



Women and Poverty in Rwanda: The Respective Roles of Courts and Policy

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Working Paper No. 1
January 2015



Oxford Human Rights Hub
A global perspective on human rights



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The views expressed in this paper are those of its independent author.

1. Introduction

It is widely recognised that women all over the world disproportionately suffer disadvantage compared to men due largely to cultural practices and distortions. The majority of women in Sub-Saharan Africa tend to be even more disadvantaged and to live in poverty due to their lack of education and skills, responsibilities placed upon them to take care of the home and family and their inability to access property and other resources which are controlled by men. Cultural and structural institutions conspire to deprive women of both property and economic agency. Women spend vastly greater amounts of time on child care and domestic duties than men, leaving little to no time for engagement with the market.¹ In such households, poverty is readily heritable by girl children as women delegate responsibilities to older girls, who are then forced to leave school and take on household duties, perpetuating the cycle of poverty.²

Women's poverty in much of Africa is worsened by their lack of rights to land. Patriarchal traditions typically prohibit women from owning immovable property in the first place.³ A married woman may have conditional access to

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1 V. M. Moghadam, The 'Feminization of Poverty and Women's Human Rights, *SHS Papers in Women's Studies/ Gender Research* (2005) 1-39 <
http://www.cpahq.org/cpahq/cpadocs/Feminization_of_Poverty.pdf>.

2 *ibid.*

³ M. A. Ajayi and A. O. Olotuah, Violation of Women's Property Rights within the Family, 1(1) *Agenda* (2005) 58-63.

and use of her husband's land, but she is not likely to hold title to that land.⁴ Without title, women are legally devoid of rights to the land.⁵ Upon the death of the husband, the property often defaults to his family, and the widow's in-laws assume ownership over the land and other property that she has been developing and relying on since marriage.⁶ In rural societies, no land means no livelihood.⁷ With no immovable property to serve as collateral for loans, women encounter difficulties in receiving credit to pursue new occupations.⁸ Although it is very difficult to determine statistically the level of ownership of land by women in Africa, according to a recent study, women are disadvantaged relative to men in nearly all measures of land ownership and bundles of associated rights.⁹ This economic marginalisation of women often leads to their social marginalisation; which causes women to become destitute.¹⁰

While most African countries have included gender equality provisions in their constitutions, they have not yet enacted the necessary accompanying

⁴ *ibid.*

⁵ *ibid.*

⁶ *ibid.*

⁷ *ibid.*

⁸ *ibid.*

⁹ C. Doss, *Gender Inequalities in Ownership and Control of Land in Africa: Myth Versus Reality*, *International Food Policy Research Institute* (2013) Discussion Paper 01308 <<http://www.ifpri.org/sites/default/files/publications/ifpridp01308.pdf>>.

¹⁰ World Health Organization, *Gender Inequalities and HIV*, *Gender, Women and Health* <http://www.who.int/gender/hiv_aids/en/>.

legislation.¹¹ As a result, inequitable cultural norms remain unaddressed and injustice against women persists.¹² Inequality in property rights has three major implications for women. First, married women are more likely to remain in abusive relationships in order to maintain access to land. Second, widows suffer disproportionately as they often lose access to land. Finally, girl children suffer more from a mother's loss of land, as they are frequently forced to marry young for a bride-price.¹³

While many grave challenges remain, significant progress has been made in recent decades to close the gender gap. Legislators have begun recognizing and addressing the institutional difficulties that women face. Efforts have been made in many African countries to improve the lot of women, to empower them towards equality with men. Legal mechanisms and programmes have been introduced aimed at ensuring women's equal access to resources, representation in public institutions and giving them a voice. Efforts to include women in the political sphere have changed countries' policies and perspectives on women's empowerment.¹⁴ This is, for instance, in terms of affirmative action in public employment, positions in decision making bodies, emphasis on girls' education and investment in agriculture where the majority

¹¹ The World Bank, *Women and Poverty: Summary of a Women Watch Online Discussion* <<http://siteresources.worldbank.org/INTGENDER/Resources/BeijingWomenandPoverty.pdf> >

¹² *ibid.*

¹³ *ibid.*

¹⁴ International Monetary Fund, *Empowering Women is Smart Economics*, 49(1) *IMF Finance and Development*, (2012) <<http://www.imf.org/external/pubs/ft/fandd/2012/03/revenga.htm> > .

of rural women are self-employed as well as subsidized micro-finance activities. Many governments also recognise that gender is a cross-cutting issue that must be addressed in all development plans and programmes. It is in this context that I look at efforts made by Rwanda in promoting gender equality, empowering women and thus minimising their exposure to poverty.

2. Rwanda's Legal Framework and Mechanism for Promoting Gender Equality

The Rwandan Constitution, governmental policies, and enacted legislation all reflect a high level of commitment to securing gender parity. Rwanda has been acknowledged internationally for empowering women by among other things, ensuring their participation in the political process, in business and in civil society. As President Paul Kagame has remarked, in Rwanda “the debate is not about women’s role or whether they should be empowered or not. That is a given. For us, ensuring gender equality is not just a moral issue, it is a rights issue and it is a shared responsibility that concerns every member of our society.”¹⁵ In Rwanda over a five-year period between 2005/2006 and 2010/2011, the number of people living in poverty decreased by over one million (12 per cent).¹⁶ Since this was mainly through support to agricultural activities and women dominated in this sector, it may be assumed that the women were empowered in this process

¹⁵ Paul Kagame, Facebook Post (June 3, 2013) <<https://www.facebook.com/PresidentPaulKagame>>.

