PROPERTY RIGHTS FOR WOMEN IN RWANDA:
ACCESS TO LAND FOR WOMEN LIVING IN DE FACTO UNIONS

Masterproef van de opleiding
‘Master in de rechten’

Ingediend door

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INTRODUCTION

To say that access to land is one of the most important conditions for the empowerment of African women, would be an understatement. The cultivation of land is one of the main sources of income and economic wealth depends strongly on a well elaborated system of land tenure. However developing and protecting land rights for women in mainly male-dominated societies is a long-term work. Even though law initiatives\(^1\) may guarantee a *de jure* equal access to land for women, the outcome highly depends on the way the culture-bound relationship between women and men is constructed.

In Burkina Faso for instance the proverb "*a woman's field is made at night*" illustrates the difficulties women experience and the limited bargaining space they have when claiming land. The saying can be interpreted in two different ways. Primarily it addresses the issue of women who are being forced to cultivate their own fields during the night since they have to work on their husbands' fields at day-time. Moreover the saying means that men can claim their land rights in broad daylight because their claims to land are not contested in society, whereas women's bargaining space is limited to the association with their husband. Thus they can only bargain in private spheres during night-time because women "will know how to obtain what they want."\(^2\)

Women's position in society can be improved by granting women equal rights to land. Nevertheless one must be cautious and keep in mind that creating formal rights does not automatically mean that these legal provisions are translated in reality. Legal initiatives can result in 'paper' rights if societies are not eager to implement or respect them. Therefore, sensitisation and decisive judicial system are known as important implementation mechanisms. Without denying the importance of correct implementation of formal rights, this dissertation will merely focus on rights that are unprotected, neither by law nor by culture or tradition.

Following figure can explain why improving land rights for women is such a complex process to realize. Basically the reasoning comes down to a vicious circle. In order to throw their weight about land rights, women should have a strong position in society to lobby. This objective can only be reached when women can become economically more independent instead of relying on affiliation with her family or husband. In this way they not only have economic agency but also gain a stronger position in the household and on a broader governmental level. However in order to increase their economic power, one of the key objectives should be the improvement of female access to land. In addition, process of bargaining must also be seen in the sociological context of land tenure. Land regulations are a reflection of the power structure in a society. As the FAO states apt:

"(...) land and other natural resources are central to social and cultural identity and economic wealth, tenure arrangements in a society develop in a manner that entrenches the power relations between and among individuals and social groups."\(^3\)

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Up to now research on women’s land rights focusses on the problem in general in the Great Lakes region.\(^4\) To begin with, when analysing legal instruments in this area, the influence of the concept of legal pluralism must be taken in account.\(^5\) Secondly, creating formal land rights has a strong influence on the structure of society because, according to Meinzen-Dick and Mwangi, property rights are “not about the link between a person and a thing (object of property), but rather about the relations between people with regard to a thing.”\(^6\) In addition much attention is given by NGO’s and governmental institutions on the implementation of land laws and sensitisation on the subject.\(^7\) And third, discussions are held about the agency of the state and its legal instruments in connection to equal property rights and its effect on the household.\(^8\)

General concern has been raised by different authors about the lack of protection for women living in de facto unions in Rwanda.\(^9\) Even though they all address the problem of the de facto unions, their analysis is limited to describing the fact that they do not have any legal claims on land. This thesis research will focus more on how an interlinked gender bargaining pattern in the household context affects women’s land rights.

This gender bargaining pattern is also characteristic for Rwandan society. Before 1999, Rwandan women could only rely on customary law that stipulates that only sons can inherit from their father and provides only weak and unpredictable inheritance rights for married women. In general women had no direct claims on land and were forced to rely on association with male members of their birth family, husband and in-laws.\(^10\) The unwritten customary inheritance system, based on the principle of masculinity and patrilineal heritage became untenable after the genocide of 1994 because all of the sudden widows and even

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female orphans found themselves as the head of their household but without any legal claims to the land.\footnote{UWAYEZU E., MUGIRANEZA T., “Land policy reform in Rwanda and land tenure security for all citizens: provision and recognition of women’s rights over land”, paper presented at FIG Working Week, 2011,2; MOHAN S.S., “The battle after the war: gender discrimination in property rights and post conflict property restitution”, \textit{The Yale Journal of International Law}, 36(46), 2011, 476.} Research estimated that 34\% of the households were headed by women after the genocide of 1994.\footnote{CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, \textit{California Law Review}, 94, 2003, 1488; POLAVARAPU A., “Procuring meaningful land rights for the women of Rwanda”, \textit{Yale Human Rights & Development Journal}, 14 (3), 2011, 112.} The Rwandan government, aware of the relevance of the issue for the peacebuilding process, approved in 1999 a revision of the civil code, which was intended to rebuild the country.\footnote{Republic of Rwanda, National parliament, minutes of proceedings, doc. N°561-572, 25/02/1999, 12.} The law of 1999 stipulates an equal inheritance right for all children, but also guarantees that married women could inherit from their husband. So women not only have inheritance rights in their birth family\footnote{Succession Law,1999, art.2 j. art.66} but have in addition an equal share in the conjugal property, of course depending on which matrimonial regime the couple had chosen.\footnote{Succession Law, 1999, art.70}

Even though the creation of these inheritance rights meant a big step forward, the process of developing and protecting land rights for women had just started. Besides the implementation problems and the clash with a culture that favoured the male population, one of the most important issues of these law initiatives is their lack of inclusiveness. The current legal system only provides inheritance rights for women who entered into an official marriage.\footnote{These terms will be used interchangeably.} This means that women living in de facto or consensual unions\footnote{MUKAMUYANGO F., “Effets juridiques de la rupture du concubinage au Rwanda”, Independent University of Kigali, 2010, unpublished thesis, 9.} cannot inherit from their partner, nor do they have any rights to the matrimonial property.

These unions must be interpreted as stable relationships that are not officially registered. Rwandan culture and law tend to name these unions ‘fake marriages’, ‘marriage putative’\footnote{Conversation RCN Justice et Démocratie, October 2013; MUKAMUYANGO F., “Effets juridique de la rupture du concubinage au Rwanda”, Independent University of Kigali, 2010, unpublished dissertation, 42.} or even worse ‘illegal’ or ‘unlawful’ marriages.\footnote{For examples in the law, see: Republic of Rwanda, law N°59/2008 of 10/09/2008 on the prevention and punishment of gender-based violence. Official gazette N°59/2008 of 10/09/2008 (\textit{further referred to as GBV Law,2008}) art. 39.} These stigmatizing terms will only be used in this thesis when citing interviewees or legal provisions.

Knowing that in Rwanda many different forms of relations exist besides an official marriage\footnote{Throughout the whole thesis, different terms will be used for ‘legal marriage’, such as official marriage, formal marriage, civil marriage and registered marriage.} it is not surprising that the formal law system excludes more than 15.3\% of women, who are involved in a relationship, from the official inheritance system.\footnote{Republic of Rwanda, National Institute of Statistics of Rwanda, \textit{National Gender Statistics report}, 2013,11.} Especially the female partner is extremely vulnerable in this situation, because after the loss of her husband she is left to the goodwill of her in-laws.\footnote{MOHAN S.S., “The battle after the war: gender discrimination in property rights and post-conflict property restitution”, \textit{The Yale Journal of International Law}, 36(46), 2011, 483.} In case that the marital union has
produced descendants, a woman can have indirect inheritance rights through her minor children.\textsuperscript{23} Yet this only applies when the father has previously recognised the children by registering them, which is not always the case.\textsuperscript{24} Besides the lack of inheritance rights, this group of women are also excluded from the protection that an official marriages offers in the event of a divorce or a separation. Women who after years of cohabitation see their relationship come to an end; have no legal claims to any of their possessions, despite having contributed for many years to the household property and income.

The official Rwandan policy to solve these problems for women living in de facto unions is to encourage them to enter into an official marriage. Despite the progressive perspective the Rwandan Constitution shows on gender\textsuperscript{25}, it stipulates that the only recognised form of marriage is civil monogamous marriage.\textsuperscript{26} Among the methods issued by the Rwanda’s Ministry of Gender and Family is the organization of mass weddings and the sensitization of rural populations about the advantages of official marriages.\textsuperscript{27}

These appear to be short-sighted solutions. In order to investigate the existence of these de facto marriages in Rwandan society, research is required. First of all, the governmental approach of sensitization needs to be tested on its effectiveness. In other words, one needs to investigate whether or not women, who are involved in de facto unions, are aware of the advantages of a civil marriage. Secondly, if they are indeed able to identify the benefits of an official marriage, one might wonder what causes their hesitancy to register their marriage. These two major questions will serve as the basis of this research and will be answered throughout this thesis.

However first of all, the methodology and the different field research challenges will be discussed. The first chapter will discuss female land tenure in Sub-Saharan Africa and analyse the impact of legal pluralism on the development of land rights for women. The following section will analyse the relevance of female property rights in order to develop women’s empowerment. Thereafter, a critical overview of the legal initiatives on marriage, inheritance and land tenure in Rwanda will follow, combined with an explanatory section on customary land rights. Since this thesis focusses on the link between land rights and marriage, the characteristics of different civil statuses in Rwandan society will be analysed in the next chapter.

Subsequently, the Rwandan policy that deals with these de facto unions will be discussed. Thereafter the effectiveness of this policy will be examined by investigating the level of awareness about civil marriage among women who are involved in de facto marriages. And lastly, the impact of the incomplete legal regulation on the local level and more specific on the household relations will examined from a gender bargaining perspective. Not only the causes of unequal bargaining power will be analysed but, moreover, in which manner living in a de facto unions affects women’s lives. To conclude,
suggestions will be made, in comparison to other countries, in order to guarantee an inclusive protection of land rights for women.
1. METHODOLOGY

During my research project people asked me often why I conducted a research that is not only based on such an ‘exotic’ theme, but is also done by using a rather uncommon legal research method. The latter question can be easily answered by referring to my academic background. Once I received my Master’s degree in History in 2011, I decided to enrol in law school. After successfully following the Preparatory Course of Master in Law, I was soon again confronted with a second thesis assignment, as a part of this master. As a historian, I did not want to limit myself to a dissertation exclusively based on secondary sources. To retrieve data, I used the technique of interviews that I had acquired during my History study and more specific by following courses on oral history. The challenges of this method will be discussed in detail below.

In addition I also prefer to see law in a broader, social context than ‘written law’. More specific I like to focus on the de facto impact of law on the population and in which way rules are implemented in a society. Seen from a western view, this might be an inessential and for some even a redundant question. Legal initiatives are created on a daily basis in our society and legislative authority is seldom questioned. With exception of highly contested ethical subjects, once laws are voted in the parliament, they are easily implemented in society without much protest. However, for developing countries, due to different reasons that will be discussed later, once a law is passed, it remains uncertain if people can assert their rights or not. Therefore it is interesting to see in these countries which alternative systems occupy the place of formal law in society.

For the first question, why I chose land rights for women living in a country as ‘exotic’ as Rwanda, the motive can be found in the volunteering work that I did in Huye for the project IMPORE, during the summer of 2012. After this experience, I got intrigued by the country and its culture. But most of all I got inspired by the stories of the women with whom I worked.

Choosing a country as Rwanda as geographical setting, implies an adjusted and flexible view on judicial systems. One has to not only deal with a totally different DNA pattern of a country in general, but also with a different legal structure. Rwanda’s legal system is based inter alia on the principle of legal pluralism. A concept like legal pluralism might be interpreted by Westerns jurists as the co-existence of formal and customary law. The influence of legal pluralism may not be underestimated, as will be discussed later. In addition, it was important to be aware of one’s own background and mind-set when trying to understand and analyse contextual related issues as women’s rights. In a male-dominated society as Rwanda, one cannot assume that rights for women are obvious or at least open for discussion. During the research it was sometimes a personal challenge to work in this context. For example, during an interview on the countryside of Gasobo district I first asked the head of the household, who was friendly and open during our talk, for his permission for an interview with his partner. Afterwards I searched for a quiet and private place somewhere around the house where the interview with the woman, who seemed rather shy to me, could take place. In the middle of the interview, when I asked her if she received a dowry, she immediately told us that this was not possible because she was raped as a young woman. The rapist appeared to be the man who was now her life partner and the one with whom I had a pleasant conversation before. After the interview I had to force myself to even thank this man for the interview and shake hands with him. To my own astonishment the man was still accepted in his village. But situations like this were perceived differently and brushed

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28 Huye is a district that is situated in the South of Rwanda.
Difficult situations like this happened almost on a daily basis and made the work a challenge from time to time. Because of the atypical approach of the dissertation assignment, the structure of the methodology will be slightly different compared to most other theses. First, I will discuss the preparatory work that has been done in Belgium. Afterwards, in the second part, I will describe the field research and all its challenges.

- **PREPARATORY WORK OF THE FIELD RESEARCH IN BELGIUM**

Before leaving for Rwanda, it was necessary to gather sufficient background information about the topic in order to create an adequate questionnaire. The libraries of the University of Ghent had books about land rights in Africa in general, but only a few dealt with land rights for women.\(^{29}\) Most of the information was found in articles via online databases, like Westlaw and Hein online. Websites of human's rights organizations, more specific the ones focusing on women's rights, also provided a useful resource for articles and studies on land rights.

Besides this theoretical background, I also had to arrange the practical side of the field research. The Rwandan embassy stipulated the cooperation of a local institution to assist me in my research, as one of the conditions for granting a visa. Therefore I contacted Professor Paul Rutayisire, director of the Centre for Conflict Management which is linked to the National University of Rwanda to orientate me in Rwanda.\(^{30}\) After some back and forth emailing, he accepted my proposal to guide me and wrote me the invitation letter that was necessary to obtain my visa. In addition, I also followed some Kinyarwanda courses so I could at least introduce myself to the interviewees. Previous experience in Rwanda showed me that people were more open when one tries to speak their language. Through the Belgian-Rwandan NGO UMUBANO I contacted Pélagie Murekbwayire, a Rwandan woman living in Ghent. She taught me the basics of Kinyarwanda and helped me with the translation of my preliminary survey.

For the financial side of the story, I applied first for a **VLIR scholarship** in March. This request was unfortunately denied by the VLIR Commission. They believed that, even though they found it an interesting topic, the proposal was not elaborated enough at that time. In addition, they argued that their budget was too tight, due to a general cutback in financial resources by the Flemish government, to risk financing an uncommon thesis research like this.\(^{31}\)

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\(^{30}\) Professor Paul Rutayisire, director Centre for Conflict Management, National University Rwanda, (prutayisire@nur.ac.rw).

\(^{31}\) Afterwards the International Relations Office (IRO) of the Law Faculty nominated me for a scholarship from the TRANSITION fellowship program 2013 South Africa, that is coordinated by the 'Vlaamse Universiteiten en Hogescholen Raad'. After the confirmation of the nominees, they gave me a scholarship of 4000€. I used 1600€ to finance the field research.
FIELD RESEARCH RWANDA: GATHERING DATA IN KIGALI AND CONDUCTING INTERVIEWS IN RURAL RWANDA

The field research took place from October till December 2013. During the first weeks, I stayed in a monastery in Kigali and later I shared a house with two Italian anthropologists. Once I arrived in Rwanda I tried to contact Professor Rutayisire but unfortunately he was abroad for at least one more month. This communication error forced me to rethink the approach for conducting the research. Luckily I was able to contact Jean Marie Vianney N., a Rwandan man who accompanied me in Kigali during the volunteering project in 2012. With his assistance I started to contact different organizations that defend women’s rights, located in Kigali. During these meetings I asked for more information on the topic of my thesis and for their opinion on the suggestions I had.

### NGO’S

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<tr>
<td>Centre for Gender, Culture and Development</td>
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<td>Reseau des femmes oeuvrant pour le développement rural</td>
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### PUBLIC INSTITUTIONS

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<td>Ministry of Gender and family promotion</td>
<td><a href="http://migeprof.gov.rw">http://migeprof.gov.rw</a></td>
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<td>Ministry of Justice</td>
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(*) I tried to get an appointment with these governmental institutions, but this was rather difficult since I did not have an official research permit. Nevertheless they were represented in the end at the meeting organised by RCN Justice et Démocratie.

In addition I also visited governmental institutions such as the Ministry of Justice and Ministry of Gender and Family Promotion. To get an appointment with these ministries was quite a Kafkaesque challenge for a student writing ‘only’ a master thesis.\(^{32}\) In the end, thanks to RCN Justice et Démocratie, I also managed to participate in a meeting where all the stakeholders where represented and where they were able to answer my questions.\(^ {33}\) During this meeting RCN Justice et Démocratie presented their preliminary findings on their research called ‘Beyond raising awareness shifting social power balance to enable women to access land’. Afterwards an interesting discussion moment was organised for remarks and

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\(^{32}\) Although one needs an official authorization granted by the Ministry of Education to do research in Rwanda, I decided not to apply for such a permit because the submitting a request was too time-consuming for this small-scale research and the procedure lasted at least two months. This would have meant that I would have received the permit so to speak the day I left Rwanda. In addition to this argument, no executive secretary ever asked for this permission. Of course for possible further large-scale research this research permit is indispensable.

\(^{33}\) The invitation can be found in APPENDIX I.
recommendations on their provisional results. The researchers merely focused on Rwandan women in general and were interested to hear about my research on consensual unions.

Besides these interesting discussions with representatives of NGO’s and ministries, I consulted the archive of the National Parliament where I found the preparatory works for the laws that concern property rights, inheritance and marriage. In addition I visited the library of a number of institutions like the National Parliament, the Ministry of Justice and the Independent University of Kigali, where I consulted books and dissertations on the subject.

The main resource for gathering data, were interviews with rural women on this topic. Before the account of the practical obstacles of the interview technique, I’ll first address the substantive evolution of the survey. Keeping in mind that I would probably have to be flexible and adjust my questionnaire once I started the field research, I tried to draft the first version when I was still in Belgium. Once I arrived in Rwanda, I soon realised that this version was too abstract to be practicable in reality. The language was also too technical to comprehend for the women. In addition I had to narrow the subject since I initially decided to focus on land rights for all women. After conversations with NGO’s and ministries I realized that the Succession law of 1999, which allowed married women and daughters to inherit, was well known among the population. However this progress needed to be nuanced, since the law only protected only women that were officially married. Keeping in mind that official marriage is not the only form of marital status in Rwanda, I decided to focus on those who were living together outside marriage. As a consequence I had to rewrite the questions and tested them during the first days of the actual field research until I was satisfied with the result.

The final survey consists of three sets of questions. (APENDIX II) The first sets concerns general personal information such as name, age, education level etc. Thereafter I asked semi-closed questions about marital status, rights linked to inheritance and property and the registration of the land. The results of these two sets of questions will allow me to make arguments based on quantitative data. Finally, I asked the women about their opinion on relationships and marriage in general and more specific on unofficial relationships. This data will be used as testimonies in the research and to describe the general perception on the issue by the women. Throughout this dissertation, additional information on the questions will be given in the footnotes. During the interviews and especially when analysing the data afterwards, suggestions to adjust the questionnaire crossed my mind. These critical remarks can be found in the footnotes.

Besides the substantive discussions I had with the women’s rights organizations that were based in Kigali, one of them, a NGO named HAGURUKA was able to give me very useful and practical information for the actual field research. HAGURUKA is an organization that not only advocates for better protection of women’s and children’s rights, but it also provides free legal assistance for women who want to claim their rights in court. HAGURUKA gave me a contact list of persons that were called ‘paralegals’. These were villagers functioning as agents of a mobile legal aid clinic, spread throughout Rwanda. They were selected in the villages to be a paralegal because of their reputation as wise and diplomatic persons. In addition they were well aware of the social and familial situation of the women in their villages. They all had a different professional background, some were members of the *abunzi* committees, others, for example, were head of the village or director of a school. HAGURUKA trained these paralegals to provide primary assistance to the people in their

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34 *Succession Law, 1999; Republic of Rwanda Organic Law repealing Organic Law n° 08/2005 of 14/07/2005 determining the use and management of land in Rwanda. (further referred to as Land Law, 2013) Official Gazette N°03/2013OL of 16/06/2013, GBV Law, 2008*

35 *Local mediation committees.*
village. Afterwards when the paralegal decides that the problem is too complex to resolve with negotiating, he or she will refer the person to HAGURUKA.

So with the paralegals as my local contact persons, I was able to start the field research. One of the first things I had to do once I arrived in a village was to ask permission for interviewing women. This consent was granted by the executive secretary of the sector council. Most of the time, before they would give me permission, I had to show them documents like the letter where Professor P. Rutayisire confirmed his assistance to my research and an example of the questionnaire, before they would give me permission.

Once the permission was granted we discussed with the paralegal which household would be considered for an interview. The selection criteria were the following. First of all only women would be interviewed. Reasons for this choice will be discussed below in the section about the general analysis of the interviews. Secondly, the interviewee needed to be involved in a de facto union, which means living together with their partner without being civilly married. There were no criteria for the duration of the relationship or if the couple had children or not. The civil status of their partner would not be taken into account for the selection. Therefore their partner could be officially married to another woman or just engaged in another relationship. Moreover, no age requirements were set. As a consequence there were fourteen minors, who complied with the previously mentioned criteria, who participated in the research.

Before discussing the geographical working field, it might be useful to explain the different administrative levels in Rwanda first. The highest level consists of the four provinces, namely the northern, eastern, southern and western province. In addition the capital of Kigali is seeing as a separate administrative unit on the same level as the provinces. The different provinces are subdivided in districts. A map of the district can be found in the below. A district consists of sectors. The sector level is responsible for granting permission for the interviews. Sectors on their turn were partitioned in cells. And lastly, the lowest administrative level is the village.

The amount of women I daily interviewed depended on the region where I was working. In the beginning I planned on interviewing ca. 10 women per province and in the capital, which would result in a total of 50 interviews. My first intention was to interview the same amount of women per province, to make comparison of the results between these provinces possible. The districts I would visit per province would depend on the presence of a HAGURUKA paralegal and their availability to assist with the research. Due to circumstances that will be explained below, I conducted interviews in all the provinces and Kigali, except for the western province.

I left every day from the capital city where I lived, for the countryside in the different provinces. Depending on the distance and the form of public transport, the ride varied from forty-five minutes up to maximum three hours one way. Therefore I was not able to visit the western province to conduct interviews, since the displacement would be too time-consuming and costly. As a result I abandoned the idea of comparative research between the provinces, since it would not be possible to realise within the timeframe of a small-scale research. Besides the time needed for the transport, the population density and the landscape also had an influence on the daily schedule. In the North for example, the landscape is far hillier than in the Eastern province. To walk there from one household to the other could take up to thirty minutes; where in the East one could find easily find ten households within a radius of one km. So on a daily basis I interviewed at least ten women, but I made sure that in every district I visited that I interviewed at least ten women.
These factors also influenced the amount of interviews I eventually conducted per district and province. Despite the fact that Kayonza district was 2.5 hours driving one way, most interviews took place in this district. Many couples in Kayonza were not officially married and the population density was high. Therefore 61% of all the interviews were conducted in the east province. Twenty percent of the interviews took place in the southern province of Rwanda, since the district Kamonyi was easy to reach and geographical settings were favourable.

At the beginning of an interview, the research assistant introduced both of us and explained the motive of our visit. Since the interview dealt with sensitive and personal subjects, I deliberately chose not to use written consents to keep the conversation as informal as possible. We did ask each interviewee oral permission for the interview. If the woman consented with the interview\textsuperscript{36}, we searched for a quiet and private place in or around the

\textsuperscript{36} \textit{There was only one woman who refused to be interviewed. The paralegal who was present told us that the woman became mentally ill after the genocide in 1994.}
When the woman was not at home or busy, we tried to search for another moment that would be more convenient for an interview. Each interview took on an average around 45 minutes, which is rather long. Therefore we tried to do the translation work as efficient as possible. For example by learning keywords on the subject, numbers, etc in Kinyarwanda and using closed questions.

The name of the interviewee was asked, to make a potential follow-up possible in the future. However women were not required to give their name in order to loosen their tongues more. Nevertheless only one woman preferred to remain anonymous. The others gave at least their first name. To guarantee the privacy of the women, a numbered code and a link to the district will be used to refer to an interview. Sometimes when quotes are used, reference can be made to the first letter of an interviewee’s name. However this will not violate their privacy, since the code is only known to the researcher, and the administrative level of a district is geographically seen large enough to make discrete references.
GENERAL ANALYSIS OF THE INTERVIEWS

From the beginning, I decided to interview only women. As a consequence, only one side of the story was exposed. Normally women are the victim due to the incompleteness of the law of 1999. Only in some very rare cases it was the male partner who found himself in a vulnerable situation. But, due to a limited period of time for the research, I was left with no choice than to focus on female interviewees. In order to fill the gap, I did some focus group interviews with the life partners of some of the interviewed women. In contrast to the amount of women I talked with, the number of surveyed men is not as representative, but nevertheless useful for qualitative research. Further research should definitely also focus on this aspect of the story.

Besides the interviews that I held in Kigali, I interviewed 106 women, 10 men, one abunzi committee in Bugesera and held two focus group interviews. The following table provides a general analysis of the interviewed women. The table indicates average data about the group of interviewed women.

