tenure- and the state administration. She argued that it is also common for land dispute resolution mechanism to be undertaken by the government.

It is recalled that land disputes could be managed outside the court. As explained earlier, courts may be confronted with limited capacity to handle land dispute resolution. Also the high cost of formal dispute resolution supports the possible use of informal dispute resolution. Reuben (1997) argues that the consideration of available forms of land dispute resolution especially in public policy tend to promote effective and efficient resolution of these disputes with the view to satisfy the affected parties.

### **2.3.2.2. Alternative Dispute Resolution Mechanisms**

Alternative dispute resolution mechanism (system) has been used in many countries. Recently, ADR have been introduced in Asia, Latin America, and Africa State (Hanstad et al., 2009). The essence of ADR is to help parties in disputes to resolve their disputes outside the court process. The purpose of Alternative Dispute Resolution is not to address dispute or the difference, but to examine the mindset of the parties with a view to reach a consensus. As a less expensive approach to dispute resolution, ADR could also be faster and more accessible to the rural and urban poor who may lack the knowledge or awareness of the court system.

Dispute resolution is a collection of process and techniques which is believed to help towards addressing issues outside the traditional mainstream of state jurisprudence. The term "alternative" can be used basically because ADR is seen as processes which complements existing processes of litigation (Nolon et al., 2013).

Ramírez (2002) argue that Alternative Dispute Resolution could result to a win-win situation for both disputing parties thereby making it a joint approach towards dealing with social conflicts. ADR is broadly understood as involving the use of negotiation, mediation, conciliation or arbitration. These techniques might not necessarily be applied in isolation, but can be used sequentially or in customized combination with other adjudicative methods for resolving land disputes.

#### **i. Facilitation/Moderation**

With respect to facilitation or moderation, disputes are resolved through the intervention of a third party with a neutral orientation with a view to helping the parties at conflict to reach an amicable resolution (Bercovitch & Gartner, 2008). The main role of the facilitator is to give the stakeholder's all the support they need to find a common starting point for the dialogue before the conflict resolution process takes place. He/She can also help in the analysis of the situation have a separate session with each of them to prepare them for mediation. Figure 2-2 shows the role of the facilitator (M) and is to help and facilitate a dialogue.

#### **ii. The mechanism of negotiation**

Negotiation is featured as one of the first steps towards resolving a dispute resolution in an effort to avoid the litigation process. According to André and Platteau (1998), parties to land disputes can freely choose to negotiate their differences and reach a joint resolution of a conflicting issue. In other words, dispute between two people could be resolved through negotiation among them. The services of a lawyer might not be required unless the disputing parties cannot reach an amicable resolution. Notwithstanding, negotiation is less expensive and faster compared to litigations. It is also worthy to note that negotiation processes does not cease even when there are pending cases of litigation especially over land matters.

The choice of another dispute resolution mechanism might arise when the parties concerned do not reach an agreement. At that stage, the services of a neutral party might be employed to help determine the

dispute. Simple examples can be used to describe the process. In Figure 2-2, P1 and P2 represent disputing parties and the nature of their relationships during the various dispute resolution mechanisms. Unlike the process of mediation which requires a mediator (M), the negotiation does not require the services of any third party. Furthermore, the balance in the power of disputing parties is triggered by sound negotiation among them. Nevertheless, an observer at the negotiation meeting does not in any way influence the outcome of a negotiation.

### iii. **The mechanism of mediation**

Herrera and da Passano (2006) defined mediation as a process whereby a neutral party called the mediator assists disputing towards resolving their disputes amicably. As a process, mediation goes beyond negotiation to help parties to agree over the main subject of the dispute while affording them the opportunity of listening and understanding each other's position without conferring any powers of final decision or award to the third party as it is done in litigation (Crawley, 2012). A neutral person assists the parties to reach a compromise. In other words, the mediator is saddled with the responsibility of consulting each party with a view to reach a consensus between them. For this purpose, the mediator is expected to initiate and offer the disputing parties a chance of reaching a consensus without giving his own opinion on the matter.

The services of a mediator can be employed by the disputing parties through means such as hiring or appointment. In some cases, a mediator could volunteer to steer the meeting between disputing parties. A mediator assist disputing parties to reflect and evolve innovative ways of averting animosity and encourage openness in the discussion of matters relating to the dispute (Bercovitch & Jackson, 2009). Notwithstanding the content of a mediation process, it is not mandatory that disputing parties must legally abide by outcome of a mediation.

Mediation has been praised as a suitable alternative to legal systems of adjudication and arbitration because it improves the chance of disputing parties to co-operate among themselves (Gamman, 1994). Commercial enterprises have also realized the ease of using mediation in the resolution of disputes arising from business transactions (Mackie & Mackie, 2002). Generally, mediation is a voluntary process in that parties to the process are not bound by the terms of a mediation. In other words, disputing parties and the mediator are free to discontinue the process at any time. In addition, participants in the mediation process are expected to agree on the balance of power, control and outcome of the mediation process (Hutabarat, 2011). It can be explained from Figure 2-2 that a mediator plays the most important role. He or She could intervene from the beginning of the process until the final decision is reached. However, outcome of a mediation can be flexible and confidential without imposing any binding decision on disputing parties.

### v. **The mechanism of arbitration**

Arbitration can be defined as a process where disputing parties agree to settle their difference using an independent third party of which any decision reached by the Arbitrator shall become binding on the disputing parties (Bar-Siman-Tov, 2004). Arbitration affords disputing parties to invite a third party called the Arbitrator who shall hear the statement of all parties concerned and hand down the award. It is considered to be one of the most commonly adopted mechanisms of alternative dispute resolution. Arbitration is the most formal method of alternative dispute resolution.

Although arbitration is sometimes considered to be similar to litigation, there are a number of differences. These difference include statement of case, disclosure of documents, witness and experts statements which might not necessarily feature in litigations (Bercovitch & Gartner, 2008). The main elements in the



arbitration process are the existence of the dispute between parties, agreement between the parties to continue the process of resolution, and finally getting the disputing parties to agree to be bound by the decision or award from the process (Davy, 1997).

Furthermore, the arbitrator has a main obligation to hear the parties and give the decisions on the dispute. Another advantage of arbitration is that it affords parties the liberty to select or appoint an arbitrator whom they deem qualified to help them address the subject of a dispute.

### **2.3.2.3. Customary dispute resolution system**

According to Arko-Adjei et al. (2010), customary dispute resolution can be considered as a variant of arbitration but with a strong conciliatory character that makes it different from litigation and other alternative dispute resolution processes. Customary land dispute resolution is characterized by a search for consensus among disputing parties. This consensus is driven by social norms and communal values. This system of land dispute resolution is geared towards maintaining a harmonious community. Irrespective of the integration of other mechanisms such as mediation, arbitration and facilitation, the final objective is to achieve satisfactory settlement of the dispute. Therefore, the main difference between customary land dispute resolution and other ADR options is that the final decision of arbitrators shall be binding on all the parties to the dispute. In some countries, the application of customary dispute resolution system is accorded legislative recognition through Acts of parliament or Edicts.

Another difference between ADR options and litigation process is the application of psychological measures to resolve the dispute. In other words, ADR deals with land disputes that have spiritual and emotional implications for the disputing parties.

Although the structure and composition of customary institutions vary across communities, customary institutions at the village and neighbourhood levels might comprise the customary Chief, the Land Chief, and the council of Elders who are expected to help disputing parties to reach an amicable agreement. The credibility of the customary mechanism rests upon three aspects namely: the procedure, integrity of the mediators and the decisions that binds all of the disputes. Notwithstanding, there is no singular model of indigenous justice system that will suit circumstances of all communities.

**Cost of adjudication:** The cost of adjudication is very minimal. For instance in Rwanda there is no fee to be paid. This means that monetary considerations are not so important. In this way, the traditional courts are located within the community and parties do not incur travel cost.

**Panel of Adjudicators:** The panel is composed of the people who are respected by the parties and regarded as custodians of traditional knowledge, values and culture norms which they bring to bear in the delivery of equity and justice in the community. The advantage of this panel is that members may be aware of the origins and underlying causes of the disputes. These could prove in handling the dispute objectively.

**The resolution process:** The person who is a victim considers himself to initiate the settlement. He/She approaches the leaders of the local institution and make a complaint. The local authority invites the offending party and seeks to persuade him or her to apologize or make restitution. The main objective is to achieve reconciliation among the people in the community. In Rwanda for instance, a minor case offender may be pardoned but in case where the offense is grievous or might have been repeated, he may be asked to provide local drinks to pacify the other party.

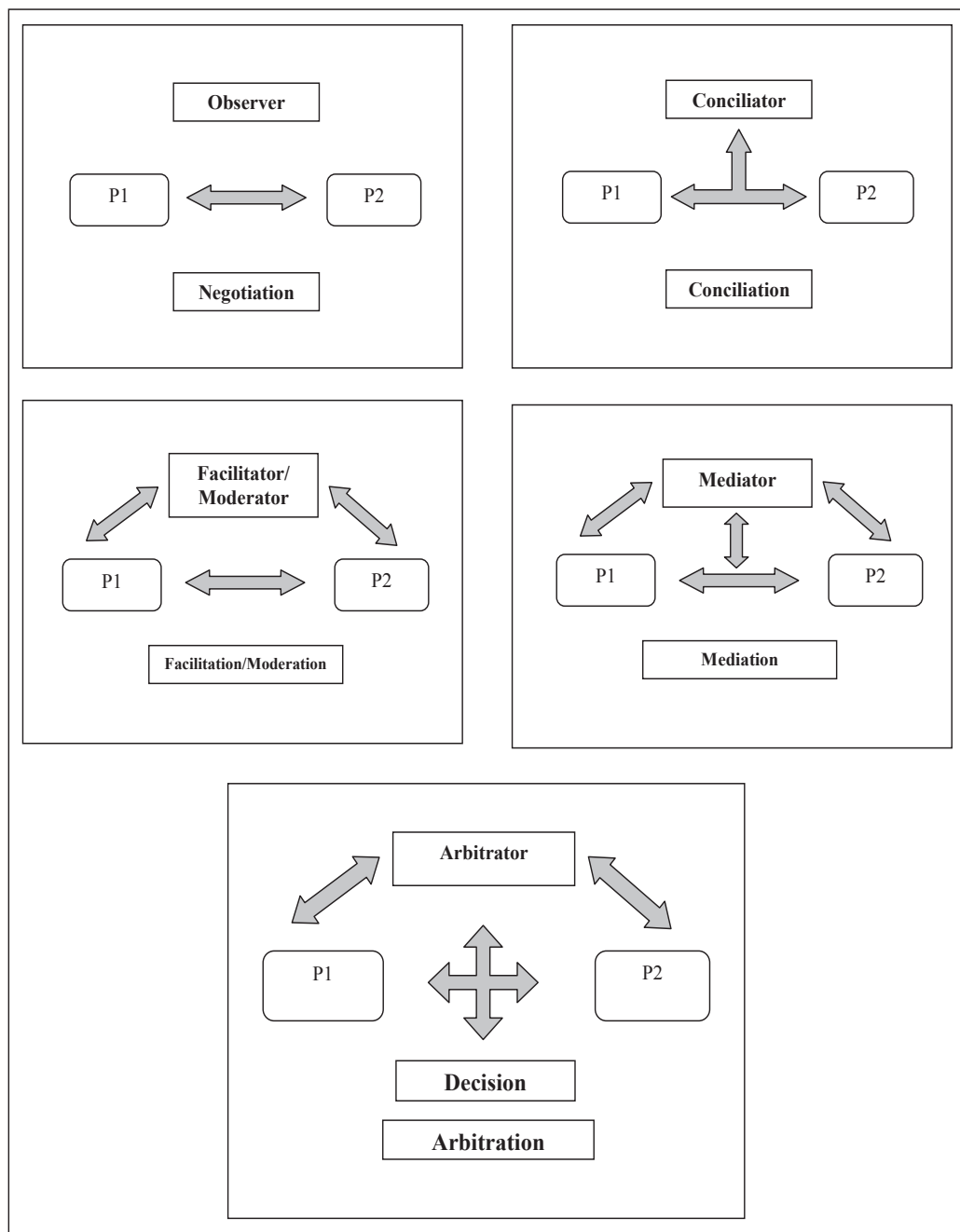


Figure 2-2 : Common process in ADR mechanism ( source: Adapted by Ramirez 2002)

**Enforcement of the decision:** The decision of the Customary court is not contested in some countries. The concerned parties are made to give their word (agreement or otherwise) in the presence of the audience that they will abide by the ruling and keep peace in the community. In Rwanda it is a grave offense to break an oath.

Even if this mechanism have a positive approach, it may not be uniformly accepted by all citizens in the country (Van Leeuwen & Haartsen, 2005). Citizens might also question the authority of such mechanism when the legitimacy, authority, and accountability of traditional institutions is weak.



#### **2.3.2.4. Religious dispute resolution mechanism**

Religious courts are only tolerated and accepted if they respect the boundaries set by state law (Boyd, 2007). People living in rural and poor urban areas, do not have the access to the state-administrated justice system and other formal institutions because of constraints arising from high cost and long distance. Alternatively, they choose to use religious justice system to resolve their disputes.

The religious institutions includes various leaders, such as the Priest, the Buddhist monk, and the Rabbi. In most Islamic countries, land dispute resolution are based on the Shari'a as the civil code, which is often conducted in the local level (Glass, 2000). Furthermore, dispute resolution with recourse to the Shari'a law is conducted through mediation, involving neighbours, elders, and in most cases, the *Ustaz* who are trained in Islamic Law. Despite the inherent advantages of using this dispute resolution mechanism, it tend to lack legitimacy, and enforceability in some countries.