¹⁶ National Institute of Statistics of Rwanda (in collaboration with the Oxford Policy Management), The Third Integrated Household Living Conditions Survey: Main indicators Report (2012) <<http://www.statistics.gov.rw/publications/third-integrated-household-living-conditions-survey-eicv-3-main-indicators-report>>.

2.1 Constitution

The Constitution calls for gender equality and equal voting rights; it also requires the creation of a gender monitoring office and the establishment of a national women's council. This constitutional framework also includes affirmative action measures: at least thirty per cent of government leadership positions are reserved for women. In this regard, Article 9 of the Constitution articulates Rwanda's commitment to fundamental principles of equality, which include:

[B]uilding a state governed by the rule of law, a pluralistic democratic government, equality of all Rwandans and between women and men reflected by ensuring that women are granted at least thirty per cent of posts in decision making organs.¹⁷

This has resulted in an unprecedented number of women being elected or appointed to decision making positions at all levels of government. As of 2014, women account for 38 per cent of Rwanda's Senators, 64 per cent of the members of Parliament's lower chamber,¹⁸ 40 per cent of Ministers, and 41 per cent of Supreme Court Justices. Although these figures do not reflect the effect of such representation on an average Rwandan woman's standard of living or the level of women's empowerment among Rwandans in general, they are indicative of Rwanda's push towards gender equity. As the CEDAW Committee notes, if women's participation in political life "reaches 30 to 35 per

¹⁷ 2003 Constitution of the Republic of Rwanda, Article 9(4).

¹⁸ Rwanda currently has the highest proportion of female legislators in the world.

cent (generally termed a “critical mass”), there is a real impact on political style and the content of decisions, and political life is revitalized.”¹⁹ It is hoped that the high participation of women in Rwanda will be an agent for transformative change for all women in the future.

Additionally, the Constitution provides a strong platform for gender mainstreaming in all sectors, stating that Rwanda is “committed to ensuring equal rights between Rwandans and between women and men without prejudice to the principles of gender equality and complementarity in national development.”²⁰ Importantly, the Constitution also recognises economic rights of women in marriage. Paragraph 4 of Article 26 provides that: “Parties to a marriage have equal rights and obligations upon and during the subsistence of their marriage and at the time of divorce.”²¹

The Rwandan Constitution thus provides a baseline principle of gender equity to which all other national laws must conform, including laws relating to land, other property, employment, and participation in wealth creation.

2.2 National Legislation

Within the context of human rights and gender equality promotion, Rwanda

¹⁹ The CEDAW Committee, ‘General Recommendation No. 23 (16th session, 1997) Article 7 (political and public life)’ CEDAW/C/GC/23.

²⁰ 2003 Constitution, Preamble, Item 10. The term “complementarity” is unusual in this context. I believe it was intended to emphasize that men and women are of equal value and capacity, and hence complement each other in their contribution to development.

²¹ 2003 Constitution, Article 26(4).

has made considerable progress in both revising previously existing discriminatory laws and enacting new ones. Current laws on equality and human rights include:

- The Succession Law, which allows women and girls to inherit and own property.²²
- The Electoral Law, Article 7 of which stipulates a minimum quota of 30 per cent of women in government leadership positions.²³
- Law N° 37/2002 of 31/12/2002, which establishes the National Commission for Human Rights, (an independent institution that holds the government accountable in relation to the enforcement and implementation of Rwanda's human rights standards, including gender equality).²⁴
- Law N° 43/2013 of 16/06/2013, governing land in Rwanda. This law provides in Article 4 that any discrimination such as that based on sex or origin in relation to access to land and the enjoyment of real rights is prohibited. (See also references to this law under Section IV below).
- Law N°59/2008 of 10/09/2008 on the prevention and punishment of gender-based violence.
- Law N° 02/2011 of 10/02/2011, which determines the responsibilities, organization, and operation of the National Women's Council.

²² Law N° 22/99 of 12/11/1999 *to supplement Book One of the Civil Code and to institute Part V regarding Matrimonial Regimes, Liberalities and Succession.*

²³ Organic Law N° 42/2000 of 15/11/2000 *on the organization of elections (J.O. n° spécial du 19/12/2000) as amended by Law N° 13/2002 of 12/03/2002.*

²⁴ Law N° 37/2002 of 31/12/2002 *modifying and completing Law N° 04/99 of 12/03/1999.*

- Law N° 47/2001 on the prevention, suppression, and punishment of discrimination and sectarianism, Articles 1 and 3 of which prohibit discrimination against women and girls in relation to inheritance.

3. Policy and Institutional Framework for the Promotion of Gender Equality and Poverty Alleviation

These laws and constitutional provisions have led to the creation of dedicated government institutions and the formulation of policies and strategies to ensure their effective implementation. Several government policies provide for the equitable distribution of national resources among men and women.

These policies have a direct impact on alleviating female poverty in Rwanda. Major policies and strategies that advocate for gender equality and poverty reduction include Rwanda's Vision 2020, the Economic Development and Poverty Reduction Strategy (EDPRS), and the National Gender Policy outlined below.

3.1 Vision 2020

Vision 2020 is a long-term development framework that highlights Rwanda's development goals between 2000 to 2020.²⁵ As Rwanda's development road map, it promotes gender equality as a cross-cutting theme and a pillar of development. Under Section 5.1, Vision 2020 recognises that women have less access to opportunities than men and are poorly represented in decision making, despite women representing the majority of Rwanda's population and contributing more than men to agricultural production.²⁶ According to Vision 2020:

²⁵ Ministry of Finance, Rwanda Vision 2020, available at <www.minecofin.gov.rw/fileadmin/General/Vision2020/vision-2020.pdf>.