<table>
<thead>
<tr>
<th>AGE</th>
<th>29 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGE START RELATIONSHIP</td>
<td>23 years</td>
</tr>
<tr>
<td>AVERAGE DURATION RELATIONSHIP</td>
<td>6 years</td>
</tr>
<tr>
<td>NUMBER OF CHILDREN</td>
<td>1.95</td>
</tr>
<tr>
<td>CURRENT NUMBER OF BROTHERS</td>
<td>2.02</td>
</tr>
<tr>
<td>CURRENT NUMBER OF SISTERS</td>
<td>2.07</td>
</tr>
</tbody>
</table>

The majority lived together with a partner that was not married, nor formally neither unofficially. Only 5% of the interviewed women were involved in a polygamous union. In three percent of the cases, none of the relationships of the man were officially recognised. The other two percent lived together with a partner who was officially married to another woman.

<table>
<thead>
<tr>
<th>EDUCATION LEVEL</th>
<th>% OF THE INTERVIEWED WOMEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO EDUCATION</td>
<td>11</td>
</tr>
<tr>
<td>PRIMARY SCHOOL (UNFINISHED)</td>
<td>43</td>
</tr>
<tr>
<td>PRIMARY SCHOOL</td>
<td>33</td>
</tr>
<tr>
<td>SECONDARY SCHOOL (UNFINISHED)</td>
<td>10</td>
</tr>
<tr>
<td>SECONDARY SCHOOL</td>
<td>2</td>
</tr>
<tr>
<td>UNIVERSITY</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100</td>
</tr>
</tbody>
</table>

Their level of education is rather low, namely the majority went to primary school but did not finish their education. Therefore 77% of the women stated that they knew how to read and 75% declared to be able to write. One quarter of the interviewed women could neither write nor read. Only 2% percent actually finished secondary school. The majority (86%) of the women said their occupation is to cultivate the fields. Another eight percent earned their living as a saleswoman, working in small shops. Others worked as a seamstress, a barmaid or a teacher and one minor still attended school.

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37 Interview 99, district Kayonza; interview 100, district Kayonza.
• DIFFERENT FIELD RESEARCH CHALLENGES

During the interviews women gave a wide variety of reactions to the questions. In general one can say that all the interviewees were rather ashamed of their situation, because these women have a bad reputation in society, as will be further explained. But not every interviewee expressed their shame in the same manner. The questions made all women reflect about their living situation. For some of them this was too confronting since they were well aware and afraid of future consequences. Some women reacted angry and frustrated others were silent and made a desperate impression. Another group of women who did not want to recognize the seriousness of their situation reacted light-footed on the questions as a defence mechanism. So it was very important that the interpreter made the women at ease during the interview and to put their mind at rest.

Despite the fact no reward was given for an interview, one must keep in mind that the interviewee might feel obliged to give the answers the researcher wants to hear. Moreover as a consequence of the genocide of 1994, women and Rwandan people in general do not talk freely and are suspicious. Furthermore since the subject of the interviews was sensitive and women felt ashamed, they sometimes tried to disguise the truth in order to leave a favourable impression. Therefore it can be a challenge to discover the hidden transcript during the interviews.38

But the major practical obstacle I had to overcome was the language barrier. Since I only spoke a limited basis of Kinyarwanda, I had to hire an interpreter to assist me during the interview. During the interview he/she translated each question in French, while I typed the answers in Dutch in an excel and a numbered word file. I had deliberately chosen not to record the interview with a voice recorder for two reasons. Firstly, I wanted the interviewees to be at ease during the interview. A voice recorder could be intimidating and its absence guaranteed women’s full privacy and anonymity. Secondly, direct translation allowed me to intervene during the interview when needed. It was especially useful and interesting to ask additional questions during the third series of questions about the women’s opinion on marital status in order to have a small discussion on this topic. In addition, I also intervened when the inheritance scheme was complex and I needed extra information to fully understand their situation.

On the other hand, I did record the two focus group interviews I conducted with the men. Recording made a fluent and open conversation possible without any disturbing conversation between the interpreter and me. It was important to explain the interpreter how to lead the interview and which topics needed to be discussed. Later, the interpreter wrote the translated interview down. Besides the role of the interpreter as moderator, I also needed to think of a way to gather the men in a place that was not suspicious or surrounded by many people. Most of the time I invited them to a small café or bar where I bought them something to drink and some goat brochettes to eat, in order to loosen the tongues.

Another issue was the presence of the interviewee’s partner during the interview. The absence of the male partner improves the quality of the interview, because women are able to talk freely about their partner and household in general, without worrying what the reaction of her partner might be. In addition the man could interfere in the interview by influencing the woman’s opinion or even answering on her behalf.

In a society where the male partner has the dominant position in the household, it was difficult to ask to talk to the women alone. Even though women are involved in the

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decision-making process at national level, e.g. 64 % of the parliamentarians are female, patriarchal ideas still prevail in rural areas.\(^39\) In order to interview a woman, it was required to ask permission not only from the chief of the village but also from the male partner of the woman. Some men were suspicious and insisted to be present at the interview. Others did not want to be overruled by the researcher, who was an outsider and in addition a young woman. Therefore it was interesting to see how both translators, with whom I worked together, Jean-Marie V. and Jeanine B., had different views on this issue. Since my knowledge of Kinyarwanda was rather limited, I was obliged to rely on the assistance of the interpreters to ask the male partner to leave the room.

The first interpreter, being a male himself, held on to the gender hierarchy in society. He did not want to offend the male partner by asking him to leave his own house during the interview. Since Jean-Marie V. was an older man, it was hard to convince him to ask the man to have a private conversation with his partner. However the female interpreter solved the issue in an interesting way, namely by appropriating the dominant male narrative of Rwandan society. Jeanine B. praised the man’s role as the decision maker in the household in a very explicit way. She did this by asking the man in an overly formal way for his permission for the interview, just to give him the feeling that he’s still the one in charge. Afterwards the man felt that he was respected as a man and as the head of the household. Therefore he could be easily asked to leave the room because it would be a conversation, as we told him, on a ‘very female’ topic. By pointing out that it was a ‘female’ topic, the man would feel uncomfortable and maybe even too ‘superior’ to participate in the conversation. To conclude this discussion about the partner’s presence, I could say that in the end it was interesting to see how, even before the actual interview started, the gendered power relation in the household was dominantly present during every moment in the field research.

2. Equal land rights: analysis of the international legal instruments and female land tenure in Sub-Saharan Africa

- INTERNATIONAL LEGAL FRAMEWORK CONCERNING EQUAL LAND RIGHTS

The international human rights framework supports many different women’s rights but unfortunately less attention is given to providing guidance for domestic laws to protect equal rights to land. For the purpose of this thesis, a brief overview of the rights to property analysed in the perspective of the international instruments will be given. To begin with, the Universal Declaration on Human Rights (hereinafter UNDHR), adopted in 1948, stipulates in article 17 “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.” Despite the non-binding character of the declaration, the core body of the declaration has been implemented in different binding treaties over the years. The International Covenant on Civil and Political Rights (hereinafter ICCPR) of 1966 does not mention the right to property specifically; however the treaty provides a non-discrimination clause and installed a Human Rights Committee to hear individual claims. So far the Human Rights Committee has not yet dealt with a case concerning land rights and gender discrimination. Similar to the ICCPR, the International Covenant on Economic, Social, and Cultural Rights (hereinafter ISESCR) does not provide a right to property. In addition signatory states are solely required to take “all appropriate means” in order to guarantee non-discrimination based on sex.

Whereas the ICCPR and the ISESCR regulate the interaction between signatory states and its citizens, the Convention on the Elimination of All forms of Discrimination Against Women (hereinafter CEDAW) stipulates that states have in addition an active obligation to ban discrimination against women on a horizontal level, namely between persons and by organisations. The Convention specifically prescribes an “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.” In addition article 5(a) requires states to ‘modify the social and cultural patterns of men and women (…)’ in order to eliminate discrimination based on sex. Despite the fact that CEDAW does not have an individual complaint mechanism, its impact on

43 However the functioning of the individual complaint mechanism is limited to the signatories of the Optional Protocol to the International Covenant on Civil and Political Rights.
48 CEDAW, 1979, art. 16(h).
49 CEDAW, 1979, art.5 (a).
domestic provisions may not be underestimated. Several domestic cases relied successfully on the CEDAW to support a dispute on equal property rights.\textsuperscript{49}

Regional instruments, such as the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (also known as the Maputo Protocol), offer thorough protection of women’s property rights. First of all, equal inheritance rights are guaranteed for all children.\textsuperscript{50} But most notably are the provisions on women’s property rights during and after marriage.\textsuperscript{51} The Maputo protocol specifies that widows have the right to have an equal share of their husband’s inheritance. Moreover widows have the right to stay in the matrimonial house.\textsuperscript{52}

To conclude one could argue that the international community should put more effort in specifically protecting women’s property rights, as prescribed in the UDHR. Even though formal law is not the sole answer to land issues\textsuperscript{53} and more specific for the improvement of women’s land rights, the existence of an international recognised framework can serve as a guidance for drafting domestic legal provisions on land rights.\textsuperscript{54}

\textsuperscript{49} For a detailed discussion of these cases, see: MOHAN S.S., “The battle after the war: Gender discrimination in property rights and post-conflict property restitution”, 2011, 472.


\textsuperscript{51} Maputo Protocol,2003, art.6, 7, 21,16, 19.

\textsuperscript{52} Maputo Protocol,2003, art 21.


\textsuperscript{54} MOHAN S.S., “The battle after the war: Gender discrimination in property rights and post-conflict property restitution”,2011, 468.
DEFINING FEMALE LAND TENURE AND ACCESS TO LAND FOR WOMEN IN SUB-SAHARAN AFRICA

When analysing female land rights in Sub-Saharan Africa, two main characteristics can be distinguished throughout the whole area. First of all, women are rarely exclusive owners of land. In other words, they seldom have the right to sell or transfer land. Generally there are three different sorts of land claims in Sub-Saharan African society. First, *usus* means the administrative right of ownership, without a right to the crop production of the land. Second, the one who uses the land has a *fructus* right. This person is allowed to harvest the land. And third, *abusus* is seen as the right to sell or rent the land.

The current land registration process has negative impact on female ownership since it favours male heads of the household over women. Only ownership in the strict sense of the word, namely the right to control and transfer land, was registered. Since women are less favourable heirs or have often not enough sufficient means to acquire land, they are rarely registered as exclusive owners. Even joint ownership between married couples is not commonly registered. And especially widows have to face difficulties claiming their deceased husband’s land when the plot of land is registered solely on his name.

To come back to the different sorts of land rights, most of the time women only have the right to cultivate the land and to sell the harvest in order to have an income. These use or *usufruct* rights can be exclusive or shared with other rights-holders who may use the land at a different time or in a specific manner. In general land rights are transferred, obtained or lost in various ways such as through purchase or investment or through association with a social group or network. Women often follow the latter path in order to gain access to land. To illustrate this matter: one hectare of land in rural areas cost on average around 1.2 million FrRw in 2008. An amount that is four to five times as high as the average annual Rwandan income. Therefore, relying on indirect land rights leaves women in a weak and unpredictable position because their rights of use depend on the will of the owner.

This brings us to the second characteristic of female land ownership in Sub-Saharan Africa, namely the concept of indirect land rights. Due to the ‘feminisation’ of poverty, women are forced to rely on association with male members in society in order to have access to land. This dependency is manifested the most in the situation of widows. After the dead of

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55 The term ‘land rights’ or ‘property rights’ will be used interchangeably.
61 Approximately around 1302.80 Euro.
their husband, widows have to rely on their in-laws, instead of being allowed to manage the
inheritance herself. Moreover, some judicial systems make the children heirs, which causes
the widow to be depend on her children.\textsuperscript{64} Kevane and Grey, who conducted a fascinating
study in Burkina Faso on land rights for women, describe this phenomenon apt by stating
that female land rights are only reserved for ‘mothers, wives, sisters and daughters’\textsuperscript{65} instead
of women as such.

As a consequence, the interpretation of women’s land rights depends moreover on
their status in the household. This status is not static and changes according to the woman’s
position in the household or family. Families and communities negotiate about land rights for
women and take the needs and specific circumstances of the case into account. In other
words, there are no well-defined land rights, they depend on negotiating and are granted on
a case-by-case basis.\textsuperscript{66} Despite many variations on the continent on the status in the
household, a general tendency can be determined. For instance, in the case of polygamy,
the first wife enjoys greater status than the younger ones. Having children or not and their
sex can also influence how land rights are interpreted. Moreover having secure land rights is
also linked with status. A divorce or death of a spouse may cause loss of land rights.\textsuperscript{67}
Moreover a second wife can also threat the land rights of the first wife. An interviewee from
the North province in Rwanda confirmed this by stating that ‘these second wives cause
insecurity in society’.\textsuperscript{68}

In addition, land rights for women are threatened by important changes in African land
tenure. First of all, the emergence of a private land market in most countries has a negative
impact on future female land owners, since generally speaking women are economically not
strong enough to purchase land.\textsuperscript{69} As land ownership shifted from a family context to being
incorporated in a profit-making oriented market, women were even more pushed in the
corner when claiming land.\textsuperscript{70} The immense land pressure explains the existence of many
land disputes.\textsuperscript{71} Moreover the majority of land is acquired through inheritance (46\%) and
donation (11\%).\textsuperscript{72} These ways of acquiring land are known for often raising discussion about
land rights. As a result of the development of a private land market, customary land systems
are often replaced by codified legal regulations that guarantee legal certainty in order to
attract investors. Secondly, the codification of the land tenure system has an influence on the
nature of women’s land claims. Before the formalization, women addressed their complaints

one and the same?” in VERSCHUUR C., \textit{Du grain à moudre. Genre, développement rural et

BERG N., HORAN H., PATEL D., “Women’s inheritance and property rights: a vehicle to accelerate
progress towards the achievement of the Millennium Development Goals”, \textit{Legal empowerment

KEVANE M., GRAY L., ”A woman’s field is made at night: gendered land rights and norms in

LANKHORST M., VELDMAN M., “Engaging with customary law to create scope for realizing
women’s formally protected land rights in Rwanda”, 2011, 94.

KEVANE M., GRAY L., “Diminished access, diverted exclusion: women and land tenure in Sub-

Interview 52, district Gayenke.

LANKHORST M., VELDMAN M., “Engaging with customary law to create scope for realizing
women’s formally protected land rights in Rwanda”, 2011, 94.

CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land

\textit{The majority of disputes in Rwanda deal with land conflicts.}


about land rights to dispute resolutions bodies on local level. The main advantages are their accessibility and the informal way of solving disputes. Nowadays land claims are dealt with in a judicial system that is characterized by a bureaucratic complexity that might disproportionally disadvantage vulnerable groups, who are less informed.

Furthermore when looking at land tenure in Sub-Saharan Africa, one must not ignore the impact of legal pluralism. The challenge of legal pluralism to realise women’s land rights can be illustrated by referring to the Rwanda’s legal system and their hierarchy of different norms. According to the Rwandan Constitution legal pluralism is recognised, nevertheless customary law only applies on the condition that it respects formal legal provisions. In addition, the judiciary are in charge of providing “authentic interpretation of custom which is unwritten and in respect of which the written law is silent.” Even though traditionalists have a valuable argument stating that the adaptive character of customary law can be an advantage, one must keep in mind that customary law may reflect an old-fashioned system of values. For example several customary regulations tend to favour boys over girls with regard to inheritance rights. Although the Constitution provides a clause to ensure that customary law is in accordance with human rights standards, discriminatory customary provisions still prevail de facto in rural areas. Legal pluralism also incites forum shopping, where people choose to rely on those formal or traditional provisions that are the most advantageous for them. This can have a negative outcome for women, who are less powerful to bargain, which will be further explained later.

Nonetheless, this dissertation does not aim to promote formal law that is embodied in the international human rights framework, as the ideal and sole solution to ‘correct’ the system of legal pluralism. Rather the most problematic aspect of parallel legal systems is its complexity. Therefore one cannot deny that the co-existence and the interaction between formal, customary and religious regulations can impede the improvement of women’s access

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73 “(...)unwritten customary law remains applicable as long as it has not been replaced by written laws, is not inconsistent with the Constitution, laws and regulations, and does not violate human rights, prejudice public order or offend public decency and morals.” Rwandan Constitution, 2003, art 201.
74 Rwandan Constitution, 2003, art 145.
75 Lankhorst and Veldman provide an overview of three different perspectives on the role of traditional law in the realization of female rights in African society. The first view is in favor of the influence of customary law since traditional norms are legitimated by the community and easily accessible. Those opposing the use of traditional norms, due to its restrictive consequences for women’s rights, form the second perspective. The third group values the utility and the role of customary rules in society. However, according to this group, customary norms must be revised from the ground up in order to fully protect and respect female rights in society. LANKHORST M., VELDMAN M., “Engaging with customary law to create scope for realizing women’s formally protected land rights in Rwanda”, 2011, 94.
to land.\textsuperscript{81} However when analysing the content of customary norms, one must not throw out the baby with the bathwater. Despite the fact that customary norms in general tend to favour man over women concerning land allocation\textsuperscript{82}, the traditional system does offer in some cases relieve for women who are denied any access to land due to the loss of their association with a male land owner.\textsuperscript{83} Following quote from Johan Pottier, specialised in pre- and post-colonial land tenure in Rwanda, illustrates this point: 

“(…)[I]n everyday life, men and women ‘sustain their claims to resources by employing arguments from both the statutory and so-called customary law’. The outcome does not always favour women, since there is much gender bias in legal cultures and statutory law, but other outcomes, (…) are also possible.”\textsuperscript{84}

Rwandan culture has indeed a history of disadvantaging women, but cultural norms are dynamic and moreover a reflection of society. For instance during the post-conflict area, women were highly involved in rebuilding the country. Due to the high number of widows, many women had to take up tasks that were normally reserved for women and headed households. As a result women are nowadays more prominent in society and this is translated in a culture that slowly but surely starts to adopt women’s new independent role.

To conclude, instead of focusing on the disadvantages of legal pluralism, attention should be drawn on the realisation of cooperation between customary rules and state law.\textsuperscript{85}

After the analysis of land tenure from an African and female point of view, one might wonder why attention must be given to facilitating land access for women. Of course, there is an international framework that requires signatory states to implement gender sensitive legislation on land tenure. Besides the international obligation, a policy on equal property rights should be morally justified in order to create incentives to improve equal access to land. Therefore, following section will shed a light on the importance of female land rights.

\textsuperscript{81} BERG N., HORAN H., PATEL D., “Women’s inheritance and property rights: a vehicle to accelerate progress towards the achievement of the Millennium Development Goals”, 2010, 14.
\textsuperscript{82} CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2006, 1505-1506.
\textsuperscript{85} CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”,2006, 1508-1509.
3. THE RELEVANCE OF LAND RIGHTS TO THE DEVELOPMENT OF WOMEN’S EMPOWERMENT

In general, improving land rights for women has proven to reduce poverty and has a positive influence on equalizing gender relations in society.\(^\text{86}\) Therefore, empowering women through guaranteeing land rights is a popular approach in developing countries.\(^\text{87}\) Empowerment can be defined as followed:

“[A] process of change that results in individuals having an enhanced ability to control resources [such as land] (...) and influence decisions that affect their lives. In addition (...) empowerment is a political process that involves a collective struggle against oppressive social relations.”\(^\text{88}\)

Summarized, social transformation and self-determination are two keywords of an empowering process. Access to land strengthens women’s position in society in four different ways, namely through economic, social, political and legal empowerment.\(^\text{89}\)

First of all, equal land rights have a positive effect on women’s economic empowerment.\(^\text{90}\) Secure land rights enable women to manage and control land independently and it provides them with a stable income. Moreover importantly, access to land can create economic benefits, not only for women but society in a whole.\(^\text{91}\) Since 95% of the Rwandan livelihoods depend on agriculture, access to land is a key development goal.\(^\text{92}\) According to FAO, women are responsible for 60%-80% of the food production in developing countries.\(^\text{93}\) In addition 92.6% of Rwandan women work in the agricultural sector, thus improving their land rights will affect the whole household economy.\(^\text{94}\) Studies have shown that equal property rights are a key element for improving agricultural production and optimise yield rates on the fields.\(^\text{95}\) A study in Uganda shows that women who have unsecure and indirect land rights, are more likely to overwork their fields. As a consequence fields are exhausted and yield rates will drop. Women are afraid that not using the land during one season would be too hazardous since they are not sure if they could maintain control over the land in the future.\(^\text{96}\) Several other studies worldwide confirm this causal link between securing equal land rights and improved agricultural outcomes on the household


\(^{88}\) PALLAS S., “Women’s land rights and women’s empowerment: one and the same?”, 2011, 274.


\(^{92}\) Or to put in a different way, only 20% of the people that have a non-agricultural job are female.

\(^{93}\) CROOK J., “Promoting Peace and economic security in Rwanda through fair and equitable land rights”,2003, 1529.


level. In addition, evidence shows that women use their earnings more carefully than men. Women’s spending priorities are ensuring health access and nutrition for their family. Moreover, women also invest more in their children’s education. This financial management will decrease poverty in society and improve educational level of the population in general.

Besides as a source of agricultural income, secure access to land can enable women to earn money through selling or renting their land. In addition, it can improve access to financial credit for women since land ownership is a strong proof of means of subsistence. Looking at these facts, one can simply not ignore the key role women play in economies in developing countries. Moreover, the success of fulfilling this economical role appears to be strongly connected to having secure land rights. Therefore briefly said, denying women access to land is undermining economic development.

Besides impact on their economic status, improving land access for women can empower women to have an active role in the public sphere. Women have a central place in African society but their voice is often marginalised or not heard. By granting land rights on an equal basis to every woman, they will be able to claim their position in society without being pushed into a corner. In addition, it makes it possible for women to be more independent, instead of relying on weak and unsecure links with male partners or their birth family. Women who have solid claims to land stand stronger when unexpected events, such as divorce or death of their partner, happen. Moreover, they have a stronger and independent position in relationships. Women, who have to depend on their association with men to economically survive, are more vulnerable to end up and stay in an abusive situation. A specialist in gender discrimination in property rights, Sharanya S. Mohan summarizes this issue apt by stating that “[e]conomic dependence, such as dependence on a husband for rights to property, serves to disempower women by ‘preventing them from challenging violence as well as making them more susceptible to it.’” Following citation from a woman living in the South province shows how difficult it is to have decision making power without possessing any means.

“I have nothing besides a jerry can and some shovels. I saved money to buy these shovels, but my husband stole and sold them. Once I have enough money, I want to leave my husband.”

An example of this vicious circle is the link between genital mutilation and marriage in some countries. The premises of the issues are as followed: women rely on marriage for survival and genital mutilation is a precondition to marry. Therefore, genital mutilation is requisite in

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103 Interview 66, district Kirehe.
order to strengthen their economic situation.\textsuperscript{104} Another example that shows that improving land rights can strengthen women’s position in society concerns the legal instructions to manage matrimonial property. One of the rights that should be extended in Rwanda to all sort of relationships, instead of granting it only to officially married women, is the mutual consent when selling common property.\textsuperscript{105}

Improving land access also had a positive influence on women’s health. For instance, a study by the Rwandan Institute for Sustainable Development (RISD) showed that land rights are relevant when analysing the prevalence of HIV/AIDS among women. Female owners are less likely to be affected by HIV/AIDS since they are in a stronger economic position to not be engaged in abusive relationships where the partner refuses to use a condom. In addition, they can better survive after losing a partner to HIV/AIDS.\textsuperscript{106}

Social empowerment encourages women to have an active role in society and facilitates the idea of political representation. Consequently, political empowerment makes lobbying for gender sensitive legislation possible, which enables legal empowerment in its turn. However, one must keep in mind that legal action alone seldom invokes a notable change in reality. Therefore multiple implementation mechanisms must be used to ensure that legal reform is translated into society. Thorough sensitization and education on legal rights must go hand in hand with legal aid and material support to make enforcement of legal provisions possible.\textsuperscript{107} Nevertheless, legislative initiative must be seen as a crucial step to guarantee gender equality.


4. THE EMERGENCE OF EQUAL FORMAL PROPERTY RIGHTS IN RWANDA: AN INCLUSIVE APPROACH?

This chapter will start with an introduction of the evolution of Rwanda’s land tenure system in order to have a better understanding of recent land reforms. This will be combined with an overview of customary practices that regulate inheritance and marriage, with an emphasis on women’s access to land. After this introduction, the legal framework on property and succession will be analysed. Two main law reforms dealing with inheritance and land regulations will be discussed. The focus will be on the protection of equal land rights in general in order to contextualise women’s current legal access to land. First of all, the law supplement to book one of the civil code and to institute part five regarding matrimonial regimes, liberalities an successions (hereinafter the Succession Law), adopted in 1999, was a breakthrough in the field of gender equality. The emergence of the law and the context will be explained in this section. In brief, without spilling the beans, the law stipulates that all children are considered equal heirs and grants women the right to inherit the matrimonial assets.\textsuperscript{108} Lastly, the organic law determining the use and management of land in Rwanda (hereinafter the Land Law of 2005 or 2013) will be analysed through a gender perspective.\textsuperscript{109}

- LAND REGULATIONS IN RWANDA: A REOCCURRING CONTROVERSIAL ISSUE

Rwanda is known as the African country with the highest population density. This characteristic is combined with the fact that 85% of the population depends on agriculture to earn an income.\textsuperscript{110} Therefore it is no surprises that recent challenges concerning land are moreover scarcity of land, increasing population growth, and an enormous amount of land disputes due to multiple land claims caused by successive waves of refugees.\textsuperscript{111} Intricate land problems are often the main issue of conflict and leitmotif throughout Rwandan history.\textsuperscript{112} Before discussing the recent regulations governing land in the context of inheritance and marriage, a brief overview of the context of the land problem in Rwanda will be given. Due to the complex history of Rwanda, one needs to address previous land issues and regulations first in order to fully comprehend current land tenure system.