#### **2.4. The Special case of Polygamous Land Dispute**

Polygamy implies a system of marriage whereby more than one woman are wedded to a man (Chaleby, 1985). While polygamy as a system of marriage and family institution is allowed in certain African countries (Hayase & Liaw, 1997), the Constitution of the Republic of Rwanda prohibits polygamy in any form or guise. Given the illegality of polygamy as a form of family institution, it is obvious that strict application of legislation treats a case arising from polygamy as being void in the first instance when viewed from the perspective of litigation. Notwithstanding, polygamous land disputes abound in Rwanda. For the purpose of this research, polygamous land dispute implies land conflict between legal- and illegal spouses, and might also involve a husband and illegal spouse(s).

#### **2.5. Key actors in Land Dispute and Land Dispute Resolution**

In order to understand more about the institution that handles this type of land dispute resolution, it is necessary to know the different actors that are involved in the land dispute resolution. The key actors involved in polygamous land dispute are the husband, legal and illegal spouse(s). In case of Rwanda, the land dispute settlement are conducted by the external actors such non government organizations.

Furthermore, informal institutions play active role in the resolution of this type of conflict. These informal institutions include customary chief or land chief whose inputs are essential towards providing information of land history and also the settlement that existed before the proceeding of the formal institution (Zevenbergen & van der Molen, 2004).

#### **2.6. Good Governance Principles**

Land dispute resolution is a part of the principle of good governance, which has been defined as (Bar-Siman-Tov, 2004). The principle of governance is defined as mechanism for managing and channelling a nation's resources towards socioeconomic development (Bar-Siman-Tov, 2004).

According to Deininger (2012), the term of "governance" is much broader than government in the sense that it may involve a state- or a non state actor. This means that both government and governance are goal-oriented (van der Molen, 2005). Governance occurs when legal and formal institutions derive authority to executing policies under their control (Villikka & Lemmen, 2006).

The system of governance is legally established by Rwandan land law. This law provide land commissions and committee at all national levels. The maximum authority is vested in general assembly which guarantees participation and democratic practices at the local level (In2eastafrika, 2013). The assembly

makes all the major decisions concerning the management of land, the recognition of land rights, and relevant rules for conflict resolution (Rwanda Government, 2013). The procedures for conflict resolution arising from tenancy and resource management matters are set within this contexts, thereby giving authority to the assembly to resolve disputes based on consensus or majority vote.

In sum, the internal organization of land commissions and committees includes the mechanisms by which disputes are discussed and may be solved, while local authorities are vested with the right to make competent decisions as prescribed by the law. Formally the process is the participative and democratic. It is institutionalized. However the right to membership is exclusive and hence part of local population is left out of the decision -making process.

## **2.7. Summary**

Chapter two describes clearly reveal that disputes have existed in all cultures, as long as humans have walked on the earth. This because disputes are an integral part of human interaction. Dealing with disputes, disputes resolution mechanism is a very important process in every society. Disputes management are both prevention and resolution process.

There are three main options for dispute resolution. Formal option, customary option and alternative techniques. The informal and customary are independent from the state and may even contradict universal standards of human rights and democracy. For instance in Rwanda, the council of elders consisting of only old men serves as the panel for conflict resolution between parties, by modern democratic standards this may be problematic because the youth and women are excluded from the decision making process even they become the subjects of these decisions. Alternative techniques refers to the methods based on agreement buildings such a mediation, facilitation, conciliation and more. Those methods serve as a bridge between the formal and customary options. Each dispute resolution mechanism has a advantages and disadvantages (Appendix E).



## 3. LAND CONFLICT AND LAND TENURE REGULARISATION IN RWANDA

### 3.1. Introduction

This chapter describes the overview of land disputes in Rwanda, nature of land disputes, types and causes of land disputes and end with land disputes resolution mechanism.

### 3.2. Overview of land conflict and its resolution mechanism in Rwanda

#### 3.2.1. Pre- LTR period

Before land tenure regularization in Rwanda, land was characterized by the collective ownership, where there was a relationship with agriculture and livestock. Also the families were grouped in lineages, and those were grouped in the clans. Every clan had two chiefs. Chief of army and chief of land.

Musahara (2006) argue that the main activities that were practiced by citizens were pastoralist and agriculture. Pastoralist are nomadic and don't claim the land rights. The land disputes come only from the agriculturalists for example where one claimed another man's farmland on which he had been in possession for many years. The disputes from farms were resolved through informal system. The villages chief and clan elders acted as mediators to settle the dispute. The mediators made decisions and whenever rights were conferred to one to use, the person was reminded that the land belonged to the community and every one has rights and access to it (Republic of Rwanda, 2004).

The non- statutory system has some weakness. one of them are the lack of law. Most of land in Rwanda was governed by customary law (Rurangwa, 2013). One law of 4th march 1976 concerning the purchase and sale of land was become absolute. This law was only used to avoid land speculations instead of procedures such transfer, mortgage etc. In conclusion, the lands laws were scattered and anachronistic. This become a sources of land conflicts.

#### 3.2.2. Land Tenure Regularisation process/ During LTR

Land tenure regularization started in 2009 and end in July 2013. It was a program that nationalized the national land policy through an Organic land law. By article 30 of the Organic land law, all land must be registered. The principle was that land registration in Rwanda is mandatory and effects both customary and formal land holdings, hence abolishing the customary land holding system (Rwanda Government, 2013). Land registration was done in two ways: Systematic land registration and Sporadic registration. The first way means a process of regularizing the ownership of existing land rights while the second is done by demand. Rwanda opted for systematic land registration, with a belief that it presents more opportunities to protect women's rights, instead of continuing with the customary land management which is believed to have marginalised women for decades (Rurangwa, 2013).

LTR process consists of nine steps: notification of areas for an LTR program; public meetings with a particular focus on informing women and other vulnerable groups about the process; training of local authorities; demarcation process; adjudication, recording objections records; publication of adjudication

records; objections and corrections period to finalize the record and disputant lists; mediation period for disputes; and issuance period (Rwanda Government, 2013).

To deal with those land disputes, the government of Rwanda developed a decentralised process. This process was implemented by former NLC later renamed by law RNRA. Integrated with the LTR process in Rwanda is the resolution of land disputes (Payne, 2011). Relevant institutions to resolve land disputes were put in place. Those institutions includes land commissions and land committee at all levels (from national level to cell levels). In summary, land disputes during systematic land registration were resolved out of the litigation process or court.

### **3.2.3. Post LTR period**

It is estimated that 11 millions of parcels in the whole country were registered through systematic registration process. Report from RNRA shows that, 11.809 of parcels are under disputes (See figure 4-1). The main disputes are related to inheritance, polygamy and some transactions such sale, exchange, donation etc.

Most of the land disputes are resolved out of the court through mediation with the support of the mediators and adjudication committee at the village level. After systematic land registration, there are a number of many institutions who deal with land conflicts: Land commissions and committee, Mediators( at cell and sector levels), lawyers, office of the ombudsman, national human rights commission, gender monitoring office, NGO's in charge of land disputes resolution and others. As expected, Rwanda being a good example, where a successful land reform was implemented in post-conflict, and the experience shown that, land reform process in a post-conflict is the most challenging program to wards peace building, as it can intensify land related disputes if not properly managed(Rurangwa, 2013).

## **3.3. Nature of land disputes in Rwanda**

### **3.3.1. Ownership**

Ownership in Organic land law involves determining who has certain rights and duties over the property. When two or more people claim the ownership over the same land, this refer to land disputes between parties concerned. The ownership refers to land rights.

### **3.3.2. Trespass**

The Rwanda land law defines trespass to land, when an individual with intention enters the land of another without a lawful excuse. Unruh and Rhodri (2013) argues that trespass can be seen as a suit against some one who has been ejected from property that did not belong to them. Brief, trespassing is entering one's land without his permission.

### **3.3.3. Encroachment**

In Rwandan context, encroachment is a situation which occurs when objects, buildings or fences that are owned by one person are placed on another person's property. Some times, encroachment is a honest mistake. The difference of trespass is that with encroachment there is intention. Once a property encroachment occurs, then arises a land dispute between the parties.

### **3.3.4. Conflict between customary and statutory law on land**

The land tenure system in Rwanda was governed by customary law an written law. The first, which governs almost all the rural land and promotes the excessive parcelling out of plots through the successive father-to-son inheritance system. Secondly , there is a written law, which mostly governs land in urban districts and some rural lands managed by churches and other natural and legal persons such foreign

persons. For instance, in per-urban area, we can find the existence of two types of rights to hold land namely statutory right of occupancy and customary right of occupancy on the same piece of land. Currently, the government made a progress because of the implementation of the master plan. This shows the land use in both rural and urban. Since the Organic land law was gazetted in 2005, the customary system was abolished.

### **3.4. Types and causes of land disputes in Rwanda**

#### **3.4.1. Population increase**

The high population pressure, the size of cultivable land is rapidly decreasing. Rwanda as a small country has now 11 millions of the population with 11 millions of the parcels. This simply means that there is a high demand of land which can be a cause of conflict. With the fixed supply of land and the high demands for independent use, people compete for land and these results in conflicts.

#### **3.4.2. Polygamy and inheritance**

Polygamy can be connected to a type of marriage where a man is going to have more than two wives at the same time. In many African countries, this practice is illegal such Rwanda, where according to Rwandan law, polygamy is prohibited. Polygamy can be a cause of dispute because children's from the illegal spouses doesn't have a equal rights as children from legal souses. Basically, this kind of disputes includes disputes between legal spouse and illegal spouse, husband and illegal spouse and also between illegal and illegal spouses.

During systematic land registration, the land belongs to illegal spouse was registered under disputes because the husband claim the right and asked to be registered on the same parcel. There are two ways to resolve this dispute. The first is the court. The decision of the court will be based on the law. Among this , it will take time and cost to reach the final decision. The second way is the alternative dispute resolution such mediation which is very cheap and save time. The land committee and commissions set up by law can help parties to find a better solution.

Within the 2003 Constitution, property rights, by article 26 which stipulate that only civil monogamous marriage between a man and women is recognized. The spirit beyond this article seems that the land property will be registered only in the name of the women and husband legally married (Musahara, 2006). When it comes to matters of ownership of property, the wife recognized by the law is the one who gets to share with the husband. The husband will nevertheless be responsible to provide for children he conceived with the other woman, from his share of the property. Here start the claims from other wives according to their land rights under customary regime while LTR attempts regularize tenure including polygamous situations.

At the same time, the land law includes the principle that, according to the constitutional principle of equality for all citizens, all Rwandans enjoy the same rights of access to land without any discrimination whatsoever. It goes on the state that according to this principle the women , married or not, could not be excluded to the process of land registration, and acquisition of land, and the female child could not be excluded to the process of land property inheritance.

### **3.4.3. Maladministration**

Van Ness and Strong (2010) defines a maladministration as a situation where there are inefficient or mismanagement in administration. In this case, land administrators do not play their roles well and some times cause land disputes. In some countries where the technology is not advanced the maladministration can be a cause of dispute. For instance from a poor record keeping, unnecessary bureaucratic etc. There are the lack of a land registry to show who owns what and where. To resolve this, is better to establish a data base to assist information on who owns what and where as a step to facilitate property and land rights. The progress was made by the government of Rwanda because all the land information's are recorded through land information system.

### **3.4.4. Others**

Others causes should be a lack of adequate knowledge on land laws, inheritance misunderstanding etc. In rural area for instance, some citizens bought lands and never made a application of transfer. Some sellers tend to sell the same piece of land to another person or claims ownership of the property after sometime. This is where buyers did not know the consequences for transfer the ownership. Also, many Rwandese have no culture or do not why the wills are very important before they die. The absence of will can cause a claim of ownership on the same piece of land which leads to inheritance disputes amongst them.

## **3.5. Land disputes resolution mechanism in Rwanda**

### **3.5.1. Land commissions and committees**

Land commissions are established by presidential order at national, Kigali city and Districts levels. Land commissions are responsible for overseeing the Sectors and Cells land Committees by advocacy and consultations, public ownership of land policy.

The ministerial order determining the process of land registration makes special provisions for the establishment of different land commissions to mediate between and assist parties to arrive at a mutually acceptable resolution on any matters concerning land disputes. Land commission and committee consist of five members proposed by the district council and approved by the Presidential order. Two of the members are women.

The main role of those commissions is severely limited only in a mediating capacity. Its brief is to assist the aggrieved parties, to arrive at a mutually acceptable solution. When the land dispute is not resolved, the land dispute may be referred to the courts. In the other words, the parties to the dispute are not forced to follow the decisions or recommendation of the land commissions and land committees.

### **3.5.2. Religion mechanism**

Church's are one of the ways to resolve polygamous land disputes. The Bible provides us with a simple yet powerful system for resolving conflict. These principles are so simple that they can be used to resolve the most basic conflicts of daily life. In the bible, Jesus says that when you have a dispute with your friend, you must go and try to resolve privately your differences(Mathieu 5: 23-24; 18: 15).It is better to do it your self or by applying biblical principles of confession, confrontation, forgiveness and negotiation. In this regards, Jesus knew before that we would not be able to resolve our differences in private. Therefore He said, " But if your brother will not listen, take one or two others along, so that every matter may be established by the testimony of two or three witness" (Matt 18:16).

By discussion, we can say that the role of these one or two others are fulfilling is sometimes referred to as mediation. Unlike a conciliation coach, who works with only one party in a dispute, a mediator works with both side to help them move toward a voluntary agreement. This means that parties are still responsible



for deciding a final agreement. A mediator from the bible should depend entirely on Christ, respect the role of the church, and help people to deal with the root causes of their conflict. Parties are not forced to agree on the decision. He must also behave in such a way as to win and hold the trust of those who are involved in the conflict, and provide them a fair and orderly process that gives every opportunity for personal reconciliation and a just resolution. This is why church's or religion can help for resolving disputes.

### **3.5.3. Customary Dispute Resolution Mechanism**

Many African countries hold the right to political, economic and social self-determination including a wide range of autonomy using their own system of justice(Hensler, 2003). The customary justice system doesn't have a singular model that will suit the circumstances of all communities. This means that structure therefore varies from community to community. Some of features are common in most customary justice system such as panel of adjudicators, cost of adjudication, enforcement of the court's justice and the resolution process. In Rwandan context, the customary justice system in land dispute are characterised as the search for consensus based on the exploration of social norms regarding the proper values and communal values. In rural areas, there still the chief of clans, chief of lineages who take advantages to settle the disputes between member's of families.