²⁶ Even though men previously were the dominant land-owners, women did the vast majority of the work on the farm. As is indicated later in this paper, women have caught up and apparently by-passed men in terms of ownership of land.

In order to achieve gender equality and equity, Rwanda will continuously update and adapt its laws on gender. It will support education for all, eradicate all forms of discrimination, fight against poverty and practice a positive discrimination policy in favour of women. Gender will be integrated as a cross-cutting issue in all development policies and strategies.²⁷

3.2 The Economic Development and Poverty Reduction Strategy (EDPRS 2, 2013-2018)²⁸

One of the principal aims of EDPRS 2 is to reduce poverty by 30 percent by 2020.²⁹ The strategy presents three flagship programs: (i) Growth for export and employment; (ii) Vision 2020 Umurenge and (iii) Governance. The strategy also states that gender equality should be prioritised and mainstreamed in all sector strategies and district plans over the period of EDPRS 2, including “reducing poverty levels among women, reducing gender based violence and other related conflicts at both family and community level.”³⁰ It provides that gender should be included in all planning and budgeting for development programs, both at the national and local government levels. As Section 6.47 explains:

EDPRS 2 will focus on sector strategies that enable women and men to

²⁷ Rwanda Vision 2020, *supra* note 25, at 18.

²⁸ Republic of Rwanda, Economic Development and Poverty Reduction Strategy 2013-2018: Shaping our Development, available at <www.minecofin.gov.rw/fileadmin/EDPRS-2/EDPRS-2-Final1.pdf>.

²⁹ *ibid.*

³⁰ *ibid* § 6.46.

participate, access, control and benefit equally from growth processes
[...] This will enhance access to economic resources and opportunities in
terms of jobs...financial services and property ownership, skills
development and market information.³¹

In addition, Section 6.48 provides that the government of Rwanda is
committed to “increasing the participation of women in leadership and
decision making especially in the private sector. Gender Based Violence
(GBV) prevention and response will be pursued to ensure that GBV is
drastically reduced and that victims access appropriate services.” Given the
link between violence and poverty, as explained in Klugman and Twigg’s
analysis in this edition, EDPRS 2 employs a variety of strategies to encourage
women to take and maintain control of their own economic advancement.

3.3 The National Gender Policy 2010

The current National Gender Policy³² represents a revised version of the 2004
Policy. Its main purpose is “to contribute to the elimination of gender
inequalities in all sectors of national life in order to achieve the nation’s goal of
sustainable development.”³³ Its aim is to set Rwandan society free from all
forms of gender discrimination and see that both men and women participate
fully and benefit equitably from the development processes.³⁴ The National

³¹ *ibid* § 6.47.

³² Ministry of Gender and Family Planning, ‘National Gender Policy’ (July 2010), <www.gmo.gov.rw>.

³³ *ibid* § 3.5

³⁴ *ibid* § 3.4.

Gender Policy has adopted four approaches for implementing its goals:

- Gender mainstreaming, which aims to integrate gender issues into policies, programmes, activities and budgets in all sectors and at all levels;
- Affirmative action, which aims to correct the significant gender imbalances existing in the various development sectors;
- Institutional capacity development, which includes different gender-sensitive mechanisms and stakeholders in the implementation of the National Gender Policy; and
- Involvement of men in addressing gender issues.³⁵

To encourage women's economic empowerment and reduce poverty, the National Gender Policy encourages the facilitation of access to credit through microfinance, access to markets, skills development, and employment.³⁶

3.4 Education Policy

As part of the strategy of empowering women in Rwanda, there is a policy of promoting the education of the girl-child. This is particularly important in a continent where a girl-child's potential was traditionally seen in terms of how many cows she would bring to her family upon marriage. In 2008, Rwanda introduced the "Girls' Education Policy" whose overall objective is "to guide and promote sustainable action aimed at the progressive elimination of

³⁵ibid § 3.7.1.

³⁶ Ibid § 4.

gender disparities in education and training as well as in management structures.”³⁷ The policy is aimed at improving enrollment of girls in school, retention after enrollment to ensure girls do not drop out for various reasons including early marriage, quality of education to ensure girls go into all fields of study including science and technology, affirmative action to ensure greater representation of women in all sectors of the economy and society and in general to improve the chances of women playing their full role in society.

This policy has been supported by other initiatives including the *Imbuto* Foundation activities spearheaded by the First Lady, Jeannette Kagame, which promotes girls education through providing scholarships, giving prizes, such as laptop computers, to excelling girls, organizing workshops and mentoring girls to empower them and prepare them for their full future roles as leaders and active participants in society. The Adolescent Girls Initiative (AGI), a multi-donor trust fund administered by the World Bank Group, has recently been praised for its efforts to empower young women. This project is meant to “boost job skills and incomes among disadvantaged girls and young women.”³⁸ Young women get skills training in a variety of areas and receive “support to form cooperative and connect with the private sector.”³⁹ This is a pilot project but the initial evidence reports that it has been successful in

³⁷ Republic of Rwanda, Ministry of Education, Girls’ Education Policy <http://www.migeprof.gov.rw/IMG/pdf/Girls_Education_Policy.pdf>.

