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ASSESSMENT OF THE LEGAL FRAMEWORK GOVERNING GENDER AND PROPERTY RIGHTS IN RWANDA

LAND Project

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ACRONYMS

CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
C.S	Cour Suprême
GBV	Gender-based Violence
GoR	Government of Rwanda
IPAR	Institute of Policy Analysis and Research
MINAGRI	Ministry of Agriculture
OG	Official Gazette
O.G.R.R	Official Gazette of the Republic of Rwanda
UN	United Nations
UNDP	United Nations Development Program

EXECUTIVE SUMMARY

This report has been compiled by the LAND Project, which is funded by the United States Agency for International Development (USAID) and implemented in collaboration with the Government of Rwanda and other land sector stakeholders in Rwanda. The LAND Project contributes to Rwanda's enduring peace and prosperity by strengthening the resilience of its citizens, communities, and institutions and their ability to adapt to land-related economic, environmental, and social changes.

This overarching goal of the project is supported by efforts to assist the Government of Rwanda (GOR), civil society, and local communities to achieve two major objectives:

1. *Increased understanding of land laws, policies, regulations, and legal judgments on land-related issues by GOR officials, local civil society organizations (CSOs), research institutes, and citizens.*
2. *Increased capacity of local Rwandan institutions to generate high quality evidence-based research on land related issues and GOR laws and policies (i.e. crop intensification, land inheritance, rural/urban migration);*

A comparative analysis of the legal framework governing gender and property rights in Rwanda and gendered property rights in practice is called for in the LAND Project's scope of work and articulated in the project's first and second annual work plans. This report comprises a review of the legal framework and will be used as a basis for comparison with results of a field study to assess women's and men's access and control over land and associated assets.

After the 1994 genocide, Rwanda made significant strides in reforming the legal framework to protect the property rights of women. The forerunner of such reforms was the Law No 22/99 of 12/11/1999 Supplementing Book One of the Civil code and Instituting Part Five regarding Matrimonial Regimes, Liberalities and Successions, more commonly referred to as the "Succession Law of 1999." It grants equal rights to male and female children to inherit property from their parents and provided for spouses married under the regime of community of property to have joint rights to property. Other important instruments promoting principles of gender equality that followed were the Constitution of 2003 as amended to date, 2004 National Land Policy, and Law n° 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda (known as the Organic Land law of 2005).

Subsequently, the 2005 Organic Law was repealed and a new Law n° 43/2013 of 16/06/2013 governing Land in Rwanda, hereinafter referred as Land Law of 2013, was adopted. And, most recently, a new law on Matrimonial Regimes, Family Donations and Successions, hereinafter referred to as the Draft Succession Bill, has been drafted and is under consideration. Given the extensive number of provisions in need of revision to provide greater legal clarity, the decision was taken not to amend the existing Succession Law of 1999, but rather replace the law entirely. The Draft Succession Bill was introduced to harmonize more closely with the Constitution, especially in its principles relating to decentralization. Rwanda has also ratified international legal

instruments that support women and men having equal rights to property and obligations to promote measures to make those rights effective in practice.

This report reviews the body of legislation in Rwanda governing property rights in the context of gender. While on the whole, Rwanda's laws are highly progressive in upholding gender equality, one finds that there are still contradictions between legal instruments, gaps or vague areas in the law that potentially leave (certain types of) women and girls vulnerable, and provisions in policy and law that may warrant reform as Rwanda continues to strive to be a model for protecting the rights of women and creating a gender equal society. Among these are:

- While male and female children are entitled to equal portions of inheritance, this same right is not applied to gifts of land from parents to children during the parents' lifetime.
- Inheritance rights of children born outside of a civil marriage are assured only in cases where the children have been officially recognized by the parent.
- The law does not assure matrimonial property rights to women whose marriages have not been performed under civil law and only recognizes monogamous marriages.
- In cases of divorce or separation, spouses married under the limited community of property and separation of property regimes are required to share common assets and liabilities, but the law does not require them to be divided equally. The Draft Succession Bill provides greater clarity by stipulating that assets designated as community property are shared equally by the spouses and that both spouses are liable for loans and debts contracted for the benefit of the household.
- Whereas spouses must provide consent for transfer of matrimonial property, no provision requires that spouses or other joint right holders share the benefits associated with those transactions. This gap has not been addressed in the current Draft Succession Bill.
- Because Rwanda's laws impose no restriction on testamentary freedom, one spouse can bequeath her/his portion of the patrimony to heirs other than the surviving spouse and children, even when married under community of property. Likewise, the Draft Succession Bill has not placed any restrictions on testamentary freedom.

The report also points to areas of inconsistency between Rwanda's domestic legislation and international legal instruments that it has ratified and challenges associated with making sure the judiciary and other legal professionals are fully equipped to draw on international law in adjudicating cases.

The report concludes with a series of considerations for strengthening the legal framework and its application in support of Rwanda's quest to fully balance the scale of gender justice.

1.0 INTRODUCTION

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Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men.¹ In many African countries, the struggle for gender equality in relation to rights to land and other property has been fierce, but still remains a distant reality.

Like other African countries, women in Rwanda have faced discrimination in the realm of property rights. Despite its ability to adapt to new realities, customary law has continued to strongly favor men when it comes to controlling land. This has been the case during Rwanda's pre-colonial, colonial and even post-colonial periods. Pre-colonial, colonial and post-colonial statutory laws have also failed to uphold gender equality when it comes to women's property rights. Rwanda's current laws reflect significant strides in support of gender equality. Nevertheless, further reforms are necessary if this legislation is to uphold full gender equality.

Under Rwandan custom, rights to control and make decisions over land have largely been accorded to males and denied to females. Inheritance of land is patrilineal, passing from father to sons,² and excluding daughters. Instead, daughters are expected

¹ Gender Impact Assessment of the Law n° 22/99 of 12/11/1999 to Supplement Book One of The Civil Code and to Institute Part Five regarding Matrimonial Regimes, Liberalities and Succession Law, Gender Monitoring Office, Kigali, August 2011.