According to Hutabarat (2011), the customary justice system is rooted in the culture and history of that particular community and is in one way and another unique to each community. In addition, it also has a binding third party decision as the result and also the aim to achieve solution in harmony.

### **3.5.4. Others justice systems**

In Rwanda, the Non- governmental organisations, such RISD, RCN and other's (ONG's) are seen to mediate land disputes between persons and provide legal advice and trainings. Under Ministry of Justice, there are lawyers who offer free legal services and assist poor family in land disputes resolution. Also, University of Rwanda based law clinics assist or represent communities in land issues and advice in the development of the land policy.

### **3.5.5. Summary**

Chapter three describes the types of land disputes in Rwanda. Most of them are based on intra-family and inter-family such ownership disputes. Those disputes are caused by many causes such polygamy and inheritance and others such as adequate knowledge in land laws.

Rwanda has some mechanisms to deal with land disputes. The land law provides land commissions and land committees from nation level to cell levels. There is also the informal system such alternative dispute resolution mechanism. The third party for resolving land disputes should be fair and not side with any party to the dispute in performing their tasks. The next chapter describes the study context and the methodology employed in the study.





## 4. RESEARCH METHODOLOGY

### 4.1. Introduction

This chapter describes the research methodology used for the thesis. Gicumbi and Musanze district both in Northern Province was the area of research. The chapter will discuss the data collection methods used and the interpretation used in this study.

### 4.2. Research matrix

The table 4-1 below shows the research matrix. This includes the research objective, research questions and the methodology used to collect data.

Table 4-1: Summary of matrix

Research objective.	Research Question.	Research Method and Data collected.	Data source
1.To describe the evolution of alternative mechanisms for resolving polygamous family land disputes in Rwanda.	a. What are the major actors in polygamous family land disputes?	<b>Qualitative data.</b> Literature, Interviews, directives, questionnaires, field observations.	1. Ministry of Justice. 2. Rwanda natural resources authority. 3. Gender Monitoring office.
	b. Which institutions exist to resolve those disputes and what role do they play?	Interviews, officials records and questionnaires.	1. Ministry of Justice. 2. Office of Ombudsman of Rwanda. 3. Supreme court. 4. NGO's in charge of land issues. (RISD, Land net...).
	c. What are the process of resolving family land disputes in the context of polygamous homes from 1999 to 2013?	<b>Qualitative and Quantitative data.</b> Literature, Interviews, questionnaires, officials records and archival records.	1. Rwanda Natural resources authority. 2. Ministry of Justice. 3. Gender Monitoring office. 4. NGO's in charge of land issues. 5. District land officer.
2. To assess the effectiveness of land tenure regularization towards resolving polygamous land disputes.	a. To what extent is the adjudication of land rights participatory for all family member's ?	<b>Qualitative &amp; Quantitative data.</b> Literature, Interviews of citizens, Interviews of victims of polygamy land disputes, questionnaires.	1. Rwanda Natural resources authority. 2. Human rights commission in Rwanda. 3. District Land commission member's.

<b>Research objective.</b>	<b>Research Question.</b>	<b>Research Method and Data collected.</b>	<b>Data source</b>
2. To assess the effectiveness of land tenure regularization towards resolving polygamous land disputes. (continued)	b. To what extent does the LTR program contribute for resolving family land disputes?	<b>Qualitative and Quantitative data.</b> Literature, interviews, officials records and registers of the institutions , questionnaires for community members.	1. Rwanda Natural resources authority. 2. Court. 3. District Bureau.
3. To propose how alternative dispute resolution mechanisms or other tools can contribute to resolve polygamous family land disputes.	a. What are the indicators of effective ADR?	<b>Quantitative and Qualitative data.</b>  Literature and questionnaires.	1. Land committees at sector and cell levels. 2. Citizens
	b. What are the preferred mechanism of ADR in case of polygamous family land disputes?	Literature, questionnaire, interviews, officials records, Filed inspections.	1. Rwanda Natural resources authority. 2. Office of the Ombudsman. 3. Gender Monitoring office. 4. District bureau. 5. NGO's in charge of land issues. 6. Citizens.

### 4.3. Research Approach

In this study, the quantitative and qualitative techniques were used. Quantitative methods is required for the quantification of the phenomena in numerical terms using SPSS or excel sheet. In the other hands, qualitative methods is used to collect data and information's from citizens and participants. Using both quantitative and qualitative can produce a good results.

Primary and secondary data concerning the location of the land dispute, parties involved, the dispute resolution process were collected from different institutions such Ministry of natural resources, Ministry of justice as well as some citizens of the districts. Documents, reports and relevant materials was obtained from the library of Kigali independent University. Field observations were done and analysis of existing literature on dispute resolution gives insight about the existing practices and the concepts in making decisions. Finally a GIS tool was used to visualize the disputes zones in Northern Province of Rwanda.

### 4.4. Study Area

Northern Province is the case study area and was selected for the study because it is one of the area that have predominant land disputes especially polygamy land disputes. Gicumbi and Musanze Districts both in Northern Province was chosen for the reason that all the various disputes resolution mechanisms can be identified in the area. The study is focused in Gicumbi District, especially in Cyumba sector and

Musanze District in Musanze sector. The report (Table 4-2) from Rwanda Natural Resources Authority below shows the number of disputes per province and districts.

Table 4-2: Annual report, Rwanda Natural Resources Authority 2013

PROVINCE	Parcels without disputes	Parcels with disputes	Total number of parcels	% of land disputes relative to total parcels
NORTH	2,215,449	4,162	2,219,611	19%
SOUTH	2,337,237	2,289	2,339,526	10%
EAST	1,586,912	2,662	1,589,574	17%
WEST	2,467,024	2,375	2,469,399	10%
KIGALI CITY	259,577	321	259,898	12%
TOTAL	8,866,199	11,809	8,878,008	100%

Source: Annual Report, Rwanda Natural Resources Authority, May 2013

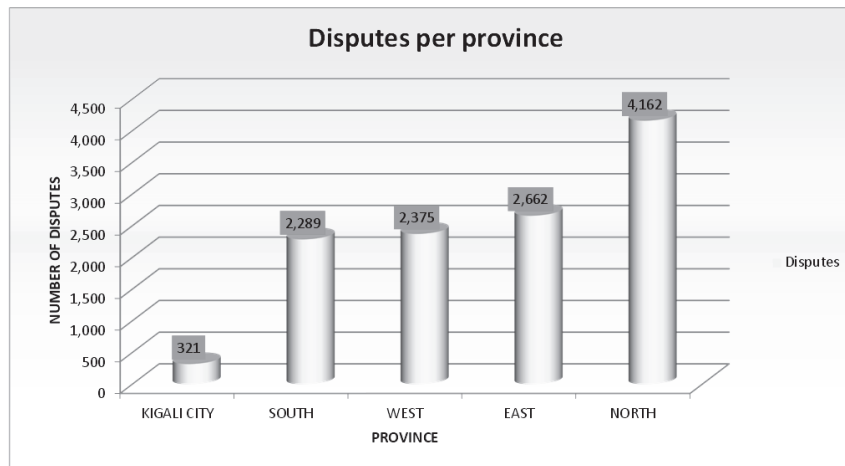


Figure 4-1: Disputes per province

#### 4.4.1. Location

Musanze district is divided into 15 sectors, 68 cells and 432 villages which brings the population around 368,563 inhabitants. It bounded to the north by the volcanoes national park. Figure 4-2 and 4-3 below shows the districts and sectors selected for the research.

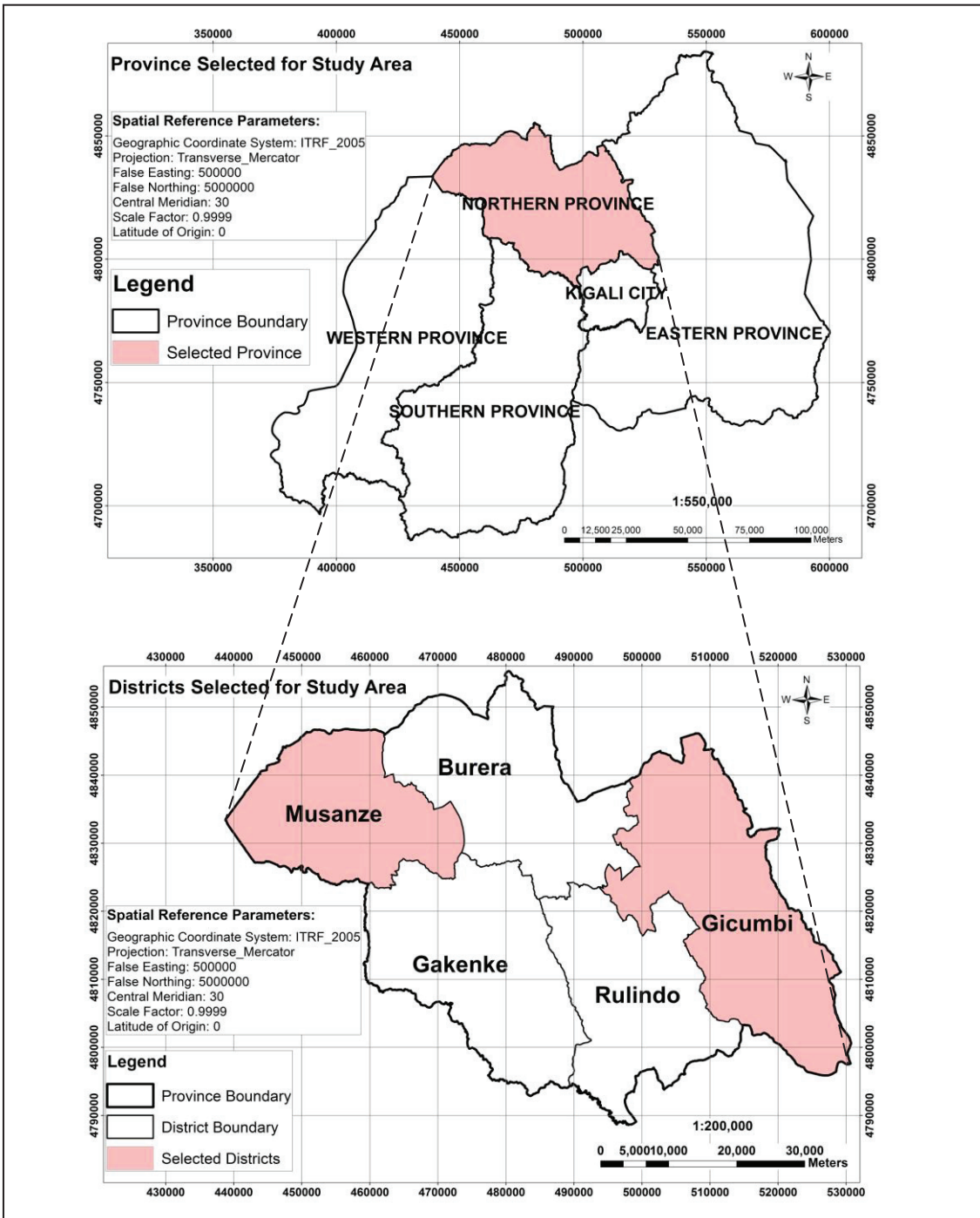


Figure 4-2: A map of Northern Province and districts

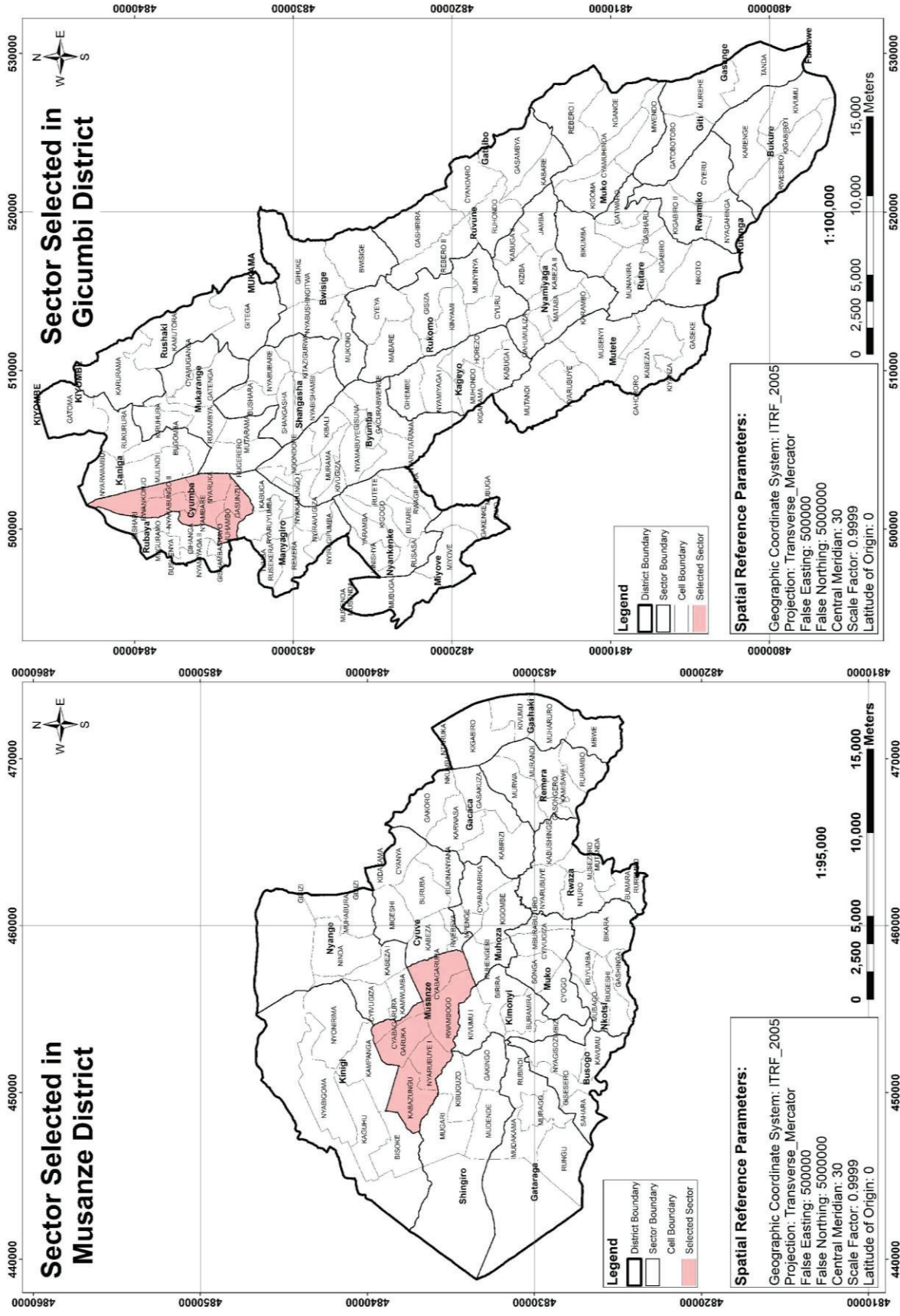


Figure 4-3: A map of sectors selected



Gicumbi is also one of five Districts in Northern Province. Located on Latitude: 29° and 54° 30' 35" in south Longitude. The Gicumbi District is governed by the Organic law No. 29/2005 of 31/12/2005 determining the administrative entities of the Republic of Rwanda. From west to east, Gicumbi is bounded respectively by Burera District, the Ugandan border and Nyagatare District in eastern province. From south to north the District is separated to Gasabo District by lake Muhazi. Both Musanze and Gicumbi are in Northern Province. The Northern Province is the smallest province in Rwanda, but it is also the most densely populated.