Pre-colonial Rwandan society was organised in different clans, which consisted of different lineages. Each clan had a chief who governed the clan and was responsible for land tenure. However, exclusive land rights were inexistent since land was common property. Therefore land could only be transmitted from generation to generation in the same clan.\textsuperscript{113}

\textsuperscript{108} Republic of Rwanda Law Supplement To Book One Of The Civil Code And To Institute Part Five Regarding Matrimonial Regimes, Liberalities And Successions. (further referred to as Succession Law, 1999) Official gazette N°22/1999 of 15/11/1999, art. 43 j. 50, 66-71
\textsuperscript{110} Statistics from 2011 stated that there are 384 inhabitants per km\textsuperscript{2} in total and 526 inhabitants per km\textsuperscript{2} for agricultural land.
\textsuperscript{113} RURANGWA E.,”Perspective land reform in Rwanda”, 2002, 3.
Before the colonisation, Rwanda was, roughly said, divided into two areas with different clans in charge. The Tutsi Nyinginya court ruled in Nduga. In this region, land tenure was regulated by the customary practice called *isambu*. This implied that the Tutsi king (*mwami*) owned all the land in an invariable way. People could use the land, on condition that they would give the king a compensation in the form of labour (*uburetwa*). In the north and north-west of Rwanda land tenure was based on the principle of *ubukonde*. Usufructuary rights were passed on in the same lineage. In return people offered gifts to the male head of the lineage (*umukonde*). This practice of gift giving (or *umuheto*) happened on a voluntary and informal basis. Manual labour was never given in exchange. Another difference with the practice of *isambu* is the inalienable character of the usufructuary rights granted by the *umukonde*. Over the years the Tutsi royal court expanded its territory by relocating Hutu fields. At the end of the nineteenth century the practice of *ubukonde* became widespread. During the colonization, the German and Belgian's governing policy "led to systematically disordering of the pre-colonial land-use patterns" by strongly encouraging the *mwami*’s legitimacy.

After the independence, the majority of the land was still administrated according to customary law. Formal law only applied to foreign investors and in urban areas. Due to a fast growing population, land became exceedingly scarce. Since fathers, who had several sons, kept dividing their land to only pass it on to their sons, the size of parcels decreased sharply over the years. As a consequence over cultivation became the solution, which had a disastrous effect on soil fertility. Agricultural food production decreased and the scramble for land drove the population apart. Furthermore, the divide and conquer tactic issued by the colonizers had a tremendous impact on the relations between Hutu’s and Tutsi’s and had a major influence on the outburst of the horrific events of 1994.

In the post-genocide era, the land conflicts increased, caused by an enormous amount of refugees and displaced persons returning to Rwanda looking for their lost property. The Rwandan Patriotic Front (RPF) that gained control in 1994 faced a tremendous challenge trying to solve the land issue and restoring peace at the same time.

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114 The practice can be translated as ‘divine-right ownership’.


119 CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2003, 1492.

120 CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2003, 1492.

121 CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2003, 1493.


123 Similarly to the article of A. Polavarapu I do not have the intention to point out land tenure as the sole driver of the genocidal conflict of 1994. Since this dissertation focusses on land relations, I merely want to present an overview of land tenure throughout Rwandan history.


126 CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2003, 1498-1502.
Women suffered the hardest in their efforts to claim land, since they were silenced by both formal and customary law. The following passages will first discuss inheritance and marriage according to Rwandan customs with an emphasis on women’s rights. Afterwards, the post-genocide legal reforms to guarantee equal land rights for women will be critically analysed.
WOMEN AS SECOND-RATE OWNERS IN RWANDAN CUSTOMARY LAW

The key principle in Rwandan traditional inheritance system is the concept of filiation. This kind of inheritance regulation excludes girls from the inheritance of her ancestors. Women can only claim weak inheritance rights with an unpredictable outcome. Moreover their right to succession is characterized by indirect claims which leave them with no choice then to rely on their association with male family members and their husband and his relatives.  

It is important to note that in Rwanda the practice of inheritance is interpreted in a different way than in Western society. Inheritance is not linked to the dead of the right bearer but more to the concept of marriage. Male members who reach the age of majority, which is also seen as the age of marriage, would receive a piece of land to build a house for their future family. This plot of land is called umunani and will be given to grandsons when there are no sons in the family.

Married women were systematically discriminated or overlooked by their ancestors when it comes to appointing the power to control land. Married daughters are supposed to live on their husband’s land. On the contrary, sons are given land to establish their household. After the dissolution of a marriage, caused by death of one of the spouses or in rare cases by divorce, women faced several difficulties claiming inheritance rights. For instance a widow can be assigned the usufruct on the conjugal house and the land of her husband. However her family-in-law can consider her as an outsider and deny any form of inheritance to the woman. The family of the husband can take the children and leave the woman with nothing left. The widow would have to return to her family and ask for a plot of land. However, this request was difficult to fulfil since family land is reserved for male members of the family. In most cases, widows or repudiated women, live with their parents and cultivate the family land.

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Moreover this right of usufruct only lasted until a son would reach the age of majority. In that event he would inherit the property of his father. Moreover, if she remained childless or without sons, her land rights depended strongly on the goodwill of her husband’s family. Sometimes they would only even let the widow stay on the land, on condition that she married one of her deceased husband’s brothers. One interviewee was involved in this practice of levirate (guhungura). She became a widow after the genocide and saw no other option than to marry the younger brother of her former husband in order to be allowed to stay on the land. (infra p.56)

Women can also receive land from their birth family but this is less common. These traditions vary from region to region and are sometimes named differently, but in general there are two different ways to have direct access to land for women. To begin with, there are several cultural practices where women could receive a plot of land as a gift for a certain occasion. For instance, a bride can be given land from her family as a gift on the occasion of her marriage, called intekeshwa. They can also give her land when she shows her newborn to her parents, which is called inkuri. Even when a woman leaves her husband or the other way around, she can go back to her parents and receive ingagari. This is a small piece of land that would serve to meet her basic needs. In the worst case scenario when a widow or a returning daughter had no family left, she could be assigned a piece of land called ingalingali by the clan chief. In the event of a funeral, if a woman would be responsible for burying the deceased, she would get a piece of land which is called inkuracyobo. However, one must keep in mind that these female land rights are limited to a use right. Besides land donations, women could also have access to land through inheritance. Normally, sons are entitled to inherit the remaining land that a father did not

133 CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2003, 1506.
135 Interview 20, district Gasabo.
136 When translated literally intekeswha or inteke means ‘that which is given to cook’. Man could also receive intekeshwa from their family or his wife’s family on the occasion of their marriage or when a male child is born.
137 LANKHORST M., VELDMAN M., “Engaging with customary law to create scope for realizing women’s formally protected land rights in Rwanda”, 2011, 96; interview 20, district Gasabo.
138 UWAYEZU E., MUGIRANEZA T., Land policy reform in Rwanda and land tenure security for all citizens: provision and recognition of women’s rights over land. 6
139 Republic of Rwanda, National Land policy, 2004, 20
139 This practice is also known as ‘inkuramwabo’ or ‘inkurashyamba’.
donate during his life but, in absence of male heirs, women could be entitled to their father’s heritage.141

These traditional practices do offer more or less access to land for women. One of the advantages of customary rights is the flexibility of cultural practices. There are diverse safety nets, mentioned above, provided for women who are in trouble due to circumstances such as their partner passing away or a divorce. Another benefit is the fact that traditional systems are easily accessible since it operates on grass root level and there is no bureaucracy involved.142 Nevertheless the other side of the coin is that flexible rights depend on the wealth of her parents since male members are strongly favoured over girls when it comes to dividing heritage or donating land. The family wealth will decide the size of the plot, which is usually never as large as the umunani that male family members receive.143 Besides increasing population, degrading quality of the land puts pressure on 90% of the households which rely on subsistence agriculture.144 Due to land scarcity in Rwanda, male members often compete with their sisters to have access to family land. Since customary norms are not static, men interpreted common law in such a way that it benefits them the most.145 Moreover customary matrimonial rights are uncertain for women since they have to deal with discrimination when claiming their land rights after the dissolution of her marriage.146 Different variables will influence this decision in an arbitrary way. For instance adult sons will inherit their father’s properties and may give their mother a piece of land to live and cultivate. If the male children were still minors, the widow would hold the matrimonial land and house in trust for her sons until they reached the age of majority. But if a widow remains childless or left with only daughters, it will depend on the goodwill of the family-in-law if a woman is allowed to stay on the matrimonial property or not.147

Despite the fact that these traditional practices do offer some land rights for women, one must keep in mind that these land rights should be interpreted as rights of use, as explained above in the section about female land rights. Control over land, such as the right to sell, donate or rent the land, remains in the hands of male family members.148

148 Interview Madina Ndangiza, October 2013, Kigali. Madina Ndangiza is a land specialist who works for USAID Land Project Rwanda and previously for RCN Justice&Démocratie in Kigali. The interviewee wished to emphasize that the views expressed during the interview where her own and not necessarily the ones of her employer. ; LANKHORST M., VELDMAN M., “Engaging with customary law to create scope for realizing women’s formally protected land rights in Rwanda”, 2011, 97.
AN ENORMOUS LEAP FORWARD: FORMAL RECOGNITION OF WOMEN’S PROPERTY RIGHTS IN 1999

Women’s and girls’ inheritance rights became an important issue in political debates during the aftermath of the genocide of 1994. Since many of the returning refugees and survivors were widows and orphans, change of the formal inheritance system was essential in order to stabilise the country and legally empower women and girls to claim back their land. Due to the horrific massacres, many husbands, fathers and sons lost their lives. After the genocide, only thirty percent of the remaining population was male.\textsuperscript{149} As a consequence of this female majority, women had to fulfil roles that were normally reserved for male members of the society.\textsuperscript{150} For instance although the law on commerce of 1913 stipulated that women were not allowed to be commercially active without explicit permission of their husband, widows had no choice after 1994 then to ignore the law in order to support their remaining family members. The same law prohibited women to engage in paid employment or to conclude a contract without consent of their spouse. In 1998 these women unfriendly legal provisions have been mad less rigid by stating that a women could open a bank account without their husband’s permission.\textsuperscript{151}

Therefore the process of improving women’s rights was initiated by the Forum for Rwandan Women Parliamentarians, established in 1996. Due to the exceptional situation, as described above, there was bargaining space to start lobbying for succession rights. Since it was a culturally very sensitive issue, the support of male parliamentarians and policy-makers was highly important for the accomplishment of the law proposal.\textsuperscript{152} However parliamentarians all agreed that a revision of the Civil Code was necessary in order to restore peace and rebuild the country.\textsuperscript{153} The president of the former Gender Commission added that new legal provisions should solve the indistinctness in many inheritance issues. Nowadays, he said, there is a gap between the constitution proclaiming gender equality and tradition excluding more than half of the population from succession. In addition, as he continued, magistrates rely on customs, but these are different throughout the whole country. As a consequence the customary system lacks legal certainty.\textsuperscript{154} During the preparatory works of the law parliamentarians inquired the Minister of Gender and Family Promotion about why it took decades to grant women the right to inherit. The Minister apologised for the delay and answered the following:

“The preparation took so long because the nature of the law is very complicated. In addition the content will have an enormous impact on the daily life of the population. That is why we wanted to prepare the law by moreover consulting many different instances, such as representatives of the sectors, women’s organisations, religious bodies and wise, elder villagers.”\textsuperscript{155}

\textsuperscript{149} BERG N., HORAN H., PATEL D., “Women’s inheritance and property rights: a vehicle to accelerate progress towards the achievement of Millennium Development Goals”, 2010, 6.
\textsuperscript{151} KAIRABA A., SIMONS J.D. (eds.), “Impact of the land reform on the land rights and economic poverty reduction of the majority rural especially women who depend on land for their livelihood. Rwanda case study”, 2012, 7.
Furthermore, during the discussion the Minister emphasized that for the law to be successfully implemented, the population that is used to rely on customary law when solving their inheritance issues needs to be thoroughly sensitized about the new law. This article refers to the concept of inheritance, interpreted according to Western law, namely:

“Succession is an act by which the rights and obligations on the patrimony of the de cujus are transferred to the heir. The succession goes through probate at the death of the de cujus, (…)”.158

However the Succession Law provides an article on ascending partition by parents during their life. This donation, known as umunani in Rwandan customary law, is defined as followed:

“(…) an act accomplished by parents while they are still alive, by which they share their patrimony between their children or their descendants who acquire, each for the portion devolved to him or her, full ownership.”159

Unfortunately the guidelines for the division of these donations are not based on the principle of non-discrimination. Article 43 of the Succession Law stipulates that ‘all children, without distinction between boys and girls, have a right to the partition made by their ascendants.’160 The article does not specify that this should be an equal right or an equal part. In addition the regulation only provides a general transferable share that a donor with a child may not exceed when donating, but does not protect an individual share per child.161 Since it is more common in Rwandan culture, as mentioned before, that parents donate parts of their inheritance during their life and sons are favoured over girls when assigning property, this regulation does not deal with gender imbalances in a substantial way. The same conclusion can be drown when analysing the working of the Council of Succession, which has an important influence in the regulation of inheritance cases. Notwithstanding the provision of the non-discrimination clause, article 77 stipulates that an unequal division of the inheritance is possible by the Council of Succession162 if an equal partition of the succession is not possible. The ones that receive a bigger share are obliged to give a compensation.


157 Equal inheritance rights are indeed guaranteed for boys and girls but only for ‘legitimate’ children. Children born out of wedlock do not have any legal to inherit from their biological parents. Although this must be nuanced, since art 70 (9) of the Succession Law offers little protection for illegitimate children in the event that the surviving spouse does not remarry, but gives birth to an illegitimate child(ren). In that case the legitimate children of the deceased shall inherit ½ of the inheritance and the other children of the widow/widower shall inherit the other half.

158 Succession Law, 1999, art.49.

159 Succession Law, 1999, art.42.

160 Succession Law, 1999, art.43.

161 “(…) the transferable quota shall not exceed 1/5 of the patrimony of the donor if he/she has a child.”

162 “The Council of Succession shall include: the surviving spouse; a child delegated by the children of the deceased, where there are any who are of majority age; a delegate of the family of the de cujus; a delegate of the family of the surviving spouse; a friend or a person of good behaviour appointed by the family of the surviving spouse; a friend or person of good behaviour appointed by the family of the de cujus.”

Succession Law, 1999, art.81.
determined by the Council of Succession to those who received less.\textsuperscript{163} In addition article 70 stipulates that the Council of Succession has the competence to decrease a widow’s share because of providing insufficient assistance to her parents-in-law or children.\textsuperscript{164} Despite the prescription of equal representation by both families, evidence has shown that the family of the deceased are the actual decision-makers in the division of the legacy. In addition, section V of the Succession Law does not provide any specifications on the decision-making process of the Council of Succession, which may possibly lead to unsupported and/or unmotivated decisions. \textsuperscript{165} Since the majority of the Rwandan population is female and statistics has shown that women live longer than men, the functioning of the Council of Succession limits equal access to land for women.\textsuperscript{166}

Secondly, the revised law guarantees that married women can inherit from their husband. As a result women can inherit from their consanguineal family and claim their share of the succession from their family-in-law.\textsuperscript{167} The range of these rights depends of course on the matrimonial regime the couple had chosen, which will be discussed below.\textsuperscript{168} In addition the inheritance rights might be infringed by a decision of the Council of Succession, who is responsible for the division of the inheritance.

Despite that guaranteeing female inheritance rights is an important step to create gender equality in Rwandan society, their impact must be nuanced since the Succession Law is non-retroactive. The original motive for the creation of female inheritance rights was to solve the land problems of many widows and female orphans after the genocide of 1994. However, the law only came into force on its date of publication in the Official Gazette of the Republic of Rwanda, namely 15 November 1999. The original motivation to revise the Civil Code was ignored. As a result, many widows and female orphans whose male relatives did not survive the genocide were left empty handed. Therefore, many land conflicts remain disputed which undermines the peacebuilding process.\textsuperscript{169}

And last, women were more or less upgraded to co-deciders concerning the conjugal property. Three categories of matrimonial regimes can be distinguished. To begin with there is the most frequently chosen regime\textsuperscript{170}, namely community of property which is interpreted as “a marriage settlement based on joint ownership of all their property—movable as well as immovable and their present and future charges.”\textsuperscript{171} When no preference of regime is made, the regime of community of property will automatically apply.\textsuperscript{172} Even if couples enter in to a civil marriage with community of assets, women living in rural areas still experience difficulties claiming their part after the death of their husbands or during divorce procedures. According to traditional law, everything belongs to the lineage of the husband. In

\textsuperscript{163} Succession Law, 1999, art. 77.
\textsuperscript{164} Succession Law, 1999, art. 70,5-6.
\textsuperscript{165} ROSE L.L., “Women’s land access in post-conflict Rwanda: bridging the gap between customary land law and pending law legislation”, 2003, 243.
\textsuperscript{166} CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights", 2003, 1525.
\textsuperscript{167} Succession Law, 1999, art.2 j. art.66-71.
\textsuperscript{168} Succession Law, 1999, art 2.
\textsuperscript{169} POLAVARAPU A., “Procuring meaningful land rights for the women of Rwanda”, 2011, 121.
\textsuperscript{171} Succession Law, 1999, art. 4.
\textsuperscript{172} Succession Law, 1999, art. 2,§2.
this context, it is difficult for women to claim their share since they are seen as third parties by their husband’s family.\textsuperscript{173}

Couples choosing for the second regime, namely the regime of limited community of acquisitions opt for a community of assets that are inventoried on the day of marriage. The community will be supplemented by property acquired during the marriage.\textsuperscript{174} Thirdly, the regime of separation of property requires couples only to contribute to the household \textit{“in proportion of their respective abilities”}.\textsuperscript{175} Despite the fact that joint ownership is made possible for women married under the regime of community of property, each spouse still has little individual decision-making power. The common provisions to the matrimonial regimes declare, despite the choice of matrimonial regime, that mutual consent is necessary for the \textit{“donation of immovable property and of any other property in the community”}.\textsuperscript{176} By only referring to donations, many other transactions can be decided on an individual basis, made by only one spouses.\textsuperscript{177} In addition, spouses married under the regime of community of property and limited community of acquisitions, are required to choose among themselves the one who will manage the common assets.\textsuperscript{178} Because of the patriarchal structure of Rwandan society\textsuperscript{179}, women will rarely be appointed as the one in charge of the management of the property. Article 206 of the Civil Code states that the husband is the one who controls the matrimonial community.\textsuperscript{180} Moreover women are considered in Rwandan society as \textit{“instruments of production, reproduction and always at the service of men”}.\textsuperscript{181} In addition, traditionally men are the head of the household who have the sole decision-making power in the family.\textsuperscript{182}

Unfortunately the Succession Law lacks any regulation on the division of the matrimony in the event of divorce. Only article 24 mentions divorce as a way to dissolve a marriage. The second paragraph only provides that ‘spouses shall share common assets and liabilities’.\textsuperscript{183} No further guidelines are given on how the assets must be divided between the ex-partners, leaving the option of an unequal partition wide open.

Another shortage is the reference to future land regulations when it comes to dividing and donating a plot of land.\textsuperscript{184} Therefore, one could argue that the Succession Law indeed guarantees land rights for women, but leaves the practical details to land regulations. Since

\begin{itemize}
\item \textsuperscript{174} Succession Law, 1999, art. 7.
\item \textsuperscript{175} Succession Law, 1999, art. 9.
\item \textsuperscript{176} Succession Law, 1999, art. 21.
\item \textsuperscript{177} In addition the Land Law of 2013 remains silent on land transactions and mutual consent of spouses, which will be discussed below.
\item \textsuperscript{178} Succession Law, 1999, art. 17.
\item \textsuperscript{180} Republic of Rwanda Law Establishing The Preliminary Title And First Book Of The Civil Code. Official Gazette N°42/1988 of 27/10/1988, art.206. (Further referred to as Civil Code,1988)
\item \textsuperscript{183} Succession Law,1999, art. 24.
\item \textsuperscript{184} Succession Law, 1999, art. 90.
\end{itemize}
the Land Law was only adopted in 2005, the outcome of inheritance and donation issues concerning land remained uncertain.

Granting women official property rights was a strong progressive signal to those supporting discriminatory cultural traditions. Women are now proud to say that they own land and that they have the right to co-decide with their spouse about issues concerning their property. Before the law initiative of 1999 women who did own land felt themselves in an awkward position, since women in those times were not attributed any agency concerning land. One could argue that it was some sort of taboo to own land as a woman. However despite the existence of female inheritance rights, women do not always believe that they have the moral right to claim an inheritance. Especially married women are reluctant to ask for an inheritance from their birth family. The issue can be linked to the contested idea of inheriting in both consanguineal family and their husband's family.

Notwithstanding previously mentioned shortcomings, the biggest issue of the Succession Law is its lack of inclusiveness. The law of 1999 remains silent on women living in consensual unions and only provides inheritance rights for women who entered into an official marriage. Different authors have denounced the incompleteness of the Succession Law. They argue that the limitation of the scope of the law to formal marriages only recognises inheritance rights of rich women. Their reasoning is based on the fact that formal marriage in most cases involves the payment of a bride wealth (inkwano). As a result, poor couples are further pushed into the corner, since they cannot afford to pay for a bride wealth.

At the time of the preparation of the law a parliamentarian raised the discussion about the interpretation of the concept marriage. This politician argued the following:

“The law proposal was not complete since it did not extend the protection to unofficially married women. I would like to suggest that this category of women is also included into the scope of the law. In East-Africa there are three categories of marriage, namely religious, traditional and legal marriage.”

Another politician gave an example to illustrate the consequences of excluding this group of women:

“Take for instance the example of a couple, living in a rural area, with children but not legally married. The man can easily chase his wife away. What’s about to happen to this woman? And what about the children? Why doesn’t the law

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186 CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2003, 1530.
188 Succession Law,1999, art.70.
provide a solution? What are their rights?” The law must make sure that these women and children have rights to claim.\textsuperscript{192}

The Minister of Social Affaires replied to this criticism that this issue should be dealt with in the Civil Code or in a different context. The Minister of Gender and Family Promotion added the following:

“The [Gender] Commission discussed the problem when they prepared the law proposal. Nevertheless they agreed that as long as the notion of consensual unions is not stated precisely in the Civil Code, it will not be possible to include this in the law proposal. Children, born out of an illegal marriage, can perhaps claim their rights from a new husband.”\textsuperscript{193}

However, nothing has changed since the parliament revised that Civil Code. The shortcomings of the Succession Law continue to have a negative impact on women’s access to land.


GEARING INHERITANCE AND LAND REGULATION TO ONE AND ANOTHER: THE NEW LAW OF 2005

Before the land policy in 2004, land ownership was regulated by both formal and customary law. However 90% of the land relations were based on custom. The limited formal laws that regulated land relations before the emergence of a proper land policy in 2004, undermined women’s access to land since land titles were only registered on the name of the husband. In addition a woman did not have any power to control the matrimonial land. This meant that her consent was not necessary if her husband wanted to sell their land.

Important to note is that at that time all land belonged to the Rwandan state, due to many land conflicts that arose after the genocide of 1994. As a consequence inheritance of land is excluded from the protection of the Succession law of 1999. During the preparatory work of this law, the parliamentarians agreed that they should not wait until the land reform was executed to regulate inheritance. Instead they decided that the new land law should be in accordance with the Succession Law of 1999.

It took the Rwandese policy-makers about seven years to develop a new policy regulating land tenure, which illustrates the enormous challenge they had to deal with finding an agreement. Finally in 2004 the policy-makers involved in the Land Tenure Regularisation Process (LTRP) introduced the Rwandan National Land Policy (further referred to as Land Policy) regulating land tenure.

One of the key principles was establishing a single land tenure system instead of combining formal and customary regulations. Land rights acquired through customary land tenure are recognised and registered but future transfer would be closely monitored according to the new Land Policy and Land Law. Furthermore, the state is the ultimate owner of land, though landholders can be granted long-term usufruct rights, with a maximum of 99 years depending for which purpose the land was used. In addition, it was agreed that land plots should not be smaller than 1 hectare. The women unfriendly outcome of this last principle will be later more discussed in detail.