² Ephrem GASASIRA (1995), *The Land Issue after the War*, Kigali: MINAGRI/UNDP

to access land through their husbands when they marry, though control rights to land would continue to vest in the husband. Customary law dictates that widows are entitled only to usufruct rights over family land until her sons attain the age of majority, after which control rights are passed to the sons.³ Nevertheless, customary law has provided women with certain rights to gifts of land from their father's patrilineage. When a woman is married, such gifts are typically called "*ingarigari*," whereas unmarried women can receive a gift from their father known as "*uwagumiwe*." Other types of land gifts women could receive are "*urwibutso*,"⁴ "*intekeshwa*,"⁵ and "*inkuri*."⁶

While important, these symbolic gifts have not laid a foundation for gender equality. Men have continued to exercise control rights over land to a much larger extent than women. This situation was made worse in the aftermath of the 1994 genocide against Tutsi, which took a disproportionate toll on men. Under both custom and statutory law, survivor daughters were not legally entitled to inherit their father's land. Several factions of post-genocide Rwandan society viewed the situation as highly unjust, especially given that the genocide had left behind a majority female population.

Women, human rights activists, and civil society groups with the support of political leaders initiated public debate seeking to change the existing legislation. After a long battle, the Rwandan Transitional National Assembly adopted Law No 22/99 of 12/11/1999 Supplementing Book One of the Civil code and Instituting Part Five regarding Matrimonial Regimes, Liberalities and Successions, hereinafter referred as the "Succession Law of 1999."

This law granted equal rights to male and female children to inherit property, including land.⁷ The law also introduced a joint management of matrimonial property for spouses married under the regime of community of property.⁸ The principle of gender equality was again affirmed in the Constitution of 2003⁹ as amended to date. The principle is also mentioned in the 2004 National Land Policy¹⁰ and the Land Law of 2013.¹¹

This study constitutes a review of the legal framework governing gender and property rights, particularly land property rights. It identifies and interprets provisions in Rwandan law and in international law that Rwanda is party to that frame the rights of women and men to land property while also analyzing their implications in terms of upholding gender equality. Section 1 reviews domestic legislation relating to gender and property

³ National Land Policy, February 2004.

⁴ *Urwibutso* means "Remembrance" and is typically given by an elderly father to a daughter.

⁵ Symbolic gift from her parents given for helping her to get used to her new home following her wedding ceremony.

⁶ Gift received when presenting her new born baby to her father's family.

⁷ Article 50 of the Succession Law, 1999.

⁸ Article 3 and 4 of the Succession Law, 1999.

⁹ Article 11 of the Constitution of the Republic of Rwanda, 2003.

¹⁰ See the General principles, Chapter 4. Section 2, p.23.

¹¹ Article 4 of the Land Law, 2013.

rights. Section 2 reviews the international legal instruments applied in Rwanda that have implications for gender and land property rights. Section 3 compares the content of international legal instruments and domestic legislation, while Section 4 examines areas of the law which merit attention and potentially reform as Rwanda continues to strive to bestow equal property rights to women and men.

2.0 ANALYSIS OF THE DOMESTIC LEGISLATION GOVERNING GENDER PROPERTY RIGHTS

Rwanda has put in place national instruments and mechanisms to promote gender equality and respect for the property rights of women. These range from equal rights principles enshrined in the 2003 Constitution as amended to date to laws and policies governing marital property regimes, inheritance and land rights. In examining the gendered implications of domestic law governing property rights, especially to land, this section specifically examines: Rwanda's legal treatment of rights of women and men to land, matrimonial property regimes, transfer and mortgaging of property, inter vivos gifts of property, inheritance of property and succession, division of property in cases of divorce or separation, and land registration.

2.1 EQUAL RIGHTS OF WOMEN AND MEN TO LAND

The Constitution of 2003, as amended to date, expresses a commitment to ensure equal rights between Rwandans and between women and men without prejudice to the principles of gender equality and complementarity in national development.¹²

As it is formulated, all Rwandans are born and remain free and equal in rights and duties. Discrimination based on ethnic origin, tribe, clan, color, sex, region, social origin, religion or faith, opinion, economic status, culture, language, social status, physical or mental disability, or any other form of discrimination is prohibited and punishable by law.¹³ As such, rights granted in law to own, access, transfer and control land as an individual or in association with others is afforded to both women and men without discrimination. This is also expressed in the Land Law of 2013, which prohibits discrimination based on either sex or origin in matters relating to access to and enjoyment of real rights.¹⁴

Besides the Constitution and the Land Law of 2013, the guiding principles contained in the 2004 National Land Policy include equality of all citizens in the enjoyment of rights of access to land without any form of discrimination.¹⁵ The policy also highlights the principle of equality of all Rwandan citizens to enjoy the same rights of access to land.¹⁶

¹²Preamble paragraph 10, The Constitution of the Republic of Rwanda, 2003.

¹³ Idem, article 11.

¹⁴ Article 4 of the Land Law, 2013.

¹⁵ National Land Policy, 2004, General principles, Chapter 4. Section 2, p.23.

¹⁶ Ibidem.

It states that women, married or not, should not be excluded from the process of land access, land acquisition, land transfer and land control, and female descendants should not be excluded from the process of family land inheritance.¹⁷

2.2 RIGHTS OF MARRIED WOMEN AND MEN

The Constitution provides that men and women in a civil marriage have equal rights in duties, both during their marriage and in the event of divorce.¹⁸ The Land Law of 2013 states that both a man and a woman lawfully married have rights over land depending on the type of matrimonial regime they opt for. However, the legal framework only provides for shared land rights to couples who are married under civil law. Women married under custom or in *de facto* unions are not protected by this new legislation, nor would they be if the current version of the Draft Succession Bill is enacted.

According to the Succession Law of 1999, the matrimonial property regime constitutes an “agreement between spouses on the management of their property.”¹⁹ In other words, the regime governs whether the rights to decide how the property can be used are shared in common or separate. This includes decision about whether the property and can be transferred and, if so, how (e.g. rental, gift, sale).

The Succession Law recognises three types of marital property regimes:²⁰

- **Community of property:** a contract by which the spouses jointly own all property, movable and immovable, that is brought into the marriage and acquired during the marriage, including property bestowed to one spouse as a gift. Items of personal use, such as clothing, jewelry and tools, are excluded and can remain separate property of the spouses.
- **Limited community of acquests:** a contract by which spouses specify which property they shall own jointly. By virtue of the fact that such a declaration must be made to the officer of civil status upon the marriage celebration, the law seems to imply that the ability to exclude property from the community of property regime only pertains to assets held by the spouses prior to the marriage and not assets acquired during the marriage which presumably would be jointly owned. However, the law is not specific in this regard.
- **Separation of property:** a contract by which spouses retain rights of enjoyment, administration and free disposal of their separate personal property. Nevertheless, each spouse is obligated to contribute to household expenses in proportion to their respective abilities.