**4.4.2. Population**

The Northern Province has a population of 1,729,927 with a growth rate 10.8%. The population in this province varies from settlement to settlement. High population areas are found in rural area and unplanned settlement while low population densities are in urban area. The table 4-3 below show the distribution of population in Northern Province.

Table 4-3: Annual Average Population Growth 2002- 2012

<b>Male</b>	819,93
<b>Female</b>	909,996
<b>Total</b>	1,729,927
<b>Growth Rate</b>	10.8%

Source: Rwanda 2012 census

**4.4.3. Land tenure system**

Two main types of land tenure systems are recognized in Northern Province. They are systematic land registration started in 2009 and sporadic system. What is evolving currently is the systematic land registration through land tenure regularization program.

**4.5. Data collection, method and sample size**

The study was conducted from 28th September to 24th October 2013 in Musanze and Gicumbi Districts both in Northern Province. Questionnaires was used for the target group provided by the districts officers both in Musanze and Gicumbi districts. For data collection, four methods were used and these are: Documentation of polygamous land disputes, semi structure questionnaires, In depth-interviews and finally the focus group discussions (FGD's). Documentation help the researcher to identify and record all land issues especially in mediators books from 2009 until July 2013. 2009 was chosen because LTR started in all districts.

To collect the quantitative and qualitative data, the semi structured was used. Those data are specifically related to the characteristics of the respondents, polygamous land disputes resolution process and the preferred mechanisms for resolving those disputes.

As tool, In -Depth- Interviews was used to collect opinions, experiences from the local authorities and also some government and non government staff in charge of land disputes.

Finally, the focus group discussion ( Figure 4-4) was used for the purpose to get more information in the short time.



Figure:4-4: Focus group discussion

With this tool two groups was target: The first group concern the groups that deal with land related disputes and the second was the mediator's groups that are responsible day by day for land related disputes. The "*Abumzi*" ( Mediators in local language) and land committee at the sector level.

#### 4.5.1. Interview

Questionnaires with important persons related to resolution land disputes were conduct for interviews ( Appendix B& C). The focus of the interviews was what is the land disputes, what is the polygamous land disputes, what is the process to deal with polygamous land dispute and finally what the preferred mechanism to deal with those kinds of disputes. Table 4-4 shows numbers of organizations, the position of the person interviewed.

Table 4-4: Interview leaders

Organization	Position	Number
Rwanda Natural Resources Authority	Deputy Director General in charge of lands and Mapping	1
	Deputy Registrar in charge of Northern Province	1
Musanze District	District land officer	1
Gicumbi District	District land officer	1
Cyumba Sector	Land committee	2
Musanze Sector	Mediators	1
Ministry of Justice	Permanent Secretary in Ministry of Justice	1
	Maison d'acces a la justice ( Lawyer)/ Musanze district.	1
	Maison d'acces a la justice ( Lawyer)/ Gicumbi district.	1
Gender Monitoring office	Deputy Director General in charge of gender equity.	1
National Human rights commission	Chairperson or President	1
Non government organization in charge of land conflict	Lawyer	1.



The secondary data collected were mainly referring to reports on how land disputes addressed to the government institutions were handled. Secondary data were collected only from Rwanda Natural Resource Authority and Gender Monitoring office. Table 4-5 below shows the types of data and their source.

Table:4-5: Sources of secondary data

N0	Types of Data	Year	Data source	Format
1.	Report on systematic land registration	2009- 2013	Rwanda Natural Resource Authority	Softy copy
2.	Annual Reports	2010- 2011	Gender Monitoring office	Softy copy in world document

A group of one hundred thirty two (132) was selected and the criteria was to be under the polygamous regime. Thirty questionnaires were administered. Some of them were open and closed questions. Illegal wife, legal wife and their husband were randomly selected (Appendix A).

**4.5.2. Study of Reports, Documents and Statistics**

Secondary data obtained from different institutions were: Legislation, Reports, Policy documents, government registers and archival. The population data for Cyumba and Musanze Sector's were obtained from the National Bureau of Statistics. To support this study, secondary data on polygamous land disputes including reports, documents and papers were studied. Some articles, news papers and dissertations were obtained from Kigali Independent University Library for reading. Others were the statistics of land disputes in Northern Province for the years 2009 to 2013. Registers of records land disputes were examined to identify the types and numbers of disputes lodged and other information's.

**4.5.3. Field observation**

In the field, we had a meeting with the land committee members ( Figure 4-5) and mediators (4-6) at the sector level. Evidence of registration documents are shown in Figures 4-7 and 4-8 respectively.



Figure:4-6: Meeting with Land committee members



Figure:4-5: Meeting with mediators



Figure:4-8: Land dispute register

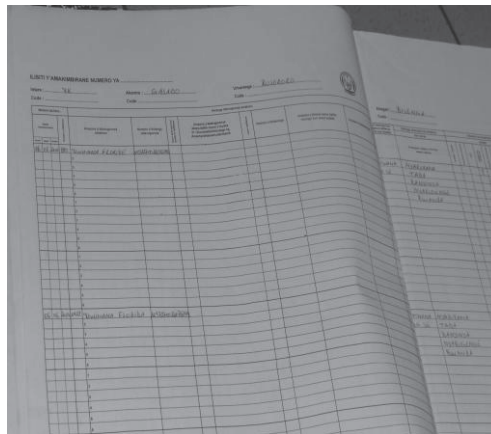


Figure:4-7: Content of land dispute register

#### 4.5.4. Data analysis

To analyse the data collected from the field, SPSS 21 and Excel were used. The responses from the questionnaires were counted and calculated using Microsoft excel. In addition to this, some interviews were recorded using a recorder. GIS tool was used to visualize the categories of polygamous land disputes. This was based on disputes records in the registers.

#### 4.6. Challenges and limitations of Data collection methods

During the field work, the researcher met some challenges. First it was the raining season and it was so difficult to attend some meetings as planned. Second was identification of the polygamous families. Because of the commercial activities in neighbour country, some of them moved from the areas indicated in the records to another areas. This was a big limitation to maximise the sample size target.

Finally, questionnaires for interviews were all in local language (Kinyarwanda). Also some interviews were conducted in the local language and recorded in the same. Interviews (Household with polygamous land disputes) were granted in Kinyarwanda. Some technical words were not good translated from the original version (English) to local language (Kinyarwanda). For instance, it was difficult to translate "Mediation", "Arbitration" in Kinyarwanda.

#### 4.7. Summary

This chapter summarises the types of data collected and the methods used to analyse those data collected from the field. The data were obtained with collaboration with the some governments staff at the districts levels. The next chapter discusses the results obtained from Gicumbi and Musanze districts both in Northern Province, Rwanda. Is land tenure regularization contribute to resolve land disputes in case of polygamous land disputes? The answer will be provided by the next chapter.



## 5. RESULT AND DATA ANALYSIS

This chapter is grouped in three major parts. The first provides a brief presentation of the sample characteristics (section 5.1) describing the general information on the respondents. The general information of respondents help the researcher to know who is the respondent, for instance if he/she has a age of majority to respond to questions or to be married. The second part is the assessment of land tenure regularization for resolving polygamous land disputes (section 5.2) describing the importance, impact and effectiveness of LTR. Section 5.3 which describe the preferred mechanism of alternative dispute resolution presents highlights of alternative dispute resolution mechanisms for resolving polygamous family land dispute before, during and after LTR. The chapter ends with section 5.4 by presenting the summary.

### 5.1. Brief presentation of sample characteristics

#### 5.1.1. Socio-demographic characteristics for respondents

This study, as explained earlier, sought out the experience and opinions of people who are involved in polygamous land disputes and also experts who deal with the resolution of land disputes. The basis socio-economic characteristics of the family's respondent at Musanze and Gicumbi Districts are shown in figures 5-1, 5-2, 5-3, 5-4, 5-5 5-6 and table 5-1.

##### 5.1.1.1. Age and gender of respondents

The figures below reflect the age groups of the respondents.

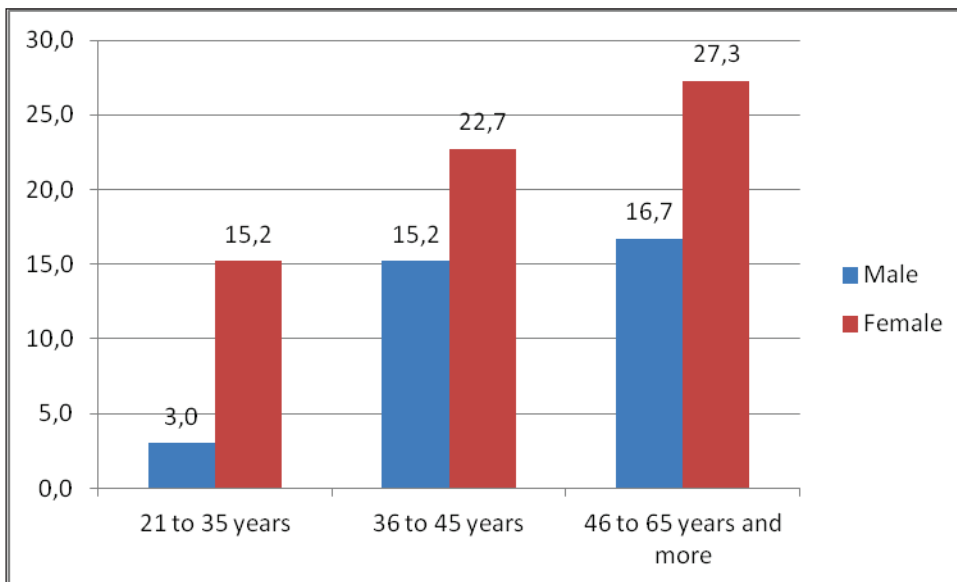


Figure 5-1 : Cross- table of age and Gender of respondents

**Mean' age for men: 47.78 (SD=10.79), N<sub>1</sub>=46; Mean' age for women: 43.95 (SD=10.6), N<sub>2</sub>=86.**

The majority of respondents are classified around 40 years (mean age). Most of the respondents 58 (44%) can be found within the age groups between 46 years and 65 years. The age of the respondents ranges between 22 years and 65 years. Reference to figure 5-1 in all group age, female (86=65.2%) constitute the

majority of respondents. This means that both the young and the old are all engaged in land dispute.

**5.1.1.2. Respondent's marital status and their position in family**

In the figure 5-2, 31.8% are female, 39.4% are in cohabitation regime within them 30.3% are illegal spouse while 4.5% are divorced.

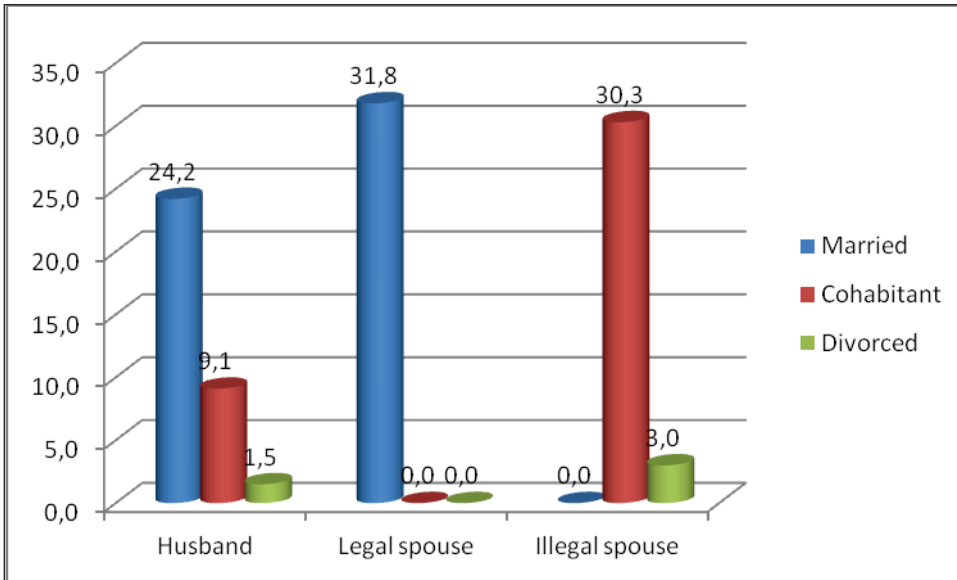


Figure 5-2: Cross- table of gender and marital status of respondents

**5.1.1.3. Education level and family position by sector of residence**

The figure 5-3 below shows the different levels of education by sector.

