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LAND PROJECT: TRAINING ON LEGAL FRAMEWORK GOVERNING LAND IN RWANDA

TRAINING PROCEEDINGS REPORT



June 2013

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CONTACT INFORMATION:

Anna Knox

Chief of Party

LAND Project

Nyarutarama, Kigali

Tel: +250 786 689 685

aknox@land-project.org

TRAINING ON LEGAL FRAMEWORK GOVERNING LAND IN RWANDA

Training Proceedings Report

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LAND Project

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ACRONYMS

CCB1	Civil Code Book 1
CPCCSA	Code de Procédure Civile, Commerciale, Sociale et Administrative
CSO's	Civil Society Organisations
FARG	Fonds des Assistances des Rescapes du Genocide
GOR	Government of Rwanda
TORs	Terms of Reference
USAID	United States Agency for International Development

1.0 INTRODUCTION

In partnership with USAID LAND Project, HAGURUKA held a training that brought together defense lawyers and other legal aid providers working with different civil society organizations (CSOs) to train them on the legal framework governing gender and land and equip them with the knowledge and skills to effectively defend the land rights of women and vulnerable groups.

Funded by the USAID, the LAND Project aims at strengthening the resilience of Rwandans, communities and institutions and their ability to adapt to land-related economic, environmental and social change. One of its primary objectives is to increase understanding of land laws, policies, regulations and legal judgments on land-related issues by GOR officials, local civil society organizations, research institutes and citizens. The training particularly sought to contribute to this objective.

HAGURUKA is a Rwandan non-profit legal entity established in 1991 with a mission of protecting and promoting the rights of women and children. HAGURUKA has a large network of legal aid providers helping to defend the rights of women and children in Rwandan communities, including their land rights.

HAGURUKA is named as a key local partner in the contract between USAID and Chemonics International to implement the LAND Project. During LAND Project Year 1 Work Planning meetings, HAGURUKA was identified as a partner in strengthening the capacity of lawyers and other legal aid providers to improve their capacity to provide effective legal aid services in resolving land-related disputes. Given HAGURUKA's unique appreciation for the land rights of women and children and the importance the LAND Project places on addressing gender and vulnerability constraints in land tenure, the decision was made to focus the training on cultivating capacity in defending the land rights of women and vulnerable groups.

Preparations for the training began in late 2012 with development of a concept note for the training and negotiation of a fixed priced subcontract between Chemonics International (the prime implementing partners for LAND Project) and HAGURUKA to prepare for and implement the course. Subcontract implementation commenced on 18th January 2013. Key subcontract deliverables submitted by HAGURUKA under the subcontract included:

- Invitation list
- Training needs assessment
- TORs for four trainers
- Report on training content and methods
- Training material and curriculum
- Moot court case and method
- Logistics report
- Training evaluation form
- Completed course
- Course proceedings
- Original course evaluations

The training took place from 1 to 5 April 2013 (see Annex 2: Agenda) at the Nobleza Hotel in Kigali. Thirty six (36) participants from nine different organizations attended the course, 23 (64%) of who were women and 13 (36%) of who were men (see Annex 1: Training Participants List).

2.0 TRAINING CONTENT AND APPROACH

The training program was facilitated by four qualified trainers, including two principal trainers and two assistant trainers. During the first segment of the training (April 1-3, 2013), the trainers imparted knowledge on the legal context that governs land in relation to women's and other vulnerable groups' rights and facilitated group discussions to enhance the trainee learning process (see Box 1). During the final two days of the course (April 4-5, 2013), trainers facilitated and participants engaged in a moot (simulated) court exercises aimed at strengthening trainees' capacity to prepare and

defend land-related legal cases before court (see Box 2). The six cases presented all concerned gender and land matters.

Box 1: Training Content – Legal Framework Governing Land Rights of Women and Children

Part 1: Historical Background of Land Management and National Land Policy vis-à-vis Women's Land Rights in Rwanda

- History of Land Management in Rwanda before, during and after colonization, National Land Policy
 - Land-related Issues (Land pressures and implications for land fragmentation agriculture and soil fertility, Lack of clear Law governing land. Discrimination against women in land management. Scarcity of experts, tools and financial resources)
 - General vision of the National Land Policy
- Analysis of Organic Law No. 08/2005 of 14/07/2005 on Land Use and Management
 - Organic Land Law vis-à-vis the hierarchy of Laws
 - Organization and Content of Organic Land Law
 - Principles underlying the Organic Land Law
 - Categorization of Land
 - Management, Organization and Exploitation of Land
- Land Use
- Land Management
- Rights and Obligations of Landlords
- Prescription
- Penalties
- Land Dispute Resolution
- Changes brought by this Law

Part 2: Analysis of the Complementarity of the Organic Land Law and Other Laws vis à vis Women's Land Rights in Rwanda

- Link between Organic Land Law and Law on Matrimonial Regimes, Liberalities and Succession
 - Gender equality over rights to manage land property
 - Impacts of chosen matrimonial regimes for land management issues
 - Children's Equality on the transfer of Land Rights
- Transfer of Land Property
 - Equal Rights between female and male children
 - Rights of minors and other incapacitated children
 - Rights confirmation of people who acquired land customarily
- Law No 59/2008 of 10/09/2008 on Prevention and Punishment of Gender-based Violence and women's access to land
- Land Law and Law No 10/2009 of 14/05/2009 on Mortgages as amended to date
- Land Law and Organic Law No 04/2005 of 08/04/2005 on Protection, Conservation and Promotion of Environment

Box 2: Training Content – Moot Court

- Moot Court Definition
 - Its purpose
 - Its Organization and Requirements
- Moot Court Preparation, Thinking and Research
 - Organizing Points
 - Preparing Notes
- Moot Court Presentation
- Time Allocation for Moot Court Preparation and Presentation
- Discussion and Feedback
- Guide for those who play the role of Judge

The course method stressed interactive learning. Trainers sought to ensure that the trainees and the learning process were the focal points of the training and that ample opportunities to engage in critical thinking, sharing of experiences and reflection were provided. Trainees reported feeling empowered by the learning format (see Section 4), which included:

- 1. Presentation of Learning Content.** In order to build upon trainees' existing foundation of knowledge, trainers presented fundamental legal instruments that govern the land rights women and vulnerable groups, including international legal instruments to which Rwanda is signatory. Presentations were segmented and followed by discussion on the application of land-related legal provisions in Rwanda. Presentations helped trainees to create a common understanding of the training material given that communication between facilitators and trainees was encouraged during their delivery.

- 2. Facilitated Group Discussions.** Small group discussions enabled participants to exchange experiences in the field of law, share understanding of the legal framework governing land, and discuss issues related to protecting and advocating for women and vulnerable groups in securing their land rights. To stimulate these discussions, facilitators provided key questions related to material covered during the presentation, and divided the participants into different groups. Guidance from facilitators was offered during these exercises, and each group nominated one participant to present and share the group

answers during plenary sessions (see Section 3). Group work discussions proved effective in keeping trainees engaged and actively involved in the training process.

- 3. Moot Court.** Moot court is a training technique often applied by law schools. It involves participants in acting out a simulated court proceeding, including preparing legal briefs and presenting oral arguments. During the training course, six groups were formed among the trainees and the following roles assigned to the group members: presiding judge, court clerk, parties to the case, advocates and (where necessary) witnesses. Each group was appointed a different land-related case developed by the trainers to resemble actual legal cases commonly brought before the courts. In addition to training participants to prepare an actual case, the exercise was used to assess trainees' skills in conducting legal research to support their cases. The entire moot court exercise was video-taped to enable it to be developed into a tool for future trainings.

Participants were given three hours and forty five minutes to prepare their cases and arguments (see guidelines in Annex 4), after which the different groups acted out the court proceedings before an audience of their peers. Following each group's presentation, both facilitators and trainees provided their observations and feedback, thereby generating new learning opportunities for the participants. The quality of case formulation and presentation varied significantly, largely due to the different levels of experience in the field of law. Some participants were legal aid providers who had no prior experience presenting cases in court.

3.0 TRAINING PROCEEDINGS

This section provides a summary of the chronological proceedings of the training course beginning on April 1 and concluding on April 5, 2013.

Day 1: Monday, April 1, 2013

3.1 Introductory and Opening Remarks

USAID Rwanda representative, Mr. Guillaume Bucyana, delivered the first introductory remarks. He outlined USAID objectives and interventions in different sectors, including democracy and governance. Mr. Bucyana explained the link between the LAND Project and USAID's objectives in Rwanda for supporting democracy and governance and economic growth. Mr. Bucyana urged training participants to fully take advantage of the training and use it as an opportunity to enrich their knowledge on legal issues encompassing land.

Guillaume Bucyana's remarks were followed by those of Dr. Fidele Masengo, Deputy Chief of Party of LAND Project. Dr. Masengo presented the LAND Project's two-fold objectives of building the capacity of Rwandan institutions in land-related research and broadening the understanding of land-related policy and law.

Dr. Masengo articulated the rationale for offering this training and the partnership between LAND Project and the organizers of the training, HAGURUKA. He then proceeded to present the training program. Dr. Masengo made reference to the Rwanda Land website developed by the LAND Project to assist stakeholders in gathering knowledge on issues pertaining to land. The website features land-related laws, articles and news. Dr. Masengo concluded by encouraging both training participants and trainers to integrate participatory and interactive learning approaches in the course and thanking HAGURUKA and LAND Project staff for their efforts to ensure the successful opening of the training.



Dr. Fidele Masengo (C), Elie Nizeyimana (L) and Guillaume Bucyana (R). Credit: USAID LAND Project

The final set of opening remarks was delivered by HAGURUKA Acting Executive Secretary, Mr. Elie Nizeyimana. He welcomed the participants to the training and recapped the main goal of the training: to enhance the capacities of legal practitioners in advocating for the land rights of women and vulnerable groups. He offered participants an overview of the training themes and training agenda. Mr. Nizeyimana prompted participants to take advantage of the training to gain understanding of important legal provisions related to land. He concluded his remarks by thanking USAID LAND Project for their contribution in supporting the implementation of the training.



Elie Nizeyimana (L) addressing his opening remarks to the participants. Credit: USAID LAND Project

3.2 Day 1: Presentations

Ms. Justine Mirembe, assistant trainer for the first phase of the training on the legal framework, presented an historical background of land management in Rwanda and the origin of the National Land Policy, focusing particularly on the treatment of women's land rights in Rwanda. The historical background of land management and land law was characterized in three periods, that preceding colonization, during colonization and after independence.

Ms. Mirembe highlighted progressing trends in the legal recognition of women's rights, including land rights and made reference to the watershed declaration of equality between men and women in the newly enacted Constitution of 2004. She likewise pointed to elements contained in Rwanda's National Land Policy in support of women's land rights and made note of its alignment with Rwanda's Vision 2020.

Ms. Mirembe's presentation was followed by that of Mr. Jean Kabuye, the principal trainer. He explained the position of the Organic Land Law in relation to the hierarchy of laws governing land, and the changes it had brought.

Kabuye described some of the realities in Rwanda that led to enactment of the Organic Land Law:

- High dependence of Rwandans on land for survival (around 90% of Rwandans depended on land);
- High incidence of disputes over land;
- High population density; and
- Failure to recognize women's rights to land.



Advocate Jean Kabuye facilitating the course. Credit: USAID LAND Project.

Mr. Kabuye's overview of the Organic Land Law aroused discussion among participants on contradictions between Article 35 of the Organic Land law vis-à-vis articles 21 and 22 of the Succession Law of 1999 and 176 of the Law n° 21/2012 of 14/06/2012 relating to the Civil, Commercial, Labor and Administrative Procedure (CPCCSA in French); along with articles 20 and 21 of the Draft Law Governing Land in Rwanda vis-à-vis article 91 of Succession Law.

The key discussion points revolved around the transfer of land rights to a third party which requires written consent of all the joint-owners of the land, including women.

However, trainees raised an important issue on article 21 of the Succession Law which stipulates that, “Whatever the matrimonial regime chosen and the management modalities of the patrimony of the spouses, the agreement of both spouses shall be required for the **donation of an immovable property.**” It was urged that there is a possibility of movable properties that may bear greater value than immovable property, such as capital market shares. However, the law does not require prior consent of both spouses upon the transfer of such movable property.

It was proposed that article 21 of the Succession Law be amended to require the consent of both spouses for the transfer of all matrimonial patrimony including moveable and immoveable. Also, discussions arose on article 20 of the Draft Law Governing Land in Rwanda which states that, “any transaction on land rights made by an elected family representative requires the consent of *all the registered right holders of the family with whom he or she shares those rights.*” Therefore, once the bill is enacted, the children’s consent will no longer be a prerequisite for the transfer of land rights, since children do not feature on the Certificate of Registration.

Mr. Kabuye, also, noted that the Organic Land Law is on the verge of being repealed and replaced by an ordinary law, and presented the reasons for the change:

- The Constitution stipulates that land will be regulated by an ordinary law, not by an Organic Law and hence the need to alter the type of law that governs land;
- To amend the law such that the consent of children is not a prerequisite for transferring land;
- To direct that certain legislation be provided for by secondary legislation such as Ministerial Orders and decrees.

3.3 Day 1: Group Discussions and Presentations

During the group discussions, three groups were formed. One group comprised lawyers while the other two groups were made up of legal aid providers and other representatives of CSOs. Each group was tasked to discuss the challenges they faced

defending the land rights of women and vulnerable groups and record these. Each group then shared the results of their group discussion in plenary with other participants. Outcomes of the discussions are featured in Boxes 3, 4 and 5.



Training Participants in group discussions and plenary session. Credit: USAID LAND Project.

Box 3: Outcomes of Group 1 (Practicing Lawyers/Advocates)

Topic: What are the challenges faced by lawyers in defending women's land rights and other vulnerable group? What measures can be taken in order to overcome such challenges?