Three main goals were distinguished in the Land Tenure Regularisation Process (LTRP), namely improving food security, equalizing social relations and restoring peace. The importance of the latter was confirmed by a nationwide sounding, held by the National

197 Succession Law, 1999, art.90;
Unity and Reconciliation Council in 2001. According to these consultations, land conflicts undermine maintainable peace.\textsuperscript{204}

For the purpose of this thesis, only the realisation of gender equality in the land tenure system will be discussed in detail.\textsuperscript{205} The framework of the Land Policy of 2004 is based on eleven general principles to guide the land reform. The second principle refers to the constitutional provision by stating that “\textit{all Rwandans enjoy the same rights of access to land without any discrimination whatsoever.}”\textsuperscript{206} The Land Policy illustrates this principle by explicitly stating that women, regardless if they are married of not, should be guaranteed equal access to the land tenure system. Moreover discrimination based on sex should be banned from the land inheritance process.\textsuperscript{207}

However, these original ideas of the Land Policy are just partially implemented in the eventual law concerning land management. The first draft of the Land Law of 2005 does refers to gender issues in the household, by stipulating in article 4 the following:

“\textit{Any discrimination either based on sex or origin in matters relating to ownership or possession of rights over the land is prohibited. The wife and the husband have equal rights over the land.}”\textsuperscript{208}

At first sight, this article could be interpreted as an inclusive and general article, that refers to different sort of marriages. But when analysing the section about transfer of land rights, the law explicitly states that family should be interpreted according to the narrow version of the Succession Law of 1999:

“\textit{Without prejudice to provisions of the civil code that govern the family, members of the family mentioned in article 35 of this organic law are spouses legally married, (…).}”\textsuperscript{209}

Over the years women’s rights organisations and researchers have raised their voices against the internal contradictions which made the outcome of land disputes for women highly uncertain. As a result the Land Law of 2005 was revised in 2013 and the article concerning the right to transfer land does not mentions the notion of ‘family’ anymore, but just states that land rights can be transferred between ‘persons’.\textsuperscript{210} However, the English version of the revised non-discrimination article 4 now replaces the terms ‘wife’ and ‘husband’\textsuperscript{211} by ‘woman’ and ‘man’. The article stipulates in the second paragraph that

\begin{footnotesize}
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\item Since it took seven years to prepare this law, it would be an understatement to say that a lot can be written about the Land Law of Rwanda. Or as J. Crook puts it: “A full discussion on the dramatic changes the law imposes on rural Rwandans’ way of life would require an entire book.”
\item CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2003, 1526.
\item Land Law, 2005, art.4.
\item Land Law, 2005, art. 36.
\item Land Law, 2013, art.21.
\item However one could argue that the English translation came to nothing, since the original article 4 of 2005 referred to “umugabo n’umugore” in Kinyarwanda and the French translation uses “l’homme et la femme”.
\end{itemize}
\end{footnotesize}
inheritance rights between lawfully married couples should be regulated by the matrimonial regime they have chosen. By explicitly referring to 'legally' married couples, the revised Land Law of 2013 also choose to make it impossible for persons living in a de facto unions to inherit land from their partner. In addition, the fact that the land law just mentions the non-discrimination principle based on sex in general instead of dealing with gender imbalances in detail, is a missed opportunity. Moreover, both Land Laws of 2005 and 2013 merely refer to other laws such as the Succession Law, which in its turn refers to the Land Laws.

Another key component of the land policy is the official registration of land. Land registration contributes to economic growth since secure land rights create a stable and favourable environment for investment. In addition, it decreases land disputes and facilitates loans since secure land rights can be used as collateral. But one must keep in mind that all the views and needs from different stakeholders needed to be incorporated in the design of the land registration system. For example, farmers wanted secure land rights in order to avoid land disputes. Women on the other hand wanted equal land rights between men and women. And last, the government interpreted the land registration as a crucial step in the national peace-building process.

An important improvement of the Land Law of 2005 was the requirement for couples married under the regime of community property, to register the names of both spouses. As a result, spouses were considered joint owners and mutual consent was required for the transfer of land rights concerning the household property. However, the revised Land Law of 2013 remains silent about this matter and refers to the ministerial jurisdiction to ‘specify modalities and procedures for land registration (…)’. Nonetheless, no Ministerial Order can be found that deals with the registration of matrimonial land.

The registration system has been criticized for being unrealistic and too expensive. In addition women suffer more from these two disadvantages. The first critique indicated that the land registration system does not take into account the average size of plots in Rwanda, which is 0.72 hectare.

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212 “All forms of discrimination, such as that based on sex or origin, in relation to access to land and the enjoyment of real rights shall be prohibited. The right to land for a man and woman lawfully married shall depend on the matrimonial regime they opted for.” Land Law, 2013, art.4.
213 Legal anthropologist L.L. Rose gives five critiques on the Land Law of 2005. These critiques deal with the lack of gender sensitivity of the Land Law in general and will therefore not be discussed in detail.
217 This number is based on statistical data from 2008.
Land plots, intended to use for agricultural purposes, need to be minimum 1 hectare in order to be registered.\textsuperscript{222} The reasoning behind this prohibition of subdividing plots is based on the idea, as a study of the FAO has shown, that a farm plot must be at least 0.90 ha in order to provide sufficient nutrition for a household. The division of the inheritance is the most important cause of fragmented plots.\textsuperscript{223} Since women mainly have access to land through inheritance\textsuperscript{224}, they risk losing their exclusive right to land when the individual plots are less than 1ha. Plots smaller than 1ha are jointly controlled by all heirs, however no guidelines are provided on the management of these plots by the Land Law of 2013.\textsuperscript{225} Therefore different decisions concerning the land can be made arbitrarily, such as selling the plot and sharing the exploitation of the land.\textsuperscript{226} Consequently, women have to compete with their male family members to control the consolidated land. Which is, to put it mildly, in the patriarchal society Rwanda still remains nowadays, not an easy job to do.\textsuperscript{227}

Secondly, registering land will be at the expense of the owner. The level of the cost depends on the size of the plot.\textsuperscript{228} Even if women are entitled to land, this extra cost can be a financial burden for most of them.

A study of 2011 conducted by the World Bank, investigated the gender impact of the Land Tenure Regularization Process combined with the Succession Law of 1999 in Rwanda.\textsuperscript{229} One of their conclusions is that women who are officially married are more likely to be joint owners of land than before the land reform. On the contrary, formally recognized access to land is remarkably reduced for women living in consensual unions after the implementation of the Land Law of 2005. The inequality between daughters and sons to be designated as an heir is almost inexistent. However, this does not necessarily mean that every child receives an equal share of the inheritance. Moreover, a remarkable result is the fact that female heads of a household are more likely to choose their male children as an heir. Unfortunately the study does not provide an explanation for this last finding.\textsuperscript{229}

\textsuperscript{222} Land Law, 2013, art.30.
\textsuperscript{225} Legal anthropologist L.L. Rose suggests that the management of this co-ownership should be based on two options. First, a public auction can be organized to sell the plot and give every heir their share of the profit. Secondly, one heir could purchase the other’s heirs share of the plot and pay them in cash.
\textsuperscript{226} ROSE L.L., “Women’s land access in post-conflict Rwanda”, 2003, 210, 248.
\textsuperscript{228} These three alternative actions are suggested in article 91 of the Succession Law, namely selling the plot, collective cultivation or compensating the loss of property rights for other heirs. However, both selling the land or collective cultivation of the land are no practical solutions. Firstly, land is highly valuable in an economic way since many Rwandan households rely on subsistence farming. As a result, people are very reluctant to sell their property and there will be not enough harvest to provide nutrition for more than one household. The last option, compensating those who did not receive the land is unrealistic. It is unlikely that families, who own land that is smaller than one hectare, will have any financial resources to compensate other family members.
To conclude, one could argue that the Land Law barely addresses gender issues that are linked with land ownership. After the Succession Law, which referred inheritance issues concerning land to new future land regulations, all hope was set on the new Land Law to deal with the problem. Moreover there are even provisions that have a disadvantageous effect for women such as the prohibition on dividing plots smaller than one hectare. However, after this analysis, it is clear that policymakers focussed more on the other goals of the policy, such as creating a private land market and improving agricultural production.

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231 Succession Law, 1999, art.90.
232 Succession Law, 1999, art.91.
In 2007, the Rwandan parliament discussed the draft of the Law on prevention and punishment of gender-based violence (hereinafter the GBV Law). Besides several lively discussions on different gender topics\textsuperscript{233}, the parliament dealt with the issue of consensual unions. First of all, marriage is defined by the GBV Law as ‘a contract entered between a man and a woman in accordance with the law’.\textsuperscript{234} This narrow definition limits the protection that the GBV Law offers to officially married women. For instance, the penalisation of conjugal rape is not applicable to de facto married women.\textsuperscript{235} Only formally married women are protected against the deprivation of their right to property.\textsuperscript{236}

Concubinage on the other hand is interpreted as a couple that lives together on a permanent basis, but one of the partners is ‘legally’ married.\textsuperscript{237} The term ‘concubinage’ is interpreted too narrow and does not reflect the reality. Only 2\% of the interviewed women declared that they live together with a ‘legally’ married partner. The definition given in art.2, 4° describes more the phenomenon of ‘adultery’.\textsuperscript{238}

The GBV Law prescribes two measures to legalize ‘unlawful’ marriages.\textsuperscript{239} First of all, the draft suggested that people who are not ‘lawfully’ married, should enter into civil marriage within twelve months. The definitive version of article 39 dropped the time limit and stipulates that ‘those [persons involved in] unlawful marriages shall [marry] according to the principle of monogamy’.\textsuperscript{240} Second, the GBV Law of 2008 offers only limited protection in one rare situation namely when a person in a polygamous relationship wants to officially marry one of his/her partners:

\begin{quote}
If a person (…) was living with [multiple] husbands/wives, he /[she] shall first of all share the [common] belongings with those husbands/wives equally.
\end{quote}

To conclude, the GBV Law’s main achievement is making different gender issues in society debatable on parliamentarian level. However the legal quality of the GBV Law is poor and the majority of persons involved in consensual unions remain unprotected.

\textsuperscript{233} For instance article 5 of the GBV Law on conjugal rape states that spouses have equal sexual rights. A parliamentarian opposed this article by stating that men and women are sexually not equal. \textbf{The parliamentarian based his statement on the following argument: }‘Men need to have sex on a permanent basis, whereas women are not always in the mood for sex. You can compare men to gorillas in the mating season. Biologically speaking, men’s libido is higher. Therefore this issue causes troubles between the couple. A woman has to accept this; otherwise her husband will look for another sex partner.’ Another parliamentarian added: ‘What if a wife refuses to have sexual intercourse with her husband? Can he take this matter up to court?’ Republic of Rwanda, National Parliament, minutes of proceedings, doc. N°91/PV/CD/UJ/2007, 11/08/2007, 40-42.

\textsuperscript{234} Interestingly the definition interprets marriage as a form of ‘contract’. During several conversations, Rwandans uttered their disbelief and dislike towards the Western concept of marriage. They thought that Western marriages are business contracts with a limited validity.

GBV Law, 2008, art. 2, 2°.

\textsuperscript{235} GBV Law, 2008, art. 5.

\textsuperscript{236} GBV Law, 2008, art. 4,§3.

\textsuperscript{237} GBV Law, 2008, art. 2, 4°.

\textsuperscript{238} The first definition of the draft was even worse. Concubinage was described as a man who officially marries two women. Since the Constitution prohibits polygamy, formalizing two marriages is legally impossible. Furthermore a general remark must be made on the poor quality of the English translation. The English version of the GBV law is far from accurate and too literally translated.

GBV Law, 2008, art. 39.

\textsuperscript{240} GBV Law, 2008, art. 39,§1.

\textsuperscript{241} GBV Law, 2008, art. 39, §2.
• RECENT JURISPRUDENCE CONCERNING WOMEN’S LAND RIGHTS

Since the majority of the disputes concern land, the rewriting of the judicial landscape after the genocide is an element that should be briefly discussed in order to fully comprehend the framework of the new laws on land and inheritance. The overview will mainly focus on the formalization of local mediation committees and the jurisprudence of the higher courts. When discussing the judicial system, one must keep in mind that one the pillars of the legal framework in Rwanda is legal pluralism. The lowest judicial body, namely the abunzi committees, are the perfect example to illustrate the influence of legal pluralism. Before bringing disputes for the abunzi committees, parties first try to negotiate a solution, assisted by family, neighbours and/or the head of the village. The gathering is called ‘inama y’umuryango’, which means ‘extended family meeting’. If they are not able to reach a compromise on the conflict, parties apply for a dispute settlement by the abunzi committee. Even though art. 201 of the Rwandan constitution stipulates a clear hierarchy between customary and formal law, the jurisdiction of the abunzi committees shows that this notion of hierarchy is rather vague in reality. Although the functioning of this local conflict resolution organism is codified, decisions are still justified by customary law and common sense. Mediators working for these committees are called inyagamugayo and selected, not for their legal expertise, but on their wisdom and knowledge. In addition, the significance of this legal institution cannot be ignored because the competence of this local committee is broad, for civil cases even up to three million FrRw. Moreover one must pass through the abunzi procedure prior to taking the matter up to primary court. However statistics have shown that 73% of the cases that were dealt with by the abunzi committees were not appealed. This example shows that, although the constitution tries to limit it, the role of customary law may not be underestimated in Rwandan society. As a result, the functioning of the abunzi committees leaves the door open to base land dispute settlement on discriminatory customs.

243 For an overview of Rwandan judicial organization, see figure in annex III.
246 “(…) unwritten customary law remains applicable as long as it has not been replaced by written laws, is not inconsistent with the Constitution, laws and regulations, and does not violate human rights, prejudice public order or offend public decency and morals.” Rwandan Constitution, 2003, art.201.
248 Converted to euro approximately 3256.99€.
CASE STUDY ABUNZI COMMITTEE BUGESERA

During one of the visits to district Bugesera, I had the chance to conduct an interview with an abunzi committee. The committee was composed of two women and three men.\textsuperscript{251} I explained to them a fictional case of a women that lives together with her partner without being married. The couple has several children together. I asked them what would happen in the event of separation or after the death of her partner. They answered that ‘illegal’ women did not have any rights to claim. When a couple splits up, the members of the abunzi committee first try to reconcile them. If this is not possible, the abunzi committee will decide on the division of the crop production of the field and the household belongings. However, they claim not to have any jurisdiction on the division of the land. ‘Illegal wives’ with children are in a stronger position to claim a share of the household patrimony. According to them, these women can solely claim alimentation to support their children. The abunzi members will assist in the negotiations about the amount of the alimentation.

After the decease of their partner, a woman is allowed to stay on their partner’s property to raise the children. She cannot be chased away by her in-laws. Nevertheless childless women will be chased away since they do not have any value in their partner’s family. Interestingly, a proof of registration of the land on both names of the couples, can overrule previous reasoning and grant ‘illegal women’ half of the land as an inheritance.

Besides the abunzi committees, higher courts also deal with cases concerning gendered property issues. For instance, the Supreme Court of Rwanda was confronted in 2011 with a case that questioned the constitutionality of art.39 of the GBV Law.\textsuperscript{252} (cf. supra p.47) Art.39 of the GBV Law deals with the division of property in polygamous unions. If a man/woman who has multiple partners wishes to officially marry one of those partners, he/she must first equally divide the common owned property with their partners. The plaintiffs argue that this provision of the GBV Law is not conform article 26 of the Constitution that only recognises monogamous civil marriage.\textsuperscript{253} The facts of the case are as followed. A man, J., lived together with T. and A. in district Gasabo. However one day, J. and T. entered into an official marriage. A. institutes legal proceedings against J. and T. at the High Court. She claimed that she is entitled to half of the house that she co-owns with J., according to article 39 of the GBV Law. A. won the case; however, J. and T. appealed the case and take the matter up to the Supreme Court.\textsuperscript{254}

First of all, the Supreme Court emphasizes that art.39 of the GBV Law does not recognise polygamous unions, but merely arranges the division of property between ‘illegal’ spouses.\textsuperscript{255} However, the Court believes that the partition of common owned property of the partners should be equal. They base their reasoning on the principle of fairness and corroborate the argument with several foreign acts and jurisprudence.\textsuperscript{256} Paragraph 5 of the

\begin{itemize}
\item \textsuperscript{251} The Law on the organisation, jurisdiction, competence and functioning of the Mediation committee prescribes that 30\% of the abunzi members must be female.
\item \textsuperscript{252} Republic of Rwanda Organic Law On Organisation, Jurisdiction, Competence And Functioning Of The Mediation Committee. Official Gazette N°2/2010 of 09/06/2010, art.4.
\item \textsuperscript{253} Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011.
\item \textsuperscript{254} Rwandan Constitution, 2003, art.26.
\item \textsuperscript{255} Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011, §1.
\item \textsuperscript{256} Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011 §7-9.
\end{itemize}

\textit{Reference is made by the Supreme Court to different acts from New-Zealand, Wales and different provinces of Australia. The Homesteads Act C.C.S.m.c. H80, New South Wales (Property Relationship Act 1984), Victoria (Relationship Act 2008), Queensland (Property Law Act 1974), South Australia (Domestic Partners Property Act 1996), Western Australia (Family Court Act 1997, the amendment act 2002), Tasmania (Relationships Act 2003), Australian Capital Territory (Domestic Relationship Act 1994, Legislation act 2001 s 169), Northern Territory (De Facto Relationships Act 1991). Moreover jurisprudence from the Supreme Court of Canada and the High Court of Australia is used."}
judgement refers to the case of Lother Pettkus V. Rosa Becker, a Canadian Supreme Court decision of 1980.

“Where one person in a relationship tantamount to spousal, prejudiced herself in reasonable expectation of receiving an interest in property and the other in the relationship freely accepted benefits conferred by the first person in circumstances he knew or ought to have known of that expectation, it would be unjust to allow the recipient of the benefit to retain it.”

Therefore the Supreme Court states that common acquired assets should be divided equally. However a distinction must be made between the division of property after divorce and after separation. An officially married couples must divide their assets conform the chosen matrimonial regime. When community of property is chosen, no proof of the common character of the assets is necessary. On the contrary, persons living in consensual unions must prove that they acquired the property together or demonstrate co-registration. As a result, the appeal was upheld by the Supreme Court.

Another case of the Primary Court of Ngoma referred to the jurisprudence of the Supreme Court. Despite the fact that the factual background is totally different, the Primary Court followed the same interpretation of art.39 of the GBV Law as the Supreme Court. The judgement ruled that the plaintiff is entitled to an equal share of the property that both ‘illegal’ spouses co-own. However, nor the man nor the woman involved in the consensual union planned on formally marrying another person, therefore article 39 of the GBV Law should not have been applicable.

Therefore to conclude one could argue that abunzi committees take into account the facts and decide on a case-to-case basis, combining formal provisions with customary reasoning. In addition, the Supreme Court has set an interesting precedent that can have a positive impact on land rights for women who are involved in de facto unions. Unfortunately, the effect of the decision of the Supreme Court remains limited, due to the narrow scope and indistinctness of art.39 of the GBV Law.

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Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011.

Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011, §5.

Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011, §16.

5. ANALYSIS OF NUPTIAL STATUS:
MARRIAGE AS A CORNERSTONE IN RWANDAN SOCIETY?

Knowing that the government considers official marriage as the answer to women’s land problems, it is important to first take a closer look at how the institute of marriage is interpreted in Rwandan society. Marriage is a concept that has different meanings in Rwandan society. In general, a married couple consists of woman and a man who are engaged in a stable relationship but they are not necessarily officially married.

Before the concept of marriage was codified in 1999, marriage was only interpreted either in a religious or a traditional way. For the purpose of this dissertation, only customary marriage will be discussed since there is a strong link with land relations. Customary marriages do not have to be exclusively based on the principle of monogamy. Men could form unions with different women. Customarily, marriage was seen as an association between two families, instead of a union between a woman and a man. Normally a future partner should go to a girl’s parents to formally ask for her hand. This customary practice is known as *gusaba*. If her parents agree, negotiations for *inkwano* can start.

According to Rwandan custom a marriage is only valuable when the practice of ‘*inkwano*’ or dowry takes place. The bride wealth is normally a cow that is given to the bride’s family, to compensate for her departure to the groom’s family since the bride’s family loses a free worker in the household. However nowadays, *inkwano* has evolved to giving money instead of a cow. As a consequence the economic value of *inkwano* has raised and poor families are not able anymore to afford the organization of this tradition. When the traditional steps were not followed, the young couple can also go to the girls’ parents to apologize by offering them some beers, a tradition which is called *kwigera*. Both families will negotiate when *inkwano* will be given. The postponement of the practice of inkwano is called *gushyingira ubutu* which means a “free marriage”. In the present time, *Inkwano* still has an important prestigious meaning. To fully comprehend the meaning of this ritual, my research assistant Jean Marie illustrated this to me by an anecdote from the time he used to work as a receptionist in a lobby. Late at night he overheard an old couple, who had been married for decades, quarrelling in the lobby of the hotel. He heard the wife arguing that she apparently was still upset and humiliated about the fact that she did not receive *inkwano* many years ago.

Nowadays written law defines marriage as “civil monogamous marriage between a man and a woman”. The Civil Code stipulates several formal and substantive requirements to enter into a civil marriage. First of all, both partners must be minimum 21 years old. In addition, a civil marriage is based on mutual consent. Moreover marriage is prohibited in

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262 Interview 85, district Kayonza.
267 Civil Code, 1988, art.171.
several situations, for example between descendants. 268 The Civil Code does not recognise religious and traditional marriages. In addition, even though the details of the *inkwano* ceremony are written in the marriage documents, the Civil Code explicitly stipulates that *inkwano* cannot be a condition for the validity of a marriage. 269

Besides the normally presumed civil statuses, namely married, divorced, widowed or single, informal marriages are becoming more present in Rwandan society. 270 De facto unions can be considered as "a widespread phenomenon". 271 In general, consensual unions are characterised as a stable relationship where partners live together as if they are married. 272

Several unrecognised forms of cohabitation can be distinguished. Firstly, a couple lives informal together without being customary, religiously or civilly married. 273 The idea of de facto unions has many different translations in Kinyarwanda, such as *kwinyina*, and *guterura*. These are nuances derived from the same idea and the difference will be explained later. However if it is an adultery, which is a hidden relationship, negative names are given such as *gusana*, *gushurashura*, *kugira ibiro* and *kugira inshoreke*. 274 Secondly, there are religious and traditional marriages. These do not have any legal consequences in Rwanda. 275

Thirdly, polygamous relationships are still present, although decreasing in Rwandan culture. 276 The Rwandan constitution only recognizes monogamous civil marriage. 277 Furthermore the Gender Based Violence law of 2008 distinguishes between concubinage and polygamy. Concubinage is seen as "the fact that two people live permanently together as if they were spouses though they are not married while one of them is legally married". 278 The concept of polygamy is interpreted by the GBV Law as a second marriage while the first is still valid. 279 Polygamy was gradually banned from society. After the independence in 1962 the constitution recognised both religious as civil marriages. 280 However, the revision of the constitution in 1978 abolished the recognition of religious marriage and prohibited polygamous unions. 281 The Constitution of 2003 confirms this prohibition by solely recognising formal, monogamous marriage. 282

A study conducted by HAGURUKA in 2005 revealed that three motives can be found for women engaging in de facto unions. First of all, the most logical one, women said that

\[\text{References}\]

268 Civil Code, 1988, art.172.
269 Code Civil, 1988, art.137 j. 168.
270 As discussed in the introduction, 15.3% of Rwandan relationships are de facto unions.
280 GBV Law, 2008, art. 2, 3°.
they agreed to have an unregistered relationship because they fell in love with their partner.\textsuperscript{283} In this case, a young man and woman voluntary start a relationship, a practice which is called \textit{kwinyina}.\textsuperscript{284} This practice takes place if the young couple is too impatient to perform all the ceremonial traditions of a customary wedding first, or when their families do not agree with their relationship.\textsuperscript{285}

Besides consent, women told that they lived together with their partner because they had sex before being married or were pregnant outside marriage.\textsuperscript{286} Several women said that the ‘cohabitation was not planned’. In most cases they visited their partner once and had sexual intercourse, with the risk of being pregnant.\textsuperscript{287} Having sex or expecting a child outside marriage is seen as immodest and indecent in Rwandan culture. Or as A., living in the South of Rwanda puts it: “a woman cannot turn back into a girl.”\textsuperscript{288} Therefore as a solution, young girls leave their birth family and start living together with their partner.\textsuperscript{289} Living together with a man is perceived as being married, especially when the young family has children.\textsuperscript{290} As a woman from Kayonza district stated “having five children with your partner is the same as being married.”\textsuperscript{291} A thirty-year old woman remembered how she run away with her current partner.

“\textit{When I was pregnant with my first child, my man came to me asking to live together. Since I was pregnant, I decided to take all my stuff and leave the house, without my parents knowing.”}\textsuperscript{292}

Since some young women are sometimes even too ashamed to show up afterwards in front of their parents, they send a child to their family to pick up some clothes and household material.\textsuperscript{293} A seventeen-year old girl told the story of how her partner suffered from \textit{maladie de l’amour} and how she ended up living together with him.\textsuperscript{294}

\begin{flushleft}
\textsuperscript{283} Interview 91, district Kayonza.  
\textsuperscript{284} Literally translated kwinyina means ‘to sneak out’.  
\textsuperscript{286} Interview 10, 70, 76, 87, 95, 101, 104, 105, 106  
\textsuperscript{287} Interview 31, district Kayonza.  
\textsuperscript{288} Interview 104, district Kamonyi.  
\textsuperscript{289} Interview 11, district Gasabo, interview 61, district Kirehe, interview 88, interview 104.  
\textsuperscript{290} Interview 1, 13, 21, 35, 61, 64, 76, 87.  
\textsuperscript{291} Interview 47, district Kayonza.  
\textsuperscript{292} Interview 13, district Gasabo.  
\textsuperscript{293} Interview 95, district Kamonyi.  
\end{flushleft}
In some cases the new couple would go to the girl's house for 'kwigera'. This is a traditional practice where the man gives beer to her parents to apologise for taking their daughter away before marriage. A young woman from the North recalls this custom

"I visited my man and we had sex that night. I was afraid that I was pregnant so I did not dare to go back home. A couple of days later we visited my parents and offered them beer to apologise.

However, regrettably, not all the women who stayed with their partner because of sexual intercourse did this voluntary. Some women not only had to undergo forced sex but they also have to live with their rapist afterwards because these women are too ashamed to return home.

“All we were good friends and he lived next door. One day I visited him at his place around 18h. When I entered the house, I noticed that he locked the door. I was too afraid to shout. He forced me to have sex with him and was way stronger than me. Afterwards he asked me to stay with him, which I did since I was too ashamed of what happened."