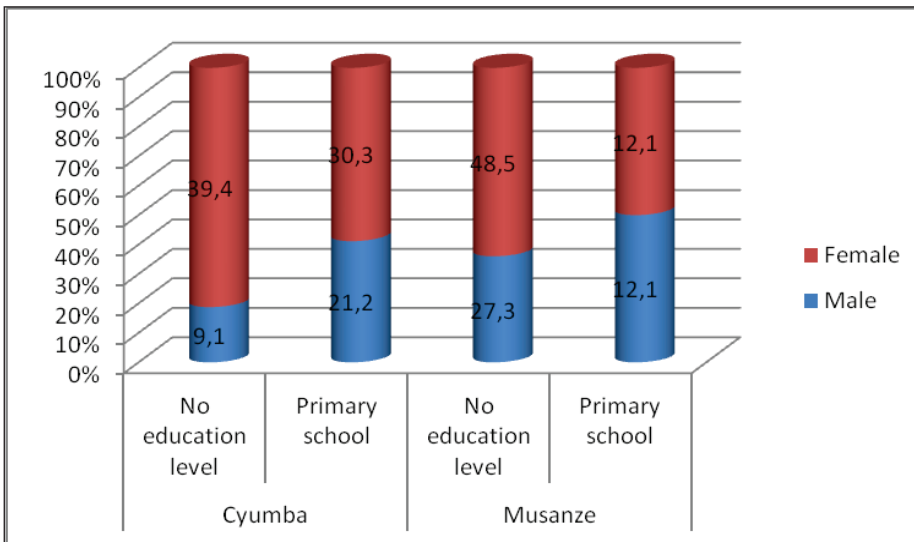


Figure 5-3 : Education level and family position by sector of residence

The result indicates that in Cyumba sector 9.1% of male respondents are not educated, only 21.2% has primary education while in Musanze sector 27.3% are not educated and 12.1% has primary education level. 39.4% of female respondents from Cyumba sector do not have any education level while 30.3% of them has a primary school level, and in Musanze sector, the proportion is respectively 48.5% and 12.1%. Majority of people who are having polygamous land dispute are not well educated. It is assumed that people which are not educated cannot having a quite big amount in solving their land dispute.

**5.1.1.4. Religion of Respondent**

The figure 5-4 shows that Catholics are predominant. The results shows that 59.1% are Catholics, 28.8% are protestant while 12.1% are Adventist.

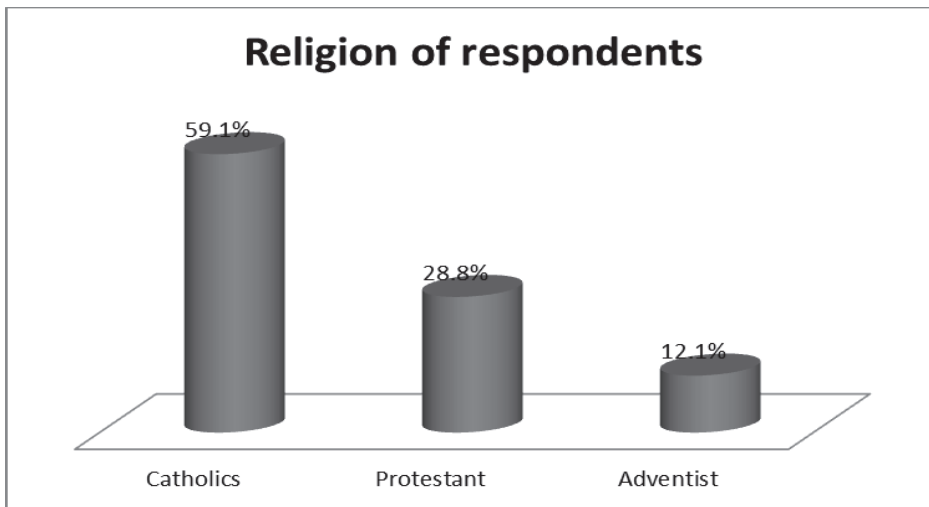


Figure 5-4 : Religion of Respondent

The view of religious dispute resolution mechanism is that even though it is well respected but yet there is still an overlap authority when it meets the litigation system and for that the enforceability of decision can be considered as the weakness of this mechanism.

**5.1.1.5. Family size**

Family is a group of people affiliated by consanguinity, affinity or co- residence who occupy a housing unit. The results shows that 95.5% of the respondents are coming from a family of more than three persons, 3.0% have tree persons while 1.5% have 2 persons.

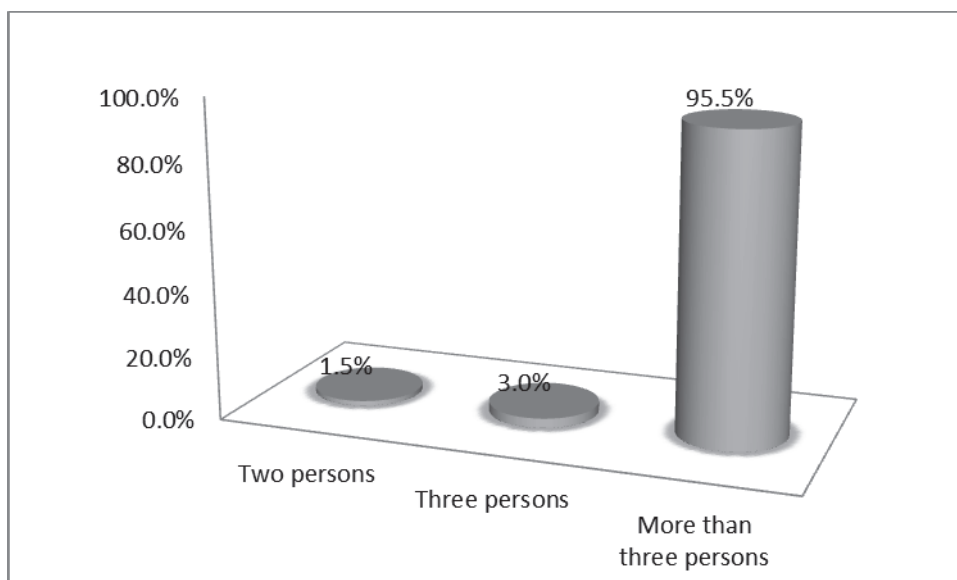


Figure 5-5 : Family size

**5.1.2. Economics characteristics**

**5.1.2.1. Employment status**

The table below show that 98.5% of respondents are farmers and only 1.5% are classified as private employee.

Table 5-1: Employment Status

Employment status	Frequency	%
Farmer	130	98.5
Private employee	2	1.5
Total	132	100.0

The majority of respondent are farmers. In Rwanda, land is the main source for farmer to maintain their livelihoods and therefore is a man source of conflict. The evolution of agriculture, long considered as the backbone of national economy, has become unpredictable because the land resource has been badly managed, and yet over 90% of the Rwandan population work on land from which they earn their livelihood.

**5.1.2.2. Family monthly income by sector of residence**

The monthly income can come from employment and other sources before taxes and other deductions. In table 5- 6, we found that the majority of respondents come from farmers because land is the main source for farmers to maintain their livelihoods. The results shows that 97.0% in rural area (Cyumba sector) earn less than 20000 Rwf as a monthly income while in per-urban area (Musanze sector) 45.5% receive less than 20000 Rwf. None from rural area declared to earn more than 50000 Rwf while in per-urban area they are 36.4%.

The rural population refers to population staying at home regularly or for over 6 months during a year and integrated with a household economically and in terms of living. The urban population refers to population living in the areas with many activities generating money.

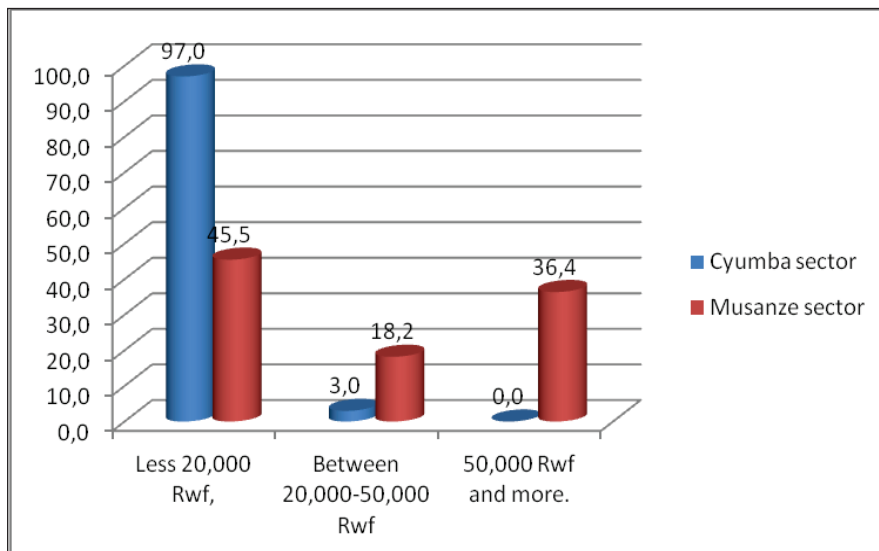


Figure 5-6: Family monthly income by Sector of residence

## 5.2. An assessment of land tenure regularization

### 5.2.1. Land size claimed by sector

The figure 5-7 below shows the land size claimed and their localisation by sector. In Cyumba sector which is classified as rural area, 84,8% of respondents declared to have a family land size of less or equal to one hectare, 12,1% have more than 1ha while in Musanze sector which is classified as per-urban area none of the respondents has more than one hectare.

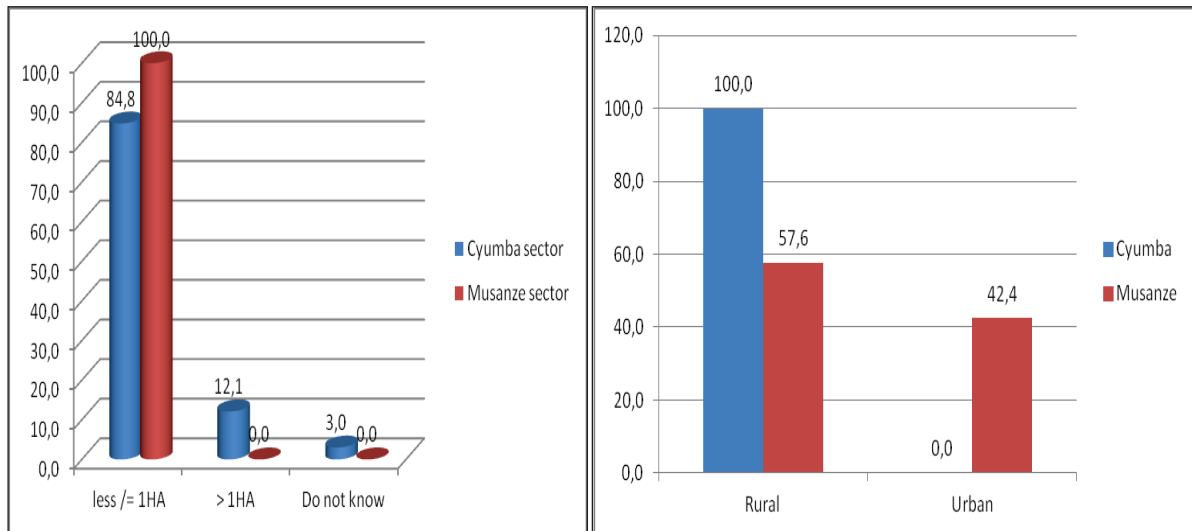


Figure 5-7: Land size claimed by sector Areas of dispute by Sector of residence

Currently, available arable land per family farm is just 0.6 ha. There are of course, regional inequalities concerning the available agriculture land per family, ranging from  $\leq 0.25$  ha to  $\geq 2$  ha. The reduced size of cultivated land per family is a nationwide problem. Some provinces such western and southern have already reached on average that is below 0.5 ha per household. And yet, the critical threshold which a farmer can no longer meet his family's basic nutritional requirements from agriculture activity alone is approximately 0.75 ha. According to the national report from Ministry of Agriculture, a farming unit should have a least 0.90 ha to be economically viable.

### 5.2.2. Parties in polygamous land disputes related

The results shows that 6.1% of husband respondents have a land disputes with legal spouse, 28.8% of husband respondents have disputes with illegal spouses. On side of legal spouse respondents, 24.2% of them has land disputes with illegal spouse while 1.5% of illegal spouses has land disputes with illegal spouses. Finally, the 13.6% of illegal spouse have land dispute with their husbands while 18.2% have land dispute with legal spouse.

Table 5-2: Parties in polygamous land disputes

Respondent' family position/The person with whom there is a polygamy land dispute	Husband (%)	Legal spouse (%)	Illegal spouse (%)
Husband	0	8 (6.1)	38 (28.8)
Legal spouse	8 (6.1)	2 (1.5)	32 (24.2)
Illegal spouse	18 (13.6)	24 (18.2)	2 (1.5)



The results are interesting since the report from RNRA indicates that 70% of land related disputes are intra-family. The results show also that many disputes can indeed be classified as intra-family and are coming from inheritance and marriages issues.

According to the Deputy Director General of RNRA in charge of lands and mapping 90% of land related disputes are intra-family (within the family) and inter-family (between two families) disputes in Northern Province. He says that many disputes can be indeed be classified as intra-or inter-family but there also a percentage of disputes related to external causes. Intra-family disputes are mainly coming from inheritance and marriages issues. In fact, intra-family and inter-family disputes accounted for over 60% of the all claims that we tracked (Daley et al., 2010).