Challenges Identified:

- Women's ignorance of laws on family patrimony causing women to lack facts to present in court when cases surface (this happens even to highly educated women). An example in relation to this issue is where men buy and register their properties without the knowledge of their wives, even registering land under their concubines' names.
- Lack of legal provisions to draw on in pleading for women who are illegally married and request joint sharing of properties. Usually all properties including land acquired together by these spouses are registered under the husband's name. It is often problematic to find legal provisions to back up her case, and uncertainty about using Article 39 of Gender-based Violence (GBV) law.
- Women improperly filing claims without seeking assistance from a lawyer, leading to cases not being reviewed by a competent court or women losing their cases.
- Loss of cases due to victims (often women) covering for their spouses in cases of domestic violence.

Recommended Measures to Address Challenges:

- Introduce outreach programs via the media that sensitize women about their rights to land.
- Train local government officials responsible for enforcing legal provisions governing land need.

Box 4: Outcomes of Group 2 (Legal Aid Providers and CSO Representatives)

Topic: What challenges do you face to protect/advocate for children's and other vulnerable groups' (except women's) land rights? What are the strategies to overcome those challenges?

Challenges Identified:

- Articles 35 and 36 of the Organic Land Law do not protect rights of minor children in the event parents decide to transfer the land; consent by minor children is not required.
- Articles 73-77 of the Organic Land Law provide penalties to persons who do not exploit land with no exception made in cases when a land proprietor is a child or another vulnerable group who is incapable of exploiting the land. In addition, minor children become victims once sanctions are applied to parents for not effectively exploiting the land.

Recommended Measures to Address Challenges:

- Amend the above-noted provisions;
- Provide a compulsory land quota for children, i.e. land that cannot be transferred and will be managed by parents until their children attain majority age.

Day 2: Tuesday, April 2, 2013

3.4 Day 2: Presentations

The trainers presented the complementarity of the Organic Land Law to other legislative instruments governing succession, gender-based violence, mortgages, environment, expropriation and land registration. Drawing on research conducted in Rwanda pointing to women's high involvement in agriculture and other land-related activities, trainers argued that it is imperative to clearly establish gender equality in land rights. The trainers illustrated how the different laws either contributed to or confirmed gender equality as far as the land rights are concerned, but also invited discussions on gaps that hinder full attainment of gender equality and recommendations for ways to fill these gaps.

3.5. Day 2 Group Discussions and Presentations

This session sought to elicit participant discussion of particular legal provisions governing women's and men's land rights and to assess potential gaps in the legal framework as well as implementation of the law. Four groups were formed based on random selection. The outcomes of these discussions are provided in Boxes 6, 7, 8 and 9.

Box 5: Outcomes of Group 3 (Legal Aid Providers and CSO Representatives)

Topic: As a CSO or an individual working for the protection and promotion of women's rights, what are the challenges that hinder you from effectively performing your duties? What are your recommendations regarding those challenges?

Challenges Identified:

- Victims' naivety of the law
- Traditions that negatively impact women;
- Absence of laws regulating the management of properties of spouses in illegal marriages;
- Fraudulently, erroneously or customarily registering property under the husband's name without considering the matrimonial property regime governing spousal property management;
- Execution of cases in which the husband is involved in the commonly owned properties

Recommended Measures to Address Challenges:

- Establishment of law/legal provisions regulating the management of properties of illegally married spouses.

Box 6: Outcomes of Group 1

Topic: Discuss Article 70 and 66 of Succession Law¹

Identified Legal/Implementation Gaps:

- Failure to provide rights for illegally married spouses or cohabitating partners;
- Exclusion of surviving spouses on the list of heirs to a deceased's property;
- Widespread failure to comply with Article 70 concerning succession of surviving spouses. Generally, this is due to failure to complete an inventory of the properties following the death of one of the spouses. In most cases, it occurs to the women's and children's detriment;
- Article 70 is not clear about the succession rights of spouses vis a vis children for situations where children from parents who are illegally married, but later the union becomes legitimate;
- Failure of Article 66 to provide mechanisms for management of inherited properties acquired by minor children; and
- Failure of Article 66 to allow the surviving spouse to partially or fully inherit the property of her/his deceased spouse when they are married under the separation of property regime, especially when Article 209 of Civil Code Book I obliges spouses to take part in mutual assistance while they are alive

¹Article 66: In the case of marriage under the regime of separation of property, the order of heirs in succession shall be as follows:

1. The children of the de jure;
2. The father and mother of the deceased;
3. The full brothers and full sisters of the deceased;
4. The half- brothers and half -sisters of the deceased;
5. The uncles and aunts paternal as well as maternal of the deceased.

With the exception of the father and the mother of the deceased, all other legatee heirs deceased before the de jure shall be represented at the succession by their descendants.

Article 70: Succession of spouses married under the regime of community of property shall be carried out as follows.

1. In case of death of one of the spouses, the surviving spouse shall ensure the administration of the entire patrimony while assuming the duties of raising the children and assistance to the needy parents of the de jure;
2. When both spouses die leaving children behind, the latter shall succeed to the entire patrimony, but must also assist their grand-fathers and grand- mothers. When the children are not blood- related, the patrimony shall be divided in two, and each child shall succeed to the part of his or her respective parent
3. When the spouses die without leaving a child behind, the patrimony shall be divided in two, one half being allocated to the successors of the husband, the other being allocated to the successors of the wife;
4. In the event that the widower/widow did not have a child with the de jure, the former takes one half of the patrimony, and the heirs of the de jure share the other half
5. When the widower or the widow does not fulfill his/her duty of assistance to the parents of the de jure, the family council shall allocate to the parents the succession part of the deceased;
6. In case the surviving spouse fails to fulfill his/her duties to raise the children of the de jure, his/her succession shall be cut back by 3/4 which shall be given to the children;
7. The surviving spouse who no longer has any children under his/her care and wants to remarry shall obtain full ownership of the 1/2 of the patrimony and another half shall be given to the deceased's heirs;
8. In case of remarriage of the surviving spouse who is still bound by the duty of raising the children of the de jure; she or he shall obtain full ownership of 1/4 of the succession and shall continue to administer the remaining 3/4 for the benefit of the children;
9. Where the surviving spouse did not remarry but gave birth to an illegitimate child, the 1/2 of the patrimony shall, on the day when the children are entitled to inherit, be devolved to the children of the de jure and the other 1/2 shall be devolved to the other children of the widow or widower in equal parts without any discrimination between legitimate and illegitimate children.

Box 7: Outcomes of Group 2

Topic: Discuss Articles 2 and 8 of the Succession Law²

Identified Legal/Implementation Gaps:

- Imposition of the community of property matrimonial regime by Civil Status Officers without providing the intended spouses adequate time to consider the implications and select the most appropriate regime for them.
- Limited time allocated by authorities to explain the different matrimonial property regimes to future spouses, leading to many problems among family members and often disadvantaging women's rights.

²Article 2: Upon entering marriage spouses shall choose one of the following matrimonial regimes:

1. community of property;
2. limited community of acquests;
3. separation of property.

In case no provision is made, the spouses shall be deemed to be married under the regime of community of property.

Article 8: At the marriage celebration, the spouses who opted for the regime of limited community of acquests shall establish and submit to the- officer of civil status a signed inventory of assets and liabilities defined by each spouse to constitute the community. Any property that is not inventoried as common property shall, be presumed to be personal property

Box 8: Outcomes of Group 3

Topic: Article 21 of Succession law of 1999 and Article 39 of GBV law of 2009

Identified Legal/Implementation Gaps:

Article 2 of the Succession Law conflicts with Article 21 which attributes property, more specifically with "abusus" (disposal) as far as the properties which are not commonly owned are concerned. It was argued that legislators overlook that some moveable properties may bear greater value than some immoveable properties and proposed that article 21 be amended to require consent of both spouses for the transfer of all matrimonial patrimony, regardless of whether it is moveable or immoveable property.

- *Article 39 of the GBV Law*² does not adequately defend matrimonial property rights of women who are not legally married to their husbands. In most cases, women are the victims given that the properties are registered under their husbands' names. It is also unclear why spouses referred to in the article are considered as if they were married under the community of property regime.
- GBV Law is silent when it comes to the property rights of illegally married women/men who are separated from their husbands/wives as a result of death, voluntary separation, etc.

Article 21 of the Succession Law: Whatever be the matrimonial regime chosen and the management modalities of the patrimony of the spouses, the agreement of both spouses shall be required for the donation of an immovable property and of any other property in the community, as well as for the acknowledgement of any right attached to these properties.

Article 39 of the Law n°59/2008 of 10/09/2008 on Prevention and Punishment of Gender- based Violence: Legalizing unlawful marriages and commun assets distribution. Those people entertaining unlawful marriages shall be married in accordance with the monogamous principle. If a person concerned with the provision of previous paragraph of this Article was living with many husbands/wives, he shall first of all share the commonly owned belongings with those husbands/wives equally. The property distribution referred to in paragraph 2 of this Article shall not entrench on the children's legally recognized rights. Modalities of such distribution shall be determined by an Order of the Minister in charge of Local Government.

Box 9: Outcome of Group 4

Topic: Discuss Articles 42 and 43 of Succession Law

Legal/Implementation Gaps:

Vagueness about age at which a child can be regarded as an adult to receive a share in respect with different laws on the subject of majority, which are assumed to be always in conflict. For instance:

- According to Article 16 of Loi n° 42/1988 Titre préliminaire et Livre Premier du Code Civil du 27 Octobre 1988 - Literally translated as Civil Code Book 1 (CCBI), a conceived child has civil rights on conditions he/she is born alive and can be considered born whenever his/her interests demand it.
- Article 431 of Civil Code Book 1-CCBI), Civil Majority age is 21 years.
- Article 3 paragraph 10, Law n° 54/2011 of 14/12/2011 Relating to the Rights and the Protection of the Child, a child is defined as any person under the age of eighteen (18) years.
- Under some insurance acts or policies consider the majority at more than 21 years (in certain circumstances at Social Security Fund for instance, a person aged 25 is considered as a child).
- Article 1 paragraph 45, Law n° 13/2009 of 27/05/2009 regulating Labour in Rwanda, hereby referred to as Labour Law, Majority age is 18 years.
- Article 100, Organic Law n° 01/2012/OL of 02/05/2012 instituting the Penal Code; a child who is under the age of fourteen (14) years shall not be criminally liable. Penal Majority age is 14 years.
- In accordance with Article 184 of the Law no. 13/2004 of 17/5/2004 relating to the Code of Criminal Procedures a child between 10 and 12 years for exceptional reasons can be detained.

Economic hindrances faced by children to exploit land which is given to them. Ideally, it is presumed that children receive their share of land from their parents once they attain majority age. At this age they are considered as adults and can exploit their land though with limited resources.

Article 42, Succession Law: Ascending partition is an act accomplished by parents while they are still alive, by which they share their patrimony between their children or their descendants who acquire, each for the portion devolved to him or her, full ownership. This partition shall be regarded as the accomplishment of parents'

The principal trainer, Mr. Kabuye, complemented the results of Group 3's discussions by highlighting an actual case filed to the Supreme Court challenging article 39 of the

GBV Law of 2009¹ as being contrary to the monogamous marriage principle provided for in the Article 26 of the Constitution. However, the Supreme Court interpreted Article 39 of the GBV Law of 2009 as not infringing on the monogamous principle, relying on foreign legal instruments to support its arguments. The decision quotes the Homesteads Act of Manitoba/Canada which allows unmarried couples to share their property. The Supreme Court of Rwanda also drew on Article 11 of the Property (relationships) Act 1976 of New Zealand which reads, “On the division of relationship property under this Act, each of the spouses or partners is entitled to share equally in – (a) the family income, And (b) the family chattels; and (c) any other relationship property.”²

Day 3: Wednesday, April 3, 2013

3.6. Day 3 Presentation and Plenary Discussion

Mr. Jean Kabuye on the complementarity of the Organic Land Law and other national laws vis-à-vis regional and international legal instruments ratified by Rwanda that address property rights. Following the presentation, participants discussed the practice of Rwandan lawyers invoking international legal instruments and concluded that most do not incorporate international legal instruments ratified by Rwanda in their legal submissions or pleas. Some of the hypothesized reasons were:

¹ Court Decision Case N° RS/Inconst/Pen.0003/10/CS rendered by the Supreme Court, on January 7, 2011.

² According to Section 8 of the Property Relationships Act 1976, Relationship property is the property that must be divided between the parties when their relationship ends. Relationship property will usually include:

- Family home and chattels (including the family car, household furniture and effects and anything else owned by the family or used for family purposes). These are all usually considered relationship property regardless of who paid for them or when they were acquired.
- Family businesses and investments. The general rule is that any business used to produce family income and any savings or investments made out of family income are treated as relationship property.
- Property owned jointly or in equal shares by the spouses or partners
- Property acquired during the relationship
- Property acquired in contemplation of the relationship and intended for common use or common benefit
- Contributions to superannuation and insurance policies after the relationship began
- Increases in the value of relationship property, or any income from it, or any proceeds from sale of it.

- Ratification of International Conventions by Rwanda is done through Orders approved by the Cabinet Ministers, however, their content is not published into the official gazette, and this leads to limited access to those conventions.
- Indolence of some judges in reading submissions, discouraging many lawyers to write detailed legal submissions. Due to the case flow in the courts, and the signing of the performance contracts to accomplish a certain number of cases in a specified timeframe, judges tend not to read the entire legal submissions filed by the lawyers. Consequently, while drafting the court judgment they hardly refer to the written submissions. Therefore, lawyers were advised to underscore the facts of the case and the legal basis of the case during the court proceedings and make sure that the court clerk takes down the notes. Legal basis should entail both domestic legislations and international conventions to which Rwanda is signatory
- The pressure for judges to adhere to performance contract targets is a factor leading them to not spend adequate time reviewing legal submissions.

The trainers introduced the topic of the justifiability of economic and social rights, underscored the dualism/monism notions with regard to international legal instruments, and what the social-economic rights and obligations bear with those rights. Participants discussed whether the GOR had set necessary and sufficient measures to ensure access and protection of the social and economic rights, and raised the Grootboom Case in the context of a debate on the justifiability of women's housing rights in Rwanda.