¹⁷ National Land Policy, 2004. Chapter 4, Section 4.2.

¹⁸ Article 26(4) of the Constitution of the Republic of Rwanda, 2003.

¹⁹ Article 1 of the Succession Law of 1999.

²⁰ Articles 2 to 10 of the Succession Law of 1999.

Article 12 of the Succession law of 1999 also provides that if, in the administration of his/her property, one spouse imperils the interest of the household, the other spouse may request that he/she be divested of their rights to administer the property and that such administration rights be assumed by the imperiled spouse.²¹

If the spouses do not elect a regime, the default matrimonial property regime is community of property.²²

The Draft Succession Bill simplifies the definitions of the regimes somewhat. Specifically, Articles 4-15 spell out the rights associated with each regime when it comes to both immovable and movable property:

- **Community property regime:** “a contract by which the spouses opt for a marriage settlement based on joint ownership of their movable and immovable property.” This regime provides that spouses “manage the patrimony together and have the same right to recover the property if taken, and act as legal representative of the property.”²³ When it comes to land, the property must be registered in both spouses name.²⁴ Under the Bill, this regime continues to serve as the default matrimonial regime.²⁵
- **Limited community property regime:** “a contract by which spouses agree to pool some of their respective property owned on the day of the marriage celebration, creating the community property to which any property acquired during the marriage by a common or separate activity, donation, legacy or succession shall be added.” In using the word “shall,” the definition suggests that all property acquired during the marriage must become part of the community property.
- **Separation of property regime:** a contract by which spouses agree to contribute to the expenses of the household in proportion to their respective abilities while retaining the right to enjoy, administer and freely dispose of their personal property.

One clear improvement of the Draft Succession Bill over the Succession Law of 1999 is that the latter provides that spouses married under community of property and limited community of acquests “shall choose who, among themselves, shall be responsible of the management of the common patrimony,”²⁶ whereas the Draft Bill imposes no such requirement and notes that both spouses have the same rights to act as a legal

²¹ Article 12 of the Succession Law of 1999 .

²² Article 2, paragraph 2 of the Succession Law of 1999.

²³ Article 5, paragraph 2 of the Draft Succession Bill.

²⁴ Idem, Article 5 paragraph 3

²⁵ Idem, Article 4, paragraph 2

²⁶ Article 17 of the Succession Law of 1999.

representative of the community property. The Draft Succession Bill essentially mirrors the prevailing Succession Law when it comes to enabling one spouse to divest the other of rights over the patrimony should s/he compromise the interests of the household by depreciating the patrimony.²⁷

According to the Ministerial Order governing allocation, transaction and termination of emphyteutic leases to land, spouses who are married under community of property regime or limited community of acquests must be registered on the lease certificate as co-owners.²⁸ Hence women whose marriages have not been performed under civil law are not assured a right to matrimonial property. In cases of divorce or separation, the Succession Law provides that spouses share common assets and liabilities.²⁹ The Draft Succession Bill under consideration would eliminate ambiguities since it specifies that in the event of divorce, spouses married under the community property and limited community property regimes shall share the community property equally, excluding personal items.³⁰

Under the Constitution, Rwanda recognizes only monogamous marriages consummated by a civil authority.³¹ Women who are married only under customary law – including women in polygamous marriages - are excluded from the property rights provided to married women under the law. This has been partially reversed by Article 39 of the Law N°59/2008 of 10/09/2008 on Prevention and Punishment of Gender-based Violence, hereinafter referred to as “GBV law of 2009.” This article states that if an individual’s informal spouse decides to formally marry another spouse, the individual has a right to an equal share of the couple’s commonly owned belongings, the definition of which is not clear. This provision is the first of its kind in Rwandan law affording protection to women in customary or de facto unions.

Recently, the law’s provision was challenged in the Supreme Court³² 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

²⁷ Article 24, paragraph 1 of the Draft Succession Bill.

²⁸ Article 51 of Ministerial Order No.0001/2008 Determining the requirements and Procedures for Land Lease, January 8, 2008.

²⁹ Article 24 of the Succession Law of 1999.

³⁰ Article 7 and 11 of the Draft Succession Bill.

³¹ Idem.

³² RS/Inconst/Pen.0003/10/CS.

is entitled to share equally in – (a) the family income, And (b) the family chattels; and (c) any other relationship property.”³³

The Supreme Court also quoted court precedents from foreign courts, such as *Beaudouin Daigeault v. Richard Paul Eugene* of 1984 of the Supreme Court of Canada, *Baumgartner v. Baumgartner* of 1987 of the High Court of Australia, and *Hayward v. Giordani* of the Court of Appeal of New Zealand.

While a positive first step toward extending rights to non-formally married women, Article 39 of the GBV Law of 2009 does not entitle the informal spouses to equal management of common property nor the right to consent if the one or both of the legally married spouses elect to transfer the property. Moreover, non-formally married women only acquire the rights to a share of the common belongings in the event of her spouse electing to engage in a civil marriage with another women. Otherwise, she does not enjoy such a right.

2.3 TRANSFER OF LAND RIGHTS

According to the Land Law of 2013, land rights may be transferred between persons through succession, gift, inheritance, ascending sharing, rent, sale, sublease, exchange, servitude, mortgage or any other transaction, in conformity with the conditions and methods provided for by the laws and regulations.³⁴

Under the Land Law of 2013, alienation of land rights through donation, rent, sale, as well as transfer through long-term lease and mortgage or any other transaction require the prior consent of all legally registered right holders on the land title. The prior consent must be evidenced through an authentic document signed by the concerned persons or upon them appending their fingerprints before a competent notary in land matters.³⁵

³³ 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.

³⁴ Article 21 of the Land Law of 2013

³⁵ *Idem*, Article 21.