All of this shows that being pregnant without living together or having sex outside a relationship is uncommon and dishonourable, which leaves these women without much options.

Moreover, men tend to convince women to start a relationship by promising them that they will get married 'soon'. A woman uttered her desperation:

“At the beginning of our relationship, my partner insisted that we should get married and start with giving inkwano to my parents. Today we're five years later and nothing has happened. My partner did no keep his promise. I think it is possible that every man in this village tricks their partner with the same false promise."

This practice is known in Rwanda society as guterura. The man tricks a woman into spending the night with him. The next day the woman cannot return home since she feels too embarrassed by the incident. The practice of guterura was also discussed during the preparatory works of the GBV Law. A parliamentarian suggested that guterura should be considered as a form of gender-based violence. Another parliamentarian opposed this idea.

295 Interview 88, district Kayonza.
296 Interview 87, district Kayonza.
297 Interview 55, district Gayenke.
299 Interview 12, district Gasabo.
300 Interview 1, 3, 66, 67, 73, 81, 92, 100.
301 Interview 73, district Kayonza.
302 Conversation research assistant Jean-Marie V.; MUKAMUYANGO F., Effets juridique de la rupture du concubinage au Rwanda, 2010, 12.
since there was no physical violence involved. Eventually a very vague article, one that is very difficult to interpret, was adopted in the GBV Law.

Thirdly, women have de facto relationships as a method to survive. Most of them are in an economically vulnerable position and consider a relationship as a solution to overcome or escape poverty. A woman testified that poor women are forced to wander like a vagabond, looking for financial means by different men. Especially orphans and children born out of wedlock are more likely to end up in a consensual union, due to their weak economic background.

Orphans can be defined in Rwandan culture as children who lost one or both parents, respectively ‘single’ or ‘double’ orphans. An additional distinction is made between ‘maternal’ and ‘paternal’ orphans, depending on which parent they lost. A lot of Rwandese orphans lost one or both parents mainly due to the genocide of 1994, HIV/AIDS and extreme poverty. More than a quarter of the interviewed women lost both parents. When taking a closer look at their age at the beginning of the relationship, it seems that women who lost both parents on an average start living together at an older age than those who still have both parents.

However, from those who started living together before the official age to get an official marriage, namely 21-years old, the overwhelming majority (79%) had lost one or both parents at that time. Orphans are seen as more willingly to be involved in a consensual union, since they do not have many options to survive. One of them is D., who lives together with her partner from the age of eighteen. She said that she settles with the decision to just live together. She thinks it is not the worst that could happen to her. Another example is that from S., originating from the South province. Her partner was known as an abusive man, nevertheless she got together with him at the age of twenty-one. When looking back at the situation years later she is persuaded that her partner took advantage of her situation, namely an orphan without many options left. Another different story was told by C. who lives in Kamonyi, in the South province. She and her partner were both orphans who lived in poor circumstances. Therefore they decided to cooperate to survive and build their house together.

Besides orphans, children born out of wedlock struggle to survive because they are not able to claim official inheritance rights. For instance the parents of a young woman from

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304 The official English translation reads as followed: “It is forbidden to distort tranquility of one’s spouse because of [dowry], reproduction and his/her natural [physiognomy].”
305 GVB Law, 2008, art. 4
307 Interview 24, district Kamonyi.
310 Interview Abunzi Committee, Bugesera, December 2013; interview 24, interview Kamonyi, interview 75, district Kayonza, interview 104, district Kayonzi.
311 Interview 75, district Kayonza.
312 Interview 104, district Kamonyi.
313 Interview 24, district Kamonyi.
the North were not officially married. As a result their daughter only got ¼ of the inheritance instead of half of it. As a consequence she had to struggle as a child to make ends meet. Children born out of polygamous unions have to deal with similar inheritance issues. A twenty-six year old from the East province did not get an inheritance from her father because he had multiple wives. The first wife claimed the whole inheritance and left the other wives, including her mother, empty handed. A similar story is told by K., whose father had one official wife and a deuxième bureau. K. father had two wives, but he wanted to marry the second one officially; K.’s mother. When asked at the sector’s office they inquired if he had another wife, he denied. However the administrators were aware of his situation and told him to give parcels to his first unofficial wife and children. K. now complains that after the decease of her father, there are no plots of land left to divide under the children of the official spouse.

Lastly, Rwandan culture foresees a situation where a woman lives together with a man instead of throwing her on the street. This practice of levirate can be illustrated by the following case.

CASE II

J. from the northern district Gasabo was officially married to her first husband. Moreover she received inkwano which confirmed their traditional marriage. However, after the genocide of 1994, she became a young widow. At that time married women did not have any formal inheritance rights and customary law foresaw little to help widows. Therefore in order to be allowed to stay in the house, she started living together with her former husband's younger brother. In this way, the property stayed in the family of her deceased husband. Moreover the youngest brother does not need to give inkwano again since the woman's family already received this.

The same traditional arrangement can be found the other way around. D. 's life partner was first married to her elder sister with whom he had four children. After the death of her older sister, the man started living together with D. to keep the families associated.

To summarize, the idea of marriage has different interpretations in Rwandan society. First of all, customary marriage is known for its several traditional practices and the establishment of a strong connection between two families. Secondly, official marriage is based on the principle of monogamy and excludes traditional and religious marriage from legal protection. And lastly, informal marriage has become more present in Rwandan society. People are involved in de facto unions for three main reasons. To begin with, a couple may consent to start an informal relationship because they fell in love and do not want to wait for a formal marriage. Secondly, having sexual intercourse outside marriage is still seen as scandalous in Rwanda. Therefore many young couples who have spent the night together will decide to start living together the next morning. Thirdly, poor women see an informal marriage as a means of survival. They marry a man who is already married and live together with him and his family. In this way, the property stays in the family of her deceased husband. Moreover the youngest brother does not need to give inkwano again since the woman’s family already received this.

\footnote{Unfortunately the questionnaire did not specifically inquire about the marital status of the parents of the interviewee. Women made a passing reference to polygamy when asked about the inheritance of their parents.}

Interview 20, district Gasabo, interview 100, district Kayonza.

Interview 53, district Gayenke.

Interview 10, district Bugesera; interview 92, district Kayonza.

Interview 10, district Bugesera.

This term is often used in spoken language to describe the second unofficial wife or lover.

Interview 88, district Kayonza.

Interview 20, district Gasabo.

Interview 94, district Kamonyi.
way to survive. Especially the last two reasons show that women not always have an actual choice to enter in to an informal marriage.
6. OFFICIAL MARRIAGE AS THE IDEAL SOLUTION?

- THE GOVERNMENT’S ANSWER TO THE PROBLEMATIC SITUATION OF UNMARRIED COUPLES

Rwanda has put much effort in implementing gender equality in society. The Ministry of Gender and Family Promotion was created in 1994 to monitor the implementation of women’s rights and lobby for women’s empowerment in society. The Ministry cooperated with the parliamentarian commission to draft the Succession Law. After the enactment of the Succession Law in 1999, the Ministry worked together with international and national NGO’s and international organisations to ensure the implementation of the legal reform on inheritance rights.\(^{321}\) Specifically when dealing with consensual unions women are encouraged to enter into civil marriage in order to benefit from the Succession Law.\(^{322}\) The official approach issued by the Rwandese government to improve access to land for women who are engaged in a consensual union, is the promotion of the official marriage. The Rwandan government has done efforts to raise awareness about the new property rights for officially married women. Governmental institutions and NGO’s have set up programs and educational campaigns to inform women and men in rural areas about the recent inheritance regulation. Several women testified that they participated in educational campaigns on the new law or that the local authorities tried to convince them to register their union.\(^{323}\)

The organization of mass weddings is one of the methods used by the Rwandese government to decrease the number of de facto unions.\(^{324}\) The goal of these mass weddings is to not only formalize unofficial unions but also increase awareness about matrimonial rights.\(^{325}\) In spite of the governmental effort to facilitate civil marriage, several social and practical obstacles can be distinguished. To begin with, mutual consent is still necessary to marry. Women complained that their partner refused to get married and that the government could not force men to marry. There are reports of cases where men reacted in a violent way when their partner asked to formalize their relationship.\(^{326}\) Some suggested that those who are unwilling to register their marriage should be punished by law.\(^{327}\) Apparently this tactic was used before the government decided to change their approach by emphasizing the advantages of civil marriage through sensitization campaigns.\(^{328}\) Secondly, gathering all the documents necessary for a civil marriage can be a practical challenge.\(^{329}\)

During one interview a woman suggested that the government should copy the approach of the sensitization campaign for medical insurance. In order to increase the number of insured people, local administrators visit households to encourage them to apply for a medical insurance. If the members of the household are not willing to do so, the


\[^{323}\] Interview 12, 16, 23, 28, 30, 36, 38, 53, 71, 96, 97,102.

\[^{324}\] Interview 16, 30, 96, 97, 102.


\[^{326}\] USAID Rwanda, “Women’s legal rights initiative conference. The role of women’s legal rights in the family and in Rwandan society” 2006, 18.

\[^{327}\] Interview 28, district Kamonyi, interview 61, district Kirehe.

\[^{328}\] Interview 61, district Kirehe.

\[^{329}\] Interview 96, district Kamonyi.
administrators appropriate a goat and sell it. With the profit of this sale, they would purchase a medical insurance for the household. 330

Furthermore, as mentioned above, to discourage people to engage into an unofficial marriage, the government introduced in 2008 penalties for unrecognised forms of marriage. 331 The Gender Based Violence law penalises two forms of de facto unions, namely concubinage and polygamy. 332 Both forms of relationships are punished with a fine ($100,000-500,000 FrRw$) and imprisonment can vary from two to five years. 334

Contrary to the sensitization effort of the government to encourage people to formally marry, stands the lack of governmental support for unmarried women. Women who are involved in de facto unions testified that governmental institutions totally abandoned them when they sought help after the loss of their partner or in the aftermath of a separation. 335 The first thing local governmental administrators inquire about is their civil status. Unmarried women living in consensual unions are denied any assistance to solve land conflicts and are sent back home. According to these local executives “there is nothing they can do for these women.” 336

Despite their efforts to guarantee enforceable rights for women through educational campaigns, raising awareness does not seem to solve the issue. 337 The following section will demonstrate that one must look further than educating people on their rights when analysing the issue on land rights for women who live in consensual unions. 338 There seems to be a discrepancy between the level of awareness of the law and the amount of couples that are not officially married.

330 Interview 28, district Kamonyi.
331 POLAVARAPU A., “Procuring meaningful land rights for the women of Rwanda”, 2011, 120.
332 GBV Law, 2008, art. 21-22.
333 Converted approximately 108.55€-542.83€.
334 GBV Law, 2008, art. 21-22.
335 Interview 5, 13, 15, 21, 30, 33, 46, 64, 79, 83, 86.
336 Interview 79, district Kayonza.
338 The same argument is supported by A. Polavarapu, who conducted a field research in 2009.
THE LEVEL OF AWARENESS ABOUT THE LEGAL AND SOCIAL FRAMEWORK OF CIVIL MARRIAGE AND NEGATIVE CONSEQUENCES OF CONSENSUAL UNIONS

Several questions of the survey sounded out the awareness about formal inheritance rights. Nearly 56% of the women answered that they could indeed inherit from their partner. However, there was only one interviewee out of the 106 women that was convinced that she had the legal right to inherit her partner’s property. The other women who answered affirmatively gave different explanations.

<table>
<thead>
<tr>
<th>REASON ACCESS TO PROPERTY</th>
<th>% OF WOMEN WHO BELIEVE TO HAVE INHERITANCE RIGHTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COUPLE HAS CHILDREN TOGETHER</td>
<td>81.36</td>
</tr>
<tr>
<td>REGISTERED ON BOTH NAMES</td>
<td>8.47</td>
</tr>
<tr>
<td>DEPENDS ON GOODWILL FAMILY-IN-LAW</td>
<td>5.08</td>
</tr>
<tr>
<td>ACQUIRED LAND TOGETHER</td>
<td>1.69</td>
</tr>
<tr>
<td>INTERVIEWEE OWNS THE LAND</td>
<td>1.69</td>
</tr>
<tr>
<td>LEGAL INHERITANCE RIGHTS</td>
<td>1.69</td>
</tr>
</tbody>
</table>

First of all, 81.36% replied that they have a right to inherit because there were children born out of the de facto union. This belief is founded on the customary practice that is discussed above where a woman holds the land in trust until the children reach the age of majority. Nevertheless children can only legally inherit if they are officially recognised by their father. A father who is willing to recognise his child(ren), must register his offspring at the district’s office, where the child(ren)’s name is added to his identity card.

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339 For the purpose of this section, married women must be interpreted as officially married women.
340 Forty-three percent answered ‘no’ and 1% of the women had no idea.
341 Another important variable is the sex of the children since according to the tradition male children will receive their fathers’ property. Unfortunately I do not have any data concerning the sex of the interviewees children.
342 Succession Law, 1999, art.50.
343 ROSE L.L., “Women’s land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation”, 2003, 210-211.
The majority of the women (63%) that stated that they could indirectly claim their partner’s inheritance through their descendants, had children that were registered on the name of the father or on the name of both parents. However, 16.67% of the women had children that were only recognised by them and another 11.11% of the interviewees did not registered their children at all.

<table>
<thead>
<tr>
<th>REGISTRATION</th>
<th>% REGISTERED CHILDREN</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOTH PARENTS</td>
<td>8.89</td>
</tr>
<tr>
<td>FATHER</td>
<td>63.33</td>
</tr>
<tr>
<td>MOTHER</td>
<td>16.67</td>
</tr>
<tr>
<td>NOT REGISTERED</td>
<td>11.11</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100</td>
</tr>
</tbody>
</table>

These children are denied any inheritance rights, which is a severe consequence of de facto unions.\(^{344}\)

Secondly, other women (8.5%) believed that they would be able to claim their partner’s land because it is registered on both their names. Asked why the house is registered on both names, the majority replied that they helped their partner build the house.

<table>
<thead>
<tr>
<th>REASON REGISTRATION ON BOTH NAMES</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women helped constructing the house</td>
<td>46.67</td>
</tr>
<tr>
<td>Administration inquired about composition of the household</td>
<td>30</td>
</tr>
<tr>
<td>Woman registered the house</td>
<td>10</td>
</tr>
<tr>
<td>Woman gave her identity card to her husband for registration</td>
<td>3.33</td>
</tr>
<tr>
<td>Couple has a good relation, man willing to co-ownership</td>
<td>3.33</td>
</tr>
</tbody>
</table>

Looking at the registration process in general, 40.54% of the couples had registered their house on both names, even though they were not officially married. However almost a quarter of them were not convinced that they would inherit the property because they were not engaged in a registered marriage. In addition the Civil Code and Land Law do not provide any guidelines on the possibility to co-register land for couples who are living together but without being married.

Nevertheless this method is supported by different authors as an important strategy to address the land issues of women involved in consensual unions.\(^{345}\) By recognising these women as official land title holders, they will have stronger claims to the property when the relationship ends or when their partner passes away. However, achieving the status as a land title holder depends on different factors. To begin with, the collaboration between the couple plays an important role. Several women argued that since they helped constructing the house, their partner agreed that the property would be registered on both names. A woman from Kirehe district stated the following about the issue:

“Our house is not finished yet. Once it is finished I am convinced that I will be registered as a co-owner because we have a child together and I help building the house. The whole village knows that I contributed to the construction of the house and that my partner does not earn that much as I do. Therefore I am sure that I will get the house in the event my partner passes away.”\(^{346}\)

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\(^{344}\) APARNA, P., “Procuring meaningful land rights for the women of Rwanda”, 2011, 142.

\(^{345}\) APARNA, P., “Procuring meaningful land rights for the women of Rwanda”, 2011, 132; BROWN J., UVUZA J., “Women’s land rights in Rwanda: How can they be protected and strengthened as the Land Law is implemented?”, 2006,35

\(^{346}\) Interview 60, Kirehe district.
The same counts for women who purchased the house together with their partner. However on the other hand, there were also women that stated that their husband would only allow co-registration of his house if they are officially married. \(^{347}\)

“When they registered our house, the administrators asked if they had to register the house on both our names. My partner told them to register it on his name alone since there was no civil marriage. The administrators tried to convince him by saying this is not a condition to register it on both our names, but he stuck to his point.” \(^{348}\)

Secondly, the policy of the land administration towards consensual unions influences women’s access to land. Women who are registered as co-holders of a land title, indicated that the land administrators inquired about the composition of the household. Thirdly, 15% of the women said that they had land rights not only through their children but also because their name is on the registration documents.

Thus to recapitulate, 56% of the women believed that they could inherit from their partner. \((\text{supra} \ p.59)\) Only one of them assumed that she had the legal right to inherit from her partner. The other gave various reasons, such as an indirect claim on their partner’s heritage through the inheritance rights of their children. Nonetheless these children need to be officially recognised by their father to have a formal inheritance claim. Other women living in a de facto union argued that they are entitled to their partner’s property for the reason that their land is registered on both their names. And last, there were women who relied on both arguments, land registration and indirect inheritance rights via their children.

On the other hand, about 43% of the interviewed women supposed that they had no succession rights. Fifty percent of them responded that an official marriage was necessary in order to claim an inheritance from their partner. Others gave a realistic answer by stating that their partner did not possess anything, so there was nothing to inherit. This was confirmed by the fact that all of these couples rented their houses. \(^{349}\) Further explanations were the absence of children or a partner that was legally married to another woman. It is remarkable that every interviewed woman knew that she found herself in an unfavourable position. This awareness is confirmed by other studies\(^{350}\) such as a research of 2005, conducted by HAGURUKA. This study showed that 75% of the interviewed women had knowledge about the Succession Law. \(^{351}\)

Therefore to conclude, one could argue that women were aware about their lack of inheritance rights, since only one woman referred to the notion of inheritance rights. Women were aware that they could not legally inherit from their partner and knew that official marriage offers different benefits for women and provides a secure living situation.\(^{352}\)

However in several cases women relied on false assumptions. For instance, women with children who were not registered on their father’s name believed that they would get a share of the inheritance of the children.

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347 Interview 50, Gayenke district.
348 Interview 104, district Kamonyi.
349 Although this must be nuanced since one of these women owned the house instead of her partner. Therefore she answered that she would not inherit from her partner since he did not own land.
352 These findings are similar to other researchers who speak of a ‘basis awareness’. See: LANKHORST M., VELDMAND M., “Engaging with customary law to create scope for realizing women’s formally protected land rights in Rwanda”, 2011, 100.
Besides awareness about their non-existing legal inheritance rights, women living in de facto unions were familiar with the advantages of a registered marriage. One of the qualitative questions inquired about the benefits and disadvantages of both civil marriage and consensual unions. These benefits of civil marriage, summed up by the interviewed women, can be divided into four categories, namely different legal rights, recognition, improved situation for the children and a stable lifestyle. These benefits will be discussed together with the negative consequences of consensual unions.

To begin, the most cited advantage of an official marriage is being able to claim formal rights. In general women are entitled to the matrimonial property, which offers a secure household situation for women. Especially when a couple chose to marry with community of goods, women feel strengthened and more secure. In the event of a divorce, women can go to court to request a reasonable division of the matrimony. A woman from the South told that married women have the right to claim their part of the household profits.

“If I would sell something, my man can take the money just like that, stating that I do not have the right to sell it. I do not have the right to claim my share.”

One of the benefits mentioned is the inheritance procedure after the death of their spouse. Married women do not have to negotiate in the succession process or take the matter up to court in order to claim their share in the inheritance. Women in de facto unions complained that the division of the inheritance of their partner would be difficult since there are no legal provisions on consensual unions.

Moreover, they say that no one can interfere with a household. For instance, the family-in-law cannot claim the assets after a divorce or the death of her husband. Many interviewed women feared the interference of their in-laws. Or another example that was given deals with the issue of a second wife. The women reasoned that an official marriage offers them more rights and protection in the event a husband has multiple unofficial wives. As a respondent put it, “If my husband would have a second wife and I pass away, my children would have more rights to claim than this second wife.”

Besides inheritance rights, the right to participate in affairs concerning the conjugal assets and non-interference after the dissolution of a marriage, several women declared that a status as a married woman makes sure that they can claim a compensation from the insurance company. Moreover they are recognised as a party during the proceedings. During one of the interviews in the North province, a woman declared the following:

“My partner has to travel a lot for his job. I am afraid that when he has an accident, I would not be able to claim anything from the insurance company. That is why I think it is important to be officially married.”

A certain woman from Kayonza told that she heard that there was a woman in the village who could not claim a compensation from the insurer after her partner died in an accident. Her claim was denied based on the grounds that she did not have the status as the official wife. But one also reasoned the other way around and said that her partner would not be

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353 Interview 89, district Kayonza.
354 Interview 30, district Kamonyi.
355 Interview 80, district Kayonza; interview 90, district Kayonza.
356 Interview 50, 54, 57, 63.
357 Interview 19,20, 21, 27, 50, 90.
358 Interview 51, district Gayenke.
359 Interview 30, 35, 43, 51.
360 Interview 51, district Gayenke.
361 Interview 43, district Kayonza.
entitled to a compensation if she would die in an accident. In that event, only her parents would be able to claim an indemnification.\textsuperscript{362}

In addition, being formally married empowers women in the context of the household. Several women referred to the fact that a civil marriage would enable them to play a more important role as co-deciders concerning the management of the goods.\textsuperscript{363} As explained above, the Succession Law requires mutual consent from the spouses for certain transactions.\textsuperscript{364} Husbands would not be able to sell the family house without the permission of their wives. In their current situation, women have to face a high level of insecurity since they do not have any control over the land. A woman originating from Kayonza district said that if her relationship would come to an end, her husband could sell the land, even without her knowing.\textsuperscript{365} Therefore women in de facto unions said that they did not have the power to demand anything in the household.\textsuperscript{366} The details of this bargaining power issue will be discussed in section seven.

The second category of benefits that were enumerated during the interviews is the recognition and status as a married woman. Married women are seen as more respected on every single level of society. Furthermore there seems to be a dichotomy between married women and the others which are often called indaya.\textsuperscript{367} A married woman’s opinion is respected in society and she enjoys a greater status.\textsuperscript{368} These women are said to have dignity. During the interviews, several examples were given. For instance unmarried couples have to visit each other during the night which is seen as immoral and indecent.\textsuperscript{369} Furthermore a married woman has a stable domicile, therefore no one can chase her away.\textsuperscript{370} In addition, male spouses are more reluctant to look for another wife.\textsuperscript{371} Even in a polygamous relationship, the official wife will still be the one that is respected in the village and society as a whole.\textsuperscript{372} Moreover she has a say in household matters. This can be illustrated by an example given by a woman from Kayonza district:

“A formal marriage gives you all the rights in the household. Even if my husband wants another woman, he cannot not take her home and live together in our house. They have to find another place to live.”\textsuperscript{373}

A woman who lived together with a man who already had children with different wives, told that an official marriage would upgrade her status towards these children.\textsuperscript{374}

The voice of women in a de facto relationship, so-called indaya, is often not heard or even ignored. Their opinion is not respected in the household. Due to their negative reputation in society, women who are involved in an unofficial relationship have a low self-esteem. Likewise they often refer to themselves as indaya.\textsuperscript{375} A woman even declared that

\begin{itemize}
  \item[362] Interview 30, district Kamonyi.
  \item[363] Interview 37, district Kayonza; interview 42, district Kayonza
  \item[364] Succession Law, 1999, art. 21.
  \item[365] Interview 42, district Kayonza.
  \item[366] Interview 9, 16, 47, 48, 49, 51, 59, 60, 65, 66, 70, 84, 86, 89, 92, 93, 94, 97, 98.
  \item[367] Kinyarwanda for prostitute, whore.
  \item[368] Interview 4, 5, 9, 27,44, 48, 51, 56, 57, 68, 71,74, 78, 79, 80, 81, 84, 86, 89, 91, 94, 97, 98, 99.
  \item[369] Interview 64, district Kirehe.
  \item[370] Interview 95, district Kamonyi.
  \item[371] Interview 89, district Kayonza, interview 95, district Kamonyi.
  \item[372] Interview 79, district Kayonza.
  \item[373] Interview 40, district Kayonza.
  \item[374] Interview 98, district Kamonyi.
  \item[375] Interview 4, 5, 9, 15, 17, 18, 25, 27, 31, 32, 36, 37, 40, 41, 44, 46, 47, 48, 49, 51, 53, 55, 57, 59, 65, 68, 69, 71, 74, 76, 78, 79, 86, 90, 91, 92, 93, 96, 97, 98.
\end{itemize}
she is seen as someone who is just passing by. 376 Others felt mocked and not taken serious by other villagers because they do not have any rights to claim.377 A wealthy woman who lives in Kamonyi expressed her frustration as followed:

“Unmarried [living in de facto unions] are not respected in our village. Even poor women look down at me. I am seeing as an idiot, who does not have a respectable position in the society. (...) Other women speak ill of my situation. I act like I do not care, but deep inside I am furious because it makes me feel inferior.”