³⁸ Independent Team, World Bank praises Rwanda on girls, *The Independent* Issue No. 331 August 22-28, 2014

³⁹ *ibid.*

placing girls in internships and in forming cooperatives. As a result of the Girls' Education Policy and other initiatives, Rwanda has made considerable progress. In primary education, the rate of enrollment has steadily increased. According to UNICEF, "Rwanda has the highest primary school enrollment rates in Africa... Gender parity has been achieved, with girls' enrollment rate at 98 per cent, which is higher than for boys (95%). The overall completion rate at primary level is 73 per cent (2012), which is a dramatic increase from 53 per cent in 2008, with girls' completion rate at 78% in 2012.⁴⁰ In secondary schools, girls constitute 52 per cent of students.⁴¹

3.5 Gender Promotion Institutions

In order to ensure that the national laws and policies are effectively implemented, Rwanda has put in place institutions focusing on gender equality promotion with emphasis on women's rights. They are briefly outlined below.

1. *The Gender Monitoring Office (GMO)*

The Gender Monitoring Office is a constitutionally established institution designed to monitor and evaluate the government's policies on gender equality.⁴² In order to effectively assess the progress of National Gender Policy's implementation, the Gender Monitoring Office has developed a set of

⁴⁰UNICEF, Statistics, (2012) < http://www.unicef.org/infobycountry/rwanda_statistics.html>.

⁴¹ UNICEF, Rwanda Education, (2012) <www.unicef.org/rwanda/education/html>.

⁴² Constitution 2003, Article 185 as amended.

gender-specific performance indicators as well as a comprehensive monitoring and evaluation system. It is also responsible for generating gender-disaggregated data (used to assess the impact of gender equity policies) and for establishing tools and mechanisms to mainstream gender in various development sectors.

2. The Ministry of Gender and Family Promotion (MIGEPROF)

MIGEPROF is the principal national institution responsible for promoting gender equality throughout Rwanda's development process. This Ministry plays a major part in the creation and implementation of national gender policies.⁴³

3. The National Women's Council

The National Women's Council established by law, represents a forum for women's empowerment and their active participation in national development. Its role includes advocating for women's rights and gender equality, mobilising women to participate in different development activities, and building the capacity of women in the workforce.⁴⁴ It is composed of women at different levels. They elect from among themselves executive committees from the lowest level (cell) to the national level.⁴⁵

⁴³ See 'Ministry of Gender and Family Promotion' <www.migeprof.gov.rw>.

⁴⁴ Law No. 27/2003 of 18/08/2003 Determining the Organisation, Attributions and Functions of the National Women's Council <<http://lip.alfa-xp/lip/AmategekoDB.aspx>> .

⁴⁵ Law n° 27/2003 of 18/08/2003 determining the organization, attributions and functions of the National

4. Other Institutions

Other institutions involved in the promotion of gender equality include the National Gender Cluster, sector Ministries, local governments, the Forum for Rwandan Women Parliamentarians, the National Commission for the Fight Against HIV/AIDS, gender focal points, higher institutions of learning, faith-based organizations, and civil society organisations.

From the numerous aforementioned laws and institutional structures established for the promotion of gender equality in Rwanda, it is clear that gender equality is an issue of national priority and that the requisite political will to achieve it exists. However, real change can only take place if existing laws and policies are implemented effectively.

4. The Effect of Rwanda's Gender Equality Laws and Mechanisms

Aside from the Constitution, the most dynamic law with regard to the empowerment of women is the 1999 Succession Law.⁴⁶ According to a report by the Gender Monitoring Office⁴⁷ this law has improved the position of women in the country both financially (thanks to property ownership) and socially (since economic independence ensures increased autonomy).

Since the enactment of the 1999 Succession Law, Rwanda's legal system has established the principle that women and men have equal rights to own property. This principle is also evident in Law N° 43/2013, of 16/06/2013 governing land in Rwanda.⁴⁸ These laws represent important tools for eradicating forms of economic discrimination experienced by women in the past, particularly within the context of customary law. This economic empowerment has had a positive impact on all aspects of women's lives.⁴⁹

Further research has revealed that women in Rwanda are now able to provide a higher level of education, health care, and standard of living for themselves and their dependents. Married women, for example, now have greater control

⁴⁶ Law N° 22/99 of 12/11/1999 to supplement Book One of the Civil Code and to institute Part V regarding matrimonial regimes, liberalities and successions.

⁴⁷ Gender Monitoring Office, 'Gender Impact Assessment of Law N° 22/99 of 12/11/1999 to supplement Book One of the Civil Code and to institute Part V regarding matrimonial regimes, liberalities and successions'.

⁴⁸ This law replaces Organic Law No. 8 of 2005 determining the use and management of land.

⁴⁹ Statistics are not readily available. However, general observation indicates that over the past decade there are more women in public service, in paid employment and in business, especially in micro and small enterprises.

over the use of matrimonial assets. According to law, the agreement of both spouses is required before the divestiture of any community property, as well as for the acknowledgement of any right attached to these properties.⁵⁰ Requiring consent from both parties allows for equal participation in the management of their community property.

Matrimonial and succession laws have been widely litigated, indicating a degree of empowerment and awareness of women's rights. This holds true among women, as well as within society at large. According to the Gender Monitoring Office, 85 per cent of judicial officers interviewed have handled matters relating to the rights of women to own and inherit property.⁵¹

4.1 Judicial Interventions in Gender-Based Violence Cases

Rwanda is a regional leader in preventing domestic violence, and is one of only six sub-Saharan states to outlaw marital rape.⁵² Furthermore in several Primary Court cases, men were found guilty of "spousal harassment". Harassment is defined "as putting someone in unrest condition by nagging, scolding or insulting him/her and others."⁵³ Harassment qualifies as an offense under the Law on Prevention and Punishment of Gender-Based

⁵⁰ Law No. 43 of 2013.