This would theoretically protect spouses who enter into a civil marriage under the community property regime from dispossession, since such spouses are required to register land jointly. It would not protect spouses in de facto unions or registered under other matrimonial regimes where the land used by the household is the separate property of the other spouse. Moreover, nothing in the land law or other existing laws requires that spouses or other registered right holders share the benefits associated with those transactions.³⁶ Whereas the Constitutional principle of equal rights between men and women could be invoked to assert that spouses are entitled to an equal share of the proceeds emanating from transactions, specificity in the law on this matter would make these rights more visible and potentially easier to defend.

Further protections in the case of mortgages can be found in Law N° 10/2009 of 14/05/2009 on Mortgages as modified and complemented by the Law no 07/05/2010, O.G. n° special of 14/05/2010, hereinafter referred as the Mortgage Law of 2009. While the Mortgage Law stipulates that any owner of an immovable property has the right to mortgage all or part of his property to secure an existing or future debt, this law contains provisions which protect the matrimonial home as long as mortgage is in effect. As provided for in paragraph 2 of article 2, the “matrimonial home” is defined as the house in which a husband and a wife reside together and the land on which they cultivate crops and rear livestock.

Article 5 states, “A mortgage of a matrimonial home shall be valid only if any document or any other instrument used in obtaining such a mortgage is signed by both the mortgagor and his/her spouse living in that matrimonial home, or where there is evidence of consensus between them so as to grant the mortgage; the mortgagee shall have the responsibility to ensure whether or not the mortgagor has a spouse.”

Drawing on Articles 3, 21 and 22 of the Succession law of 1999 and Articles 33-38 of the former Organic Land Law of 2005, the Supreme Court has invalidated mortgage contracts concluded by men without the consent of their wives.³⁷

Nevertheless, the stipulation in Article 5 of the Mortgage Law allowing “evidence of consensus” between the spouses concerning the mortgage to be a substitute for written consent gives the mortgagee wide discretion in determining what that evidence is and leaves a spouse who may contest that there was consensus with no proof to support her claim. It also restricts the need for consent to spouses living in the matrimonial home, potentially leaving spouses who may not reside in the marital home vulnerable to debt or property loss.

2.4 DONATIONS

Many societies in Rwanda have customary practices of passing land to their children during the parents’ lifetime, rather than after their death. Under Rwandan Law, a donation is “an act by which a person transfers to another by gratuitous act a

³⁶ Idem, Article 22.

³⁷ Decision case N° RCom. 0001/08/CS rendered by the Supreme Court on 24/07/2008.

patrimonial right.”³⁸ Donations are comprised of donations intervivos, ascending partition, legacy and promised donation.³⁹

The practice of giving parcels of land to one’s children, referred to as “ascending partition” in the Succession Law, is a popular traditional practice in Rwanda. In *Kinyarwanda*, it is referred to as “*umunani*,” defined as an accomplishment of the parents’ duty to raise their children and provide them with a personal patrimony.⁴⁰ Different Rwandan traditions have also provided for women to receive gifts of land from their parents, often in conjunction with their marriages or the birth of a child.⁴¹

According to the Succession Law of 1999, all children, male and female, have a right to such gifts.⁴² However, unlike inheritance, this provision does not specify that gifts of land be divided equally between daughters and sons, or between female and male descendants. The Constitution’s prohibition of discrimination based on sex in matters relating to ownership or possession of rights over land could be used to argue that both male and female descendants are entitled to equal portions of gifted land. Moreover, the Draft Succession Bill states that, “without discrimination between males and females, all children....have a right to ascending partition....”⁴³ However, a more explicit provision in the Draft Succession Bill stating that all donations of land must be partitioned equally among children regardless of sex is recommended to alleviate any ambiguity.

Law provides that donations of one’s property cannot exceed one-fifth of the patrimony if the donor has children and cannot exceed one-third of the patrimony if there are no children.⁴⁴ The Draft Succession Bill alters this by providing that donations cannot exceed one half of the patrimony if there are no children, adding that the remaining half shall be reserved for spouse to be shared with other heirs.⁴⁵ Moreover, donations of immovable property (which would include land) and any other “property in the community” require an agreement by both spouses.⁴⁶ In the Draft Succession Bill, this is clarified to apply regardless of the matrimonial regime chosen.⁴⁷ Although the Succession Law does not stipulate the agreement to be in writing or witnessed by authorities, the Land Law of 2013 states that registered right holders must provide this consent to transfer in writing and before a competent notary in land matters.⁴⁸

³⁸ Article 25 of the Succession Law of 1999.

³⁹ Article 26 of the Succession Law of 1999.

⁴⁰ Article 42 of the Succession Law of 1999.

⁴¹ National Land Policy, 2004. Section 3.5, p. 20.

⁴² Article 43 of the Succession Law of 1999.

⁴³ Article 39 of the Draft Succession Bill.

⁴⁴ Article 31 of the Succession Law of 1999.

⁴⁵ Article 30 of the Draft Succession Bill

⁴⁶ Article 21 of the Succession Law of 1999.

⁴⁷ Article 22 of the Draft Succession Bill.

⁴⁸ Article 21 of the Land Law of 2013.

2.5 INHERITANCE BY DAUGHTERS AND SONS

Inheritance is the transfer of land of a deceased individual to his or her designated heirs. Under most customary law in Rwanda, inheritance of primary rights to family land is from father to son. Daughters in most cases are excluded as heirs.⁴⁹

By contrast, under Rwandan statutory law, all legitimate sons and daughters have a right to an equal share of the patrimony upon the death of their parents.⁵⁰ While this provision succeeds in challenging gender discrimination, it favors children born in wedlock over those born out of wedlock. Under Law n° 42/1988 children born outside of civil marriage seemingly do not have a legal claim to land belonging to their parents until they are legally recognized by the parents.⁵¹ The Draft Succession Bill upholds gender equality,⁵² but has the advantage of making no distinction between children born in and out of wedlock. While Rwandan law protects the property rights of female and male children in cases of intestate succession, it does not restrict testamentary freedom. If legitimate children are provided for in a will, they are entitled to equal shares. However, they could potentially be excluded or given very small shares.