While trainees agreed that the GOR had put in place legal measures to promote and protect women's land rights, many felt that serious implementation gaps remained. Others argued that the GOR has carried out some government implementation programs, such as Bye- Bye Nyakatsi, Fonds des Assistance aux Rescapes du Genocide (FARG), One Cow per Family, and other programs are aimed at fulfilling the socio-economic rights of women and vulnerable groups. Nonetheless, all participants and trainers agreed that despite the GOR's efforts to fulfill these rights, there are still no

written policies or other measures dedicated to the fulfillment of these rights, concluding that this makes defending these rights challenging in Rwanda.

Days 4 and 5: Thursday and Friday, April 4&5, 2013

3.7. Introduction to Preparation and Presentation of the Moot Court Cases

The fourth and fifth day of training were dedicated to preparation and presentation of the Moot Court proceedings and were facilitated by Mr. Emmanuel Ndizeye, Principal Trainer, and Mr. Justin Niyo Rushikama, Assistant Trainer. Trainers began by introducing the concept of the Moot Court to trainees and providing guidelines on implementing the cases. Mr. Ndizeye described the moot court exercise as a simulated courtroom and a good for cultivating skills in legal research, advocacy, and public speaking.

He emphasized that benefits derive from taking the exercise seriously and devoting ample time to researching the case and thinking about how to formulate one's arguments and present them before the court. He then, outlined the steps of moot court preparation (see Table 1 and Annex 4) before dividing participants into six small groups for the exercise. He ended by assigning cases to each of the groups and distributing the background materials pertinent to those cases to guide group preparations (see Annex 5).

Table 1: Steps for Preparation of the Moot Court exercises

Steps:	Tasks:	Time(3Hrs 30min)
Step 1	Case Analysis	30 minutes
Step 2	Research	30 minutes
Step 3	Formulation of argument	30 minutes
Step 4	Meeting your partner	15 minutes
Step 5	Writing skeleton argument	1 hour
Step 6	Submission of skeleton argument to registry	-
Step 7	Final Preparations	45 minutes
	TOTAL CASE PREPARATION TIME	3.5 HOURS

Presentation of the cases and arguments by the different groups began on the afternoon of Day During the presentations, facilitators and the remaining trainees played the role of observers. Afterwards, they and provided the group with comments and feedback on the strengths and weaknesses of their case presentations.



Participants engaging in a moot court exercise. Credit: USAID LAND Project

Some of the identified weaknesses pointed out by trainers and participants alike were:

- Lack of confidence by most mooting lawyers in presenting their cases before the Judges, including failure to face the judge while pleading for their clients;
- Limited ability by most of the mooting lawyers to respond adequately to unexpected questions/arguments raised by adverse parties during the hearing;
- Limited research conducted by most of the mooting lawyers to support their cases, especially with regard to overreliance on domestic legislation to the exclusion of regional and international legal instruments ratified by Rwanda, case precedents, doctrines, etc. to support their cases;
- Efficient management of time allocated for moot court preparation and presentation.

At the close of the moot court exercise, training provided several **recommendations** to participants:

- Failure by some participants to master the objective of the claim so as understand how best to support their clients and formulate strong arguments.

Some of the identified key strengths during moot court sessions were the following:

- High motivation displayed by all participants in the moot court exercise;
- Respect of the moot court by all observers, who applied appropriate ethical conduct;
- Effective administration of case hearings by most of the mooting judges;
- Use of convincing tone of voice and gestures by some mooting lawyers during case presentations; and
- Improve legal analysis by drawing not only on domestic legislation to provide evidentiary support in preparing case submissions/pleadings, but also doctrines, judicial precedents, and regional/international legal instruments to which Rwandan is signatory.
- Take time to appreciate the needs and wishes of one's client so as to strengthen case formulation and submission/pleadings, and better assist one's client;

- Enhance legal writing techniques; and
- Increase attention to the arguments being made by adverse parties before the Judge.
- Display greater confidence in presenting arguments.

4.0 TRAINING EVALUATION

Two training evaluation forms were administered to participants. The first was provided prior to the moot court exercise and asked participants to self-evaluate their capacities to conduct legal research. The results of this assessment can be found in a separate document, entitled Assessment of Legal Research Capacities of a Sample of Legal Practitioners. The second evaluation sought to assess whether the training program objectives were achieved, and whether the training met with participants' expectations. Findings are presented in this section of the training proceedings. Participant feedback from both evaluations will be used by the LAND Project to design future trainings targeting legal practitioners.

Out of the 36 trainees, 30 training participants (83%) complete the two part evaluation covering both the legal context presentation and the moot court sessions. The information below summarizes the ratings on different evaluation criteria assigned by the participants and includes additional narrative feedback.

Part I: Training on the Legal Framework

4.1 Information on Participant's Profession and Years of Experience

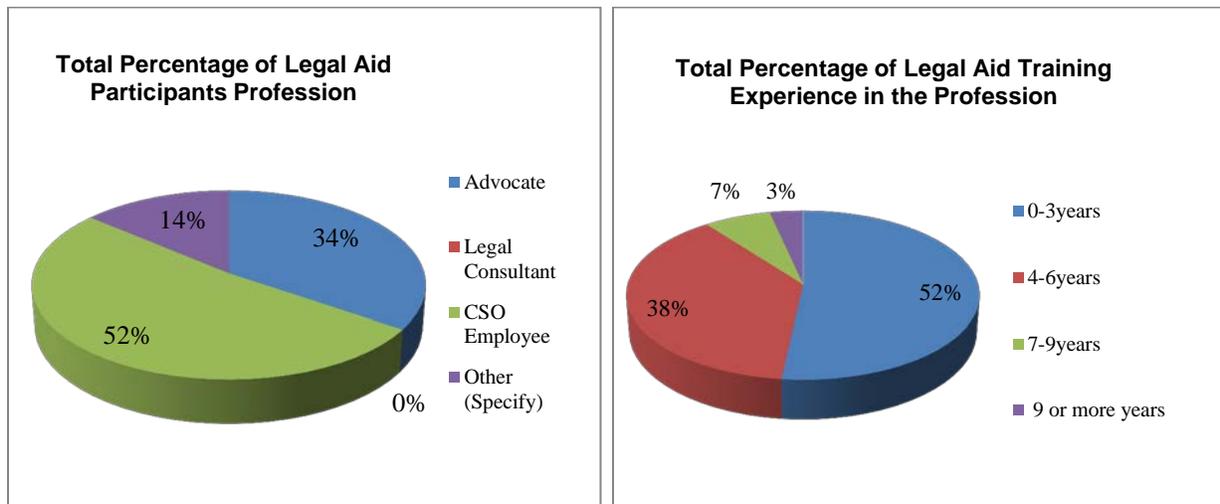


Figure 1: Profession of Participants

Figure 2: Years of Legal Experience of Participants

Of the 28 participants out of 30 who reported their legal professions, 52% described themselves as CSOs employees, 34 % as advocates (lawyers), and 14 % as “Other” (see Figure 1). This is consistent with the invited participants to the training where 50% of invitees were from HAGURUKA’s cadre of in-house jurists while the remaining 50% were jurists from other CSOs and the Kigali Bar Association who possessed experience in advocating for the land rights of women’s and vulnerable groups (see Annex 1: Training Participant List). Of the 29 out of 30 who responded to the question on years of legal experience, 52% have legal experience not exceeding 3 years, and 45 % have legal experience ranging from 4 years to 9 years. Only 3% had 9 years or more of legal experience (see Figure 2).

4.2 Course Content & Materials

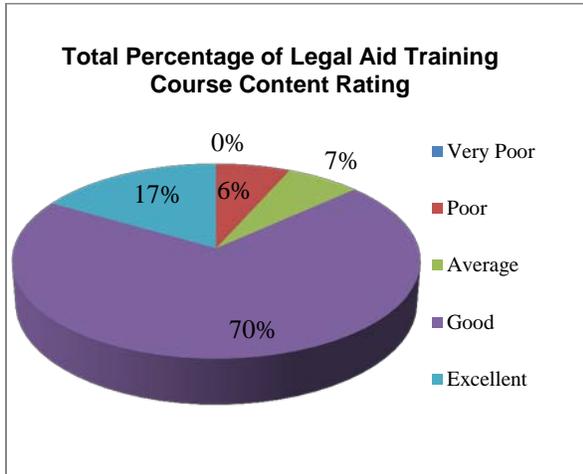


Figure 3: Legal Training Course Content



Figure 4: Legal Training Course Materials

The majority (70%) of respondents reported that the training course content was good while 17% felt it was excellent. However, 13% rated the course content as average or poor (see Figure 3). In assessing course materials, 67% rated these as good or excellent, while 33% judged those to be either poor or average quality (see Figure 4). When asked what participants did not like about the first unit of the training, 50% pointed to the organizers' failure to provide adequate and good quality course materials to the trainees.

4.3 Favorite Unit of the Training

Of the 29 trainees out of 30 who responded to this question, 70% responded that they had most appreciated the moot court sessions compared to 30% who preferred the first part of the training focused on land-related laws.

4.4 Strengthening of Skills and Knowledge

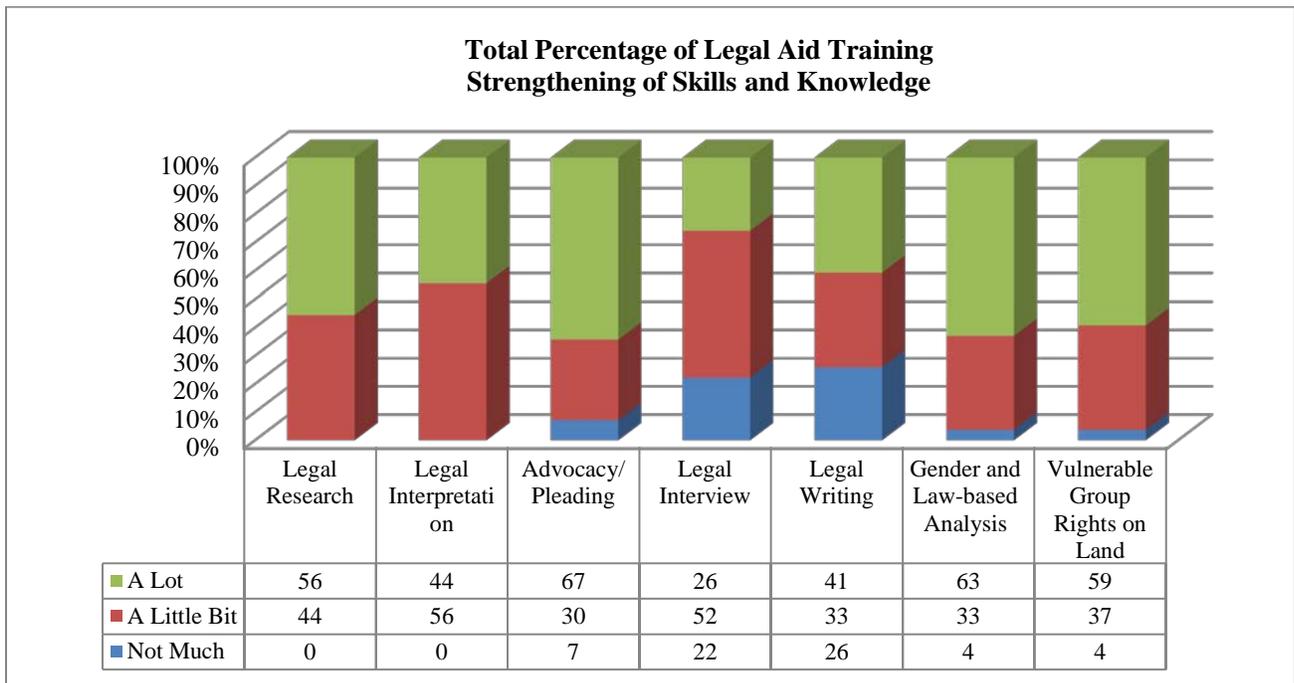


Figure 5: Strengthening of Skills and Knowledge

Asked whether the training had enhanced their skills in terms of legal research, interpretation, advocacy, interviewing, legal writing, gender and law-based analysis, and vulnerable group rights' on land, the majority reported that the training sharpened their skills in advocacy/pleading, gender-based legal analysis, vulnerable groups' land rights, and legal research "a lot." Overall, participants reported learning less on terms of legal interpretation, legal interviewing, and legal writing (see Figure 5). The lower scores on the latter two criteria are not surprising given that the course did not focus on legal interviewing and writing.

4.5 Use of Knowledge Gained from Training in the Future

Of the 27 participants out of 30 who responded to this question, all of the respondents (100%) anticipated applying knowledge acquired during the training in their legal practice. In particular, participants highlighted expectations of applying acquired skills in

legal interpretation, client advocacy, case analysis, and formulation and presentation of cases.