⁵¹ Gender Monitoring Office: 'Gender Impact Assessment of Law N° 22/99 of 12/11/1999 supra note 47 at 75.

⁵² United Nations, '2011-2012 Progress of the World's Women: In Pursuit of Justice' 136-7 <<http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>> .

⁵³ Article 2 para. 12 of the Law No 59/2008 of 10/9/2008 on Prevention and Punishment of Gender Violence. (There is a question of poor translation here)

Violence. Article 20 provides that “[a]ny person guilty of harassing his/her spouse shall be liable to imprisonment of six (6) months to two (2) years.”⁵⁴

This provision was later superseded by the Penal Code Articles 240 and 241 which provides for lesser sentences. Article 240 of the Penal Code states that “[a]ny person convicted of harassment against a spouse like insults, assault and battery, refusal to assist in family responsibilities, denial of the right to property or any other act preventing him/her from living a peaceful life shall be liable to a term of imprisonment of at least three (3) months but less than six (6) months.”⁵⁵

Article 241 covers the disposal of community property without consent from both spouses:

Any person who: (1) fraudulently donates, sells, mortgages or uses the marital property without spousal consent shall be liable to a term of imprisonment of at least three (3) months but less than six (6) months; (2) acquires the property referred to under item 1 of this article whilst being aware of the absence of mutual consent of the spouses, shall in addition to the restitution of the property acquired or the payment of cash equivalent be liable to a term of imprisonment of at least two (2) months and a fine of five hundred thousand (500,000) Rwandan francs or one of these penalties; (3)

⁵⁴ *ibid* Article 20.

⁵⁵ Organic Law N^o 01/12/OL of 02/05/2012 *Instituting the Penal Code*, Article 240.

participates in the acts referred to under item 1 of this Article shall be liable to a term of imprisonment of six (6) months to one year and a fine of one million (1,000,000) to five million (5,000,000) Rwandan francs or one of the penalties.⁵⁶

However, Article 242 makes prosecution dependent on the willingness of the aggrieved spouse to prosecute. It states that above offences “shall be prosecuted only upon complaint of either spouse.”⁵⁷ As a result, some women fail to report violations of their rights, for fear of losing their homes or of reprisals from their husbands.

In *Prosecutor v. Jerome Nkusi*, the accused was prosecuted for two offenses – harassment and disposal of community property without spousal consent. He assaulted her in the market and took money from her violating Article 240 and 241 of the Penal Code. He was sentenced to five months in prison.⁵⁸ In *Prosecutor v. Uwimana Alexandre*, the accused was found guilty of battery and verbal abuse towards his wife, and was also sentenced to five months in prison.⁵⁹ In his defense he argued that he had mistreated his wife because he did not agree with the way in which she used the family property. In

⁵⁶ *ibid* Article 241.

⁵⁷ *ibid* Article 242.

⁵⁸ *Prosecutor v Nkusi Jerome* RP.0056/13/TB/BSSMANA decided on 27/06/2013 (Unreported).

⁵⁹ *Prosecutor v UwimanaAlexandre* RP 0014/14/TB/MGB decided on 06/03/2014 (Unreported).

Prosecutor v. Twagirayezu Jean Pierre,⁶⁰ the accused was charged with harassment of his spouse, including battery, verbal abuse, and threats against her life. The accused stated in his defense that he suspected her of stealing 40,000 francs (approximately \$58) from him. He was also sentenced to 5 months in prison.⁶¹ These cases illustrate the type of harassment and abuse used by husbands against their wives in order to impede their access to family property, or to deprive them of their own property and earnings. Such a pattern of abuse is especially common in families where women generate most of the household income.

Judicial processes are not sufficient in and of themselves to completely deter gender-based violence or the erosion of women's property rights by men. Policy measures must accompany legal and judicial reform – including educating women on their rights, sensitising men, and encouraging cooperation and communication between husband and wife. More women need to be supported and encouraged to lodge claims against their husbands, partners or male relatives who harass them, abuse them or deprive them of their rights to property.

With regard to the fight against gender-based violence, one policy intervention has been the establishment of centres for the care of abused women. In 2009, Rwanda established the Isange One-Stop-Center with the support of UNICEF,

⁶⁰ Prosecutor v Tugireyezu Jean Pierre RP 0020/14/TB/MGB decided on 6/03/2014 (Unreported).

⁶¹ *ibid.*

UNIFEM (UN Women) and UNFPA (UN Population Fund). Launched by First Lady, Madam Jeanette Kagame, the Center offers comprehensive care for victims of gender-based violence, including protection from further violence, medical, legal and counselling services. Since July 2010, the Center has handled over 6,000 cases of gender-based violence. From its base at the Kacyiru Police Hospital, the model is being rolled out throughout other districts in the near future.⁶² This initiative is similar to the South Africa “Thuthuzela” (meaning “comfort” in Xhosa) Care Centers which operate in public hospitals.⁶³

4.2 Judicial Interventions for Women in Relationships Outside of a Conventional Marriage

Historically, in Rwanda, women who live in informal relationships with male partners are legally vulnerable, since they risk losing any jointly held property upon separation. This position has now changed. When the Law on Prevention and Prosecution of Gender Violence was introduced, it included a provision protecting the interests of such women to some extent. Paragraph 2 of Article 39 provides that persons living together as husband and wife but not in a legally recognised marriage shall share equally the property commonly owned or held together before either can get into a legally recognised marriage with someone else. In the case of *Kiza Anita v. Gatera Johnson and*

⁶² For details see: Imbutu Foundation, What we do: Health Projects <<http://www.imbutofoundation.org/what-we-do/health-projects/>>

⁶³ UNICEF, South Africa: HIV and AIDS: Thuthuzela Care Centres <http://www.unicef.org/southafrica/hiv_aids_998.html>

Kabalisa Teddy, this provision was challenged in the Supreme Court on the grounds that it was unconstitutional. It was argued that only monogamous marriages are recognised by the Constitution and that including cohabiting partners within the scope of the provision would subvert the intent of the Constitution.⁶⁴ It was further argued that, contrary to what is provided for in Article 39 any other relationship besides a monogamous marriage cannot confer the same rights, benefits, and duties conferred by legal marriage.