A new provision has been introduced in the Draft Succession Bill that potentially would give daughters an opportunity to balance the scales if they were given smaller or no shares as gifts during their parents' lifetime. Article 42 of the Draft Bill states that, "A descendent who does not receive property in an ascending partition, or who has received a manifestly smaller share, may initiate an action to reduce the shares of the other beneficiaries if the property remaining in the estate or patrimony is insufficient to provide his/her respective portion."⁵³

2.6 SUCCESSION BY WIDOWS/WIDOWERS

According to the Succession Law of 1999, if spouses are under the regime of community of property or community of acquests and one spouse dies *intestate* (i.e. without a will), the surviving spouse administers the "entire patrimony."⁵⁴ It is not clear whether the patrimony includes the matrimonial property as a whole, or only the deceased spouse's portion, though the scenarios for intestate succession set out in Article 70 seems to suggest the former. The Draft Succession Bill provides greater clarity in specifying that a surviving spouse married under the regime of community of property is entitled to half of the common property and only succeeds to the other half if

⁴⁹ National Land Policy, February 2004.

⁵⁰ Article 50 of the Succession Law of 1999

⁵¹ Article 206 of Law n° 42/1988 of 27 October 1988 establishing the Preliminary Title and Book One of the Civil Code

⁵² Article 46 of the Draft Succession Bill.

⁵³ Article 42 of the Draft Succession Bill

⁵⁴ Articles 70 and 71 of the Succession Law of 1999.

there are no children of the deceased, along with the parents of the deceased. The same rules apply under the limited community property regime, for that property which was held in common by the couple. In the case of couples married under the separation of property regime, there is no common property that surviving spouses are entitled to inherit. The surviving spouse is only entitled to inherit the deceased's patrimony if he has no children.⁵⁵

Within the Succession Law of 1999 no definition is given for the term "administration," in terms of whether this includes all rights associated with ownership of land, including rights to transfer and alienate the land, or whether such rights may preclude transfer rights in the interest of securing the property for children and other heirs in the future. However, further reading of the law, and particularly other scenarios described in Article 70, suggests that such rights impede permanent transfer of the land. Limitations of the surviving spouses right to usufruct only is made clear in the case of the conjugal home and furniture.⁵⁶ Surviving spouses who remarry retain full ownership to half the patrimony they inherited if they have no children under their care. But if they are caring for the deceased's children, surviving spouses may assert full ownership to only one quarter of the patrimony with the remaining three quarters is to be administered by the surviving spouse for the benefit of the children.⁵⁷ In the case of spouses who are married under separation of property, the surviving spouse only has rights to their own patrimony; the first in the line of heirs to the deceased's patrimony is his/her children.⁵⁸

However, the Draft Succession Bill implies that half the common property inherited by the surviving spouse constitutes a full ownership right,⁵⁹ rather than simply an administration right, enabling him/her to alienate or otherwise make transactions on that piece of land without any interference from the deceased's family. This appears to apply regardless of whether the surviving spouse elects to remarry or not. With regard to the protection of the family house, if the surviving spouse has children with the deceased and did not inherit the family house and its furnishings with her/his share of the common property, s/he is entitled to remain with these until s/he dies, implying a usufruct right. But this right is lost if s/he remarries. If there are no children with the deceased, the law suggests that the surviving spouse is entitled to a full ownership right to the house and furnishings to the exclusion of other heirs, but must compensate other heirs if the value of these exceeds her/his succession share.⁶⁰

None of the rights stipulated above apply in the case of couples not married under civil law. Hence, women in de facto unions have no entitlements to the conjugal property or the deceased's personal property in the event of widowhood.

⁵⁵ Articles 69-72 of the Draft Succession Bill.

⁵⁶ Article 75 of the Succession Law of 1999.

⁵⁷ Idem, Article 70.

⁵⁸ Idem, article 66.

⁵⁹ Article 71 of the Draft Succession Bill.

⁶⁰ Idem, article 90.

Because Rwanda's laws impose no restriction on testamentary freedom,⁶¹ one spouse can bequeath her/his portion of the patrimony to the heirs of his/her without regard to the order of heirs provided for under intestate succession. This remains the case under the current version of the Draft Succession Bill.⁶² What remains unclear in the Bill is whether one has the power to deprive one's spouse of her/his share of the common marital property. The Draft Bill does not clarify whether the terms "his/her property" in Article 52 includes the common marital property.

2.7 LAND REGISTRATION

According to Article 20 of the Land Law of 2013, registration of land a person owns is mandatory and everyone is obliged to register his/her land.

Ministerial Order N°002/2008 of 01/4/2008 Determining Modalities of Land Registration further defines the modalities for land registration, including the establishment of a Register of Land Titles, procedures for the registration of titles to land and other interests in land, transfers of title to land and other transactions related to land, and related matters.

The order mandates that couples in civil unions must register land jointly if married under full or limited community property,⁶³ a provision that is echoed in the Draft Succession Bill in the case of marriage under the community property regime.⁶⁴ However, this requirement does not apply for spouses in customary marriages or consensual unions. Land registration policies do not disallow women in informal marriages, including those in polygamous marriages, to be registered jointly with their husbands or for their husbands to provide them with shares of land which may be registered individually in the informal wife's name. Yet, this ultimately depends on the will of the primary landholder, which is typically the husband.

3.0 INTERNATIONAL LEGAL INSTRUMENTS THAT ADDRESS GENDER EQUAL RIGHTS TO PROPERTY

3.1 THEORETICAL PROGRESS OBSERVED IN SIGNING AND RATIFYING OF KEY INTERNATIONAL INSTRUMENTS

Rwanda is signatory to several international legal instruments which promote and protect equal rights, whether broadly or referring specifically to gender or sex. These instruments include the Universal Declaration of Human Rights, Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), International

⁶¹ See Section II of the Succession Law of 1999.

⁶² Article 52 of the Draft Succession Bill.

⁶³ Article 51 of the Ministerial Order No. 0001/2008 Determining the Requirements and Procedures for Land Lease, January 8, 2008.

⁶⁴ Article 5 of the Draft Succession Bill.

Covenant on Economic, Social, and Cultural Rights, International Covenant on Civil and Political Rights, African Charter on Human and People's Rights, and African Union Protocol on the Rights of Women in Africa.

By signing and ratifying these international legal instruments, the Government of Rwanda has expressed political will to be bound by their provisions and to promote gender equality. However, signing and ratifying an international legal instrument is not enough to enable its provisions to have full application. They must first be published in the Rwandan Official Gazette to have this authority.