4.6 Quality of Training Facilitation

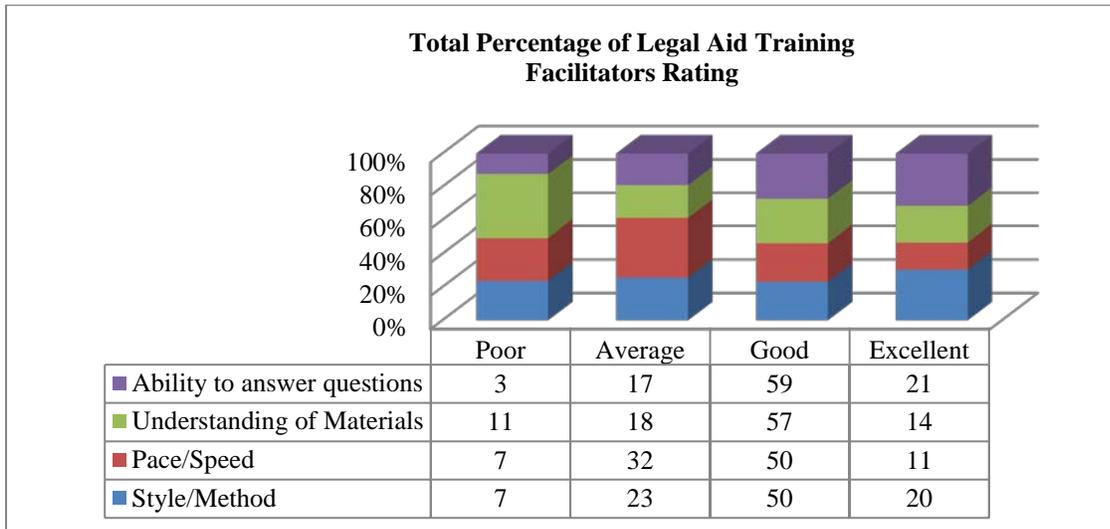


Figure 6: Legal Aid Facilitators' Rating

In rating the quality of training facilitation during the first unit as carried out by Mr. Kabuye and Ms. Mirembe, the majority of trainees rated the facilitators as either “excellent” or “good” in terms of their ability to answer questions well (80%), their understanding of materials (71%), their style and method of teaching (70%), and the pace of the teaching (66%). When asked whether they would recommend the trainers to facilitate future trainings, most responded that they would, but two trainees said that they would not.

4.7 Overall Level of Participation in the Training

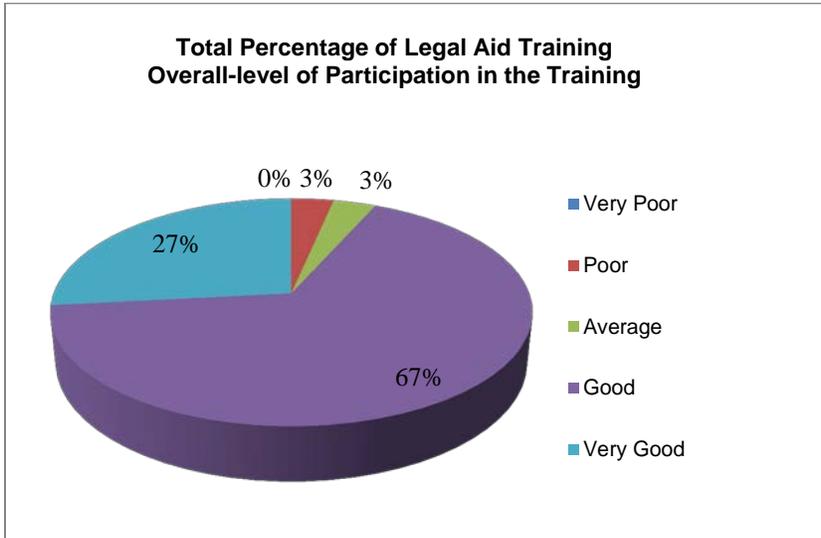


Figure 7: Legal Aid Participants' Overall-level Participation in the Training

Assessing participants' point of view on their overall-level of participation in the training, 94% assessed their participation as either good or very good, while only 6% judged it as average or poor (see Figure 7).

4.8 Training Facilities and In-room Set-Up

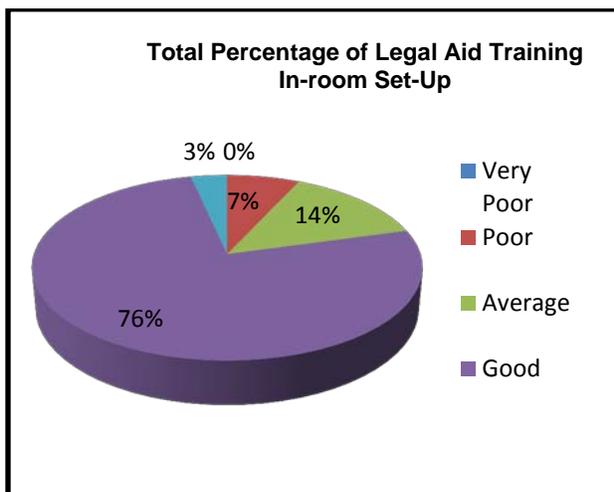


Figure 8: Legal Aid Training In-room Set-Up

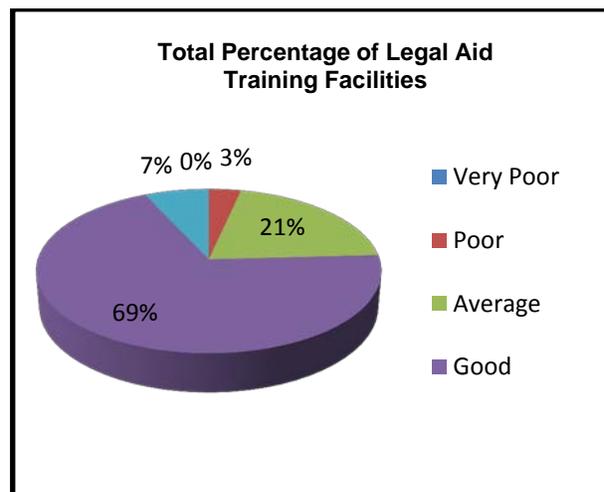


Figure 9: Legal Aid Training Facilities

While most participants considered the in-room set up and training facilities to be either good or excellent, 21% expressed some disappointment with the in-room set up while 24% thought the overall facilities were either average or poor (see Figures 8 and 9).

4.9 Meeting Trainees' Expectations

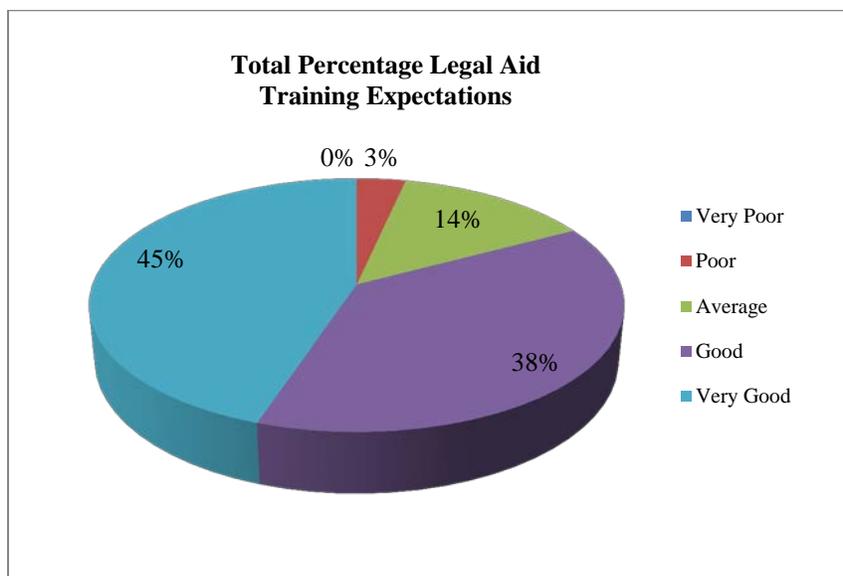


Figure 10: Legal Aid Training Expectations

Of the 30 trainees who responded to this question, 45% judged the ability of the training course to meet their expectations as “very good” while 38% assessed it as “good” (see Figure 10). This demonstrates that 83% of participants felt they got what they came for and is an important indicator of the overall success of the course. Still, 17% expressed a certain degree of dissatisfaction in terms of being able to get what they wanted from the course, pointing to the importance of doing a thorough needs assessment, drawing on such an assessment to shape the course, and making the learning objectives of the course clear to participants in the invitation letter materials.

Part 2: Moot Court Sessions

4.10 Training Learning

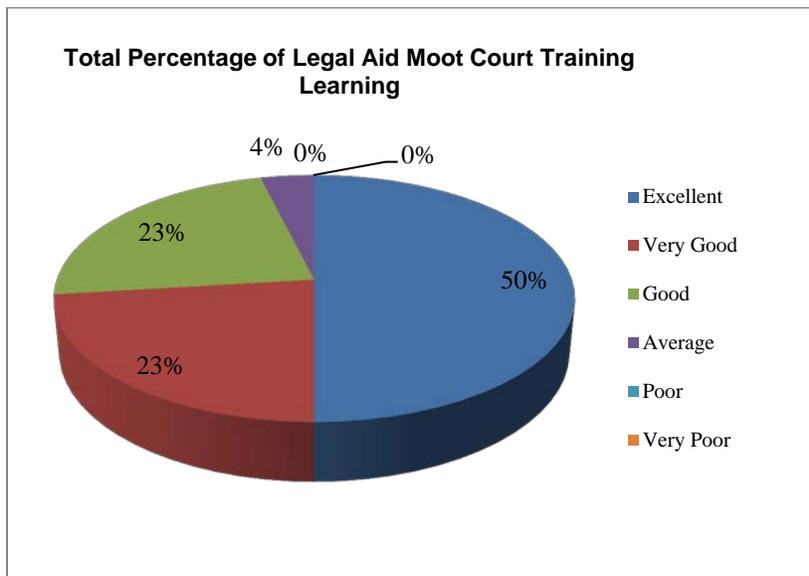


Figure 11: Moot Court Training Learning

Assessing whether trainees had acquired learning from the moot court sessions, 50% of responding participants judged such learning to be “excellent,” while 46% assessed it as either “very good” or “good” (see Figure 11). Only 4% rated their learning as average and none felt it was “poor.”

Further enquiry into what they specifically learned during the course of moot court revealed that 79% learned about court case preparation, legal analysis employing research with the use of national and international legal instruments related to land, case submission, and appropriate behavior to apply while advocating for their beneficiaries.

All of the participants (100%) reported that they would apply the experience gained from the moot court in their legal practice, especially in improving formulation and submission

of their cases. Participants also committed to incorporating reference to international conventions ratified by Rwanda and other pertinent land-related laws in their cases.

While feedback on the moot court sessions was overwhelmingly positive, 78% of participants complained that the time for preparing the moot court cases was insufficient and recommended extending the time for future training courses.

4.11 Moot Court Facilitators' Rating

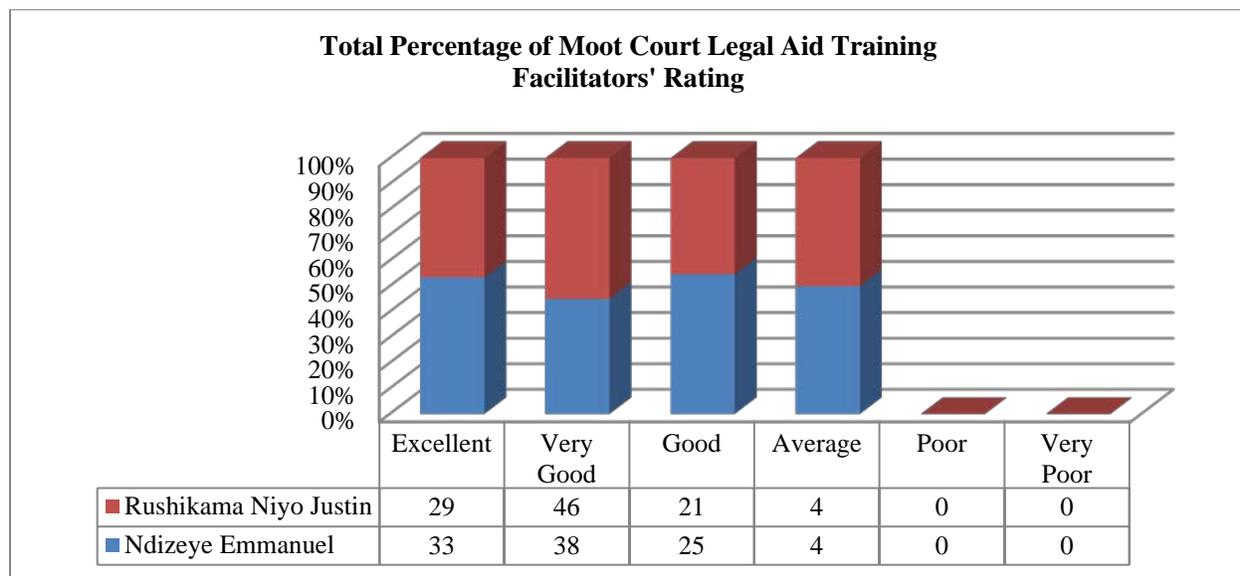


Figure 12: Moot Court Training Facilitators' Rating

Training participants deemed both moot court trainers. Mr. Rushikama and Mr. Ndizeye, as highly competent, with 75% rating Mr. Rushikama's facilitation as either "very good" or "excellent" and 71% rating the same for Mr. Ndizeye (see Figure 12). Some participants noted that Mr. Rushikama was very dynamic and convincing in his arguments, making him an especially effective facilitator. Only 11% of respondents recommended that new trainers should be found if the course were to be repeated.