**5.2.3. Land acquisition and LTR contribution to land disputes resolutions**

The majority of respondents (54.5%) who acquired their land by inheritance stated that LTR contributes to land resolutions followed by the ones who purchased their land (25.8%).

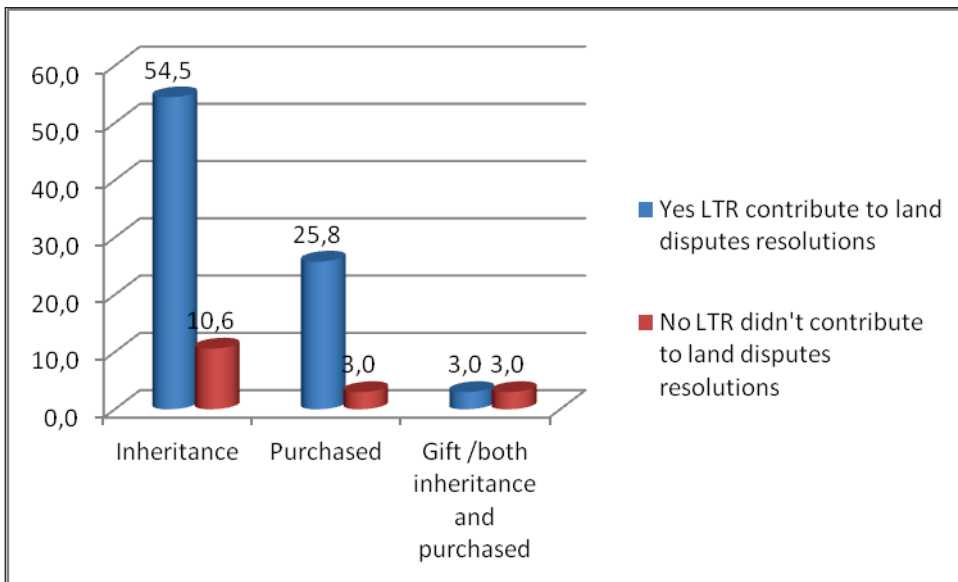


Figure 5-8: Land acquisition and LTR contribution to land dispute resolution

The mode of land acquisition is strongly linked with the Rwandan traditions and customs. This is why land disputes are connected to the mode of land acquisition.

**5.3. The effectiveness of LTR**

Land tenure regularization can be seen as a relationship, legally defined, among people, as individuals or groups, with respect to land. This section will analyze the importance of LTR and the satisfaction level according to how LTR contributed to resolve land dispute.

**5.3.1. Importance of LTR by gender**

The results presented in figure 5-9 below highlights that LTR play a important role to resolve land disputes, where 21.2% of female said that land disputes were resolved, 21.2% state that LTR facilitated the land mortgage while for male the proportions are respectively 12.1% and 7.6%. Female at a level of 13.6% argued that LTR helped to increase the land value.

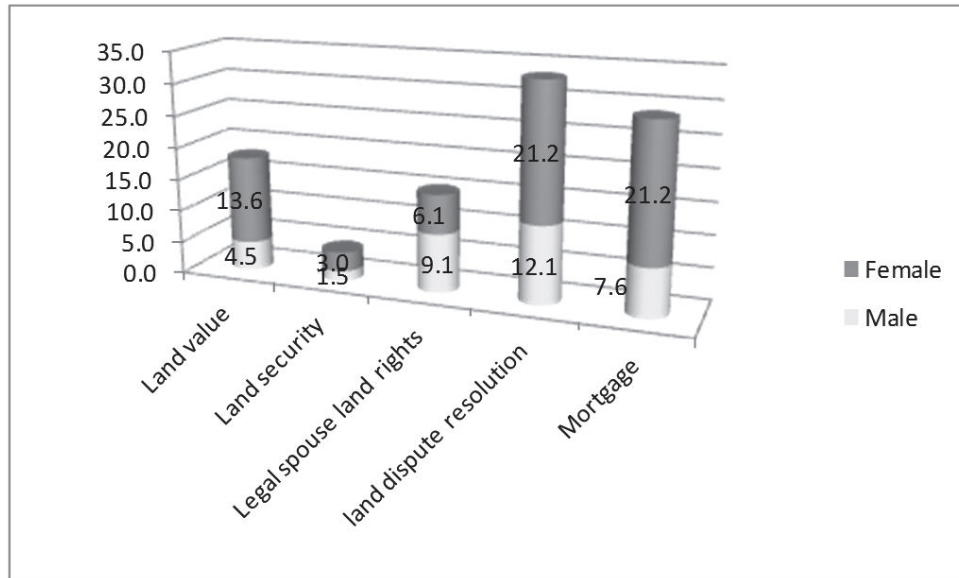


Figure 5-9: Importance of LTR by gender

Land tenure can be observed, especially in developing countries, where different sources of law and different ownership patterns may coexist.

It is also important to mention that, local leaders from both Cyumba and Musanze sector's see the importance of LTR as a tool to end frequent disputes in the community. One of the mediator's said that in local language "*Igikorwa cyo kwandikisha ubutaka kituzaniye amaboro mu muryango kuko kigiye gukemura amakimbirane ashingiye ku butaka*" meaning that " I have no enough worlds to explain how land registration come with many solutions to the land conflict".

### 5.3.2. Importance of LTR by family position

When we take to position in family, 13.6% of respondents from illegal spouse category estimated that LTR facilitated land dispute resolution while 12.1% of respondents from husband category think so. At equal percentage (10.6%), respondents from legal and illegal spouse categories found that LTR helped to increase the land mortgage.

A voice of sector leader " *Ibyangombwa by'ubutaka bizatuma banyirabyo bababwa inguzanyo mu ma banki anyuranye*" meaning that " land documents like certificate and land lease will help the owners to get loan in different local banks.

Table 5-3: Importance of LTR by family position

Importance of LTR/ Position in family	Husband (%)	Legal spouse (%)	Illegal spouse (%)
Land value	6 (4.5)	10 (7.6)	8 (6.1)
Land security	2 (1.5)	2 (1.5)	2 (1.5)
Legal spouse land rights	12 (9.1)	6 (4.5)	2 (1.5)
land dispute resolution	16 (12.1)	10 (7.6)	18 (13.6)
Mortgage	10 (7.6)	14 (10.6)	14 (10.6)

### 5.3.3. Satisfaction level position in family

For satisfaction of respondents regarding the effect of LTR, 30.3% of respondents who declared satisfied with LTR are coming from husbands category while at equal level (22.7%), legal spouse and illegal spouse are also satisfied.



Figure 5-10: Satisfaction by family position

**5.3.4. LTR satisfaction level by land location**

According to the satisfaction by location, 69.2% in rural area were satisfied by the effect of LTR while in urban area, 100% were all satisfied.

Table 5-4: Satisfaction by land location

LTRP satisfaction level by Land location	Area of land/ Land location	
	Rural (%)	Urban (%)
Satisfied	72 (69.2)	28 (100)
Unsatisfied	16 (15,4)	0
No opinion	16 (15,4)	0

The aim of this point was to analyze the level at which the respondent are satisfied with the process of their disputes resolution. The LTR paid attention to gender and, by and large, the land rights of women, who are in monogamous registered marriages have been recorded on land title. However, the LTR process appears to have worked against women who are not legally married- perhaps due to a misinterpretation of the spirit of the law, the name of the women who are not legally married are much less likely to have been recorded on land titles.

The district land officer in Musanze district reported since LTR started, we have increased our performance by 85%, because we do not spend any more time on resolving land related disputes which used to take over 80% of our time.

**5.4. Perception of alternative disputes resolution mechanisms for resolving polygamous family land disputes**

The main aim of this research as explained earlier is to find the preferred mechanism based on polygamous land dispute. It is why this section will analyse the mechanism preference by religion, preference mechanism before, during and after LTR. The section will ends of duration of land dispute resolution by mechanism.

#### 5.4.1. Mechanism preference by religion of respondent

On religion basis, 79.5% of Catholics, 73.7% of protestants and 62.5% from Adventist preferred the mediation land dispute resolution mechanism while the preferences of arbitration are respectively 12.8%, 15.8% and 25.0%.

Table 5-5: Mechanism by religion of respondent

Mechanism by religion of respondent	Religion of respondent		
	Catholics	Protestant	Adventist
Mediation	62 (79.5)	28 (73.7)	10 (62.5)
Arbitration	10 (12.8)	6 (15.8)	4 (25.0)
Others	6 (7.7)	4 (10.5)	2 (12.5)

#### 5.4.2. Preference for mechanism before LTR

Before LTR, most of the legal spouse (85.7%), 69.6% of husbands and 63.6% preferred mediation while the preference of arbitration is respectively 9.5%, 21.7% and 18.2%.

Table 5-6: Preference for mechanism before LTR

Land dispute resolution mechanism before LTR	Position in the family		
	Husband (%)	Legal spouse (%)	Illegal spouse (%)
Mediation	32 (69.6)	36 (85.7)	28 (63.6)
Arbitration	10 (21.7)	4 (9.5)	8 (18.2)
Others	4 (8.7)	2 (4.8)	8 (18.2)

#### 5.4.3. Preference mechanism during LTR

Reference to figure 5-11, during LTR, most of the legal spouse (81.0%), 56.5% of husbands and 63.3% preferred mediation while the preference of arbitration is respectively 9.5%, 21.7% and 18.2%.

A voice of a lawyer from Gicumbi district during interview" The LTR process will help us to resolve the family dispute that are common in this area, between husband and wives.... it is very good for us women understand that the new land law allows us to have the same rights as men in Kinyarwanda saying that " *Kwandika ubutaka bizatuma dukemura ibibazo byiganje ino bagati y'abagore n'abagabo.....kandi nishimiye nk'umudamu kumenya ko itegeko rishya riduha uburenganzira bungana n'ubw'umugabo*".

#### 5.4.4. Dispute resolution mechanism after LTR

The table 5-7 shows the preference mechanism after LTR. Most of the legal spouse (85.7%), 73.9% of husbands and 68.2% preferred mediation while the preference of arbitration is respectively 9.5%, 17.4% and 18.2%.

Table 5-7: Land dispute resolution mechanism after LTR

Land dispute resolution mechanism after LTR	Position in the family		
	Husband (%)	Legal spouse (%)	Illegal spouse (%)
Mediation	34 (73,9)	36 (85,7)	30 (68,2)
Arbitration	8 (17,4)	4 (9,5)	8 (18,2)
Others	4 (8,7)	2 (4,8)	6 (13,6)

At all stage ( before, during and after LTR), the responses from the respondent were of varied opinions as to the preference of alternative land resolution mechanism out side the court of law particularly in case of polygamous land dispute resolution. The reasons being that the ADR mechanisms are efficient and can reduce and expedite justice.

**5.4.5. Duration of land disputes resolution by mechanism**

Figure 5-11 depicts the duration of land disputes by resolution mechanisms previously exposed. Between mediation and arbitration, 50,0% said that mediation can solve polygamous land disputes between 3 and 5 months while for the respondents who estimated that land disputes are resolved in less than 3 moths, 40% found that arbitration is the best ways of land dispute resolution.

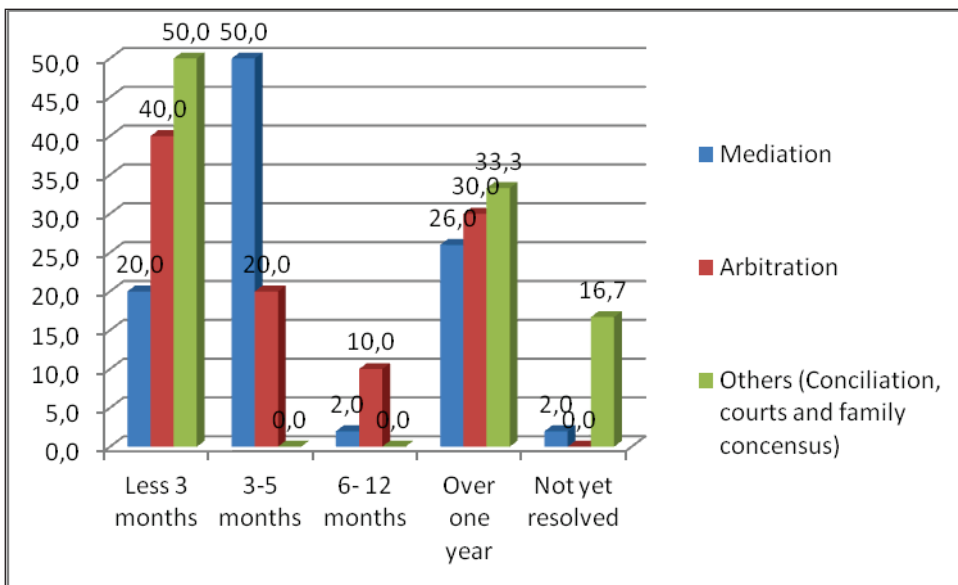


Figure 5-11: Duration of land dispute resolution by mechanism

**5.5. Summary**

In conclusion, chapter five analysed the data from the field. It was found that 118 out of the 132 was directly concerned and involved in land disputes especially in polygamous land disputes. It was also found that many respondents prefer mediation than others disputes resolution mechanisms. Finally, from the results we found that land tenure regularization play a important role to resolve land disputes especially polygamous land disputes.

## 6. DISCUSSION OF FINDINGS

### 6.1. Introduction

This chapter discusses the results that were presented in chapter 5 as well as inference from the review of literature in chapter 2 pertaining to alternative mechanism for resolving polygamous family land dispute in Rwanda. The discussion of findings were based on the objectives of the research. Section 6.2 evaluates the evolution of alternative mechanism for resolving polygamous family land dispute, Section 6.3 assesses the effectiveness of land tenure regularization as a tool for resolving polygamous land dispute, section 6.4 examines the satisfaction of respondents with the role of LTR in resolving polygamous land dispute, and section 6.5 discusses Respondent's preference for mechanisms used in resolving polygamous land disputes in Rwanda.