Once published, international treaties and agreements occupy a high position in the hierarchy of legal sources in Rwanda, second only to the Constitution. As provided for in Article 190 of the Constitution of the Republic of Rwanda of 2003 as amended to date, once international treaties and agreements are published in the Official Gazette, they become more binding than organic and ordinary laws, and domestic courts and other governmental bodies may use them as a source of law.

The following are some of the international instruments that assert, either specifically or broadly, women's rights, including rights to property and other livelihood assets signed by Rwanda.⁶⁵

3.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights of 10 December 1948⁶⁶ is one of the key international legal instruments that protect human rights. It calls human rights of all persons to be respected without distinction and recognizes the equal rights of all members of the human family.

Article 17 emphasizes that:

- Everyone has the right to own property alone as well as in association with others.
- No one shall be arbitrarily deprived of his property.

Taken together, these provisions of the Declaration imply that the rights of women and men are the same, including rights to access, control and retain property. Article 25 of the Declaration also affirms the right to an adequate standard of living, including housing.

The Constitution of the Republic of Rwanda of 2003 as amended to date affirms Rwanda's adherence to this Declaration as stipulated in its Preamble 9^o and in Article 11 which states, "All Rwandans are born and remain free and equal in rights and duties. Any form of discrimination is prohibited and punishable by the law."

⁶⁵ Legal and Policy Framework for Gender Equality and the Empowerment of Women in Rwanda Pamela Abbott and Marklin Rucogoza, IPAR, Kigali, June 2011.

⁶⁶ Rwanda acceded on 18th September 1962 by the mere fact of its admission as member of the UN) It was approved and ratified through the presidential order N^o 159/01 of 31st December 2002 (O.G. No 12 ter of 15th June 2003).

3.3 CONVENTION OF 18 DECEMBER 1979 ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The Convention on the Elimination of All Forms of Discrimination Against Women⁶⁷ (CEDAW) defines discrimination against women as any "distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, on the basis of equality between men and women, of human rights."

Among international instruments, the convention provides some of the most robust law on the specific rights of women, including property rights:

- Article 14 (2) of the Convention requires "State Parties to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development." This same provision also obligates states to uphold women's "equal treatment in land and agrarian reform as well as in land resettlement schemes."
- In Article 15, the 1979 Convention says that, "State Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals."

Furthermore, the Convention says that: "State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations."⁶⁸ The provision specifically refers to the equal rights of spouses with respect to ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms,⁶⁹ including:

- To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- To establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.⁷⁰

⁶⁷ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly. and entered into force on 3 September 1981. It was ratified by Rwanda through the Presidential Order n°431/16 of 10 November 1980, O.G. n°. 4 of 15/02/1981,p. 132. <http://www.un.org/womenwatch/daw/cedaw/>

⁶⁸ Article 16 of the CEDAW

⁶⁹ See article 2 of the CEDAW.

3.4 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS OF 16 DECEMBER 1966

This International Covenant on Economic, Social and Cultural Rights⁷¹ has provisions that offer limited protection of women's property rights. Article 3 says that the "States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant." Article 11 requires the "States Parties to the Covenant to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". Taken together, the covenant can be said to assure equal rights of men and women to housing.

3.5 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS OF 16 DECEMBER 1966

This Covenant emphasizes equality of all persons before the law and their entitlement to equal protection and to civil and political liberties.⁷² Article 1.2 states that "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

3.6 THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

The African Charter on Human and People's Rights⁷³ has also two key provisions upholding land rights. Article 13, paragraph 3 affirms that "Every individual shall have the right of access to public property and services in strict equality of all persons before the law."

Article 14 states that the "right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws." However, neither provision offers any specific protections for women or assurances of gender equality when it comes to private property or expropriation.

Nevertheless, Article 7(d) of the Protocol on the Charter specific to the Rights of Women in Africa⁷⁴ provides that States shall ensure that "in case of separation, divorce or

⁷⁰ Article 16 of the CEDAW.

⁷¹ Adopted by General Assembly resolution 2200 of 16 December 1966, it entered into force on 3/10/1976. Rwanda adhered to this convention by the Decree-law n° 8/75 of 12/02/ 1975. (O.G.R.R., 1975, p. 230).

⁷² Commission Nationale des droits de la personne, *Le Rwanda et les principaux instruments internationaux et régionaux relatifs aux droits de l'homme*, 3e édition, Kigali, Octobre 2005, page 5.

⁷³ Rwanda adopted it on 27th June 1981. It has been ratified by Rwanda through Presidential Decree n° 10/1983 of 1st July, 1983 (Official Gazette n° 13 of 01/07/1983).

⁷⁴ The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. Adopted on July 11th, 2003 in Maputo, Mozambique. Rwanda signed it on 19th December 2003 and ratified it on 1st July 2004 through the Presidential Order No11/01 of 24th June 2004 (OG no special of

annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.”

4.0 COMPARING AND CONTRASTING INTERNATIONAL LEGAL INSTRUMENTS AND DOMESTIC LEGISLATION

Examination of international legal instruments and domestic legislation relating to gender and property rights reveals a number of similarities and differences.

4.1 SIMILARITIES BETWEEN INTERNATIONAL LEGAL INSTRUMENTS AND DOMESTIC LEGAL PROVISIONS

Some of Rwanda’s domestic legislation draws substantially on existing international instruments. This facilitates implementation of international law because courts tend to be more familiar with domestic legislation and apt to apply it as compared to international instruments. Examples of international instrument provisions related to gender equality in property rights which have been incorporated into domestic law are:

- 1) Article 17 of the Universal Declaration of Human Rights providing that, “Everyone has the right to own property alone as well as in association with others.”

Article 29, paragraph 1 of the Rwandan Constitution of 4th June 2003 similarly stipulates that “every person has a right to private property, whether personal or owned in association with others. Private property, whether individually or collectively owned, is inviolable.”

- 2) Article 14(2) of the Convention on the Elimination of All Forms of Discrimination Against Women requires, “State Parties to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development.” Similarly, paragraph 10 of the Preamble to the Rwandan Constitution commits the People of Rwanda to “ensuring equal rights between Rwandans and between women and men without prejudice to the principles of gender equality and complementarity in national development.”