4.12 Quality of Moot Court

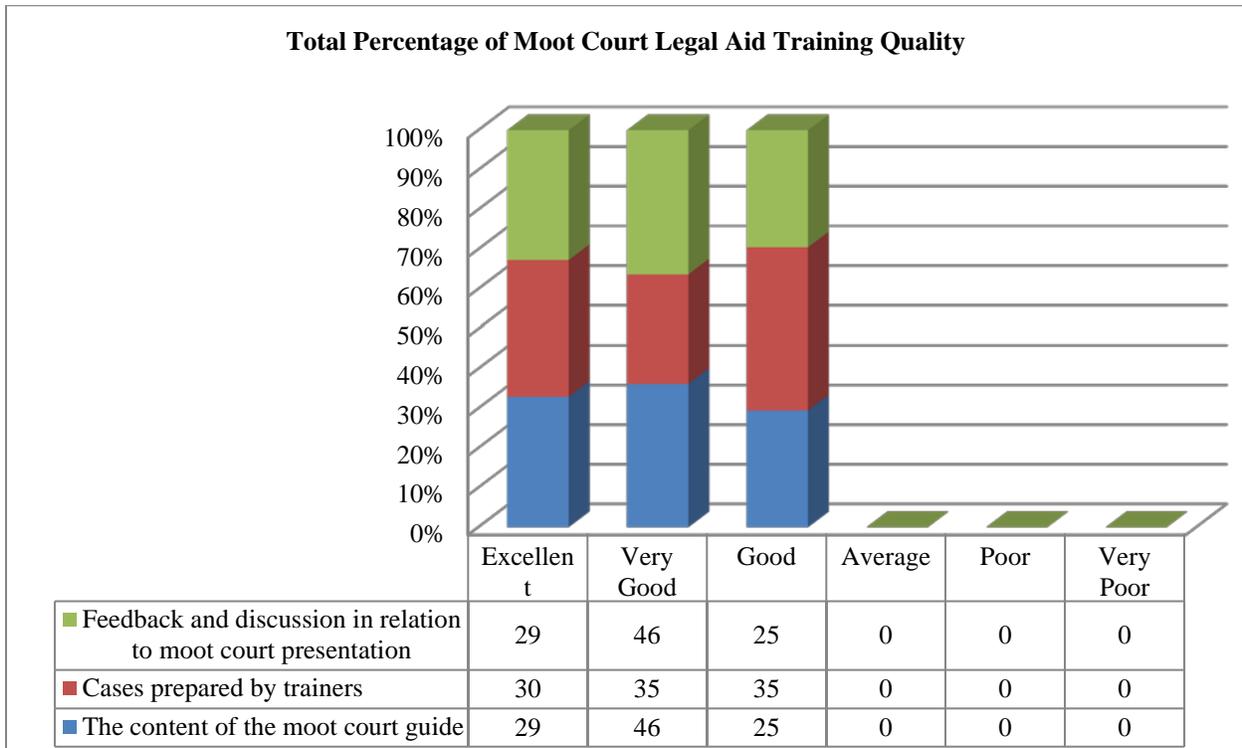


Figure 13: Moot Court Legal Aid Training Quality

In assessing the quality of moot court delivered to trainees, all trainees rated the moot court guide, cases prepared by the trainers, and the feedback and discussion during the sessions as above average, with 65-75% assessing them to be either excellent or very good (see Figure 13).. All of the participants (100%) averred that the moot court was interesting and useful, especially the legal research aspect.

Clearly, the moot court sessions were the most popular part of the training, highlighting the effectiveness of interactive methods of teaching that give trainees and opportunity to apply what they have learned and receive feedback from instructors and peers alike. Such methods also provide an opportunity for peer collaboration and learning,

cultivating important soft skills that are often neglected in traditional methods of teaching.

5.0 GENERAL RECOMMENDATIONS FROM THE TRAINERS

Following the training, the facilitators provided overall recommendations, directed both at participants and the Government of Rwanda.

5.1 Recommendations to Training Participants

- Broaden legal research to incorporate relevant regional and international legal instruments ratified by Rwanda, using these to motivate legal cases and to more effectively advocate for clients; and
- Allocate adequate time to consult with clients -- as long as necessary -- before initiating legal proceedings to ensure all relevant details useful in arguing their cases is secured.

5.2 Recommendations to the Government of Rwanda

- Resolve conflicts in laws over majority age;
- Continue to sensitize women and other vulnerable groups on their rights in relation to land and engage the media in the sensitization programs;
- Continue to train local government authorities on legal matters;
- Harmonize laws governing land and gender equality to remove outstanding conflicts or contradictions;
- Establish laws or legal provisions regulating the management of properties belonging to illegally married spouses until they formalize their union;
- Promote the principle of mutual assistance between the spouses by allowing surviving spouses to inherit a share of the deceased spouse's patrimony regardless of matrimonial regime; and

- Establish legal and other measures to protect and fulfill economic and social rights provided for by international conventions ratified by Rwanda, thereby strengthening women's and vulnerable groups' property rights.

6.0 CLOSING CEREMONY

Mr. Elie Nizeyimana, Acting Executive Secretary of HAGURUKA, and Dr. Fidele Masengo, Deputy Chief of Party for the LAND Project, provided the closing remarks for the training.

Mr. Nizeyimana expressed his appreciation to the LAND Project their contributions to the implementation of the training. He urged the participants to use the skills they gained to advocate for women and other vulnerable groups in their legal practice.

Dr. Fidele then took the floor to congratulate participants for the time they dedicated to the training. He urged them to utilize the skills gained during the training to advocate for amendment of conflicting legal provisions that were discussed during the training. He thanked HAGURUKA for conducting the training well.

Both Mr. Nizeyimana and Dr. Masengo concluded the ceremony by awarding certificates to the participants.



Dr. Fidele Masengo (L) and Elie Nizeyimana (R) awarding a certificate to a participant. Credit: USAID LAND Project.

ANNEX 1: TRAINING PARTICIPANTS LIST

NAMES	ORGANIZATION	EMAIL
Adv. DUSABIREMA Marthe	HAGURUKA	dusamarthe@yahoo.fr
Adv. KAMPIRE Celine	KBA	ckampire@yahoo.fr
Adv. KANYABITABO Benoit	KBA	benoitkn@yahoo.co.uk
Adv. KAYITESI Angelique	KBA	angekay7@yahoo.fr
Adv. MUGENGANGABO Jean Népomuscène	CORPS DES DEFENSEURS JUDICIAIRE DE KIGALI	mugengangabo.jnepo@gmail.com
Adv. MUKAMANA Elisabeth	KBA	mukama2007@yahoo.fr
Adv. MUKARUSINE Agnes	KBA	mrusine2007@yahoo.fr
Adv. MUSILIZA Gaston	KBA	gmsiliza@yahoo.com
Adv. NDEKEZI MIHIGO Jacqueline	KBA	ndekezi1965@yahoo.fr
Adv. NDENGEYINGOMA Laxse	KBA	ndemala@yahoo.fr
Adv. NGAMIJE KIRABO Guido	KBA	guido-nk@yahoo.fr
Adv. UMWIZA Lyse	KBA	umwiza.lyse@yahoo.fr
Adv. UWERA Solange	KBA	soluwera24@gmail.com
AKALIKUMUTIMA	HAGURUKA	clemycoll@yahoo.com
CIZA Dorine	HAGURUKA	cizadodo@yahoo.fr
DUSABUGILIMBABAZI Epiphanie	HAGURUKA	edusabugilimbabazi@yahoo.fr
HITIMANA KAMANZI Pascal	AJPRODHO	kamanzi_pscal@yahoo.fr
INGABIRE Françoise	HAGURUKA	infanny79@yahoo.fr

ISHIMWE Benjamin	CLADHO	benjav2020@yahoo.fr
KAMANA M. Noëlla	HAGURUKA	programhaguruka@gmail.com
MUHUMBA Merari	HAGURUKA	merarri2004@yahoo.fr
MUJAWMARIYA Dative	HAGURUKA	mujdative@yahoo.fr
MUKANTEGANO M. Jeanne	ICYUZUZO	ntegajane@yahoo.fr
MUREKATETE Jeanne D'Arc	HAGURUKA	jeannedarcm@yahoo.fr
MUSONI Gilbert	HAGURUKA	elmusoni@yahoo.fr
MUTAMURIZA Mariam	HAGURUKA	Not provided
NDANGIZA Madina	LAND PROJECT	mndangiza@land-project.org
NGUTEGURE Bellancille	HAGURUKA	ngutegurebela@yahoo.fr
NIYIBIZI Dominique	RWANDA MEN RESOURCE CENTER	nidominique015@yahoo.fr
RUGANBWA Emmanuel	COPORWA	rugema1@yahoo.fr
TAREMWA Damitar Daniel	HAGURUKA	Not provided
UMMURERWA Ninette	HAGURUKA	ninetteu@yahoo.fr
UMURUNGI M. Claire	HAGURUKA	umurungim.claire@yahoo.fr
UMUTESI Gaudiane	HUMAN RIGHTS FIRST RWANDA ASSOCIATION	godianeu@yahoo.fr
UWIMANA Stephanie	HAGURUKA	uwimanasteph@yahoo.fr
UWAMAHORO Alyma	HAGURUKA	uwamahoroalyma@yahoo.fr
UWIMANA Daniel	LIPRODHOR	danieluwimana@yahoo.fr

ANNEX 2: TRAINING AGENDA

DATE	TIME	ACTIVITY	RESPONSIBLE PERSON
01/04/2013	8:00-8:30AM	Arrival and registration of trainees/ trainers	Mr. Safari, Training Facilitator
	8:30-8:40AM	Introduction of participants	Mr. Safari, Training Facilitator
	8:40-8:50AM	Opening Remarks	Guillaume Bucyana, USAID
	8:50-9:00AM	Introductory Remarks	Fidele Masengo, LAND Project
	9:00-9:10AM	Introductory Remarks	Acting Executive Secretary, HAGURUKA
	9:10-9:15AM	Introduction of Trainers	Mr. Safari, Training Facilitator
	9:15-10:00AM	Introduction to women's land rights and land management in the history of Rwanda and the National Land Policy.	Mr. Jean Kabuye & Ms. Justine Mirembe
	10:00-10:15AM	TEA / COFFEE BREAK	HAGURUKA
	10:15-11:30AM	Introduction to women's land rights and land management in the history of Rwanda and the National Land Policy	HAGURUKA
	11:30-1:00PM	Q&A	
	1:00-2:00PM	LUNCH	HAGURUKA
	2:00-3:00PM	-Women's land rights and land management in Rwanda -The main principles enshrined under the organic land law and other related laws in relation to the changes made under the Draft Land Bill;	Ms. Justine Mirembe & Mr. Jean Kabuye
	3:00-3:15PM	TEA / COFFEE BREAK	HAGURUKA

	3:15-5:00PM	Group Work: Identify challenges faced by lawyers in defending land rights of women and vulnerable groups and what can be drawn from the legal framework to resolve these.	HAGURUKA
02/04/2013	8:00AM-10:00AM	Hierarchy of laws to ensure defense lawyers and legal aid providers use the Constitution of Rwanda when defending women's rights in general and their land rights in particular.	Ms Justine Mirembe & Mr. Jean Kabuye
	10:00-10:15AM	TEA / COFFEE BREAK	HAGURUKA
	10:15AM-1:00PM	-Analysis of some of the provisions under all laws mentioned above and identification of gaps that remain in law governing land and property rights in terms of achieving gender justice and discuss solutions.	Ms. Justine Mirembe & Mr. Jean Kabuye
	1:00-2:00PM	LUNCH	HAGURUKA
	2:00-3:00PM	Highlights of changes brought about by the Draft Land Bill	
	3:00:3:15PM	TEA / COFFEE BREAK	HAGURUKA
	3:15-5:00PM	Group Discussions	All participants oriented by trainers
03/04/2013	8:00-10:00AM	Complementarity of national laws regarding land rights and international and regional legal instruments.	Mr. Jean Kabuye & Ms Justine Mirembe
	10:00-10:15AM	TEA / COFFEE BREAK	HAGURUKA
	10:15-1:00PM	Key provisions that guarantee equal rights for men and women on land acquisition, use and management under international and regional legal instruments that govern land and women rights	Mr. Jean Kabuye & Ms. Justine Mirembe
	1:00-2:00PM	LUNCH	HAGURUKA
	2:00-3:00PM	Discussion of the practice of	Mr. Jean Kabuye &

		using international legal instruments in land and land-related cases in Rwanda; Economic and social rights in international law, especially rights to land and housing for women and vulnerable groups.	Ms. Justine Mirembe
	3:00-3:15PM	TEA / COFFEE BREAK	HAGURUKA
	3:15-4:00PM	Summary and concluding remarks	Mr. Jean Kabuye & Ms. Justine Mirembe
	4:00-5:00PM	Recommendations and evaluation of Part 1 of the training.	Participants and trainers
04/04/2013	8:00-9:00AM	Instructions on how to prepare and present a moot court.	Mr. Emmanuel Ndizeye & Mr. Justin Rushikama
	9:00-10:00AM	Moot court preparation (case analysis, research, developing and drafting arguments)	Participants and trainers
	10:00-10:15AM	TEA / COFFEE BREAK	HAGURUKA
	10:15-1:00PM	Moot court preparation continued.	Participants and trainers
	1:00-2:00PM	LUNCH	HAGURUKA
	2:00-3:00PM	Presentations, discussion and feedback	Participants and trainers
	3:00-3:15PM	TEA / COFFEE BREAK	HAGURUKA
	3:15-5:00PM	Presentations, discussion and feedback	Participants and trainers
05/04/2013	8:00-10:00AM	Moot Court presentation	Participants and trainers
	10:00-10:15AM	TEA / COFFEE BREAK	HAGURUKA
	10:15-1:00PM	Moot Court presentation	Participants and trainers
	1:00-2:00PM	LUNCH	HAGURUKA

	2:00-3:00PM	Moot Court presentation	Participants and trainers
	3:00-3:15PM	TEA / COFFEE BREAK	HAGURUKA
	3:15-4:15PM	Trainer and peer feedback to participants on Moot Court presentation	Trainers and Participants
	4:15-4:45PM	Closing remarks	HAGURUKA and LAND Project

ANNEX 3: LEGAL PROVISIONS DISCUSSED DURING THE TRAINING IN FACILITATED DISCUSSION GROUPS

1. ORGANIC LAW N° 08/2005 OF 14/07/2005 DETERMINING THE USE AND MANAGEMENT OF LAND IN RWANDA

(a) Article 20:

In respect of public interest and in a bid to improve rural land productivity, the Minister having Agriculture in his or her attributions in conjunction with local authorities and the respective residents may approve the consolidation of small plots of land in order to improve land management and productivity. Each landholder shall be entitled to the rights over his or her parcel of land.

Procedures for the land consolidation of the small plots of land shall respect the order of the Minister having Agriculture in his or her attributions, which determines the modalities of land consolidation and productivity.

Without prejudice to provisions of paragraph one of this article, it is prohibited to reduce the parcel of land reserved for agriculture of one or less than a hectare. Similarly, the land between one hectare and five hectares may be reduced if the land commission at the level of jurisdiction where the land is found authorizes the owner of the land.