The Supreme Court decided that Article 39 was constitutional. The Court concluded that the provision for equal distribution of common assets under Article 39 was not based solely on the fact of cohabitation. The law does not state that such a distribution should occur regardless of each party's contribution, as would be the case for divorce under the community of property matrimonial regime. Rather, Article 39 recognises the rights of persons who have cohabited and hold property together: "commonly owned" or "acquired together." This had no adverse implication for the Constitutional provision on monogamous marriage, nor did it legalise illegitimate forms of marriage. This decision enabled the female plaintiff to receive an even share of all assets jointly owned with her male partner of nine years.

⁶⁴ *Kiza Anita v. Gatera Johnson and Kabalisa Teddy*, RS/INCONST/003/10/CS. See also *Kiza Anita v. Gatera Johnson and Kabalisa Teddy*, RC0334/09/TGI GSB; *Gatera Johnson and Kabalisa Teddy v. Kiza Anita*, RCA0048/10/HC/KIG.

A number of cases have followed in *Gatera's* footsteps. In *Kantarama v. Karuhanga*, a female partner successfully avoided dispossession of a house that she had shared with her deceased male partner, who was legally married to another woman.⁶⁵ The female partner demonstrated that she had contributed to her male partner's business, which enabled them to build and live in their shared house. The Court relied on Article 39 to confirm Kantarama's right to retain the house. Additionally, male parties have equally benefited from this interpretation of Article 39. In *Nsabimana v. Uwimana*, a male partner successfully retained his share of jointly acquired property that he shared with a female partner. The couple had lived together for sixteen years and had four children together, before they separated on account of mutual harassment accusations.⁶⁶

Sometimes, however, producing evidence of property ownership can be problematic. In cases where a couple shares different property in different locations and has no clear documentation, one spouse may be unable to demonstrate that this property is common or jointly acquired.⁶⁷ Invariably, it is the woman who is disadvantaged.

⁶⁵ *Kantarama v. Karuhanga*, RC 0514/12/TGI/GSB. (Unreported).

⁶⁶ *Nsabimana v. Uwimana*, RC 0388/13/TGI/GBO. (Unreported).

⁶⁷ See, e.g. *Kagoyire Nusuru v. Ayabagabo Ramanzani*, RC 0559/12/TGI/GSO. (Unreported).

While this provision protecting former cohabitants may not yet be widely utilised, the judicial decisions above represent steps in the right direction, especially in terms of protecting women from losing the property to which they contributed, and insulating them from poverty and homelessness.

4.3 Judicial Interventions Regarding Women's Inheritance

In much of Africa, denying women the right to inherit equally with men is the norm. As has been stated by International Human Rights Group, "The denial of inheritance rights to women results in the descent of millions of women and their families into extreme poverty and is a major cause and consequence of violence against women in Africa."⁶⁸ Such denial is commonly based on customary law rule of primogeniture which regards the first male child as the heir entitled to inherit all of his parent's property. In the absence of a male heir, the property devolves on the closest male relative. In many cases, customary law contradicts constitutional provisions that prohibit gender-based discrimination. Some countries specifically exempt customary law from the application of the anti-discrimination provisions.⁶⁹ In Rwanda there is no such provision. Instead Article 200 of the Constitution states: "The Constitution is the supreme law of the state. Any law or act which is contrary to this

⁶⁸ International Human Rights Law Group, IHRIG Women's inheritance rights in Africa initiative available at <http://www.hrlawgroup.org/initiatives/inheritance_rights/>.

⁶⁹ For instance in Botswana, While Article 15 of the constitution of Botswana prohibits gender discrimination, it also exempts all laws addressing "adoption, marriage, divorce, burial, devolution of property on death or other matters of person law from this prohibition," <<http://www.commonlii.org/bw/legis/const/1966/1.html>>. These exemptions or clawbacks are present in several constitutions in various African countries including Lesotho, Swaziland, Zambia, Zimbabwe etc.

Constitution is null and void.” As argued below, the Civil Procedure Law also makes customary law subordinate to other laws and judicial decisions.⁷⁰

On the other hand, it is encouraging that in some jurisdictions the courts have taken the bold step to invalidate customary law that discriminates against women. Notable cases are those of South Africa and Botswana. For example in *Bhe & Others v Magistrate, Khayelitsha & Others*, the Constitutional Court of South Africa declared Section 23 of the Black Administration Act 38 of 1927 that denied women the right to inherit, to be inconsistent with the Constitution and invalid. The Court also declared the rule of male primogeniture as it applies in customary law to the inheritance of property to be inconsistent with the Constitution and invalid to the extent that it excludes or hinders women and extra-marital children from inheriting property.⁷¹ Botswana’s courts have similarly declared discriminatory customary law that denied women the right to inheritance. While it did not directly declare customary rule of primogeniture unconstitutional, in the landmark 2012 case of *Ramantele and Another v Mmusi and others*, the Court of Appeal of Botswana, recognized a woman’s right to inherit property. In a concurring judgment, Kirby JP expressed the modern view: “It need hardly be said that any customary law or rule which discriminates in any case against a woman unfairly solely on the basis of her gender would not be in accordance with humanity, morality or natural justice.