### 6.2. Evolution of alternative mechanism for resolving polygamous land disputes

#### 6.2.1. Disputes about land related to polygamous marriages

The Rwandan Law currently prohibits polygamy as a family institution. Irrespective of this prohibition, it was found that cases of polygamy abound in Cyumba sector of Rwanda. The migration of men to the area in the past helped to improve their fortune and wealth such that they were motivated to marry more wives. The prevailing customary institution and norms from the pre-1994 genocide period to the pre-2003 constitutional reform of Rwanda encouraged men especially in rural areas to practice polygamy. Nevertheless, it was found that some men in this sector took to polygamy as a family institution following the death of large number of their male kindred during the genocide period because the population of women at that time outnumbered that of men.

The principle of equality as enshrined in the constitution of Rwanda accords equal rights to all citizens of the country without any form of discrimination. The implication of this provision of the constitution is that even married and un-married women have the right to the acquisition, inheritance and registration of land. This right equally extends to a female child born to a family.

Notwithstanding the position of the constitution on polygamous family and the rights of married women to land as enshrined in the constitution, the plight of women who are married as subsequent wives of a man have been further weakened by the position of the Law towards them such that they might possibly challenge the provisions of the Law denying them access to land since they consented to polygamy prior to the constitutional reform in 2003. The question now is should a Law be interpreted in retrospect? According to Musahara (2006), a significant proportion of women married as subsequent wives still reside and farm on the land held by their husbands. However, the current position of the Law has denied them inheritance of their husbands land rights and constrained them to the rights to rent and/or purchase as a form of land acquisition (Rurangwa, 2013), which may be very expensive for them to initiate.

The content of the LTR stipulates that all existing rights including those vested in polygamous families should be regularized. In practice however, it was found that women in monogamous families benefited immensely from the LTR compared to their counterparts in polygamous family institutions. This is because of ensuing problems of disputes over land rights in polygamous families which have defiled amicable family resolution such that an intervention by the village head became inevitable. In such

situation, it was found that village heads and land committees resort to alternative dispute resolution mechanisms to resolve the polygamous land disputes between a husband and his wives; and between the wives married under the polygamous family system.

In the course of fieldwork, one of the sector leaders narrated how a case of polygamous land dispute was handled through mediation. In his words, *"X is a young woman (around 30 years old) and has two children with the husband. The couple migrated to 2009 in Uganda in search of economic fortunes, but after a few months X returned to cyumba sector, while her husband returned later. In 2010, the husband of X married a second wife, with whom he had one child. The husband in question later decided to send X back to her parents so that he could live with his new wife. Following this impasse, the husband's family attempted to intervene to resolve the dispute by insisting that husband should vacate the house for his first wife and their children. However, the husband did not accept this solution and the dispute had to be brought forward to the Mediators of the sector. These mediators intervened in the dispute after which the husband accepted to vacate the house for his first wife and their children"*. Contrary to court litigations, this is a brief account from fieldwork on how mediation was found to be useful in the resolution of polygamous land disputes.

### **6.2.2. Parties in polygamous land disputes**

The findings from the field study and secondary data shows that polygamous land disputes in Musanze and Gicumbi Districts mainly occur between: (a) Husbands and illegal spouse, (b) Husbands and legal spouses, (c) illegal spouses and legal spouses and finally between illegal and illegal spouses. In Chapter 5, the results shows that 6.1% of husband respondents have land disputes with legal spouse, 28.8% of husband respondents have disputes with illegal spouses. On side of legal spouse respondents, 24.2% of them has land disputes with illegal spouse while 1.5% of illegal spouses has land disputes with illegal spouses. Finally, 13.6% of illegal spouse have land dispute with their husbands while 18.2% have land dispute with legal spouse.

Polygamy is accepted by women as long as their rights are respected. The man can have more wives, but the women must have their rights respected. When the registration started, if a man had more one wife, then he had to split his land between them. The first wife would have the land registered with the husband as stipulate by the land law. The other wives had land registered in their names- having received this land as a " friend"- and they could decided to have or not the name of the man in the certificate. With this kind of ownership, the illegal wives cannot access for some advantages like loan, compensation etc.

A good illustration of the problem is one family in Musanze District, where the husband has two wives. One with five children and other with four, and is not legally married to any of them. When the people in their neighbourhood had to be relocated, a dispute erupted over who should receive compensation. This confusion was due to the fact that the husband is alive but incapacitated and unable to take any decision and the older woman, whose older child was supposed to inherit according to a document the father wrote in 1993, says she built the house together with the husband and claims she should be the one to receive the money. But, the younger woman, who is living with the man, contests this, asking where she is supposed to go with her children and the man.

In this case, none of the women have any claim to the property for neither of them is legally married to the man, the district land officer explained. The man is the one to receive the compensation and then allocate to them what he wants. The lesson in this case is that the category of "illegal spouse" is the one who suffer the most and who can lose everything because they are not protected by the law.



### 6.3. Effectiveness of land tenure regularisation

#### 6.3.1. Importance of LTR by gender

Although LTR has empowered most Rwandan women in terms of land rights, only the legal spouses tend to enjoy rights of their land and property. Similar to other countries like Mozambique where a successful post-conflict land reform was implemented (De Wit, 2002), results from Rwanda indicates that LTR plays a vital role towards resolving land dispute in post-genocide period. Among these disputes is that emanating from rights of women in polygamous family institutions.

With reference to Figure 5-9, it was found that a significant number of women married as illegal spouses viewed LTR as important to the resolution of land dispute as well as increases their chance to access mortgages. However, these women are not confident that LTR can give them more secure land tenure in the first place. In the course of a focus group discussion in Musanze sector, a subsequent wife (illegal spouse) of one of the men in that community lamented that: *"even if I die now when I have my land certificate with my name and my husband name. I know I will go to heaven"*. Beyond the literal translation of her lamentations, inference can be drawn that she views her right to land titling as an assurance that she has a place in her husband's home.

It was obvious that women constitute the larger proportion of interviewees at the focus group discussion given the current adverse implication of polygamy on them. Men however constitute a smaller proportion of respondents in Figure 5-9. These men view LTR as affording more land rights to legal spouses; a situation which might not go down well with their subsequent wives (Figure 5-9).

It is important to mention that Land Tenure regularisation was developed on the premises of decentralisation, transparency and equity to guide the allocation and management of land with a view to guarantee security of tenure (Republic of Rwanda, 2004). The current practice in Rwanda recognizes that both husband and wife have equal land rights to the extent that their names appear on a land title certificate (Musahara, 2006). Notwithstanding, the current interpretation of the Rwandan laws on the subject of polygamy has made it awkward and even unconstitutional for the name of a man and his several wives to appear on a land title certificate; hence an alternative measure to resolve such conflicts becomes imperative especially for women who are victims of the Law that fails to take into account the fact that they consented to polygamy prior to the enactment of same Law.

#### 6.3.2. Importance of LTR by family position

The family position of key respondents include the husband, legal spouse, and the illegal spouses/subsequent wives of a man (See Table 5-3). Although 10 out of 42 legal spouses are view LTR as contributing to the resolution of land disputes, it was observed that 18 out of 44 illegal spouses in the focus group viewed land dispute resolution as an importance of LTR. Supporting this view is majority of the husbands in the same focus group. The implication of this finding is that the majority of men who are at the heart of this dispute are desirous to see it resolved amicably. These men are not so much concerned about the implications of LTR on land value or tenure security as such.



## 6.4. Satisfaction with the role of LTR in resolving polygamous land dispute

### 6.4.1. Satisfaction level by position of respondents in the family

Recalling that the family position of key respondents include the husband, legal spouse, and the illegal spouses/subsequent wives of a man, their satisfaction regarding the role of LTR in resolving polygamous land dispute was evaluated in this section. In general, it was found that husbands are the most satisfied respondents in the focus group. Their satisfaction with the role of LTR might be connected with the fact that it has relieved them of the enormous pressure of having to organize the resolution of impending land disputes within the family over the years. While it is unlikely that illegal spouses will have their names mentioned in land title certificates, ADR will in most cases award them land rights on the basis of the share of their husbands only. Similarly, children from such women are entitled to inherit the 50% share of their father.

### 6.4.2. Satisfaction level by location of respondents

Respondents in the focus group are made up of residents in urban and rural areas of Cyumba and Musanze sectors. It was observed that majority of respondents who were satisfied with the role of LTR in resolving polygamous land disputes are from rural areas of these sectors mentioned above. In other words, 72 out of 132 respondents who are resident in rural areas are satisfied with the integrated role of polygamous family land dispute afforded by LTR. Contrary to this, only 28 out of 132 respondents in the urban area are satisfied with the role of LTR in this regard. This finding confirms the prevailing characteristics of polygamy in rural areas of Africa (Hayase & Liaw, 1997) and the satisfaction likely to arise if land dispute resolution is integrated with LTR programmes (Payne, 2011).

## 6.5. Respondent's preference for the resolution disputes

### 6.5.1. Preference of dispute resolution mechanism

Preference of respondents for specific alternative mechanisms for resolving polygamous land disputes was elicited during the focus group discussion. With specific focus on the post-LTR period, it was found that mediation is the most preferred system of ADR for polygamous land disputes in the study areas. Ranked second in the order of their preference is arbitration, while other forms of ADR such as conciliation and family consensus were ranked as the last based on the frequency distribution of responses across the three categories of respondents namely: the husband, legal-, and illegal spouses respectively. This confirms the results of earlier studies concerning the suitability of mediation as an alternative to other legal systems of adjudication and dispute resolution (Gamman, 1994; Hutabarat, 2011; Mackie & Mackie, 2002).

It is further argued that land disputes can be administratively handled using technical tools in lieu of legal proceedings. Respondents further decried inefficiency of legal proceedings to address prevailing land disputes in a timely manner. They were of the view that available administrative system for resolving polygamous land disputes will go a long way to afford them timely resolution of these disputes without having to undergo rigours and cost of seeking legal counsel. Mediation does not involve expert fees or litigation costs.

One respondent however, put forward that *"It must be agreed that there is no way you can completely resolve land disputes and have no land case unless the entire sun is dead. If we are all dead then there can not be land disputes. Land disputes are everyday increasing because people are getting aware of their lands"*. In other words, this respondent was view land disputes as an inevitable phenomenon of man's interactions. This means that if any alternative

methods are to be established outside the formal system, the problem of enforceability of judgements or decisions emanating from these systems is left to the compliance of disputing parties.

In Rwanda, the "*Abunzi*" are the only actors that mediate disputes in a way that promotes sustainable peace within each community while simultaneously promoting the goals of LTR. These individuals rely on their knowledge of culture, expertise and community relations while participating in the mediation process. If provided with the right resources and training, these persons would possibly reduce the burden of pending litigations in the courts. We are convinced from by our findings that mediation is preferable to litigations which might fuel further disagreements and disputes in the future.

### **6.5.2. Preference of dispute resolution by religion of respondent**

As mentioned in chapter 2, religious institutions play a dominant role in actualizing the resolution of conflicts among parties. It was gathered in the course of the focus group discussion that all respondents are Christians except that they belong to different denominations. This phenomenon triggered the need to analyze the distribution of their preference for mediation, arbitration and other forms of ADR (conciliation and family consensus). Although Christian doctrines aligns with the constitution of Rwanda which prohibits polygamous family institutions, the emphasis of Table 5-5 was to examine the relationship between the Christian denomination of respondents and their preferred system of ADR. It was found that a predominant proportion of respondents who preferred mediation and arbitration are Catholics.

### **6.5.3. Efficiency of LTR as a tool for land dispute resolution**

The duration for the resolution of land disputes by mediation, arbitration, and other mechanisms in Figure 5-11 was used to measure the efficiency of LTR as a tool for alternative land dispute resolution. Among the existing ADR mechanisms embedded in the LTR programme, about 50 out of 132 respondents in the focus group replied that disputes referred to conciliation and family consensus process were determined in less than three months. While some of polygamous family land disputes referred to conciliation and family consensus were resolved within 1 year in which they were first mentioned, a significant number of such disputes are yet to be determined as analyzed from responses provided by participants at the focus group discussion. Among these ADR mechanisms, polygamous family land disputes referred to mediation processes were determined within periods of less than 3 months to a period of over one year depending on the complexity of matters involved. A good advantage of mediation as observed from Figure 5-11 is that only 2 out of 132 respondents replied that cases referred to mediation are awaiting the commencement of resolution process.

## **6.6. Summary**

Alternative mechanisms for resolving polygamous land disputes evolved as a result of the age-long customary practice of polygamy which is not accorded any recognition in the formal process of dispute resolution by the courts. In other words, the current position of Rwandan Law has restricted the rights of women married as subsequent wives to renting and/or purchase of land which might be very expensive for those residing in rural areas. In the course of implementing LTR, the government of Rwanda embedded options of ADR to help resolve polygamous land disputes between a husband and his wives; and between the wives married outside the system of court litigation.

Furthermore, It can be summarized that LTR is an effective tool for resolving polygamous land dispute in the study area given the findings that it affords subsequent wives who are the principal victims of the strict interpretation of Law prohibiting polygamy in Rwanda the opportunity to present their case and be heard

outside the court since their consent to the institution of polygamous marriage was done prior to the enactment of the current Laws which does not protect their rights to land titling in their matrimonial homes in the first place.

The satisfaction of key stakeholders with the role of LTR in resolving polygamous land dispute was measured using two indicators namely the position of respondent in the family, and the location of respondents. With respect to the position of respondents, it was found that husbands are the most satisfied respondents in the focus group. This is because LTR has relieved them of the enormous pressure of having to organize the resolution of impending land disputes within the family over the years. In terms of the location of respondents in focus group, it was gathered that the most satisfied respondents are residents of rural areas in Cyumba and Musanze sectors, who are at least happy that the integrated ADR process saves them from the financial burden of catering for the land rights and obligations of their family members.