(b) Article 35:

Final transfer of rights on land like sale, donation or exchange by a representative of the family requires the prior consent of all other members of the family who are joint owners of such rights.

(c) Article 36:

Without prejudice to provisions of the civil code that govern the family, members of the family mentioned in article 35 of this organic law are spouses legally married, children who have attained majority age, minors represented by their guardians and the incompetent children represented by their tutors.

(d) Article 73:

The district, municipality and town land commission shall always monitor that individual and leased district land in the district, municipality and town is well managed and productively exploited. Every year, the commission shall make a report on the monitoring and submits it to the mayor of the district and other officials with powers to donate or lease state private owned land.

Those officials may impose sanctions provided for in this chapter of this organic law against the landlord or any other person allowed to lease the land who fails to respect the obligation of efficiently conserve the land and productively exploit it.

(e) Article 74:

The Minister having land in his or her attributions or any other official with powers to allocate or lease state private owned land, after consideration of the views of the responsible land commission, is allowed, if it is clear that the land has spent a period of three (3) consecutive years when it is not in use with no sound reason, to order requisitioning of the land for a period of three (3) years which may be renewable for another three (3) years.

If it is clear that the land is degraded, the Minister having land in his or her attributions, or any other competent person, after consulting the responsible land commission, shall requisition the land irrespective of the period mentioned in paragraph one of this article.

Requisition shall only be carried out on a piece of land that is not productively exploited or one under degradation, but after a registered written notice is given to the landlord or the person who was supposed to utilize it at least six (6) months before requisitioning.

The requisitioned land may be entrusted to another person who so requests and who demonstrates ability to efficiently conserve the land and productively exploit it. If there is no person available, the district, town or municipality in which the land is located shall conserve it and productively exploit it.

(f) Article 75:

Due to general interest, except in case it is clear that there is a concrete reason as to why the land was not utilized, any land in the following categories may be confiscated:

1° the land that was requisitioned as mentioned in article 74 of this organic law, which was given back to the owner who fails to respect paragraph one of article 78 of this organic law;

2° the land which was requisitioned for six (6) years and the owner does not apply for its repossession;

3° the land in the boundaries of outskirts of towns of which it is clear that it has spent three (3) consecutive years unexploited.

(g) Article 76:

The Minister having Land in his or her attributions after consultation with the national land commission shall approve confiscation of the land.

(h) Article 77:

The decision to confiscate the land from the owner cannot be taken before the landlord has been given a registered formal warning notice or a letter with a certificate of acknowledgement at least six (6) months before confiscation.

If the landlord cannot be found, the registered formal warning shall be given to the land user and it shall be displayed on notice boards of the District, Town or municipality or the City of Kigali and of the Sector where the land is located for a period of six (6) months as stipulated in paragraph one of this article.

The registered formal warning shall indicate, beyond reasonable doubt, the reason for the basis of the decision taken, and the day on which failure of exploitation of the land was noticed.

2. LAW N° 22/99 OF 12/11/1999 TO SUPPLEMENT BOOK I OF THE CIVIL CODE AND TO INSTITUTE PART FIVE REGARDING MATRIMONIAL REGIMES, LIBERALITIES AND SUCCESSIONS.

(a) Article 2:

Upon entering marriage spouses shall choose one of the following matrimonial regimes:

- Community of property;
- Limited community of acquests;
- Separation of property.

In case no provision is made, the spouses shall be deemed to be married under the regime of community of property.

(b) Article 8:

At the marriage celebration, the spouses who opted for the regime of limited community of acquests shall establish and submit to the- officer of civil status a signed inventory of assets and liabilities defined by each spouse to constitute the community.

Any property that is not inventoried as common property shall, be presumed to be personal property:

(c) Article 21:

Whatever be the matrimonial regime chosen and the management modalities of the patrimony of the spouses, the agreement of both spouses shall be required for the donation of an immovable property and of any other property in the

community, as well as for the acknowledgement of any right attached to these properties.

(d) Article 22:

When one of the spouses is involved in a transaction which requires the consent of the other, spouse, he or she shall obtain this consent at the time of ratification of this transaction or within six months thereafter.

This consent shall be notified to the third contracting party by a written notice.

Where no reply from the latter is made within a month following the date of notification, his or her consent shall be deemed definitely given.

Where, for some reasons the spouse whose consent is required is not available or due to serious reasons beyond his/her control could not give it, transaction shall be deemed final one year after its ratification for movable property and five years for immovable property.

(e) Article 42:

The ascending partition is an act accomplished by parents while they are still alive, by which they share their patrimony between their children or their descendants who acquire, each for the portion devolved to him or her, full ownership. This partition shall be regarded as the accomplishment of parents' duties to educate their children and to provide them with a personal patrimony.

(f) Article 43:

All children, without distinction between girls and boys, alive or where deceased before parents their descendants, excluding those banished due to misconduct or ingratitude, have a right to the partition made by their ascendants.

(g) Article 66:

In the case of marriage under the regime of separation of property, the order of heirs in succession shall be as follows:

- The children of the de cujus;
- The father and mother of the deceased;
- The full brothers and full sisters of the deceased;
- The half- brothers and half -sisters of the deceased;

- The uncles and aunts paternal as well as maternal of the deceased.

With the exception of the father and the mother of the deceased, all other legatee heirs deceased before the de cujus shall be represented at the succession by their descendants.

(h) Article 70:

Succession of spouses married under the regime of community of property shall be carried out as follows.

- in case of death of one of the spouses, the surviving spouse shall ensure the administration of the entire patrimony while assuming the duties of raising the children and assistance to the needy parents of the de cujus;
- When both spouses die leaving children behind, the latter shall succeed to the entire patrimony, but must also assist their grand-fathers and grand- mothers. When the children are not blood- related, the patrimony shall be divided in two, and each child shall succeed to the part of his or her respective parent
- when the spouses die without leaving a child behind, the patrimony shall be divided in two, one half being allocated to the successors of the husband, the other being allocated to the successors of the wife;
- In the event that the widower/widow did not have a child with the de cujus, the former takes one half of the patrimony, and the heirs of the de cujus share the other half
- When the widower or the widow does not fulfill his/her duty of assistance to the parents of the de cujus, the family council shall allocate to the parents the succession part of the deceased;
- In case the surviving spouse fails to fulfill his/her duties to raise the children of the de cujus, his/her succession shall be cut back by 3/4 which shall be given to the children;
- The surviving spouse who no longer has any children under his/her care and wants to remarry shall obtain full ownership of the 1/2 of the patrimony and another half shall be given to the deceased's heirs;

- In case of remarriage of the surviving spouse who is still bound by the duty of raising the children of the de cujus; she or he shall obtain full ownership of 1/4 of the succession and shall continue to administer the remaining 3/4 for the benefit of the children;
- Where the surviving spouse did not remarry but gave birth to an illegitimate child, the 1/2 of the patrimony shall, on the day when the children are entitled to inherit, be devolved to the children of the de cujus and the other 1/2 shall be devolved to the other children of the widow or widower in equal parts without any discrimination between legitimate and illegitimate children.

(i) **Article 91:**

A property which does not exceed an area of one hectare and any other undivided thing cannot be partitioned. The owners have rather to agree on the modalities of their sale or exploitation and share the fruits there from.

3. LAW N°21/2012 OF 14/06/2012 RELATING TO THE CIVIL, COMMERCIAL, LABOUR AND ADMINISTRATIVE PROCEDURE

(a) Article 176: Persons allowed to make a third party opposition

Any person who was not a party to a case but who has an interest in it may make a third party application to set aside a judgment which is prejudicial to his/her rights and if neither he/she nor the person he/she represents were called at the trial.

The provisions of the Paragraph One of this Article shall not apply to the spouse of the either party or their children when the subject matter is the family property.

4. LOI N° 42/1988 du 27 OCTOBRE 1988 PORTANT TITRE PRELIMINAIRE ET LIVRE PREMIER DU CODE CIVIL.

(a) Article: 16

L'enfant conçu jouit des droits civils à la condition qu'il naisse vivant. L'enfant simplement conçu est réputé né toutes les fois que son intérêt l'exige.

(b) Article: 209:

Les époux se doivent mutuellement fidélité, secours et assistance.

(c) Article: 431

La majorité civile est fixée à vingt et un ans accomplis; à cet âge on est capable de tous les actes de la vie civile, sauf les exceptions déterminées par la loi.

5. LAW N°59/2008 OF 10/09/2008 ON PREVENTION AND PUNISHMENT OF GENDER- BASED VIOLENCE

(a) Article 39: Legalizing unlawful marriages and common assets distribution

Those people entertaining unlawful marriages shall be married in accordance with the monogamous principle. If a person concerned with the provision of previous paragraph of this Article was living with many husbands/wives, he shall first of all share the commonly owned belongings with those husbands/wives equally.

The property distribution referred to in paragraph 2 of this Article shall not entrench on the children's legally recognized rights.

Modalities of such distribution shall be determined by an Order of the Minister in charge of Local Government.

6. ORGANIC LAW N° 01/2012/OL OF 02/05/2012 INSTITUTING THE PENAL CODE

(a) Article 100:

A child who is under the age of fourteen (14) years shall not be criminally liable.

7. LAW N° 13/2009 OF 27/05/2009 REGULATING LABOUR IN RWANDA

(a) Article one (45):

As used in this Law, the following terms shall have the meanings indicated herein:

Child: any human being below the age of eighteen (18) years;

8. LAW N°54/2011 OF 14/12/2011 RELATING TO THE RIGHTS AND THE PROTECTION OF THE CHILD

(a) Article 3: Definitions of terms

For the purpose of this Law, the following terms mean: **a child:** Any person under the age of eighteen (18) years.

9. LAW N° 13/2004 OF 17/5/2004 RELATING TO THE CODE OF CRIMINAL PROCEDURE

Article: 184

A child who is below the age of twelve (12) years cannot be detained in the custody meant for criminal suspects.

However for exceptional reasons, a child who is aged between ten (10) and twelve (12) years against whom there are doubtful reasons to suspect that he or she has committed an offence can, for the purposes of investigation, be detained by a judicial police for a period which cannot exceed forty-eight (48) hours but only when the offence he or she is suspected to have committed is punishable with at least five (5) years imprisonment.

ANNEX 4: MOOT COURT PREPARATION & PRESENTATION GUIDE

1. Introduction

➤ What is a moot court?

A moot court is a simulated courtroom. It will be set up in the training room and shall be arranged just like a real court. During the moot court, the trainer(s) play the role of observer(s).

➤ What is the point of mooting?

Mooting is a good method of developing skills in both legal research and advocacy. To get a benefit out of mooting you must devote considerable time to researching the problem and thinking about how you might present your argument. It is a lengthy process but it will prove enormously beneficial for practice. Mooting gives you an invaluable opportunity to build both your confidence in speaking in public and your experience of courtroom etiquette as well as enabling you learn a great deal about the topic you are researching.

➤ How do I prepare?

This guide sets out the steps you must take in preparing for the moot court. Trainees are expected to properly research the scenarios given and prepare thoroughly for the sessions.

2. Preparation

Steps:	Tasks:	Time:3 hours 30minutes
Step 1	Case analysis	30 minutes
Step 2	Research	30 min.
Step 3	Formulation of argument	30 min
Step 4	Meeting your partner	15 min.
Step 5	Writing skeleton argument	1 hour
Step 6	Submit skeleton argument to registry	-
Step 7	Final preparations	45 min.

Monday	Tuesday	Wednesday	Thursday	Friday
<p>Receive scenario;</p> <p>start thinking of the case</p>	Think of the case	Think of the case	<p>-8.00-9.00: Instructions on how to prepare and present a moot court</p> <p>-9.00- 12.30: Moot court preparation(case analysis, research, create and write arguments</p> <p>-2.00-5.00: presentations, discussion and feedback</p>	<p>8.00-5.00: Presentations , discussion and feedback continue</p>

2.1 Step One: Case Analysis

Trainees will receive the case three days before the moot court presentation. Trainees are asked to start preparation early to avoid a rush for materials before the moot court. Equally, to get the maximum benefit from the process, research ought to be conducted separately from your partner. Only after this stage is completed should you meet to discuss your findings and divide responsibilities. Please see appendix 1 for a sort of moot court case you can expect. The first stage will be to understand both what the problem involves and which side you will be representing. There are two stages to this process:

➤ **Understanding the facts:**

- Read the case a number of times;
- Draw up a list of material facts.

Example: see Appendix 1

Material Facts:

- Alice is married to Bosco
- Bosco and Alice were drunk
- Bosco and Alice had a fight in their house
- Bosco pushed Alice
- Afterwards Bosco and Alice had rough intercourse
- Alice's medical report indicates injuries and a bruise
- Earlier reports of domestic violence between Bosco and Alice
- First complaint by Alice

- Use your existing knowledge to pinpoint which area of law these facts fall under;
- Note what you believe the legal issues are;
- It may be that you discover new issues as your research progresses.

Example: see Appendix 1

Understanding the legal issues:

- Did Bosco commit conjugal rape?
- Did Bosco assault Alice?
- In the alleged assault, did Bosco act in self-defense?

HINT: If you can easily see the issues being raised, beware, moot problems are written to have no clear or one right answer. Moreover, you cannot challenge the facts, nor can you invent facts to fill the spaces. You must therefore use what is written to construct the best arguments you can through extensive research.

2.2 Step Two: Research

After you have worked out which legal issues are involved, the next thing to do is to research the involved area(s) of law. First try to find the relevant provisions of the Penal or Civil Code. You must take out the relevant books, then try to find if there are other legal sources on the particular subject of the case, such as the Constitution, other national laws, international conventions and (if available) case law. A good place to find all the Rwandan law on a particular subject is online at the Ministry of Justice website (www.amategeko.net). Read your selected sources in full and note the relevant information.

2.3 Step Three: Formulation of an argument

For the formulation of a legal argument, you should use deductive reasoning. Deductive reasoning involves applying a general rule (the major premise) to a specific situation (the minor premise) in order to reach a conclusion. Within your legal argument, you should create one submission for each legal provision involved.