⁷⁰ *Mukamusoni Catherine v. Mukagasana Domitilla et al*, RCA 0087/12/HC/KIG.

⁷¹ *Bhe & Others v Magistrate, Khayelitsha & Others*, (CCT 49/03) [2004] ZACC 17; para. 136,

Nor would it be in accordance with the principles of justice, equity and good conscience.”⁷² The Court noted that times are changing and so must the law to match the needs of society.⁷³ Similarly, the Kenya High Court found customary law (which did not allow married daughters to inherit) to be in violation of Section 3(2) of Kenya’s Succession Act as well as the Constitution.⁷⁴

Despite the progress made by a number of countries, discriminatory customary law continues to dominate inheritance disputes in many sub-Saharan African countries, often defying existing statutes or constitutional provisions. In Zimbabwe, for example, despite the country’s ratification of CEDAW, the Supreme Court held that a daughter could not inherit property, since Article 16(h) of CEDAW (on gender equality and land inheritance) did not specifically ban customary practice.⁷⁵

In Rwanda the 1999 Succession Law covering inheritance generally – and the rights of girls and women to inherit family property in particular – is by now

⁷² *Ramantele and Another v Mmusi and others* CACGB-104-12; High Court Case No. MAHLB-000836-10, at para.36

⁷³ Lesetedi JA delivering the judgment of the Court said: “It is axiomatic to state that customary law is not static. It develops and modernizes with the times, harsh and inhumane aspects of custom being discarded as the time goes on; more liberal, flexible aspects consistent with the society’s changing ethos being retained...” *ibid* para 77.

⁷⁴ *Teresina Mukele Rapando & another v Grace Omukwaya Malala & 4 others* [2013] eKLR. The judge said: “I am aware there has been from the 1990s quite a substantial shift in the law as regards inheritance which previously discriminated against women getting land from their fathers. It is my finding that discrimination channeled through some of the customs are ousted by section 3 of chapter 8 of the laws of Kenya, section 29 (of the Law of Succession Act) and article 27(3) of the Constitution.

⁷⁵ *Magaya v. Magaya*, 1999 S. Ct. Zimbabwe.

well established among the general public. However, customary practices and traditions still stand in the way of women's access to inheritance, both in Rwanda and in sub-Saharan Africa at large.⁷⁶ Nevertheless, in Rwanda, women today legally have a fair share of ownership of land because of the intensive campaign of the government to register all land in the country, and because of the requirement in the law relating to registration of land that land must be registered in the names of both spouses in a marriage (unless married out of community of property) as well as minor children where applicable.⁷⁷ According to the National Land Office, the statistics from the land registration exercise that was completed in 2013, show that more women than men have rights over land. Twenty-two per cent of all land parcels in the country are registered on women only, 12 per cent on men only, 58 per cent on couples while 8 per cent are registered on legal persons, including the state.⁷⁸ Although this considerably reduces the risk of women being denied access to productive resources, it remains to be seen whether in practice women exercise full or equal control over land and other resources and what

⁷⁶ See M. Lankhorst and M. Veldman, Engaging with Customary Law to Create Scope for Realizing Women's Formally Protected Land Rights in Rwanda, IDLO Working Paper Series n. 5 (2011) <<http://landportal.info/resource/research-paper/engaging-customary-law-create-scope-realizing-women-s-formally-protected-land>>.

⁷⁷ Article 10 of the *Ministerial Order No. 002 of 2008 of 1/04/2008 determining the modalities of land registration*, requires any person seeking to register land to fill the prescribed form. This form requires the applicant to list the names of spouse and children to be included on the registration certificate. At the same time, Article 4 paragraph 2 of the Law governing land in Rwanda states that rights of married persons to land depend on the matrimonial regime applicable to them. This means that those married in community of property are automatically co-owners of the land registered in the names of their spouses. Further, Article 2 of the law on matrimonial regimes and succession supra note 47 provides that where spouses do not choose a matrimonial property regime at the time of marriage, they shall be presumed to be married in community of property.

⁷⁸ Personal written communication to the author by Dr. Emmanuel Nkurunziza, Director General, Rwanda Land Centre on 12/08/2014.

impact that has on their lives. There is need for continued sensitisation, especially among rural communities, so that practice will reflect what the law already provides.

One specific problem addressed in a number of cases by the Courts is that of women's inheritance claims on property that became inheritable prior to the 1999 Succession Law. In such cases, male family members have argued that the Succession Law cannot be applied retrospectively, and that the customary practice of male-only inheritance should apply. However, in a number of these cases, courts have taken a progressive stance in favor of women and girls. In *Mukayiranga Esperance v Kayitengerwa Mary*⁷⁹ and more recently in *Mukamusoni Catherine v. Mukagasana Domitilla et al*,⁸⁰ the High Court ruled in favor of a woman's right to inherit, basing its decision on constitutional provisions guaranteeing equality that existed before 1999, as well as on international conventions to which Rwanda was party. In addition, the High Court relied on the precedents set by Rwandan courts, which rejected customary practices and norms discriminating against women. In *Mukamusoni Catherine v. Mukagasana Domitilla*, the Court confirmed that a woman – regardless of her marital status or her relationship with her biological family – could inherit the property of her sister (who was killed during the genocide alongside her husband and children). The 1999 Succession Law

⁷⁹ *Mukayiranga Esperance v Kayitengerwa Mary*, RCA 0662.012/HC/KIG/RCA 0663/012/HC/KIG.