Both instruments ensure the participation of men and women in the development of their country. However, the CEDAW provision is more explicit since it obligates the State to take measures to eliminate discrimination in rural development, whereas the Preamble of the Rwandan Constitution is providing for equal rights

24th June 2004). (<http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>)

between men and women and does not obligate the State to ensure equal participation and benefits from development.

- 3) Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women says that, “State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”

By contrast, Article 17 of Succession Law of 1999 says that in case of marriage under the regime of community of property or that of limited community of acquests, the spouses shall choose who, among themselves, shall be responsible for the management of the common patrimony. The spouses are also equally entitled to monitor and to represent the patrimony. Whereas CEDAW assures women equal administration rights, the Succession Law provides that the couple choose an administrator for the property among them. If the wife cedes this right of administration to her husband under pressure from him or social convention, then she no longer has equal decision making power when it comes to managing the land. Should the Draft Succession Bill pass in its current form, it would require that marital common property be managed jointly by the couple and each spouse entitled to act as its legal representative, thereby aligning with CEDAW.

Article 21 of the Succession Law does afford spouses equal decision-making power when it comes to bestowing gifts of immovable matrimonial property. This article stipulates that, “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.”

- 4) Article 13 of CEDAW says that, “State Parties shall take all appropriate measures to eliminate discrimination against women in areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits. Assuming that “family benefits” include bequests to one’s familial heirs, Article 50 of the Succession Law of 1999 which says that “all legitimate children of the *de cujus*, in accordance with civil laws, inherit in equal parts without any discrimination between male and female children” reflects a measure Rwanda has taken to eliminate discrimination against women when it comes to the right to family benefits. This is further improved under the Draft Succession Bill which does not discriminate between children born in wedlock and out of wedlock. Extending this provision to equal

rights of male and female children to gifts of family property would ensure greater compliance with CEDAW.

- 5) Article 7(d) of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa says, "in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage."

The article in the Protocol is reinforced by Article of 25 of the Draft Succession Bill which states that matrimonial regimes are dissolved by: divorce; modification of marital regime and death of one of the spouses. Death has been included on the grounds for the dissolution of any marriage regime.

In case of the first two reasons for the dissolution of the community, spouses shall share common assets and liabilities." What is missing though is the "equitable" stipulation contained in the Protocol, though the basis for determining what is equitable would seem to be open to interpretation and not necessarily ensure gender equality.

4.2 PROVISIONS OF DOMESTIC LAWS WHICH ARE NOT COMPLIANT WITH INTERNATIONAL INSTRUMENTS

In general, Rwandan laws that have been promulgated following enactment of the Rwandan Constitution of 4 June 2003 are found to be compliant with international obligations to treat men and women equally.

However, some legal provisions, especially those adopted before enactment of the 2003 Constitution, are still discriminatory to women and in contradiction to international legal instruments ratified by Rwanda. They are also contrary to the spirit and the content of the 2003 Constitution with regard to gender equality. Examples of these legal provisions are the following:

- 1) Article 206 of Law n° 42/1988 of 27 October 1988 establishing the Preliminary Title and Book One of the Civil Code stipulates that the husband is the head of the household, which is composed of a man, a woman, and their children. The *ratio legis* of this legal provision is based on traditional gender roles which place men as the primary decision-makers in the family. Despite the proliferation of policy and law to secure gender equality in Rwanda, this discriminatory legal provision which places men in charge of management of the household including family property remains in force. It could potentially be used to argue that husbands have a right to uniformly transfer land and other household property.
- 2) Article 352 of the Civil Code also designates fathers as responsible for the administration of the assets of minor children. Mothers only acquire these rights in the absence of the father.

Both articles contravene Article 16 of CEDAW assuring equal rights between spouses when it comes to administration, management and disposition of property. They also run counter to Constitutional guarantees of gender equality. Hence, these two provisions of the Civil Code can be challenged on the grounds that they are unconstitutional or contradict international legal instruments ratified by Rwanda since international law has legal authority over Rwanda's organic and ordinary laws and other regulation in force.

In addition to invoking international law when domestic law is contradictory, courts may also draw on these instruments when domestic legislation is silent or ambiguous.

Although the Government of Rwanda has ratified several international instruments which can be used to support women's property rights, use of these instruments by the Rwandan courts is still reported to be uncommon and challenges in their implementation persist. Some of these implementation challenges cited by legal professionals consulted for this review are:

- Even though the 2003 Constitution of Rwanda places international instruments as superior to organic and ordinary laws in the hierarchy of legal sources, there is no specific institution in charge of ensuring a proper dissemination of ratified international and regional instruments to all primary users (courts, legal professions) and the general public. Some lawyers consulted reported that international instruments are sometimes not published in the Official Gazette, which makes them difficult to access and to implement.
- The dissemination of international laws and treaties used to be the responsibility of the Parliament's Legal Commission. However, this commission was merged with the Political Commission.⁷⁵ Since then, there has been no particular institution or body in charge of dissemination and follow up on gender-related international and regional instruments.⁷⁶
- Lawyers, human rights activists and court personnel frequently lack understanding of the relevance of international instruments in the local context and rarely refer to these instruments.
- Implementation and dissemination plans are lacking for the different international instruments which Rwanda is party to, which may account for poor awareness of these by the population and local institutions administering the law.

⁷⁵ Gender Monitoring Office, Assessment of gender related international and regional instruments and their implementation in the Republic of Rwanda, Kigali, July 2011.

⁷⁶ Idem.

- International law sometimes conflicts with customary norms, potentially leading to resistance by citizens and dispute resolution authorities to comply with such law.
- Poverty and other economic and social barriers faced by women often prevent them from claiming their rights to property through the justice system.

5.0 CONCLUSIONS AND PRELIMINARY RECOMMENDATIONS FOR STRENGTHENING THE LEGAL FRAMEWORK TO FACILITATE GENDER JUSTICE IN RWANDA

Since the 1994 Genocide, Rwanda has made tremendous strides in establishing a legal framework to foster greater gender justice, including in the realm of property rights. Nevertheless, there are still aspects of the legal framework governing gender and property rights that merit consideration for reform. The recommendations discussed in this section are preliminary. The LAND Project intends to carry out a broad-based field assessment to assess the exercise of gendered rights in practice, which could have an influence on the conclusions and recommendations formulated here.