Major premise

A general rule of law (most often a legal provision) should be your major premise.

Minor premise

A statement of fact should be your minor premise. It is where the bulk of your argument is constructed, and consequently where you will receive the most points. For each element of the legal provision you use as a major premise, you will need to prove that the facts of the case either do or do not apply. It might help if you first consider what the other side's argument might be. Then consider your own argument. So, you construct submissions that deal with both sides of the argument (e.g. '*The Prosecution might argue A, but B.*').

Conclusion

This is where you state the result of your argument. This is also the legal finding you suggest the judge(s) should make.

Example: see Appendix 1

Skeleton form of a legal argument:

- 1) Assault is excusable when it was directly provoked by grave violence against the person assaulting.
- 2) The assault by Bosco against Alice was directly provoked by grave violence by Alice against Bosco.

6.1 Step Four: Meeting your partner

When you have constructed your legal argument in note form, meet your partner to discuss which part of your legal arguments should be used. This is an exercise in

teamwork and good organization is essential. You will also need to decide who is going to write which section(s) of the skeleton argument.

6.2 Step Five: Writing a skeleton argument

Together with your partner you must construct written submissions in the form of a skeleton argument. For an example, see Appendix 2. Respect the following criteria.

Subject:	Criteria:
Word limit	500 words
Font	Book Antiqua
Size	11 point
Margin	2.5 cm
Spacing	1.5

6.3 Step Six: Submit skeleton argument to the trainer(s)

Both teams must submit their written submissions to the trainer(s) well before the start of the moot court session³.

6.4 Step Seven: Final preparations

Prepare notes

Because it is not sufficient to simply read your skeleton argument during the hearing, you are permitted to make one A4 sheet of notes from which to speak. Team should select one person to present their argument. Ensure that you know these notes well, as it will affect the assessment of your performance by the trainer. You have only 15 minutes to speak, so keep your argument brief. For trainees making opening arguments this should outline the structure of your speech and the legal sources to which you are going to refer to. Note also that it might be appropriate to give a brief summary of the

³ Note that you will need to submit your written submissions 10 before moot court starts. This will help trainers to

facts to the court. For teams who will be presenting counter-arguments, it is often better to anticipate the arguments of the other side and draft your counter-arguments to those.

Practice your speech

Before conducting the moot court exercise, practice your speech with your partner a number of times. This will give you the confidence to get a good mark for the continuing assessment.

Advocacy revision

In the moot court you are an advocate. As such it will be important to refresh yourself on the skills of advocacy. You will be assessed not only for the quality of your arguments, but also for the way in which you deliver them. Therefore, spend some time thinking about how you might put the arguments to the judge. In order to plead usefully please refer to various notions relating to pleading. If possible read the following documents for further knowledge and skills.

Recommended readings⁴:

- I. Morley, *The Devil's Advocate: a short polemic on how to be seriously good in court*, London: Thompson Reuters (Legal) 2009
- D. Pope & D. Hill, *Mooting and Advocacy Skills*, London: Sweet & Maxwell 2007
- Elkington, *Skills for Lawyers 2005-2006* (Guildford, College of Law, 2005), Ch.12
- J. Webb, *Lawyers' Skills*, Oxford: OUP 2005, Ch. 8
- A.D. Horstein, *Appellate Advocacy*, St Paul: West Publishing 1998, Ch.8
- L.L. Teply, *Legal Writing, Analysis and Oral Argument*, St Paul: West Publishing 1990, Ch.10

⁴ It is not necessary to read these books before this moot court on land issues. You should read them in your free time after the training to get more insights on moot court, especially how to prepare written submissions and oral presentation.

7.0 Procedure

Time:1 hour and 30 minutes	Task:
10 minutes	Courtroom preparation
15 minutes	Opening speech team A – trainee 1 + judge’s questions
15 minutes	Opening speech team B – trainee 1+ judge’s questions
15 minutes	Response team A – trainee 2 + judge’s questions
15 minutes	Response team B – trainee 2+ judge’s questions
20 minutes	Feed-back session and discussion

Courtroom set-up

Before the start of the hearing, the trainees will set up the moot courtroom in the training room under the supervision of the trainer(s). The judges sit at the front of the courtroom behind a single table. Both teams of trainees face them and also sit behind a single table.

Dress Code

Trainees have to wear a gown during the hearing if available and possible. The gown should be worn in the correct manner.

Hearing

The hearing starts when the presiding judge opens the hearing. Whether judges choose to already be seated when the trainees enter the courtroom or to enter the courtroom when the trainees are already seated, is left to their discretion. The first trainee of team A starts with his or her opening speech. Then the first trainee of team B delivers his or her opening speech. Then the second trainee of team A delivers his or her response to team B. Finally, the second trainee of team B delivers his or her response to team A. Every trainee speaks not more than 15 minutes. This includes the time that is needed to

answer the judges' questions. The judges should ask at least one question to every trainee. This means that the hearing will not take longer than 60 minutes in total. The trainer will watch the time for which every trainee speaks and signals them when to finish their submissions. During the hearing, the trainers will write down useful feedback for every trainee.

Feed-back session

The trainees who have performed the exercise receive feedback from the trainers. These comments should be of a constructive nature. The trainers should focus on a small number of problem areas, give examples of these areas and finally suggest solutions. This session should not take longer than 15 minutes per trainee. The trainer(s) could also ask trainees from the audience to give feedback.

Discussion

After the feedback session, there is a discussion on topics, which have come up during the moot court session. The trainer(s) supervise(s) this discussion.

8.0 Content

Sub-criteria: Complexity of Argument

Trainees have to show in their written and oral submissions that they have analyzed both the facts and legal issues of the case. They should be capable of constructing a legal argument of some complexity. Their argument should indicate that they have considered the possible submissions of the other side.

Sub-criteria: Logical Structure

Trainees should present the conclusions of their legal argument as the result of deductive reasoning. The written and oral submissions must also be arranged in a logical order. For example, in the order that points appear in the case or in the order that puts the strongest point first.

Sub-criteria: Relevance

Trainees should only submit legal arguments that are relevant to the facts and/or the legal issues of the case. It should be remembered that the truth of the facts of the case is not open for debate. Judges could ask trainees for the relevance of their oral or written submissions.

Sub-criteria: Reference to Legal Sources

In order to account for their legal argument, trainees have to refer to valid legal sources⁵, such as Rwandan laws, the Constitution, conventions Rwanda adhered to or Rwandan case law. References should be correct and comprehensible. If a trainee refers to foreign or international legal sources, he or she should explain why these sources are authoritative. A trainee could be asked to read the relevant passage of the source he or she referred to.

4.1 Oral Submissions

Sub-criteria: Posture, Gestures and Eye Contact

With their behavior trainees should not distract the judges from what they have to say. Therefore, they should stand still and straight, hold their head up, keep their arms down and their hands out of their pockets, and avoid physical ticks. Although trainees may rely on notes during speaking, oral submissions become more effective when they have regular eye contact with each of the judges.

Sub-criteria: Volume, Pace and Tone of Delivery

Trainees should speak at such a volume that the judges can easily hear them. They should also speak at an appropriate speed (not too fast), with pauses and vary the tone of their voice sometimes. In general, their voice must sound natural. They should avoid bad verbal habits.

⁵ For this particular moot court on land issues trainees are required to use www.rwandaland.org

Sub-criteria: response to questions

Through preparation trainees should be familiar with the topic of the case and therefore be able to deal effectively with reasonable judicial interventions. However, judges should ask questions to test the legal argument rather than the trainee's general legal knowledge. A trainee should listen carefully to the question and might consult his or her partner before answering.

4.2 Written Submissions

Sub-criteria: Brevity

The judges will have access to (or possibly have written) the moot court case. Therefore, trainees should not restate all the facts of the case. Moreover, judges will be able to read the written submissions before the hearing. Therefore, there is no need for reading them out loud during the hearing. Written submissions should only contain the skeleton argument (maximum of 500 words).

Sub-criteria: Style

Persuasive language is usually short and plain. Trainees should avoid informal and provocative terminology. Written submissions benefit from clear headings, font (size) and page layout.

Sub-criteria: Grammar and Sentence Structure

Written submissions must be spelled correctly, properly punctuated and free from grammatical errors.

4.3 Professional impression

Sub-criteria: Persuasion

An orator can be persuasive by establishing his or her own credibility, by appealing to emotions and/or by appealing to reason. In moot court exercises persuasion is primarily achieved by logical legal reasoning.

Sub-criteria: Good Manners

Trainees should demonstrate appropriate courtroom manners, both toward the judges and to their opponents. This includes handing in written submissions on time, being on time for the hearing, being correctly dressed for the hearing, turning off mobile phones, not interrupting judges or opponents, listening to other team member, and addressing judges and opponents properly. Trainees should avoid jokes, literary quotes and personal comments about their opponents. Trainees must never deceive or knowingly mislead the judges.

Sub-criteria: Teamwork

Trainees should have divided tasks equally and help each other when necessary and possible.

Appendix 1: Example Criminal Moot Court Case**Facts of the case:**

On Monday morning Alice goes to the local police station and states:

“Last Saturday my husband, Bosco, and I were at a party with some friends. We both had a few beers. When we returned home, we got into a fight, because he accused me of having looked at another man. All of a sudden, my husband pushed me and I hit my head against the wall. Then he pushed me onto the bed and told me to get undressed. I told him I did not want to have sex with him. This made him even angrier. He said that if I kept refusing, he would leave me. I was afraid, so I let him have sex with me. It hurt a lot. I don’t remember very clearly everything that happened that night, because I had had some beers and I was very afraid. Today is the first day my husband has not been at home, because he went out to work. That is the reason I did not go to the police earlier. It is not the first time this happened. I have kept silent because of our kids.”

Later that day, Bosco testifies to a police officer:

“Last Saturday I was at a party with my wife Alice. We had a lot of drinks and a good time. When we arrived at home, she started an argument. I forgot what it was about.

She started to throw things at me, so I pushed her away. I don't remember if she hit the wall. The only thing I know is that I have a big bruise on my arm. I went out of the house to cool off. After a few minutes, I went in again and we made up. It is true we had sex later that night, but she agreed to it. Actually, she was the one who started it. Because we were both very drunk, it is possible that we were not as gentle as normal. This morning we had another fight over money. She threatened to tell the police that I raped her. It seems like that is what has happened.”

The medical report states that on the body of Alice injuries were found that indicate sexual penetration by force. Also a bruise was found on her head, which could indicate being hit against a wall. Moreover, injuries sustained an earlier date were discovered. A second medical report states that the bruise found on Bosco's arm happened before Saturday. A police report states that the neighbors have called the police four times over the last two years, because they suspected domestic violence against Alice. The report states that until now Alice had refused to file a complaint against Bosco. One of the neighbors testified that on Saturday he heard a lot of noise late at night coming from Alice and Bosco's house. He heard a male voice screaming and a female voice crying. He looked outside his window. He could not see what happened, because it was dark. The noise lasted for almost 30 minutes. He did not see any person leaving the house during this period.

Positions of the parties:

- A) The public prosecutor charges Bosco with conjugal rape and assault.

- B) Bosco denies to have raped or assaulted Alice. With regard to the charge of assault, he also claims to have acted in self-defense.

Appendix 2: Example skeleton arguments (see Appendix 1)

Written submissions on behalf of the Prosecution:

Conjugal rape

According to article 2.7 of the Law on prevention and punishment of gender-based violence (n° 59/2008 of 10 September 2008) one of the methods of conjugal rape is to coerce a spouse into sexual relations without that spouse's consent by way of intimidation. Alice and Bosco both testified that they had sexual intercourse on a certain Saturday night. Alice testified that she clearly told her husband that she did not consent to this intercourse.

Eventually, she let him have his way, because of his threats. That Alice was intimidated by these threats is understandable, because of their children and the history of domestic violence. Alice's testimony is reliable, even if she does not remember everything into detail, because this testimony is largely supported by other evidence (e.g. her medical report, police report, neighbor's testimony). Bosco's alternative version of the events is not supported by any other piece of evidence. Therefore, it is proved beyond reasonable doubt that Bosco raped his wife, Alice.

Assault

Alice's medical report supports her testimony that she was assaulted by Bosco. Bosco does not deny this assault. Therefore, it has been proved beyond reasonable doubt that Bosco assaulted Alice. However, Bosco claims to have acted in self-defense. According to article 333 of the Penal Code (n° 21/1977 of 18 August 1977) assault is only excusable when it was directly provoked by grave violence against the person assaulting.

Except for Bosco's own testimony, there is no evidence that Alice used violence against Bosco. Moreover, Bosco's medical report does not show any injury related to this alleged violence. Therefore, even if it could be proved that Alice used some violence against Bosco, this violence was not grave enough to provoke Bosco's excessive use of force against her. The plea of self-defense should be dismissed accordingly.

Sentence

Therefore, the Prosecution seeks a sentence of 4 years of imprisonment for Bosco.

Date:

Name: trainee 1

Name: trainee 2

Written submissions on behalf of the Defense:

Conjugal rape

According to article 2.7 of the Law on prevention and punishment of gender-based violence (n° 59/2008 of 10 September 2008) conjugal rape means coercing a spouse into sexual relations without that spouse's consent by way of force, intimidation, tricks and others. The only evidence of rape is Alice's own testimony. This testimony is not reliable, because she admits to be drunk on the night in question. Her medical report states that force was used during the sexual penetration. However, Alice does not mention the use of force by Bosco. She rather states that she had let Bosco had his way. Moreover, Bosco has an alternative explanation for the medical findings of the use of force, which is not challenged by any piece of evidence. Because there is no other evidence of the rape, it cannot be proved beyond reasonable doubt that Bosco raped his wife, Alice.