Mainly female villagers ask them about the whys and wherefores of their situation. Women also said to have to endure more disapproval about their relational status than unmarried man living in a consensual union.379 Another one was even convinced that legal provisions exist stating that these women cannot claim anything from their partner after separation because they should be considered as prostitutes. She assumed that even if the matter would be taken up to court, men could plead that their ex-partner is a prostitute in order to avoid dividing the goods.380 Interestingly the status of a woman living in a de facto union could be improved if she has children with her partner.381

Nevertheless, a complaint that is often heard during the interviews is the lack of support by governmental institutions.382 Women seek governmental support in two cases. First of all, after a break-up women ask for assistance from the local administrative bodies to claim alimentation or a part of the property of their former partner. The group of interviewed women considered this as an important benefit that the status of a married woman offers.383 Second, advice is asked about polygamous relationships since land disputes and the division of land between the wives in these households are highly complicated.384 Unfortunately most women are sent away under the pretext of lack of competence. B., living in Kayonza district, testified that married women can go to the sector’s office to complain about marriage problems. The administration will listen to them and offer assistance in solving the issue. However, unmarried women do not enjoy the same treatment because the local governmental institutions regard them as indaya.385

Female spouses also enjoy greater recognition of their family and in-laws.386 Most women living in de facto unions feel ashamed of their situation, especially those whose family were abreast of their daughter starting a relationship. In several cases, young women were afraid of returning to their family because their tarnished honor. They are said to live a life in sin.387 One of the consequences is that stronger family associations facilitate a more harmonious management of the family assets. Unofficial wives face more difficulties

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376 Interview 57, district Gayenke.
377 Interview 84, 89, 91, 102.
378 Interview 102, district Kamonyi.
379 Interview 47, 53, 55, 65.
380 Interview 85, district Kayonza.
381 Interview 31, district Kayonza, interview 56, district Gayenke, interview 82, district Kayonza.
382 Interview 5, 13, 15, 17, 21, 30, 33, 46, 50, 51, 60,64, 66, 69, 79, 83, 84, 85, 86, 87, 89, 90, 91, 96, 98.
383 Interview 84, district Kayonza, interview 91, district Kayonza.
385 Interview 79, district Kayonza.
386 Interview 22, 42, 43, 65, 74, 82, 95.
387 Interview 58, district Gayenke.
endeavouring to have access to the matrimony.\footnote{Interview 50, district Gayenke.} This recognition is extended to the children born out of an official marriage.

This introduces the third advantage of an official marriage, named by the group of women that participated in the interviews: an improved living situation for the children. Children born out of wedlock are disadvantaged in several situations.\footnote{Interview 26, 42, 50, 52, 53, 61, 63, 74, 75, 77, 83, 84, 91, 94, 98.} From a legal point of view, equal inheritance rights are indeed guaranteed for boys and girls but only for ‘legitimate’ children. Children born out of wedlock do not have any legal right to inherit from their biological parents.\footnote{Succession Law, 1999, art 50.} Since in Rwanda 15.3\% of all couples are not officially married, many children are excluded from this protection.\footnote{Republic of Rwanda, National Institute of Statistics of Rwanda, National Gender Statistics report, 2013, 11.} Several women told during the interviews that an official marriage would offer better protection of the inheritance rights of their children.\footnote{Interview 14, 16, 29, 37, 38, 40, 49, 63, 65, 71, 72, 85, 91, 92.} In addition, married women are considered as more capable of sustaining their children after a split-up.\footnote{Interview 75, district Kayonza, interview 88, district Kayonza.}

In general, the interviewed women feared that their children do not have a stable living environment to grow up. The descendants of a married couple have a ‘fixed address’, as some interviewees explained it. The expression refers to a stable household where children’s rights are guaranteed through their parents’ marriage.\footnote{Interview 93, district Kayonza; interview 95, district Kamonyi; interview 96, district Kamonyi.} On the other hand, the living situation and future of children born out of a consensual union is uncertain and fully depends on the stability and quality of their parents’ relationship. S. from district Kayonza said that these children are seen as vagabonds because they do not have a fixed address.\footnote{Interview 83, district Kayonza.} As a woman from Kamonyi enumerates:

\begin{quote}
"my children will be in trouble if their father decides one day to refuse to pay for nourishment, school fees and health insurance."
\end{quote}

Moreover, when their parents break up, children born out of wedlock risk to be raised by only one parent or by strangers who might not take adequate care of them.\footnote{Interview 94, district Kamonyi.} Unmarried women are afraid that no one would take care of the children or that they would be badly taken care of.\footnote{Interview 26, 42, 50, 52, 53, 61, 63, 74, 75, 77, 83, 84, 91, 94, 98.}

\begin{quote}
"Children become victims after a relationship splits. They have to look after themselves because their parents are reluctant to make proper arrangements for them."
\end{quote}

Furthermore, fathers living in these de facto unions are reluctant to officially recognize the child, even though international human rights standards prescribe an equal treatment and protection of children born out of wedlock.\footnote{Interview 11, 52, 55, 68, 84, 87, 91, 93, 95, 98.} Therefore automatic recognition of children with
married parents is pointed out as one of the advantages of a civil marriage. This is illustrated by following quote from one the interviews:

“An unmarried woman has to go to court to claim the rights of their children. Some men may refuse to recognize the children. In that case court procedures might take a while.”

An example of a court decision concerning the confirmation of paternity can be found in a ruling by the Primary Court of Ngoma. The plaintiff E. requested the recognition of her five children with V., with whom she had been living together the past 18 years. The Primary Court ruled by default that the children should be recognised by V., based on the children’s birth certificates and proof of their parents’ relationship by the executive of the sector Maraba. Details of the judgement show that the couple owned property with a value of 210.000 FrRw. In the end V. had to pay 3.900 FrRw litigation costs. Most women cannot summon the father of their children since the legal procedure is not only time-consuming, but also costly.

Parallel with the status of unmarried women, regrettably, society looks down on children born out of wedlock. Since it is the custom that the children belong to their father in Rwandan culture, dissolution of de facto unions can have severe consequences for these children’s wellbeing. Particularly children born out of wedlock who are raised by the second wife are hard pressed. One woman expressed her fear in the following way:

“If I would die, then my children would not have any value. They risk being neglected by the second wife because they have less value than this wife.”

C. who lives in district Kayonza expressed the same opinion:

“Imagine that my partner accepts to take care of our children after the break-up and he lives together with another wife. This second wife might refuse to give my children their share of the inheritance after their father passes away.”

And finally, the fourth benefit is the stable lifestyle of married women, according to the interviewed women. Married women feel more secure and have a stronger position in the household. Similarly to children of an officially married couple, female spouses have a fixed address. As a consequence their partner cannot easily chase them away whenever he wants. This fear of being randomly chased away empty handed was expressed during the majority of the interviews.

A paralegal working for Haguruka in Kayonza gave the following example:

“There was a woman in my village who only had a religious marriage and three children. Her family-in-law disrespected her and treated her badly. Eventually under the pressure of her in-laws, she had to leave her husband empty handed. She did not even receive a share of the goods the couple acquired together.”

401 Interview 22, district Kamonyi; interview 54, district Gayenke; interview 80, district Kayonza.
402 Interview 80, district Kayonza.
403 Republic of Rwanda, Primary Court of Ngoma, RC 0032/TB/11/NGOMA, 11/04/2011.
404 Approximately around 227.99 Euro.
405 Approximately around 4.23 Euro.
406 Interview 98, district Kamonyi.
407 Interview 91, district Kayonza.
408 Interview 1, 6, 7, 9, 15, 17, 18 25, 27, 31, 32, 36, 37, 40, 41, 44, 46, 47, 48, 49, 51, 53, 55, 57, 59, 65, 68, 69, 71, 74, 76, 78, 79, 86, 90, 91, 92, 93, 95, 96, 97, 98.
409 Interview paralegal Kayonza district.
Another woman from the north province interestingly linked official marriage to a decrease of violence in the household. She said that married men are less inclined to hit their wife, since she could decide to leave him and claim half of his property.\footnote{Interview 51, district Gayenke.}

To conclude this chapter, it clearly shows that access to formal marriage is apparently restricted for other reasons than ignorance. Women are well aware of the benefits of formal marriage and understand the problematic issues of consensual unions. The main question that needs to be answered is why women do not enter into formal marriage even though they are aware of the benefits of a civil marriage. In general it seems that women do not have an actual choice to choose their way of living and are forced to keep on living in consensual unions. As some women described this phenomenon apt: “A woman refusing an official marriage must be foolish.”\footnote{Interview 55, district Gayenke, interview 100, district Kamonyi, interview 102, district Kamonyi.}
7. THE RELUCTANCE TO OFFICIALLY MARRY: LOOKING FURTHER THAN POVERTY

When asked why women did not register their marriage, the reactions can be divided into different categories, going from logical to complex and layered explanations. First of all, for some women it was technically speaking impossible to register their marriage. Secondly, a lack of sufficient financial resources was named as the primary cause. However, this section will analyse this explanation and demonstrate that one should look further than poverty when explaining this phenomenon.

<table>
<thead>
<tr>
<th>REASON DE FACTO UNION</th>
<th>% OF THE INTERVIEWED WOMEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>FINANCIAL COST</td>
<td>57</td>
</tr>
<tr>
<td>MAN REFUSES</td>
<td>19</td>
</tr>
<tr>
<td>IGNORANCE</td>
<td>9</td>
</tr>
<tr>
<td>PREGNANCY</td>
<td>7</td>
</tr>
<tr>
<td>NO OWN HOUSE YET</td>
<td>2</td>
</tr>
<tr>
<td>DELAYED</td>
<td>2</td>
</tr>
<tr>
<td>RELATIONSHIP PROBLEMS</td>
<td>2</td>
</tr>
<tr>
<td>CHILDREN FIRST WIFE DO NOT APPROVE</td>
<td>1</td>
</tr>
</tbody>
</table>

(*)

- **LEGAL REQUIREMENTS AS AN OBSTACLE FOR FORMALIZING RELATIONSHIPS**

To start with, some consensual unions exist due to the impossibility to fulfil the formal and substantive requirements for official marriage.\(^{413}\) Article 171 of the Civil Code imposes an age restriction for formal marriage. According to the Rwandan Civil Code, marriage is only authorized from the age of twenty-one.\(^{414}\) The law provides an exception in the event that the minor gets the permission from the Ministry of Justice, based on serious motives. When one reads between the lines, this exception clause has no valuable de facto meaning. As a consequence minors caught up in a de facto marriage are highly unprotected in the event of separation or decease of their partner. Especially girls, who are trapped in this situation, suffer the most since their fall-back position is compromised by cultural practices that favour boys. UNICEF statistics have reported that 3.1% of Rwandan girls in 2012 were involved in a consensual union.\(^{415}\) The field research for this dissertations shows that nearly 10% of the interviewee were beneath the age of twenty-one at the time the interview took place.\(^{416}\) This percentage rises even to 33% of the interviewee when one takes a closer look at their age at the beginning of the consensual union.

\(^{412}\) The question for this table was the following: “Why are you involved in a consensual union?”. Therefore some women answered how they ended up in a de facto union. However most women interpreted the question as “why are you not officially married?”. Further field research should add the latter question. (Cf. annex II questionnaire)


\(^{414}\) Civil Code, 1988, art.171.


\(^{416}\) interview 8, 12, 29, 41, 57, 67, 76, 77, 79, 81, 87, 88, 99, 106.
Most of them, who were minors at the time of the interview, were aware of the fact that they could not marry before they would reach the age of majority.\textsuperscript{417} However, some of them thought that the official age was twenty\textsuperscript{418} or twenty-five.\textsuperscript{419} But not everyone saw this substantive requirement as an obstacle. K. living in the Eastern province revealed that she would solve this issue by lying about her age when requesting her identity card, which is necessary to register a marriage.\textsuperscript{420}

The second obstacle to fulfil substantive requirements is the prohibition of polygamous unions since the constitution only recognises monogamous civil unions.\textsuperscript{421} Women living in polygamous relationships are unable to inherit from their partner or to have a share in the decision-making power. Although polygamy is decreasing, 8\% of Rwandan women in a relationship live in a polygamous union.\textsuperscript{422} Four women replied during the interviews that they did not enter into a civil marriage since their partner was already officially married.\textsuperscript{423} A woman from Kayonza explained that her partner wants a divorce but he is still looking for financial resources to request one.\textsuperscript{424} A remarkable story was told by a fifty-one year old who did not want an official marriage.

CASE III

\begin{quote}
When I met my partner before the outbreak of the genocide, he had a child with his first, at that time, unofficial wife. After a while I started feeling guilty of this betrayal since I am a supporter of the Pentecost church. I insisted that my partner would officially marry his first partner because I think that infidelity is disreputable. After the genocide when we returned to Rwanda I gave him a cow to convince the first wife to marry him. Now we both have separate households and he visits me during the day to repair some things in the house. In the evening he returns back to his official wife.\textsuperscript{425}
\end{quote}

Women involved in polygamous unions not only have to face a high level of insecurity, they also risk to be prosecuted according to the Gender Based Violence Law.\textsuperscript{426}

\textsuperscript{417} Interview 29, 41, 57, 76, 81, 87, 88, 99, 106.
\textsuperscript{418} Interview 87, district Kayonza.
\textsuperscript{419} Interview 81, district Kayonza.
\textsuperscript{420} Interview 88, district Kayonza.
\textsuperscript{422} Unfortunately the statistics are not clear on how the term “polygamous unions” should be interpreted. A polygamous union can be seen as a person with both an official and unofficial partner and/or two unofficial partners.
\textsuperscript{424} Interview 56, 64, 71, 100.
\textsuperscript{425} Interview 71, district Kayonza.
\textsuperscript{426} Interview 100, district Kayonza.
\textsuperscript{426} GBV Law, 2008, art. 21-22.
• **FINANCIAL OBJECTIONS TO AN OFFICIAL MARRIAGE**

Secondly, the most common heard answer to the question why women do not enter into a registered marriage is the cost of the procedure and the wedding. Half of the women answered that they did not have sufficient financial resources for a civil marriage.\(^{427}\) A woman from Kamonyi argued that the determination to marry decreases with the level of poverty.\(^{428}\) The link between poverty and the reluctance to formally marry is also confirmed by other research.\(^{429}\) According to a study conducted by Haguruka, 81.7% of the women replied that they were not married due to a lack of financial resources.\(^{430}\) An official marriage goes hand in hand with several financial costs.\(^{431}\) First of all, there is an administrative fee for registering a marriage at the sector’s office.\(^{432}\) In some sectors the administration waived the registration fee.\(^{433}\)

Another rather remarkable administrative cost that was mentioned during two interviews, is a fine for those who wait too long to get married. A forty-two year old woman who has been living together with her partner for more than twenty years, reported the following

> “I am not officially married because it is too expensive. The fine gets more expensive the longer you wait and increases with your children’s age.”\(^{434}\)

However, this story was contradicted during another interview. A woman recalled the days that the local government tried to decrease the number of de facto unions, by punishing their existence. According to her the administration’s approach was two-sided, namely fining and even a prison sentence.\(^{435}\) Since the government’s current method is in general based on sensitization, the latter story seems to be the most accurate.

Some women reported that obtaining the official documents required for civil marriage\(^ {436}\) at their birthplace was a financial obstacle because transport costs were too high.\(^ {437}\) For instance, a couple living in Kamonyi wanted to participate in a mass wedding organised by the local administration. Unfortunately they could not join the mass wedding celebration because they were not able to obtain the required documents on time.\(^ {438}\) A woman living in Gasabo district estimated that gathering the required documents would cost around 5000 FrRw.\(^ {439}\) This issue occurs when one of the partners is originated from another

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\(^{427}\) 52% of the interviewed women.

\(^{428}\) Interview 96, district Kamonyi.


\(^{429}\) POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 142.


\(^{431}\) Unfortunately no governmental documents can be find to verify the existence and the amount of the fee.

\(^{432}\) Interview 61, district Kirehe, interview 63, district Kirehe.

\(^{433}\) Interview 85, district Kayonza.

\(^{434}\) Interview 59, district Gayenke.

\(^{435}\) Interview 61, district Kirehe.

\(^{436}\) Civil Code, 1988, art.180.

\(^{437}\) Interview 11, 14, 15, 20.

\(^{438}\) Interview 96, district Kamonyi.

\(^{439}\) Approximately around 5.43 Euro. Interview 11, district Gasabo.
province. C., a twenty-six year old woman living in the Eastern province, complained that her partner lived far from their place.

“If my partner lived close by, we would have been married a long time ago. My partner comes from the Western province. It is just too expensive to pay for public transport tickets to request the necessary documents at the administration of his birth village.”

Two different sorts of documents have to be submitted to the civil servant in order to register the marriage. Firstly, a birth certificate is necessary to find out if applicants comply with the age requirements. Secondly, since only monogamous marriages are permitted, one needs to submit a proof of celibacy. As a proof of dissolution of marriage, an attest of divorce or decease of a former spouse is also accepted. In any case, governmental efforts, such as waiving the registration fee, might not solve the financial concerns of informally married couples, since Rwandan culture attaches great value to the ceremonial aspect of a marriage.

Therefore the major financial obstacle is the cost of the wedding ceremony. Many customary rites involve great expenses, such as the practice of inkwano. As a result of the evolutionary interpretation of the practice of inkwano, poorer families cannot afford to pay inkwano anymore since the price of the dowry rises. The majority of the interviewed women (86%) declared that they did not receive inkwano. In most cases of those who did receive inkwano, the partner donated a cow to the woman’s family. Others spoke about the donation of money or beer and a shovel. However the high number of women, who did not receive inkwano, indicates that unmarried couples do not wish to spend their scarce money on ceremonial practices.

People highly value the prestige associated with a great wedding. A formal wedding without any proper celebration is seen as disgraceful. People wish to invite different guest, including their parents, brothers, sisters and in-laws to be present at their wedding. The newlyweds are also supposed to provide their guest with drinks and food. In addition, they attach importance to wearing nice clothes during the ceremony instead of their daily clothes, used to cultivate the fields. C., who lives in Kamonyi, noted the following:

440 Interview 85, district Kayonza.
441 An interviewee also declared an attest confirming that a person is HIV free was necessary. (Interview 92, district Kayonza) However the Civil Code does not prescribe additional documents that are required nor does it delegate any jurisdiction to the Ministry of Justice to ask for supplementary documents.
442 Civil Code, 1988, art.180, 1°.
443 Civil Code, 1988, art.180, 2°.
447 Interview 51, district Gayenke.
448 Interview 34, district Kayonza, interview 59, district Gayenke, interview 75, district Kayonza.
451 Interview 11, district Gasabo.
452 Interview 24, district Kamonyi, interview 53, district Gayenke.
“Even though registering a civil marriage is for free, people want to look good at their wedding. I cannot marry in the clothes I am wearing right now at the moment. Moreover my partner needs a nice jacket and new trousers.”

As a result, sufficient funds are necessary to pay the cost of a wedding ceremony. During one of the interviews a woman added the following reaction:

“If your partner comes home every day with only 1000 FrRw, then it is difficult to save money for a civil wedding.”

A paralegal working for Haguruka in Kayonza district added that couples sometimes even run up debts to finance an excessive wedding party. According to her, debts are not a great way to start married life and may cause future difficulties. Since most of the assets belong to the male head of the household, it is especially hard for women to convince their partner to spend the household money on a marriage. During a focus-group discussion a man stated the following:

“(…) and in addition when your wife knows that you earned some money that day, she will be the first to remind you to save it for a civil marriage because she wants to be an honourable wife.”

Some women got impatient and planned to take the law into their own hands. For instance, K. who lives in Kayonza, suggested that she would sell some of their goats in order to be able to afford a wedding ceremony.

In summary, one could argue that unmarried couples consider wedding expenses as a large cut in their budget and in general as a waste of money. When asked for further explanation why they did not have sufficient financial assets to afford a wedding ceremony, similar answers were given. The interviewed women stated that they preferred to spend their money on things that were more important and urgent. J., who lives in the eastern province, observed apt:

“I see that people do not think about a civil marriage. They only care about surviving and making sure that there is food on the table.”

Different priorities were enumerated during the interviews. First of all, women are concerned about ensuring sufficient nourishment for the household. Secondly, money is commonly used for housing purposes. Following quote shines a light on this matter:

“I refuse to organize a civil wedding at this moment. We should better spend the money on more urgent issues. For example, imagine if our roof collapses. In that event we better have some money up our sleeve. Or even better, we should save the money for the education of our children instead of spending it on a wedding ceremony. Therefore it is important to wait for the right time to marry.”

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453 Interview 24, district Kamonyi.
454 Converted approximately around 1.09 euro. Interview 65, district Kirehe
455 Interview 70, district Kayonza.
456 The male authority over the household is confirmed by several articles in the Civil Code. For instance, article 206 states that “the husband is the head of the family”.
458 Interview male focus group, Rusomo, Northern province.
459 Interview 88, district Kayonza.
460 Interview 13, district Gasabo, interview 98, district Kamonyi.
461 Interview 22, 39, 58, 62, 65, 90, 91, 95, 98, 105.
462 Interview 39, district Kayonza.
463 Interview 39, district Kayonza, interview 62, district Kirehe, interview 65, district Kirehe.
464 Interview 62, district Kirehe.
Similarly, two percent of the interviewed women reported that their main priority investment was the construction of their own house. As a woman living in Kayonza comments:

“I cannot marry now since I have other priorities. We need to complete our house and buy fields to cultivate. If we would still have enough money after that, then we will get married.”\textsuperscript{465}

Couples who did not own a house, declared that they rented one (22\%) or were allowed to stay in someone else’s house (6\%). Couples who rented a house, would rather spend the money on the rent instead of organising a wedding. C. puts it as followed:

“Imagine if we would have, let’s say, 20,000 FrRw. Why should we spend all of this money on a wedding? Then we would be unable to pay our rent the next day.”\textsuperscript{466}

In one district situated in the eastern province, owning a house was set as an additional condition for a civil marriage during one of the districts meetings. The couple needs to submit a document proving that they possess a house. The decision was based on the following reasoning. Nowadays young couples start living together before entering into a marriage. Since they lack sufficient financial funds, these couples rent a house instead of building or purchasing one. After a couple of months the girl gets pregnant and as a consequence it will be more difficult for the head of the household to maintain the young extended family. Therefore the girl has no choice left but returning to her parents empty handed. If the man owned a house, she could have at least been able to stay in the house with the children. For this reason, local governmental institutions advice young girls not to engage in unofficial relationships with poor men.\textsuperscript{467}

Despite the more restricted access to the institute of marriage, one could argue that the reasoning behind this approach takes women’s interests into account. However, as indicated above, requiring extra documents and setting the ownership of a house as a prerequisite holds villagers back to undertake the step to register their marriage. Consequently, general administrative guidelines should promote a prompt, and if possible cost-free, settlement of a civil marriage.

Financial concerns were indeed a standard answer during the interviews when the interviewee was asked why she had not registered their relationship. That is why awareness campaigns should focus on convincing couples to register their marriage and postpone the ceremonial wedding traditions, such as giving inkwano, until they have gathered enough financial funds.\textsuperscript{468} Although the impact of these financial considerations cannot be ignored, it is important to indicate there are more underlying reasons for the reluctance to enter into an official marriage.\textsuperscript{469} A woman who lives in Kayonza warned other women about the pitfalls of informal marriage:

“Some people say they are not married due to a lack of financial resources, but this is not true. It is the ignorance of women. They think they belong to a family [which provides them a safety-net], but in reality this is not the case.”\textsuperscript{470}

Interestingly 52\% of the interviewed women answered that they were not married because they could not afford a civil marriage. Remarkably, when talking in general about consensual

\textsuperscript{465} Interview 91, district Kayonza.
\textsuperscript{466} Interview 98, district Kamonyi.
\textsuperscript{467} Interview 100, district Kayonza.
\textsuperscript{468} POLAVARAPU A., “Procuring meaningful land rights for the women of Rwanda”, 2011, 143.
\textsuperscript{470} Interview 72, district Kayonza.
unions, the interviewees gave various substantiated explanations why other women are not formally married. The following case may conclude this section about financial obstacles and introduce the next chapter at the same time.

CASE IV
C. is a twenty-four year old woman, living in Kamonyi, situated in the South of Rwanda. One day she visited her current partner, without her parents knowing. The next morning, she decided to stay and sent a child to her parents’ house to pick up some of her clothes. In the beginning of the interview, she is convinced that her partner is willing to enter into a civil union, but both thinks this is impossible due to a lack of financial assets. She explains that when they started living together, the house did not have any doors. Currently they have purchased two doors in total. Further during the interview, she is asked again why people in general do not officially marry. This time however she replied something different: “Every time I suggest to get married to my partner, he refuses and answers that the house is not finished because it is impossible to lock the house. But I’m telling you, we have doors now. I think he just uses the house as an excuse to dismiss my wish to formally marry.”