It was found during the post-LTR period that mediation is the most preferred system of ADR for polygamous land disputes in the study areas. Reason adduced by respondents for this choice of ADR include timely resolution of land disputes without having to undergo rigours and cost of seeking legal counsel. However, the onus lies on disputing parties to voluntarily enforce the decisions reached during mediations.

The next chapter of this research draws conclusion and recommendations based on these findings.

## 7. CONCLUSION AND RECOMMENDATIONS

### 7.1. Conclusions

The main objective of the research was to investigate how land tenure regularisation was contributed to resolve land dispute in case of polygamy and land rights. This study was realised through analysis and data collected through questionnaires and interviews. Those were conducted in Cyumba and Musanze sector's both in Musanze district and Gicumbi district, Northern Province in Rwanda.

From the general objective, we formulated three sub-objectives: (1) the description of the evolution of alternative mechanism for resolving polygamous family land disputes, (2) the assessment of land tenure regularisation towards resolving polygamous land dispute and (3) propose the best alternative dispute resolution mechanism to resolve land dispute. Seven (7) questions were therefore raised and they have been answered by the data collected during the research period.

#### 7.1.1. Objective one: To describe the evolution of alternative mechanisms for resolving polygamous family land disputes in Rwanda

Under this question, three questions were raised " *who are the major actors in polygamous family land dispute?*", *which institutions exist to resolve those land disputes and what role do they play?*" and *"what are the process of resolving family land disputes in the context of polygamous home from 1999 to 2013?"*.

The result was found that major actors in polygamous family land disputes are husband, illegal spouse and illegal spouse.

At the same time the result shows that the institutions available to resolve polygamous land disputes are divided in three categories. The formal system such a court and the informal system. The first is established by law while the second is provided by the land tenure regularisation program such adjudication committee, land commission and land committee. The last institution was the government agencies and non- government agencies such the NGO's in charge of land resolution disputes.

In the context of polygamous family land dispute, the process was done through the office of the Registrar or Deputy Registrar in charge of this zone where the land dispute was located. The claim was addressed to the Registrar and resend to lawyers through the Deputy Director General in charge of lands and mappings.

#### 7.1.2. Objective two: To assess the effectiveness of land tenure regularization towards resolving polygamous land dispute

Two questions were answered for this objective: " *to what extent is the adjudication of land rights participatory for all family member's?*" and " *to what extent does the LTR program contribute to resolve family land disputes?*"

The adjudication of land rights was done by the adjudication committee which were composed by the village leaders. This committee is in charge to demarcate the plots and to regularize the rights through the documents presented by the owners or after listening to the village leaders.

In Rwandan context, land tenure regularization was the best solution and pro-poor program for all citizens to resolve land disputes especially polygamous land disputes. Also land tenure regularization presents a important opportunity to improve the position of Rwandan women in term of land rights.

### **7.1.3. Objective three: To propose alternative dispute resolution mechanisms or other tools that can contribute to resolve polygamous family land disputes**

For this objective, the question that was raised and needed to be answered was "*what are the indicators of effective ADR?*" and "*what are the preferred mechanism of alternative dispute mechanism in case of polygamous family land disputes?*"

Within the context of ADR, the indicators of effective LTR were found to include timely resolution of land disputes and satisfaction of stakeholders in polygamous land dispute with the LTR process.

Compared to Arbitration and conciliation, it was found that mediation is the most preferred mechanism for resolving polygamous land disputes in the study area.

### **7.1.4. General conclusion**

The research come up with interesting data around the topic : *Investigating the contribution of land tenure regularisation on land dispute resolution. The case of polygamy and land rights in Rwanda's Northern Province.* The findings from the field confirm the hypothesis that land tenure can contribute for resolving polygamous land disputes. Both in the two sector's, citizens and villager's leader's talk about the importance of LTR.

## **7.2. Recommendations**

In this study the following are some recommendations:

### **7.2.1. Recommendations**

Land disputes such polygamous land disputes need a low-cost dispute resolution tools. As mentioned, mediator's are not well educated and trained. It is why they need a legal training related to land laws and others laws related to land. In addition to that, materials are also needed in order to have a good results for resolving land disputes. It seems that after land tenure regularization in Rwanda and during the maintenance phase, there is a need of establishment of land dispute management project and also the good system of monitoring.

### **7.2.2. Future research**

The study focuses on the contribution of land tenure regularisation for resolving land disputes. The case of polygamy and land rights in Rwanda. Specific investigations can be done on the role of mediator's (*Abunzi*) in land disputes resolution system. Studies can also be done on the satisfaction of level of disputants after resolution of disputes and find the response that resolved land disputes will not receive again in the process.

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# APPENDICES

## Appendix A: Questionnaire for Community members.

### 1. Location:

- 1) Village .....
- 2) Cell.....
- 3) Sector.....
- 4) District.....
- 5) Province.....

### 2. Sex

1. Male
2. Female

### 3. Age: \_\_\_\_\_

### 4. Civil status:

1. Married
2. Cohabitant
3. Divorced
4. Widow/ Widower

### 5. Education level:

1. No education
2. Primary level
3. Secondary level
4. Tertiary level

### 6. Religion

1. Catholics
2. Protestant
3. Adventist
4. Muslims

### 7. Household size

1. One person
2. Two persons
3. Three persons
4. More than three persons

### 8. Employment status

2. Farmer
3. Business
4. Public server
5. Private employee
6. Artisan
7. Other (Specify).....

**9. Position in the family:**

1. Husband
2. Legal spouse
3. Illegal spouse

**B. SOCIAL ECONOMICS CHARACTERISTICS OF RESPONDENT**

**10. Size of land claimed**

1.  $\leq$  1HA
2.  $>$  1HA
3. Do not know

**11. Area of land**

1. Rural
2. Urban

**12. Monthly income**

1. Less 20,000 Rwf,
2. Between 20,000-50,000 Rwf,
3. 50,000 Rwf and more.

**C. QUESTIONS ON POLYGAMOUS LAND DISPUTES**

**13. Have you ever been involved in polygamous land disputes?**

1. Yes
2. No

**14. With whom do you (person) have or having the polygamy land disputes?**

1. Husband
2. Legal spouse
3. Illegal spouse

**15. When did it happen (month & year)? \_\_\_\_\_**

**16. How do you acquire the land?**

1. Gift.
2. Inheritance.
3. Purchased

**17. Is Land Tenure Regularization contributed to resolve polygamy land disputes?**

1. Yes.
2. No

**18 If resolved, which conflict management mechanism used to resolve your polygamy land disputes?**

1. Arbitration
2. Family consensus
3. Conciliation
4. Mediation

- 5. Facilitation
- 6. Court
- 7. Other ( specify).....

19. How long did it take or has it taken to go through the resolution process (days/ months)\_\_\_\_\_

20. Are you satisfied with the arrangement and process?

- 1. Satisfied
- 2. Unsatisfied
- 3. no opinion

**D. PREFERENCE IN LAND RESOLUTION MECHANISM**

21. Which land disputes resolution mechanism would you prefer to use for resolving polygamous land disputes?

1. Mediation	2. Arbitration	3. Conciliation	4. Facilitation	5. Consensus	6. Courts	7. Others (specify)

22. Why?

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24. How will you judge the effectiveness of land tenure regularization for resolving polygamous land disputes?

- 1. Very Satisfied
- 2. Satisfied
- 3. Unsatisfied
- 4. Do not know

25. Did land tenure regularization played a role in polygamous land disputes?

- 1. Yes
- 2. No

26. How?

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27. In your opinion, what is the best mechanism for resolving polygamous land disputes?

- 1. Arbitration.
- 2. Mediation.
- 3. Facilitation.
- 4. Conciliation.
- 5. Simple consensus.

28. Before LTR, Which mechanisms was best for resolving polygamy land disputes?

1. Using Mediation?
  2. Using Arbitration?
  3. Using Facilitation?
  4. Using Conciliation?
  5. Courts?
  6. Others mechanism?
- 29. Why is it the best?**

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**30. Do you have anything/ comments to add/?**

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**Appendix B: Interview schedule for key persons of land dispute resolution for local organisations.**

**Title/ Position:** \_\_\_\_\_

**Organization's name:** \_\_\_\_\_

1. In your organization, which types of land disputes do you normally receive?
2. Do you receive land disputes related to polygamy? Yes or No.  
If no. Normally I am supposed to end my data collection for this subject because he is not appropriate to respond to the remaining questions
3. If yes, how do you resolve polygamous land disputes?
4. Which laws or mechanisms do you use to resolve polygamous land disputes?
- 5.a. Which mechanism (s) is or are preferred by the citizens for resolving polygamous land disputes?
- 5.b. Why? \_\_\_\_\_
6. Are the conflict resolution rules or mechanisms known to the parties in polygamy land disputes before the process starts?  
Yes.  
No
7. If yes which kind of mechanisms are know by the parties in polygamy land disputes resolution?
8. How land tenure regularization contributed to deal with polygamous land disputes?
9. How many polygamy disputes cases were / have been filed in  
2009            2010            2011            2012            2013
10. How many were/ have been resolved?  
  
2009            2010            2011            2012            2013
11. How many were/ have been referred?  
  
2009            2010            2011            2012            2013.
12. Which mechanism are you using to resolve polygamous land disputes by using :  
a. Mediation

- b. Arbitration.
- c. Facilitation
- d. Conciliation
- e. Simple consensus

13.a. In your personal opinion, what is the best mechanism to resolve polygamy land disputes?

- a. Arbitration.
- b. Mediation.
- c. Facilitation.
- d. Conciliation.
- e. Simple consensus

13.b. Why? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Appendix C: Interview schedule for land Experts, Researchers, State officials.**

Male \_\_\_\_\_ Female \_\_\_\_\_

Title/ Position: \_\_\_\_\_

Organization's name: \_\_\_\_\_

1. Which Institutions/ Organizations are involved in the management of land in the Country?
  2. Which laws/ regulations mandate the above mentioned institutions to manage lands?
  3. Which types of lands tenures exist in the Country?
  4. In which areas in the country are land disputes prominent?
  5. What are the various types of land disputes in the country and the reasons for the disputes ?
  6. Do you deal with polygamous land disputes ?
  7. If yes who are the parties involved in polygamous land disputes?
  8. If yes what are the existing guidelines/ regulations for handling polygamous land disputes resolution in the country?
  9. If no: Are you involved in land tenure regularization? Yes or No.
  10. If yes : How Land tenure regularization deal with polygamous disputes?
  11. What are your experiences with LTR and polygamous land disputes?
  12. Does LTR contributed to polygamous land disputes resolution? If yes, How? If not, Why not?
  11. Are there alternative disputes mechanisms used by Land tenure regularization to resolve polygamous land disputes effectiveness? Which is the preferred mechanism and why?
  12. In your opinion, what is the best mechanism for resolving polygamous land disputes and why?
- Arbitration.
  - Mediation.
  - Facilitation.
  - Conciliation.
  - Simple consensus

**Appendix E : Advantage and disadvantages of Dispute resolution Mechanisms**

	Advantages	Disadvantages
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<p><b>COURTS</b></p>	<ul style="list-style-type: none"> <li>• Decisions are made by legally qualified judge.</li> <li>• Doctrine of judicial precedent will be applied by the judge, which leads to a reasoned decision.</li> <li>• There is a appeal system if a party is unhappy with the decision of the trial judge.</li> <li>• Legal aid is available for these on a low income.</li> </ul>	<ul style="list-style-type: none"> <li>• Courts are very expensive.</li> <li>• There are delays in waiting for the trial.</li> <li>• The procedures are complex.</li> <li>• The courts are open to the public and press, which could lead to adverse publicity.</li> <li>• The judge will not have technical expertise.</li> <li>• The court service chooses the trial date.</li> </ul>
<p><b>Alternative Dispute Mechanism Resolution</b></p>	<ul style="list-style-type: none"> <li>• Cheap, some schemes are completely free.</li> <li>• Quick, many cases can be resolved in a matter of weeks, or even days.</li> <li>• Efficient system for recovery of debts, by individuals.</li> <li>• Confidentiality</li> <li>• Enhancing Flexibility and Informality is preferred by many clients.</li> <li>• ADR is " alternative" dispute resolution , not intended to be compulsory, but should be " appropriate".</li> <li>• Creates an imbalance by allowing an Unprepared side to be assisted a mediator.</li> <li>• Simple process, for example with small claims.</li> <li>• More suitable in family matters, or where the parties have ongoing relationship.</li> <li>• High degree of success. And use is growing rapidly.</li> <li>• Middle class professional complainants make a high proportion of the users ADR, particularly Ombudsman and trade association.</li> </ul>	<ul style="list-style-type: none"> <li>• ADR are not legally bindings ( Enforceability)</li> <li>• Lack of legal background</li> <li>• No specific model</li> <li>• Not all of ADR are quick, in fact some forms of ADR require a client to pass through many stages before adjudication.</li> <li>• There can be too much informality, not popular with sophisticated clients.</li> <li>• Disadvantages the less powerful side in a dispute, by assisting negotiation thereby produces a results that reflects the imbalance of bargaining power.</li> <li>• Not popular with lawyers because it is not in their financial interests. This has the effect of closing access to the legal system which should be open " to all".</li> <li>• Some trade arbitration schemes, such as ombudsmen often award less than would a court.</li> <li>• Unsuitable for some types of claims, for example where there has been intentional wrongdoing, or involves public law or crime.</li> </ul>
<p><b>Customary</b></p>	<ul style="list-style-type: none"> <li>• The System fits into situation of the State inefficiencies</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary decision</li> <li>• The System may contradict</li> </ul>

<b>Dispute Resolution</b>	<ul style="list-style-type: none"> <li>• The System approaches are not-centric</li> <li>• The System is the process - oriented and take time into consideration</li> <li>• The system provides for inclusive and participatory approaches</li> <li>• The system focuses on the psycho-social and spiritual dimensions of conflicts</li> </ul>	<p>universal standards and Human rights and democracy</p> <ul style="list-style-type: none"> <li>• No specific regulations for punishment</li> <li>• Open for corruption</li> </ul>
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