Assault

Bosco does not admit that he has assaulted Alice. He only admits to have pushed her away. Her medical report states that her bruise could indicate being hit against a wall. This means that it could also indicate something else. Moreover, it does not prove that the bruise was the result of Bosco's push. Finally, Bosco pushed Alice away in self-defense. According to article 333 of the Penal Code (n° 21/1977 of 18 August 1977) assault is excusable when it was directly provoked by grave violence against the person assaulting. Alice admits that she and Bosco got into a fight when they arrived at their home. This supports Bosco's testimony that Alice started to throw things at him. Throwing objects in a confined space such as a home when drunk could be considered provocative and it could constitute grave violence, depending on the objects and the

force used. This violence justifies pushing this person away. Therefore, even if it could be proved that Bosco assaulted Alice, he was simply acting in self-defense.

Overall conclusion

Therefore, Bosco should be acquitted.

Date:.....

Name: trainee 1 (trainee's names).....

Name: trainee 2 (trainee's names).....

ANNEX 5: MOOT COURT CASES

CASE 1

Mukamana Yvonne was born in 1972 in Musanze District, Sector of Muhoza. Her parents are KAGINA Innocent and MUSABYIMANA Gaudence. She is married since 1999. She got two children. No marriage certificate to prove their marriage. She has two brothers Mupenzi Alphonse and Kamanzi Robert and one sister Musabyimana Innocente. Their parents have many properties including three houses, two vehicles and four pieces of land. With regard to land they possess, they don't have any land title which proves that they are their owners.

But their neighbors and local and administrative entities (Cell and Sector) know that they possess those pieces of land because they cultivate and lease them. All her sisters and brothers were given pieces of land by their parents. Yvonne was not given any piece of land because she was married. Her parents and Yvonne's sisters and brothers share the views that she cannot be entitled to the land of the family. When Yvonne raises that issue, it causes family quarrel. Yvonne decided to bring her problem to local administrative entities i.e. Sector and District but the latter did not help her settle her problem. Yvonne wants to bring the case before the courts and needs lawyers to help her prepare her claim. Her parents also need a lawyer who can prepare the case and plead it before the court. Basing on what was said above prepare written submissions for Yvonne and for her parents. You are also asked to prepare oral defence before the court.

CASE 2

Ayinkamiye Gerardine was born in 1967. She got three children. She returned to Rwanda after 1994 genocide against Tutsi. When she arrived in Rwamagana District, Mwulire Sector where her parents were living she found that the land of the family was used to build the office of the Sector Mwulire and a State secondary school. Because she really needed land to cultivate she asked the District of Rwamagana to give her a piece of land for agriculture.

The District of Rwamagana, pursuant to land policy sharing, asked the neighbors of Gerardine, who are Murenzi Robert and Muvura Paul, to share their land with Gerardine. Robert and Paul rejected the District's proposal arguing that it is against their right to land. The District of Rwamagana strived to convince them and finally they accepted the District proposal. In 2005, they gave land of a half of hectare to Gerardine. The District did not deliver any document proving that land sharing, and Gerardine did not get land title.

In 2006, Paul and Robert's sisters- Mukankusi Claudine and Musanganire Esperance, came back in Rwanda from Burundi where they were living since 1994. When they arrived in Rwamagana District they found that their family land that was kept by Robert and Paul was divided into parts and a ½ hectare was given to Gerardine. Claudine and Esperance argued that no one should have given the land of the family without their consent. They said that they should have been consulted before taking the decision.

They asked the District of Rwamagana to recognise his right to land but the District did not because it could not take a decision that contradicts the one on land sharing which was taken previously. They brought their problem before the Eastern Province but the latter decided to not contradict the District decision on land sharing. Claudine and Esperance decided to bring the case before the court and want lawyers to analyse their problem. As lawyers of Gerardine and the District of Rwamagana prepare submissions of both parties and prepare oral defences before the competent court.

CASE 3

Nsengimana Esdras married Mukabarisa Stephanie in 1978 in the former Mushubati District, in the former Gitarama. They gave birth to four children. Two of them died and the two others (Kampire Chantal and a boy) went to seek a job in Kigali and they live there so far. They had a piece of land of a hectare in that District. In 1984, they went to live in the former Kibungo. During the war of 1994 Nsengimana Esdras died. After settling in Kibungo their land was occupied by Mushumba Jean Damascene, the big brother of Esdras. Mushumba said that he was given the land by his brother Esdras.

There is no existing proof but he says that all his neighbours know that. In 1991, Mukabarisa Stephanie came back home in Mushubati to see their land and found that it was cultivated by Mushumba. Mukabarisa asked him to give her back the land but he refused. Mukabarisa seized administrative entities and the problem lasted long time without being resolved.

Mukabarisa had gone back to Kibungo. In 2008, Mukabarisa raised again her problem, Mushumba and local administrative entities said that the land law in Rwanda provides that every land must be exploited usefully, that Mushumba used the land pursuant to land law in Rwanda. Stephanie continued arguing that her right to land has to be respected. In the meantime, Stephanie's girl called Kampire Chantal came back in Mushububati to see her parents' dwelling and she is claiming her right to her parents' land. As Stephanie's lawyers prepare written submission and oral defence and link Stephanie's problem to Chantal's problem. Mushumba also wishes lawyers to deal with his case by preparing his written submission and oral defence before the competent court.

CASE 4

In 1999, Mr Kamanzi Pothin fell in love with Nyiramugisha Grace. In 2000, Pothin told Grace that he wanted to legally marry her. Pothin thought that when he marries Grace he will have a car that will allow them to move in Kigali town and in other regions in the country. In 2001, Pothin got money to buy the car but he could not afford transport fees from outside. At that time he possessed a piece of land in Kacyiru District of 25 meters and 28 meters.

In order to import the car, Pothin and Kadage agreed that the latter will import the car for Pothin and Pothin accepted to give him his piece of land above mentioned. They didn't sign any written agreement. After receiving the car, Pothin and Kadage signed a document in which it was stated that the piece of land belongs to Kadage. This document was notified by the notary of Kacyiru District, but there was no mention in the notified document that the piece of land which was given to Kadage belonged to Pothin.

In 2002, Pothin and Grace married legally and agreed that their properties- existing and coming- will constitute one property belonging to all of them. Pothin did not reveal that the piece of land he gave to Kadage was his property at the time of wedding.

In 2005, Innocent decided to sell the piece of land to Kubwimana Elie. In the meantime Grace knew that on the day of wedding, Pothin had a piece of land, and pursuant to marriage contract, that piece of land was part of their common property. Grace attempted to tell his husband about the problem. Pothin responded that the piece of land cannot be part of the family common property, because it was his own property.

Grace wishes that the piece of land become part of the family property. She brought her problem before administrative entities. The latter did not handle the problem because the current owner (Elie Kubwimana) has built a house in that piece of land. Grace wants to have right to that piece of land despite her husband's disagreement. As a lawyer prepare written submission and oral defense for Grace and Kadage.

CASE 5

Mwiza Angelique was born on 14th July 1977, in Bugande. Her parents are Kavuna Peter and Mukayuhwi Peninah. She legally married Paulin Bizimana and got three children. In 1959, Kavuna Peter and Mukayuhwi Peninah fled to Uganda due to internal problems in the country. They stayed in Uganda for 30 years. When they fled, they had lands in the former District Kayenzi, which has become Kamonyi District. When they came back in the country in 1994, their lands were in the hands of A.D.E.P.R.

AD.E.P.R said that it was given the lands by the Government of Rwanda. The proof provided was the letter that was written to ADEPR by Kubwimana Elie, who was the member of Kamonyi District council. A.D.E.P.R built in that land a church and schools accredited and financially supported by the government of Rwanda.

After a short time following their return in the country, Kavuna started claiming the land but Kavuna and Mukayuhwi Peninah died. Mwiza Angelique took over and continued to deal with the problem at Cell, Sector and District levels but in vain. Angelique Bwiza

wants to take the case to courts and has witnesses. Mwiza and A.D.E.P.R need lawyers to prepare written submissions and oral defenses before competent court.

CASE 6

UWANYIRIGIRA Valerie's parents are KAMANA Jonas and MUKAMWIZA Lea. Valerie was born in 1930 and she lives in INEZA village, BIBARE Cell, KIMIRONKO Sector, GASABO District. She has brothers and sisters -Kankwazi, Kankindi, Kanjogera and Kalisa. Their parents had a very big land in Bigabiro village, Cyanya Cell, Kigabiro Sector, Rwamagana District. In 1959, they fled to Burundi where their parents died. Their big sister Kankwanzi stayed in Rwanda and was married to one of the officials of the former government of Rwanda.

Before they fled to Burundi, Kamana Jonas asked his nephew Muhayeyezu to keep his land. Muhayeyezu died after one year. After his death, Kankwanzi took all parents' properties. In 2000, when dealing with properties registration, Kankwazi decided to do registration of one part of properties in the name of his father as it can be observed on property title. The remaining part was divided into parts that were given to her children.

One of Kankwanzi's children affirmed, that, the part he was given, belonged to his grandfather. The rest of land was sold to different persons because she thought she was the lawful owner. In 1994, her brothers and sisters (KANKINDI, KANJOGERE and KALISA) returned to Rwanda and Kankwanzi gave them pieces of land where they built their own houses. They all considered the land they were given as their own land.

In 2005, Uwanyirigira Valerie returned home and she was the one who knew well all the parents' lands. Valerie asked all her sisters and brothers to share equally, but in vain. Kankwazi was not cooperative. Those (KANKINDI, KANJOGERE and KALISA) who were given land did not wish to make claim because they were satisfied with the pieces of land they were given.

Uwanyirigira Valerie took the case to administrative entities but her problem was not settled. She decided to take the dispute to the committee of conciliators (Abunzi) but ABUNZI did not decide on the dispute because Kankwanzi came from a different Cell.

Uwanyirigira needs lawyer(s) who can help her to get the re-division of the parents' land so that she can have her part. Basing on what had been described above, prepare the parties' written submissions and prepare oral defences before the competent court.

ANNEX 6: EVALUATION FORMS

1. PART I: TRAINING ON LAND LEGAL FRAMEWORK EVALUATION FORM, APRIL 1- 3, 2013

This survey will help us (HAGURUKA A.S.B.L) to understand the results of the training of lawyers on legal framework governing land in Rwanda, by providing us with a tool to measure progress. Understanding results allows us to share our accomplishments, as well as learn from what we do. Your feedback is much appreciated. We would like you to answer the questions as sincerely, correctly and fully as you can. Thank you for participating in this process.

i. **What is your name?**

ii. **What is your legal profession?**

1. Advocate
2. Legal consultant
3. Civil society employee
4. Other (please specify)

iii. **How long (in years) have you been in your profession?**

1. 0-3
2. 4-6
3. 7- 9
4. 9 or more

iv. **What is your professional address?**

v. **What is your specialization (if any):**

vi. **When did u start the training?**

vii. **How would you rate the course content?**

- 1) Very Poor 2) Poor 3) Average 4) Good 5) Excellent

viii. **How would you rate the course materials?**

- 1) Very Poor 2) Poor 3) Average 4) Good 5) Excellent

ix. **What was your favorite unit of the training?**

x. **How well did the program strengthen your skills and knowledge in the following areas**

- a)Not much b) a little bit c) a lot
1. Legal Research

2. Legal Interpretation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Advocacy/Pleading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Legal Interview	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Legal Writing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Gender-and-Law based Analysis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Vulnerable Group Rights on Land	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

xi. What did you like best about the training?

xii. What didn't you like about the training?

xiii. How will you use the training in the future?

xiv. Please rate your facilitator on the following:

a)poor b)average c)good d)excellent

1. Style/Method	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Pace/Speed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Understanding of materials

4. Ability to answer questions

xv. How would you rate your overall level of participation in the training?

1) Very poor 2) Poor 3) Average 4) Good 5) Very Good

xvi. How would you rate the training facilities?

1) Very poor 2) Poor 3) Average 4) Good 5) Very Good

xvii. How would you rate the in-room-set-up of the training?

1) Very poor 2) Poor 3) Average 4) Good 5) Very Good

xviii. How did the training fit your needs/expectations?

1) Very poor 2) Poor 3) Average 4) Good 5) Very Good

2. PART 2: PREPARATION AND PRESENTATION OF MOOT COURT ON LAND LAW IN RWANDA, APRIL 4-5, 2013

General instructions:

Please consider the training program that you have attended and complete the following evaluation form.

Tick your answer where it is necessary. For open questions, put your answer on the free space.

Be completely honest in your assessment, and answer the questions as fully as possible. This may help HAGURUKA to raise the quality of its services and training programmes.

I – Learning

1. To what extent do you feel you have learned from the training? (Please ring the score number that you feel most closely represents your views)

Learned a lot	6	5	4	3	2	1	Nothing learned
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If you have rated 6, 5 or 4 please describe:

a) What have you learned?

b) What do you intend to do with this learning on your return to work?

If you have rated 3, 2 or 1, please state as fully as possible the reasons why you gave this rating:

II - Confirmation of Learning

2. To what extent do you feel that previous knowledge has been confirmed?

Confirmed a lot	6	5	4	3	2	1	Confirmed little
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If you have rated 6, 5 or 4, please describe:

a) What knowledge has been confirmed?

b) What do you intend to do with this learning on your return to work?

If you have rated **3, 2** or **1**, please state as fully as possible the reasons why you gave this rating.

III - Non-learning

3. What did you miss that you expected and wished to learn during the training? Please describe fully any items?

IV – Other remarks

4. Write any other comments you find important regarding the contents of the training you have had.

5. How did you appreciate the explanation and comments of:

N.	Names	Good				Poor	
1.	NDIZEYE EMMANUEL						
2	RUSHIKAMA NIYO JUSTIN						

If you have rated **4, 5** or **6**, please state as fully as possible the reasons why you gave this rating.

6. How did you appreciate the quality of:

N.	Topics	Good	Poor
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		1	2	3	4	5	6
1.	The content of the moot court guide						
2.	Cases prepared by trainers						
3.	Feedback and discussion in relation to moot court presentation						

If you have rated **4, 5** or **6**, please state as fully as possible the reasons why you gave this rating.

Thank you very much for your participation and contribution to the training.