\(^{471}\) Interview 95, district Kamonyi
A GENDERED CONFLICT IN THE HOUSEHOLD: THE BACKGROUND OF THE IMBALANCE IN BARGAINING POWER

In general it appears that access to the institute of official marriage and by consequence access to land, is determined by a gendered conflict within the household. A gendered conflict is characterized by different interests of both men and women, and an unequal division of bargaining power. The most dominant person will pursue his own objectives in an opportunistic way, which is detrimental to the interests of the other person. The underlying theory of this hypothesis is based on the principle of gender bargaining power. According to Agarwal B., who analysed gendered land conflicts in India, this refers to the intra-household interaction that can be based on either cooperation or conflict.\textsuperscript{472} In general, bargaining power within the household is defined by how strong an individual’s fall-back position is. This means to what extent someone can survive without depending on family relations.\textsuperscript{473}

Agarwal B. further strongly advocates for an interlinked system with interaction between intra-household bargaining power and extra-household bargaining power, such as with the community and the State. For example possessing control over land, which is achieved through gender household bargaining, will influence a person’s bargaining power on a broader economic, political and social level.\textsuperscript{474}

The model of bargaining power is highly relevant when understanding the different challenges women meet when trying to get access to land in general and more specific to formal marriage. In addition, since formal law does not guarantee any land rights for those involved in de facto unions, women have to ‘creatively manoeuvre’ to gain access to the household assets.\textsuperscript{475} However, several obstacles can be distinguished. The following figure demonstrates, broadly speaking, the working of this gendered bargaining pattern.

\begin{itemize}
\item Strong bargaining position in household concerning:
  \begin{itemize}
  \item Matrimonial assets
  \item Course of relationship
  \end{itemize}
\end{itemize}

\begin{itemize}
\item Dominant economic position men
\item Consensual unions
  \begin{itemize}
  \item socially accepted discourse by male population
  \end{itemize}
\end{itemize}

formal marriage

= creating rights for women
= strengthening bargaining position women

\textsuperscript{474} AGARWAL B., “Bargaining and gender relations: within and beyond the household”, 1997, 2,14.
\textsuperscript{475} ROSE L.L., “Women’s land access in post-conflict Rwanda: bridging the gap between customary land law and pending law legislation”, 2003, 238.
Primarily, two characteristics of household relations can be distinguished. To begin with, men are in general in the most dominant economic position. The following section will firstly clarify the economic background of both sexes, which directly influences their bargaining position in the household. The focus will be on land since in general it is the most important asset that defines a person’s economic position in Rwanda. Secondly, there seems to be a discrepancy between the willingness of men and women to formally register a relationship that is translated into society as an uncontested and recognised discourse.

As a twenty-four year old young woman from Kamonyi observed very apt:

“Men tend to see marriage as just a simple formality. Whereas for women, marriage is all about having prospects for the future and creating rights.”

This narrative and the opposing interests that both sexes need to preserve will contextualise the roots of the gendered conflict concerning marriage.

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476 Interview 104, district Kamonyi.
DOMINANT ECONOMIC POSITION MEN

Despite recent gender sensitive law initiatives and a noteworthy representation of women in parliament, society is strongly based on patriarchal thinking.\(^{477}\) Several Rwandan sayings can illustrate the marginalized position of women in Rwandan culture. For instance, “\textit{nta nkokokazi ibika isake ihari},” which means “no hen cackles in the presence of the rooster”. Or “\textit{uruvuze umugore ruvuga umuhoro}” ("When the women speaks within the family, fighting starts.") which demonstrates that the opinion of a woman is not valued.\(^{478}\) Moreover, in general men are the strongest economic actors since customary traditions, that ruled for a long time, favours men over women. As a result land ownership is still almost an exclusively male matter.

Women on the other hand rarely have direct access to land, as explained above. In fact, purchasing land is almost inconceivable for women. The most common way to have access to land is through inheritance or land donation. There is still resistance in Rwandan culture to live up to the legal provision of the Succession Law of 1999.\(^{479}\) In general 53\% of the interviewed women declared to have received land as \textit{umunani}.

For instance, 82\% of the interviewed women had one or more brothers. When it comes to receiving a land donation from their parents, women who had a brother are less likely to receive a parcel from their parents. Brothers received their parcel for various reasons, such as \textit{umunani} or on the occasion of their marriage, both a civil marriage as a consensual union.

<table>
<thead>
<tr>
<th>UMUNANI</th>
<th>WOMEN</th>
<th>BROTHERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOTH PARENTS ALIVE</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>ONE PARENT ALIVE</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>PARENTS DEAD</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>TOTAL</td>
<td>23</td>
<td>28</td>
</tr>
</tbody>
</table>

Interestingly, the brothers of the interviewed women received more often land on the occasion of an informal marriage than their sisters. Eight percent of the brothers received a piece of land when they started living together outside an official marriage. Yet only 4.65\% of the interviewed women received a land donation for the same occasion. In addition, the tradition of \textit{inkurarwobo} was more practiced by sons than by daughters. According to this custom, the one that buries a deceased ancestor receives a piece of land as a reward.\(^{480}\) Thirteen percent of the brothers received land on this occasion, whereas only 2.33\% of the women performed the practice of \textit{inkurarwobo}.

Cultural resistance to female inheritance rights can be eliminated in society through sensitization of the legal provisions concerning succession. However time is also a considerable factor of influence, since cultural transformations do not occur overnight. Lastly, due to land scarcity, fathers prefer to pass on their land to sons to ensure that land stays in the family.\(^{481}\)

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\(^{479}\) POLAVARAPU P., “Procuring meaningful land rights for the women of Rwanda”, 2011, 133.

\(^{480}\) \textit{This can also be a cow or money, depending on the richness of the family. But in most of the cases the person receives a piece of land.}

Conversation with assistant Jean-Marie; interview 2, district Bugesera.

\(^{481}\) POLAVARAPU P., “Procuring meaningful land rights for the women of Rwanda”, 2011, 133-134.
Not only are women disadvantaged in cultural practices, they also experience difficulties claiming their legal inheritance rights. Following tables illustrate the de facto discrimination towards women regarding land allotting between children. When more details were asked about land donations or umunani in the family, 62% of the women answered that the division was equal. The other 32% declared that other siblings received more land as a gift or inheritance. In 71% of the cases parents decided to give their sons more land than their daughters.

The main reason can be found in the tradition where newlywed girls leave their birth family and move in with their husband. Sons have a prominent position in the family and daughters are supposed to live with their future family-in-law. 482 Therefore sons need to be provided with a piece of land where they can settle with their wife and children. A son who did not receive umunani yet is seen as an unattractive potential marriage partner. 483 To summarize this practice, unmarried women stay on their father’s land and married women live on their husband’s land. Despite laws enforcing female inheritance rights, this ‘customary conceptualization’ is affirmed by formal law. 484 For instance, article 83 of the Civil Code stipulates that “a woman legally resides where her husband lives”. 485

Women often reported that their brother(s) received their part of umunani first. Hence there was not much land left to divide afterwards and women had to content themselves with the leftovers. In addition, women felt left out of the decision-making process concerning the family assets.

![Division family property between siblings](image)

Factual examples of restricted access to land can also be found. Although following factors influence the land access of both sons and daughters, girls have to struggle harder since they are already disfavoured by Rwandan culture. Concerning de facto rights to land, women often told that other family members used their land. In most of the cases, their mother stayed on the family land after the decease of their father. 486 In some cases women also reported that priority was given to others when dividing the family land. The most common situation is the one where brothers receive land to start a family, even when they

Particularly female orphans complained that their brother(s) were the dominant decision makers. A twenty-two year old girl, who lost both parents complained that her brother sold the family land without informing her. She and her eldest brother still have disputes every time she asks her share of the inheritance. 486 Almost ten percent stated that they did not have a clue concerning the partition of the family property. Others declared that they will accept what they will receive. 487

482 POLAVARAPU P., “Procuring meaningful land rights for the women of Rwanda”, 2011, 134, 139.
484 POLAVARAPU P., “Procuring meaningful land rights for the women of Rwanda”, 2011, 139.
485 Code Civil, 1988, art.83.
486 Interview 69, district Kirehe.
487 Interview 81, district Kayonza, interview 88, district Kayonza; interview 102, district Kamonyi.
488 Interview 33, district Kayonza; interview 35, district Kayonza; interview 92, district Kayonza; interview 102, district Kamonyi.
are not formally married. J., who lives in Gayenke complained that her three brothers all received a plot to live with their partner, in spite of them not being officially married. Therefore she and her other two sisters left the family house to start living together with a man because there was not much of the umunani left to divide.489

Secondly, during several interviews women complained that they were victims of land grabbing. The cases that were reported all dealt with strangers or neighbours taken over their property in their birth village during the genocide of 1994. Remarkably all of these women were orphans. They have no parental support and as explained above, Rwandese culture easily denies girls land rights. For these reasons they might be seen as easy victims. A woman from Bugesera told the following story:

“I was born in the Northern province. My family had different parcels over there. Due to the genocide we had to flee and during our absence our neighbours appropriated our property. When I came back to my birth village after the genocide to claim our property back, the neighbours threatened to kill me if I would pursue this claim.”490

Other women had similar experiences but found the courage and, more important, the financial support to take the matter up to court.491 Another one was advised by the sector’s office, when complaining about the lack of compensation, to purchase a new plot of land or to move to another parcel that was situated too far away.492 This indicates that nowadays land conflicts, which go back to 1994, are still common and governmental support is indispensable to guarantee women full access to their land.

And ultimately, children born out of wedlock are more disadvantaged in the land distribution matters than registered children. The Succession law excludes them by only granting inheritance rights to ‘legitimate’ children.493 Moreover inheritance issues become more complex if they are born in a polygamous union.494 After the pater familias passes away, property is divided by the different wives, according to their status in the household and their personal relationship with the man.495 For example, F.’s parents were formally married but her father had a second, unofficial wife. He gave the biggest parcel to his second wife, because he was in love with her. F. thinks this was unfair since the second wife only has two children, whereas her mother received a smaller piece to maintain five children.496 This shows that measures are necessary in order to change the course of this downwards spiral.

To conclude, evidence has shown that women have a weak economic position in society. Their marginalized position in matters concerning land division in the family are deeply rooted in Rwandan culture. To overcome cultural resistance to female inheritance rights, educational campaigns must sensitize the population more on female succession rights, an effort that will require time. In addition, land scarcity pushes women more in the corner and makes them victims of land grabbing. Another consequence is the fact that men are determined to keep the land in their own hands.497 The land crisis is a complex issue that

489 Interview 58, district Gayenke.
490 Interview 6, district Bugesera.
491 Interview 9, district Bugesera; interview 34, district Kayonza.
492 Interview 61, district Kirehe.
493 Succession Law, 1999, art 50.
494 Interview 10, district Bugesera; interview 67, district Kirehe; interview 92, district Kayonza.
495 Interview 67, district Kirehe.
496 Interview 92, district Kayonza.
will require overarching solutions and policies. In anticipation of these measures, men keep their economic position to dominate the gendered household conflicts.
INFORMAL MARRIAGE AS SOCIALLY ACCEPTED PHENOMENON

To fully understand the conflict concerning formal marriage, the imbalances in economic strength between women and men must be seen in combination with the socially accepted discourse of men’s unwillingness to marry. These two factors interfere which one and another. Due to their dominant economic position, men can ‘afford’ to refuse a civil marriage. However this refusal is only possible when it is socially accepted by society. Since Rwandan culture is strongly based on the principle of patriarchy, men have a major influence to define what is custom in society or not. On the other hand, women strongly judge this lifestyle because they have to bargain from a victim’s perspective.

Men, specifically young men, seem to have made a pact to not formally marry. These matters are often discussed in little bars that are usually not frequented by women. Several women complained that their partners were persuaded by other men to not marry. A woman who has been living together with her partner for thirteen years testified the following:

“I keep on asking him to marry but he refuses. I think some people whisper in his ear that registering a marriage is a bad idea.”

During another interview, a woman from Kamonyi spoke about a ‘new mentality’ among men living on the countryside. Another woman who has been living together with her partner for thirteen years now said that there were only two couples officially married in her village. She argued that “perhaps it is culturally accepted here that men do not marry.” One of her neighbours confirmed this by stating that no one in our whole street is formally married. In the district of this street, even several village heads, who normally practise an exemplary function, did not register their marriage. C. went even further by stating the practice of de facto unions is ‘typical Rwandese’.

“People do know that a civil marriage is a good thing. But as long as they are not facing any problems or difficulties in life, they do not care about it. For instance, when one wakes up in the morning, a civil marriage is not the first thing that comes to their mind. People here solves problems when they occur.”

Different surveys also confirm that consensual unions, despite governmental sensitization campaigns, still exist in society.
Refusing to get officially married must be seen in the bigger context of a counter-movement on the creation of new female rights. Men tend to believe that the recent legal framework on gender favours women over men.\textsuperscript{508} Men worry that these laws forces them to accept new ideas about gender relations that are not originated in Rwandan culture.\textsuperscript{509} Moreover, this tendency is strengthened by the existence of several myths concerning civil marriage. A woman from Kayonza said that there was a civilly married man in the village who complains a lot about his marriage. As a consequence other male villagers are not keen to register their marriage.\textsuperscript{510} These myths portray official wives as tyrants that terrorize the household since civil marriage grants them different rights.\textsuperscript{511} Different metaphors were used describing this phenomenon of aversion to civil marriage. One woman told that men saw an official marriage as a prison.\textsuperscript{512} Or others put it as being ‘chained up’.\textsuperscript{513} Ultimately some spoke about being tied down to a bomb.\textsuperscript{514} In general one could say that official wives are seen as a burden.\textsuperscript{515} Moreover, people believe that divorces only can end badly.\textsuperscript{516} Remarkably there was also a general believe that in the “Western” world, people make some sort of contractual relationships with a limited duration instead of marrying. This myth appealed to the imagination of many different conversation partners.\textsuperscript{517} During some interviews the partner, who was present due to circumstances as explained above, intervened and expressed his antipathy for official marriage. A man that was present during an interview in Kayonza told the next story.

“One day I passed by the police and I saw a woman hitting her husband harshly. Apparently her husband came home very drunk at night and had beaten his wife. The woman did not accept this since she was his official wife. So the next day she went to the police where she told the story and they allowed her to hit him. When I witnessed this scene, I was disgusted by the law.”\textsuperscript{518} Another man added that many problems will arise after an official marriage and that it can even result in murder.\textsuperscript{519} Similarly women had stories about formal marriage, as for example C. who lives together with her partner for eight years.

“A lot of people believe that a civil marriage causes trouble. Take for instance a married couple that I know. The husband left his wife while she was pregnant. Even though they were officially married, the man clearly did not have the intention to set up a stable household environment. Or I can give you...
another example of a woman who left her husband and moved back to her parents. These stories show that civil marriage is far from ideal as well.\textsuperscript{520}

These stories were not only shared among villagers, one woman recalled a radio broadcast about a couple that had a civil marriage. The story went as followed:

“A couple got married in a traditional and formal way. The couple celebrated their marriage with a big, great wedding party since the man was well-to-do. Afterwards they went to their hotel. Once arrived in their room, the girl refused to have sex with her husband. She kept on pushing the man away, because, according to her, he smelled bad. The man kept on trying to convince her but he gave up in the end. The next day the newlyweds went home and their families tried to reconcile them. However, this was in vain, since the girl kept on refusing to sleep with the man and wanted to return to her parents. She took everything she brought with her back home and filed immediately for divorce. In the end, the girl could claim half of his property.”\textsuperscript{521}

Therefore living together outside marriage is seen as a period of trial where both partners try to get to know each other’s character.\textsuperscript{522} The following analysis of the situation was given by a woman who lives in Bugesera:

> “Nowadays men do not like civil marriage. They say that an official wife is a burden and there is high probability that she will respect her husband anymore. (…) Therefore they prefer not to register their relationships and consider it [consensual unions] as a period of trial.”\textsuperscript{523}

In addition unmarried women have a worse reputation in society than men who are living in de facto unions.\textsuperscript{524} They are not valued in society. As discussed above, the interviewed women described themselves and other women who are involved in consensual unions as indaya or prostitutes. On the other hand only three women described men in the same situation as prostitutes.\textsuperscript{525} Despite exceptions where young couples both expressed their willingness to register their marriage, in general it appears that men tend to dislike formal marriage.\textsuperscript{526}

\textsuperscript{520} Interview 91, district Kayonza.
\textsuperscript{521} Interview 100, district Kayonza.
\textsuperscript{522} Interview 35, district Kayonza; interview 69, district Kirehe; interview 96, district Kamonyi.
\textsuperscript{524} Interview 6, district Bugesera.
\textsuperscript{525} Interview 55, district Gayenke; interview 98, district Kamonyi; interview 101, district Kayonza.
\textsuperscript{526} Interview 9, district Bugesera; interview 66, district Kirehe; interview 99, district Kayonza.
\textsuperscript{527} These findings are confirmed by other authors, but no thorough explanations were given.
\textsuperscript{528} BROWN J., UVUZA J., “Women’s land rights in Rwanda: How can they be protected and strengthened as the Land Law is implemented?”, 2006; POLAVARAPU A., “Procuring meaningful land rights for the women of Rwanda”, 2011.
BARGAINING ON HOUSEHOLD ASSETS AND THE COURSE OF THE RELATIONSHIP: “A WOMAN IS CHASED AWAY IN THE WAY SHE HAS ARRIVED”

The starting point from the gendered conflict is that both partners would only marry on the condition that they will both benefit from it. Now that the premises of the gendered bargaining positions are discussed, the stakes of the gendered conflict can be discussed. Two interlinked topics for discussions are at stake. With regard to assets, women and men negotiate ownership of the household patrimony and decision-making power. Secondly, the couple bargains the course of the relationship. The course and the outcome of these issues of conflict will be discussed in the following sections.

(1) Since men are in a dominant economic position, they can demand women to first contribute assets to the household before getting an official marriage.528 For instance, men insist that women bring along their inheritance. They oppose the fact that women nowadays, due to legal reforms, have double access to land.529 Not only can they inherit from their birth family, they are also able to claim an inheritance from their husband.530 However as indicated earlier, women’s access to the family patrimony remains restricted in many cases.531 Following section will first explain why women are seldom able to contribute to the household. In general it seems that women get stuck in a vicious circle, since families rarely donate land to their daughters that are not married. Of all the interviewed women, only 53% received a plot of land as umunani. And only one woman received land on the occasion of her de facto marriage.532 Two other received land as intekeswha.533 All the other 103 women that did not receive a piece of land for their marriage gave the following reasons.

<table>
<thead>
<tr>
<th>REASONS NO DONATION MARRIAGE</th>
<th>% OF INTERVIEWED WOMEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAMILY NOT AWARE OF RELATIONSHIP</td>
<td>32.18</td>
</tr>
<tr>
<td>ORPHAN</td>
<td>19.54</td>
</tr>
<tr>
<td>POOR FAMILY</td>
<td>14.94</td>
</tr>
<tr>
<td>NO INKWANO GIVEN</td>
<td>9.20</td>
</tr>
<tr>
<td>NO CIVIL MARRIAGE</td>
<td>6.90</td>
</tr>
<tr>
<td>PARENTS DO NOT AGREE WITH RELATIONSHIP</td>
<td>5.75</td>
</tr>
<tr>
<td>IGNORANCE</td>
<td>4.60</td>
</tr>
<tr>
<td>WOMAN WAS NOT GIVEN AWAY</td>
<td>3.45</td>
</tr>
<tr>
<td>NO KWIREGA</td>
<td>1.15</td>
</tr>
<tr>
<td>MISCELLANEOUS</td>
<td>2.30</td>
</tr>
</tbody>
</table>

527 Interview 34, district Kayonza.
528 Interview 5, district Bugesera; interview 45, district Kayonza; interview 47, district Kayonza; interview 82, district Kayonza.
529 Interview 60, district Kirehe.
530 Succession Law, 1999, art. 50; art.70.
531 Crook J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2006, 1509-1510 j. 1525.
532 Interview 76, district Kayonza.
533 Interview 19, district Gasabo; interview 20, district Gasabo.
To begin with, most women answered that their parents were not aware of their relationship. This lack of awareness can be linked to the section that explains how women ended up in de facto unions. More specific parents were not aware of the relationship because daughters are too ashamed to return to their parents once they spend the night with a man. Therefore several women mentioned the fact that they did not follow the normal traditional procedure, restrained by their parents from supporting their marriage by donating family property. Traditional practices concerning customary marriage are moreover gusaba and inkwano, which are explained above.

If these practices did not take place, parents are not eager to recognize the relationship and are certainly not willing to donate land. Rwandan culture prescribes that parents are not obliged to donate anything to their daughter if they did not accompany her to her future husband.\(^{534}\)

Besides these traditional constraints, two other major reasons, namely no parents and no land to donate, must be considered in the post-genocide context. The first issue, as a terrible consequence of the genocide, is the average age of the women who had lost both or one parent: 30 years old. They started their relationship on an average age of 23 year. Almost 40% of them did not receive umunani or if they did their property rights were violated.

Secondly, due to an increasing population growth, land is incredibly scarce in Rwanda. As previously mentioned when discussing customary land regulations and the dominant economic position of men, land scarcity disadvantages women since succession of land is culturally based on patrilineal inheritance. Therefore fathers prefer to keep the scarce land in the family by passing it on to their sons.\(^{535}\)

To summarize, there is a small chance that women are able to contribute land to the household union. The reasoning behind this demand of contribution is based on the fact that marriage creates rights for women to the matrimonial property, which includes mostly assets contributed by the man. Therefore men are in many cases the absolute ruler when it comes to household property decisions. In addition they do not want to jeopardize their dominant position in the household by formally marrying.\(^{536}\) According to the head of a village in Kayonza district, men want to control their money in their own way. For instance, if a man wants to sell something in the house, then his wife could refuse to give him permission. And he added subtly that if a man wants to buy beer, he should be allowed to do so without his wife holding him back.\(^{537}\) Another man that was present during the interview confirmed this way of thinking by stating that if he wants to sell a cow or a parcel, he would have to consult his wife because her permission is required for the transaction.\(^{538}\)

Besides their refusal to put their dominant decision-making position at risk, men fear that women would immediately apply for a divorce and claim all of ‘his’ property.\(^{539}\) Not only do men fear a divorce, they are also worried what might happen once an official spouse passes away. In that event her family could come and ask their part of the inheritance from the man.\(^{540}\)

\(^{534}\) Interview 1, district Bugesera.
\(^{536}\) Interview 15, 42, 44, 46, 49, 54, 58, 63, 66.
\(^{537}\) Interview 42, district Kayonza.
\(^{538}\) Interview 49, district Kayonza.
\(^{539}\) Interview 87, district Kayonza.
\(^{540}\) Interview 40, district Kayonza.
Similarly to women, men are well aware of the new laws concerning marriage. A remarkable quote from a study of the Rural Development Institute may illustrate that sensitization campaigns may have a downside too. “Women in Ruhengeri thought that the majority of relationships were now legal marriages. When asked why the number of legal marriages was relatively high in Ruhengeri compared against what we had heard in other areas, they laughed and said it might be because education about the law is low in Ruhengeri and the men might not have understood the extra protections that legal marriage grants to wives.” Unequal contributions make men worry that they might have to split their assets one day with a partner who did not add anything to the household property. As a woman who has been together with her partner for eleven years puts it as followed: “If the contributions to the household are not well divided and one partner owns significantly more than the other, there is less willingness to officially marry.”

As a result of this male aversion to sharing, some women even spoke about the selfishness of men. Others complained that this conflict incites men to hide their property or to sell it without their partner knowing. Men on the other hand complained that women nowadays were too materialistic. Some men explained that young girls seduce rich men, only to profit from their wealth. According to them, this phenomenon mostly takes place in urban areas.

Interestingly in some rare cases of women who owned a house, the female partner appropriated the narrative that is normally put forward by men. Men who live in a women’s house have a negative status in society. A Rwandese saying describes the phenomenon as followed: “Ntamwinjira ugira ijambo” (A man who lives in a women’s house has nothing to say in the household). A minor from Kayonza district who received a plot of land as umunani, reasoned in the same way as men: “The parcel from our house is registered on my name. I do not want to marry my partner since he did not contributed anything to our household. If I would marry him, I would be obliged to share my personal property with him.”

Another woman concluded: “If my partner would decide to leave me, he would lose anyway.” As a consequence men have a cautious attitude and are not keen on civil marriage. They want to wait and see in order to get to know their partner for what she is.

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541 Interview 61, district Kirehe.
543 Interview 6, 9, 15, 18, 28, 29, 30, 31, 38, 39, 40, 42, 44, 45, 47, 60, 61, 63, 71, 72, 74, 80, 87.
544 Interview 39, district Kayonza.
545 Interview 60, district Kirehe; interview 71, district Kayonza.
546 Interview 27, district Kamonyi.
547 Interview 4, district Bugesera.
548 Interview E., a lawyer in Kigali, November 2013; interview 60, district Kirehe.
549 Interview 6, district Bugesera; interview 9, district Bugesera; interview 63, district Kirehe; interview 99, district Kayonza.
551 Interview 99, district Kayonza.
552 Interview 63, district Kirehe.
can be linked to the issue of the ‘period of trial’ as discussed above.\textsuperscript{553} The fact that these women did not contribute anything to the household gives the male partner a strong hold over their woman.

“If a woman complains about a small issue in the household, her partner silences her by saying that if she has a problem, she can leave anytime she wants.”\textsuperscript{454}

As a result, men do not only have a dominant decision-making position concerning the management of the household assets, they determine the course of the relationship. Their influence on this latter issue and the outcome of the negotiation process on relationship matters will be analysed in the following section.

(2) Consensual unions have two main advantages for men that they wish to preserve by not getting married. First of all, they can end the relationship anytime they want without any legal maintenance obligations. Once officially married, women can claim their share of the matrimonial assets after a divorce or the death of their spouse. Especially the complexity of divorce procedures discourages men to marry.\textsuperscript{555} The cost and duration of a divorce are named as the major obstacles.\textsuperscript{556} Therefore they would like to preserve their freedom to decide about the duration of the relationship.