Donations to children. Whereas Rwandan law stipulates that land inherited from parents must be shared equally between daughters and sons, this does not apply in the cases of donations of land passed to children during the parents' lifetime. It is well known that daughters often receive smaller shares of *umunani* compared to sons. Reforming law to ensure that gifts of land be divided equally between daughters and sons, or between female and male descendants, would not only enhance the consistency of principles governing parental land allocations to children, but potentially also stem perverse incentives for fathers to allocate land to their sons prior to the death, leaving less land to be inherited and shared equally by male and female children.

Inheritance by children. When it comes to testamentary bequests, children, even if born into a civil marriage, can be excluded from inheritance of the patrimony or given very small shares. Rwanda does not place any restrictions on testamentary freedom.

Restrictions placed on testamentary freedom could ensure that an established portion of the patrimony is set aside for the immediate family, including the surviving spouse and children.

Recognition of non-civil marriages. Due to exclusive legal recognition of civil monogamous marriage, customary marriages, some religious marriages, polygamous unions, and consensual unions have no legal standing in domestic law. Women in these unions who have not also married under civil law and their children are therefore vulnerable to deprivation of access to land in the event of death of the informal spouse or dissolution of the union. Only Article 39 of the Law on Gender-based Violence has instituted very limited protection to women in informal marriages, though it is not clear whether land is included in the common belongings that the informal spouse is entitled

to and this entitlement only occurs if her informal husband decides to formally marry another woman. Otherwise, these women have no legal rights under law to land property accessed through their informal spouses or partners.

Legal reforms to recognize alternative forms of marriage and consensual unions would enable women in these marriages to legitimately claim access and control rights to matrimonial property, especially if the marital regime for such unions is deemed community of property unless declared otherwise before a competent authority. Some advocates of reforms are calling for the revision of the Civil Code Book I by including the content of Article 39 of the Law on Gender-Based Violence and adding a clause protecting the property rights of all couples in de facto unions, whether monogamous or polygamous.

While such a reform has the potential to facilitate protection of the welfare and interests of a significant proportion of Rwanda's most vulnerable individuals, it would constitute a major shift in the country's normative structure and require a Constitutional amendment. Advocates in favor of recognition of non-civil unions would do well to first assess the political will to embark on such a reform. If political will is lacking, an incremental approach to reforms may encounter less resistance and yield more sustainable results for achieving gender justice.

Division of Property in Divorce or Separation. Upon dissolution of a civil marriage, spouses are required to share matrimonial assets and liabilities, but the law does not make any stipulation on how these shares are to be allocated between the two parties.

Divorced women may be disproportionately harmed by the absence of these stipulations as well as restrictions on being able to sell the property, provisions that are designed to protect the interests of the children. Women in Rwanda typically move to their husbands' communities when they marry. Even if a divorced woman retains a legal right to use the land of her former matrimonial home, if she is the one to have to leave the marital home in the event of divorce, in practical terms she is likely to be unable to make use of and benefit from it.

Passage of the Draft Succession Bill in its current form would stipulate that spouses share common assets and liabilities equally upon dissolution of the marriage, overcoming gaps in the present law.

Administration of Matrimonial Property. When it comes to controlling and making decisions over how land will be used and managed, domestic law provides that the couple select one among them to assume the administration responsibility. Under current social norms in Rwanda, this is highly likely to be the husband in husband-wife households where the couple resides together, leaving many women deprived of authority over the land she has joint rights to.

Reforms to make this provision consistent with CEDAW, which Rwanda has ratified, would provide that wives and husbands jointly administer matrimonial property, thus helping to guard against women being marginalized from decision-making around land and other key household assets. It would also eliminate any contradiction with other domestic law provisions according equal rights in marriage to women and men. The Draft Succession Bill as it stands to date achieves this aim.

Transfer Rights. Rwanda law prescribes that “all the registered right holders on the land title” are required to give consent before land property can be transferred. During the systematic Land Tenure Regularization exercise conducted in Rwanda from 2008 to 2012, however, “persons of interest” were often included on the titles. It is unclear if they are included in the category of “registered right holders” and therefore their consent required prior to property transfer.

Harmonization of the Mortgage Law with the Land Law of 2013 calls for the removal of “other evidence of consensus” by the spouse as constituting sufficient evidence of spousal consent to extend a mortgage to an applicant. The law would then be consistent that all transfers of land property require written spousal consent given before a competent notary in land matters, at least for couples who are married under civil law and where land forms part of the marital common property.

Reforms in process could be improved by requiring spousal consent for the transfer of the land and/or home resided on by spouses, *regardless* of whether the spouse is included as a registered right holder and which marital property regime they subscribe to, as well as by inclusion of a stipulation that right holders be entitled to equally share the benefits from transfers of commonly held property.

Succession by Surviving Spouse. Provisions in Rwanda’s Succession Law governing intestate succession would benefit from definition of “patrimony” since it is unclear whether it comprises the entirety of the matrimonial property or only the deceased spouse’s estate. Likewise, the term “administration” needs to be clarified to make clear whether the term embodies rights to transfer land or only rights associated with land use and management. The necessary clarity has partially been accomplished under the Draft Succession Bill, though the Draft Bill would still benefit from specificity of all the rights spouses share over common marital property.

Legal reforms under consideration seek to better protect the interests of widows and widowers by entitling them to ownership rights to half the common marital property and hence including as an heir entitled to the deceased’s share of the property if the deceased had no children.

A final recommendation concerns international instruments addressing gender and property rights. Given the important position international instruments occupy in the hierarchy of Rwandan Law, it is critical that awareness of these instruments is raised among legal professionals charged with drafting domestic legislation, defense lawyers and especially those engaged in defending clients with property disputes, and the

judiciary. Likewise, public awareness campaigns that make known the full extent of legal provisions protecting the interests of women and men when it comes to land property are essential so that Rwandans have robust knowledge of the rights available to them.

While this paper has pointed to several examples of where international provisions upholding gender equitable property rights have been incorporated into Rwanda's domestic legislation, gender justice could be better served if mechanisms were established to ensure that the Courts and legal practitioners were fully equipped to draw on the full body of applicable international and domestic legislation.