⁸⁰ *Mukamusoni Catherine v. Mukagasana Domitilla et al*, RCA 0087/12/HC/KIG.

now provides for a woman's right to inherit property from her biological family; prior to this law in accordance with custom, property was automatically transferred to the husband's family.

According to Rwandan law, all other sources of law (including international conventions ratified by Rwanda) should take precedence over custom in the absence of an applicable statute. Judicial precedent also prevails over custom.⁸¹ Among the precedents cited in the aforementioned cases was the decision issued by the *Cour de Cassation* (the highest court prior to the 2003 reform) in 1985, when it overturned the Court of Appeals' decision in *Mukamusoni v Buyitare*.⁸² The Court of Appeals had rejected a woman's claim to a share of inheritance. The Court of Cassation, however, found nothing in the law upon which the Court of Appeals based itself to support the decision that a daughter could not inherit the property of her father. In addition, Article 16 of the then Constitution did not sanction gender-based discrimination. During the colonial era, an attempt was under way to modernise customary law and rid it of gender discrimination by the progressive King Mutara Rudahigwa. In 1956, the King in Council decided to divide the estate of Chief Rwubusisi equally among his children and widows, irrespective of gender.

⁸¹ Article 6 of the Law relating to Civil, Commercial, Labour and Administrative Procedure No. 21/2012, "Judges shall decide cases by basing their decisions on the relevant law or in the absence of such a law, on the rule they would have enacted, had they to do so, guided by judicial precedent, customs and usages, general principles of law and written opinions."

⁸² *Mukamusoni v Buyitare*, RA 00967/13.03/84 decided on 10 April, 1985, (Unreported), available in the Supreme Court archives.

Roughly translated, the King stated the following: “Based on the common human values that should guide us in the improvement and adjustment of the national culture and custom towards justice and equity: We have decided to put the sons and daughters of Rwubusisi on the same level in sharing the inheritance.”⁸³

Although only a small proportion of inheritance disputes actually make it to court in Rwanda, the aforementioned cases demonstrate the important role that courts can play in adjudicating disputes and setting precedents that can guide future social behavior. Indeed, the increasingly frequent incidence of litigation and media awareness of the issue of women’s property and inheritance rights has contributed to cementing both an awareness of these matters and an awareness of women’s rights in Rwandan society at large.

In the 2013 case of *Nyirampfabakuze Perousse*, the female plaintiff argued for her right to inherit her deceased mother’s estate, despite the existence of living male relatives.⁸⁴ The Court referenced Article 66(a) of the Succession Law in determining that the plaintiff legally qualified as the sole heiress to her mother’s estate. Furthermore, in *Ntawugashira, Mukankundiye and Uwimana*,

⁸³ The original text in Kinyarwanda reads: *Dushingiye k’uburyo busanzwe bwa kintu bugomba kutuyobora mwigorora n’itunganya ry’umuco w’igihugu twerekera mu nzira y’ubutabera no gushyira mu gaciro: Twemeje guhshyira ku rugero rumwe abahungu n’abakobwa ba Rwubusisi muby’iminani*. The document titled “Ubuhamya bg’izungura ry’umutware Rwubusisi”, done at Kigali on 2/02/1956, was handed into Court as evidence in the succession case of the descendants of Rwubusisi, Case No.RC0215/12/TGI/NYGE (Unreported) available in the Intermediate Court of Nyarugenge, Kigali.

⁸⁴ *Nyirampfabakuze Perousse*, RC 0182/13/TB/NYB of 31/07/2013.

the Court, relying on Articles 50 and 70 of the Succession Law, concluded that a deceased person's estate should be divided equally among all surviving children regardless of age or gender.⁸⁵ Finally, a set of three complaints arose (*Nyirandege, Nyirambarubucyeye, Nyabyenda v. Kimanuka*) that all concerned a brother's attempts to rob his sisters of their share of inheritance.⁸⁶ The Court referred to several well-established precedents to reconfirm the legal principle that all children, regardless of gender, have a right to an equal share of their deceased parents' property.

5. Conclusion

The laws, policies, and cases discussed above demonstrate the existence of a body of law and policy that confirm and advocate for equality regarding women in the distribution of family assets. The above laws and policies have created an environment in Rwanda, within which women have the opportunity to thrive economically and pull themselves and their families out of poverty. This increased empowerment is further illustrated by the increase of women-only microfinance and self-help organisations. The inclusion of women in general poverty alleviation strategies such as the one-cow-per-family (*Girinka munyarwanda*) has also helped improve the general status of women in Rwanda.

⁸⁵ *Ntawugashira, Mukankundiye and Uwimana*, RC 0614/13/TB/NYB of 31/07/2013.

⁸⁶ *Nyirandege, Nyirambarubucyeye, Nyabyenda v. Kimanuka* RCA 0035/13/TGI/RSZ; RCA 0036/13/TGI/RSZ; RCA 0037/13/TGI/RSZ.

Nonetheless, much remains to be done to ensure access to justice for women in rural Rwanda, where a majority of the population resides. Lack of education regarding women's inheritance rights has meant that in some cases customary law is still used by families to determine access to land and other resources crucial for fighting poverty. Further, lack of financial ability can make pursuing property claims prohibitively expensive for rural women. Despite dramatic improvements in the protection and promotion of women's rights in Rwanda, societal norms and cultural realities still hinder the full and effective implementation of existing government policies and legal measures. That being said, women's empowerment has considerably improved through education, social affirmation, political participation and access to property, supported by the increasing body of law and judicial precedent that continue to affirm the rights of women.