Many women complained that men nowadays want to have relationships with different women.\textsuperscript{557} This phenomenon was described as being ‘gourmand’ or greedy. Women referred to two sort of situations. Firstly men want or have multiple relationships at the same time.\textsuperscript{558} Men involved in these unions, refused to officially marry since polygamous marriage is not allowed. The second and most common situation is the one where men wish to have different, successive relationships. A woman gave the example of a man, known as a layabout in her village, who had more than five relationships. According to her, the man chased the woman away with empty hands as soon as she got pregnant.\textsuperscript{559} Some men prefer to have a younger woman. A thirty-eight year old woman thought about this issue for a second and answered gleeful:

“My partner is much older than me, he’s fifty years old. He won’t find another woman; he is too old for that.”\textsuperscript{560}

In addition, men can also ‘afford’ to end the relationship. Some women testified that they were involved in an abusive relationship, but they did not see a way out to escape the violent situation due to their weak economic position. J., a twenty-three year old woman living in Kirehe, revealed her plans:

“I do not own anything besides a jerry can and some shovels. But as soon as I find enough money, I will leave my partner.”\textsuperscript{561}

Secondly men believe that unofficial wives are more likely to be obedient and submissive towards them. Men do not wish to marry a bossy, insubordinate woman.\textsuperscript{562}

\textsuperscript{554} Interview 44, district Kayonza.
\textsuperscript{555} Interview 9, 18, 22, 26, 36, 37, 45, 47, 53, 57, 60, 78, 96.
\textsuperscript{556} Interview 45, district Kayonza.
\textsuperscript{557} Interview 6, 23, 35, 40, 41, 44, 45, 46, 47, 56, 66, 71, 72, 76, 79, 81, 82, 84, 85, 97, 91, 93, 96.
\textsuperscript{558} Interview 40, district Kayonza; interview 79, district Kayonza.
\textsuperscript{559} Interview 7, district Bugesera.
\textsuperscript{560} Interview 30, district Kamonyi.
\textsuperscript{561} Interview 66, district Kirehe.
\textsuperscript{562} Interview 16, 18, 20, 34, 69, 82, 91.
Women gave various examples such as a woman who uses contraceptives without her partner knowing. Hence if their partner acts in this way, they can threaten her with ending the relationship and chasing her away with empty hand. Likewise, married women do not have to fear for this threat. As a result officially married women are seen as too dominant and a threat for the male supremacy in the household. This narrative of the unbearable wife is linked to the different myths that exist about civil marriage. A man who was present during an interview in Kayonza shed a light on the issue:

"Nowadays the Rwandese government value women a lot. If a man officially marries a woman, she will become unbearable because she will have too many rights. The wife becomes an enemy of the man, who does not have any value anymore in the household. The couple will quarrel on a daily basis. As a result, the man will decide to leave his wife in the end."

Due to the many conflicts and imbalances in bargaining power, couples often experience several difficulties in their relationship. A woman commented as followed on the issue: "If one of the partners did not contribute to the household, a couple will disagree on many different subjects." Unequal bargaining power will be the slumbering basis of many conflicts in the household. Consequently when asked why people refused to enter into civil marriage, women often answered that couples that do not get along well are not keen on marrying. A lack of trust between both partners was one of the reasons brought up during the interviews.

"Women can have the intention to marry a young man, assuming that he is still childless. If this would come out later, women prefer not to marry this person. However my example works both ways." Or other complained that partners can be unbearable, such as alcohol addicted persons.

Since men are economically speaking in power of the household: household decisions are rarely negotiable for women. Their will is law and makes women feel powerless towards an arbitrary decision of their partner. When it comes to choices concerning their relationship, women told that they were left with no choice when their partner, for example, wants a second wife. They have to look upon their partner’s adultery with envious eyes. Following example illustrates apt the powerless position in the household of a consensual union in such cases.

“One day I was working on the field with another couple that was not formally married. The man always threatens the woman that if she does not respect him, he will look for another woman. That day a girl, who is known in our village as an indaya, was also working on the field. When the girl decided to...

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564 Interview 34, district Kayonza.
565 Interview 61, district Kirehe.
566 Interview 82, district Kayonza.
567 Interview 6, 34, 37, 42, 45, 48, 50, 59, 60, 61, 64, 66, 67, 68, 71, 74, 75, 76, 77, 80, 81, 82, 83, 97.
568 Interview 66, district Kirehe.
569 Interview 39, district Kayonza; interview 66, district Kirehe.
570 Interview 39, district Kayonza.
571 Interview 42, district Kayonza.
572 Interview 52, district Gayenke; interview 81, district Kayonza.
Men prefer to stay in control in the household. A civil marriage creates rights for women, therefore men feel threatened that their dominant position in the household would be at risk. In the same way as the other myths about formal marriage, men think that women turn into bossy wives that henpeck their spouse. Remarkably the same narrative was heard in Ugandan research, where men told that 'if a woman owns land, she will grow horns'.

To conclude this chapter, one could argue that men tend to profit from the dichotomy between the de facto and de jure position of women in society. Recent law initiatives indeed promote and encourage a more independent position in society. The new gender ideas are at odds with a tradition that merely focusses on maintaining the patriarchal structure in society.

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572 Interview 88, district Kayonza.
8. SUGGESTIONS TO IMPROVE LAND RIGHTS FOR PERSONS INVOLVED IN DE FACTO UNIONS

Focussing on legal awareness and facilitating the ceremonial aspects of civil marriage appears to be unsufficient to deal with the issue of consensual unions. Revealing deeper underlying causes of the reasons why many people do not have access to formal marriage may contribute to finding a possible way to guarantee equal land rights. To thoroughly tackle the problem of informal marriage, a multidimensional approach is required. Not only the legal context must be analysed, but attention must also be given to the socially gendered framework of the household. The following sections will analyse different suggestions to improve the situation of women who are involved in de facto marriages. These suggestions will only be briefly discussed since additional research is necessary to investigate their effectiveness.

To begin with, the Civil Code and the Constitution could officially recognise customary and religious marriage. Other neighbouring countries – like Tanzania and Uganda, have chosen this strategy to protect women’s land rights in the context of marriage. The parliament of the latter country discussed last year a revision of the marriage act. The Marriage and Divorce bill\textsuperscript{574} has been in the pipeline since 1964. The bill would not only broaden the concept of marriage, but also guarantee equal property rights in marriage. It would also include a regulation for cohabitating couples. Unfortunately there is no political will to pass the bill because it clashes with cultural beliefs about marriage.\textsuperscript{575} A better example is neighbouring country Tanzania. The Law of Marriage Act provides a presumption of marriage that is stated in article 160 (1):

\begin{quote}
"Where it is proved that a man and a woman lived together for two years or more, in such circumstances as to have acquired the reputation of being husband and wife, there shall be a rebuttable presumption that they were duly married."\textsuperscript{576}
\end{quote}

When this presumption is confirmed by a court, a woman has the right to claim financial maintenance for her and every child born from the union, based on the sole condition that the couple lived together for minimum two years.\textsuperscript{577} Through this provision religious and customary marriages are recognised and women in these unions can benefit from the same rights after separation as in the case of a divorce after a formal marriage.\textsuperscript{578} However, the field research has shown that women who did not officially recognise their relationship are not married in a customary or a religious way either. As mentioned above, 86\% of the interviewed women did not receive \textit{inkwano}, one of the required traditions of customary marriage. Nevertheless, officially recognising de facto unions would upgrade women’s position in society and give them the possibility of claiming formal rights instead of being ignored by local authorities.

Second, the Rwandan parliament could adopt a legal provision that stipulates that persons living in de facto unions for a certain period of time shall be considered officially married. Despite that this proposition theoretically solves the problem; several notes can be

\textsuperscript{574}Uganda Marriage and Divorce Bill N°19, 2009.
\textsuperscript{576}Tanzania Law of Marriage Act N°5/71 Chapter 29. Gazette 12/02/1971, section 160 (1).
\textsuperscript{577}Tanzania Law of Marriage Act N°5/71 Chapter 29. Gazette 12/02/1971, section 160 (2).
\textsuperscript{578}BROWN J., UVUZA J., “Women’s land rights in Rwanda: how can they be protected and strengthened as the Land Law is implemented?”, 2006, 14.
made on the legal proposition. First of all, one of the substantive conditions of marriage is consent of both spouses. The proposed provision would automatically declare a couple married, without their mutual consent. One could argue that the duration of the relationship implies an indirect consent; however, this appears to be a weak argument. Furthermore, the provision is difficult to implement in practice. For instance, the law would define a certain period of time as three years. This would be an incentive for couples, who do not wish to get married, to split up just before they would be together for three years. During those three years the couple might have built up a household with contributions of both partners or they might have children together.

Thirdly, instead of legalizing formal unions, the legislators could opt for a punitive approach. The GBV law already punishes people, who are involved in concubinage and polygamous unions, with a fine and/or prison sentence. However, this would be a bad idea for two reasons. As stated above, women do not always have to free choice to enter into an informal marriage. Secondly, one of the main reasons why people did not formalise their relationship was their lack of financial resources. Therefore, imposing a fine would drag them further into poverty.

Ultimately, Rwanda’s jurisprudence has proven to be moving in the right direction. The Supreme Court set an important precedent by interpreting article 39 of the GBV Law in favour of polygamous women/men. In addition, local courts, e.g. the abunzi committees, issued practical and fair solutions for the division of the common assets after the ending of a consensual union. Another recommendable approach would be the encouragement of the registration of joint ownership of the household assets of an unmarried couple.

However the problem of de facto unions is not limited to legal rights. As discussed above, female empowerment is a main condition for improving land rights and vice versa. Therefore an overarching approach is necessary to break this vicious circle. Recommendations to improve land rights for women should in theory be based on the following guidelines, suggested by the Centre on Housing Rights and Evictions. According to them inheritance law should:

- provide for legal recognition of both spouses rights’ to adequate land and housing
- create minimum disturbance for the family situation once the spouse has passed away
- treat female and male children equally
- apply equally to all marriages, whether entered into under customary law/religious rites or civil/common law”.

579 GBV Law, 2008, art. 21-22.
CONCLUSION

The main purpose of this thesis was to focus on land rights for Rwandan women in relation with their marital status. A distinction is made between two forms of relationships, namely official marriage and de facto unions. To begin with, official marriage has a highly valued position in society. In addition, Rwandan law only recognises a monogamous marriage between a man and a woman.\(^{581}\) As a consequence, customary and religious marriages are excluded from legal protection. Beside formal marriage, many couples live together in an informal marriage.\(^{582}\) De facto unions are interpreted as a man and a woman who live together without being formally married to each other.\(^{583}\) During the field research 106 women who were involved in de facto unions, were interviewed about the link between consensual unions and land rights. More specific, the effectiveness of the official solution offered by the Rwandese government, namely encouraging women to enter into a civil marriage to improve their land rights, was challenged. The structure of the field research was based on finding an explanation for two main research questions. To begin with, the level of awareness about civil marriage was investigated by asking the interviewees to sum up the benefits of formal marriage. In addition the negative consequences of informal unions were discussed during the interviews. The second research question can be subdivided into two questions. The first one inquires about the reasons why women are involved in de facto marriages. The second question deals with the obstacles that made couples hesitate, or even refuse, to formalize their unions.

However, before discussing the result of the field research, the general legal and social framework of female land tenure in Rwanda should be explained in order to consider the issue in its entirety. Improving equal land rights in Rwanda is a complex and multifaceted issue that affects all levels of society. Land tenure is based on social power relations that dynamically evolve with economic, social and/or political changes in society.\(^{584}\) Moreover since subsistence agriculture is dominantly present in Rwandan society, land is highly valued and scarce.\(^{585}\) However due to patriarchal leverage, women's access to land is restricted by customary norms and even by statutory law. In general, female land tenure is characterized by indirect land rights that are often merely usufruct rights. Women rely on their association with male members to gain access to land. As a consequence, female land rights are weak and unpredictable.\(^{586}\) In addition, a pluralistic legal system impede the protection of women's land rights.\(^{587}\) The co-existence of common and formal law causes uncertain and complex land claims, which disadvantages women who do not have equal access to

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\(^{582}\) 15.3% of the Rwandan women who are involved in a relationship, live in de facto marriages. Republic of Rwanda, National Institute of Statistics of Rwanda, National Gender Statistics report, 2013, 11.

\(^{583}\) However one of the partner may be formally married to another person. In addition polygamous unions are also included in the definition of consensual unions.


information and legal assistance. Moreover, Rwandan custom tends to favour men over women. Customary inheritance is based on the principle of patrilineal succession. Family land is preferably given to sons in order to keep the property within the family. Land is given to male descendants on the occasion of their marriage in order to establish a household. On the contrary, daughters are supposed to leave the family and live with their husband’s family.

Several international legal instruments guarantee the protection of women’s property rights, such as the Elimination of All forms of Discrimination Against Women. However, in order to guarantee a thorough implementation, the justification of land rights for women should not only be based on international obligations but also on moral rationalisations. Therefore, it is important to demonstrate that guaranteeing women’s land rights equals female empowerment. For example, strong land claims improves women’s economic position, since it enables them to control land independently and it makes a stable income possible. Despite the fact that the government of Rwanda has been praised in the past for their efforts to improve gender equality in society, one cannot ignore the limited scope of the current regulation on marriage, inheritance and land access for women. The Succession Law of 1999 and the Land Law of 2013 only provide inheritance rights for officially married women. Therefore the law does not reflect the reality, since many different forms of relationships exist in Rwandan society.

The field research has shown that couples living in de facto unions are not only denied formal rights, there are many negative consequences that affect the daily life of women involved in those unions. Women living in de facto unions have to face a high level of uncertainty since their partner can chase them away at any given time, leaving them without any legal claims on the land. Furthermore, they suffer from a negative reputation and a lack of respect since women living in de facto unions are seen as indaya. The land issue does not only affect women, but children also suffer in this situation, because they are denied a stable living environment. After a separation, in most cases, the children stay with their

594 Succession Law, 1999, art.70; Land Law, 2013, art.4.
595 Kinyarwanda for ‘prostitute, whore’.
mother; however she is not able to provide them with sufficient supplies for their education since she has a high risk of remaining landless after the separation.

The approach of the Rwandan government to tackle the issue of consensual unions is based on sensitization campaigns concerning the advantages of civil marriage. Moreover, mass weddings are organised to facilitate access to the institute of formal marriage. However, the governmental strategy can be criticised for two reasons. First of all, women have various reasons to be involved in de facto unions. Nevertheless, the research shows that the majority of the interviewed women did not have an actual choice due to poverty and the scandalous reputation of having a relationship without living together. In addition, the field research demonstrates that women involved in a de facto marriage were well aware of the benefits of formal marriage. Therefore, one could argue that there are different factors influencing couples’ decision to not enter into civil marriage.

First of all, some couples do not formalize their marriage because they are not able to comply with the legal requirements of civil marriage.\(^\text{596}\) For instance, the minimum age to enter into an official marriage (21 years old) was an obstacle for minors.\(^\text{597}\) Secondly, 52\% of the women answered that they could not afford the organisation of a formal wedding due to a lack of financial resources. The link between poverty and the reluctance to enter into civil marriage was confirmed by other research.\(^\text{598}\) However, despite the organisation of mass weddings by the government, couples were still not eager to register their union. Therefore poverty alone is not a substantial explanation for the persistent existence of de facto marriages.\(^\text{599}\)

The interviewed women often complained that they, or the government, could not force their partner to officially register their union. This matter reveals an ongoing gendered conflict in the household where both partners want to preserve their own interests. The outcome of the conflict depends on the bargaining power of both sexes.\(^\text{600}\) In most cases men refuse to enter into a formal marriage because they fear that granting their partner the status as an official wife will create an instability in the household that will disfavour them. This fear is exacerbated by myths depicting official marriage as an institute that turns women into unbearable wives terrorizing their husbands. A woman in a consensual union is more likely to obey her partner since there is the constant threat of being chased away without any rights to claim a part of the property. In addition, men are not keen to share their decision-making power in the household with their partner. To be involved in a formal marriage would force men to consult their partner and to even ask for permission concerning property. For example, consent of both spouses is obligatory when selling immovable property that belongs to the marital patrimony.\(^\text{601}\) As a woman from Kayonza district stated:

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\(^\text{597}\) Civil Code,1988, art.171.


\(^\text{601}\) Succession Law, 1999, art.21-22.
“In general no woman refuses to get officially married because then their opinion on household matters is taken into account.”

Furthermore, men think that women would immediately apply for a divorce and claim all ‘his’ property. Thus, in general men refuse to marry because they are not eager to share their land with their female partner, who did not contribute any land to the union. The origins of this conflict can be found in Rwandan culture, where parents donate land to their sons but not to their daughters on the occasion of their marriage. Women could only receive smaller plots of land as gifts, for example inkuri, a piece of land that a daughter gets when she shows her new-born for the first time to her parents. This imbalance influences the bargaining power of both parties when it comes to enter into a civil marriage or not.

In very rare cases women may also refuse to register their union because they think their partner does not have enough assets to support her. In this reasoning women appropriate the male narrative by valuating their partner on the basis of the quantity of property they own.

The field research revealed that the gendered conflict about land rights and marriage was characterised by a dominant bargaining position of men due to their strong economic background. Men’s strong economic position is supported by a culture that favours men over women when it comes to dividing family land. As a consequence, men were not eager to marry since official marriage creates rights for women, which threatens men’s dominant position in the household. Upgrading women’s bargaining position would involve economic empowerment by improving access to land. However, women are trapped in a vicious circle since the government’s strategy to guarantee land rights for women is to promote indirect land rights through official marriage. Suggestions to break this circle include legal reform, e.g. official recognition of religious and customary marriages. However legal provisions alone are not sufficient enough, since women’s problem of restricted access to land is influenced by many different factors. Therefore further research is required to develop an overarching approach that will challenge legal and cultural restraints in order to achieve equal land rights.

To conclude, the following citation summarizes the gendered conflict and its opposing interests apt: “Men tend to see marriage as just a simple formality. Whereas for women, marriage is all about having prospects for the future and creating rights.”

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603 CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2006, 1509-1510 j. 1525.
605 Interview 35, district Kayonza.
606 Interview 104, district Kamonyi.
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Uganda Marriage and Divorce Bill N°19, 2009.

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Websites


### Reports and guidelines


Dissertations


UNPUBLISHED AND MISCELLANEOUS


Eigendomsrecht kan in Centraal-Afrikaanse landen niet louter zakenrechtelijk worden gedefinieerd, maar bestaat uit een complex gegeven van een aantal factoren. Zo hebben eigendomsrechten een belangrijke socio-economische component waarbij het bezitten van eigendom de sleutel tot economische voorspoed en garantie op bestaansmiddelen en onafhankelijkheid biedt. Zeker in een samenleving zoals in Rwanda waarbij de overgrote meerderheid van de actieve bevolking (90%) afhankelijkheid is van overlevingslandbouw. Volgens Meinzen-Dick en Mwangi moeten eigendomsrechten dan ook in een sociale context gezien worden: ‘They are not about the link between a person and a thing (object of property), but rather about the relations between people with regard to a thing.’ Dat het eigendomsrecht een belangrijke plaats inneemt in de Afrikaanse maatschappij kan ook worden geïllustreerd aan de hand van het Afrikaans Charter voor mens en de volkeren. Art. 3 j. art. 14 stellen namelijk dat eenieder gelijk is voor de wet en dat bovendien gelijke aanspraak op eigendom moet gegarandeerd worden. Eerst en vooral is het belangrijk om op te merken dat na de onafhankelijkheid de Rwandese overheid beslist heeft om het eigendomsrecht over het gehele land toe te schrijven aan de staat. De wet van 1976 bepaalt namelijk dat particulieren enkel over een vruchtgebruik op hun land beschikken en de staat de volle eigendom bezit. Dit heeft tot gevolg dat het in de praktijk niet mogelijk is om land te verkopen of er een hypotheek op te vestigen. Na de burgeroorlog in 1990-1994 hadden vele vrouwen niet enkel hun echtgenoot en vele familieleden verloren, maar waren bovendien verjaagd van hun landeigendom of moesten op de vlucht slaan uit angst voor het geweld. Op het einde van de burgeroorlog steeg het aantal vrouwelijke gezinshoofden door de vele mannen die waren overleden, verbannen, geveld of beschuldigd werden van oorlogsmisdaden en hiervoor een straf moesten uitzitten. In deze context kwam het gebrek aan eigendomsrechten voor de vrouwelijke populatie eind jaren '90 op de politieke agenda. Sinds 1999 is het mogelijk voor vrouwen om, aan de hand van de rechten die gewaarborgd worden in de nieuwe erfeniswet en de aangepaste landwet, land te bezitten via het huwelijksvermogen en te erven via hun echtgenoot of vader. Deze wetten garanderen een gelijk recht om land te bezitten en te gebruiken, rechten in het huwelijkseigendom en erfenisrechten.

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R. RWANDA, No. 22 - 13/11/1999Law to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions 1999.
Alvorens dieper in te gaan op de wetgeving met betrekking tot de eigendoms- en erfensrechten, is het nuttig om eerst deze wetten algemeen te kaderen in het Rwandese rechtstelsel. Rwanda wordt gekenmerkt door een pluralistisch rechtstelsel, dit wil zeggen dat formele wetten en gewoonterecht naast elkaar fungeren en elkaar beconcurreren. 

Na de onafhankelijk in 1962 werd de hiërarchie in de grondwet verankerd, waardoor gewoonterecht enkel geldt indien het niet vervangen wordt door formeel recht en bovendien niet tegenstrijdig is met de grondwet. De huidige grondwet van 2003 voegt daar nog het verbod op strijzigheid met de mensenrechten aan toe: “Unwritten customary law remains applicable as long as it has not been replaced by written laws, is not inconsistent with the Constitution, laws and regulations, and does not violate human rights, prejudice public order or offend public decency and morals.” (Art. 201 Grondwet)

Desondanks deze grondwettelijke bepalingen ondervindt men in de praktijk moeilijkheden om de wisselwerking tussen gewoonterecht en formeel recht in goede banen te leiden. Onder meer het gebrek aan kennis van beide rechtssystemen en soms de onwilligheid van lokale gezaghebbers om het bestaan en de voorrang van het formele recht te erkennen, vormen obstakels om de uitwerking van het grondwettelijk principe te garanderen.

Na de burgeroorlog ontstond er grote chaos in het landeigendomsbeleid aangezien vele mensen al hun hebben en houden hadden moeten achterlaten tijdens de oorlog omdat ze moesten vluchten of verbannen waren. Het niet-neergeschreven gewoonterecht voorzag geen systeem van landregistratie en berustte op sociale relaties die volledig verstoord waren door de woelige oorlogsjaren. Bovendien verloor het gewoonterecht een groot deel aan legitimiteit aangezien er geen eenstemmigheid was onder de bevolking. Dit vacuüm zorgde ervoor dat de overheid een volledig tabula rasa beleid kon doorvoeren en de mogelijkheid had om nieuwe landwetten te ontwerpen.

Tot 1999 discrimineerden de formele wetten m.b.t. eigendom, die een restant waren van het koloniale tijdperk, impliciet de vrouwelijke burgers, zelfs wanneer ze een wettelijk huwelijk hadden aangegrepen. Zo werd land enkel op naam van de man geregistreerd en kon de echtgenoot het land verkopen zonder dat hij enige toestemming van zijn partner nodig had. Hieraan kwam een einde met de nieuwe Erfeniswet van 1999. Kinderen uit een niet-erkend huwelijk hadden voortaan, ongeacht hun geslacht, recht op de erfenis van hun vader. De moeder kon op deze manier via haar kinderen ook impliciet aanspraak maken op land, aangezien ze de kinderen in onderhoud moest voorzien. Helaas liet deze wet de kinderloze weduwe echter in de kou. De tweede grote verandering die er kwam met de Erfeniswet is het recht voor de vrouw op het huwelijksvermogen. Het gehele vermogen werd

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614 Art. 93, grondwet 1978 (thans art. 201 grondwet 2003) 
gezamenlijk bezit van de man en de vrouw. Als laatste hervorming kreeg de langstlevende
echtgenoot volgens de Erfeniswet het recht op de erfenis van de overleden echtgenoot. Begin 2000 ondernam de Rwandese overheid een poging om een nationaal landbeleid uit te werken waarbij de eigendomsrechten voor vrouwen gewaarborgd werden. Na het uitbreken van het algemene beleid werd er in 2005 een nieuwe landwet ontworpen waarbij een gelijk recht op land, ongeacht geslacht, zonder enige vorm van discriminatie werd gegarandeerd.

Het huidige gewoonterecht in Rwanda heeft een uniek karakter door de invloed van de kolonisering en burgeroorlog. Een belangrijk kenmerk van gewoonterecht is het evolutieaspect waarbij de regels voortvloeien uit de collectieve wilsovereenstemming met betrekking tot een bepaald maatschappelijk probleem of conflict dat dient opgelost te worden. Na het uitbreken van de burgeroorlog heerste er chaos in Rwanda waarbij er geen sprake meer was van een eensgezinde bevolking. Dit element ondermijnde het ‘natuurlijke’ gezag van het Rwandees gewoonterecht.


Maar het is niet enkel kommer en kwel wat betreft de eigendomsrechten van vrouwen in het gewoonterecht. Hoewel het eigendomsrecht volgens de patrilineaire lijn wordt doorgegeven, heersen er ook een aantal tradities waarbij er eigendom aan vrouwen werd gegeven. Zo kan een dochter, voornamelijk wanneer er enkel vrouwelijke erfgenamen zijn, van haar vader een stuk grond krijgen. Deze schenking wordt urwibutso genoemd. Daarnaast kan de dochter volgens de intekeshwa traditie ook een perceel ontvangen van haar vader als huwelijksgift. Of wanneer ze haar pasgeboren baby aan haar ouders toont, kunnen deze

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620 Artikel 4: Any person or association with legal personality has the right over the land and to freely exploit it as provided by the organic law. Any discrimination either based on sex or origin in matters relating to ownership or possession of rights over the land is prohibited. The wife and the husband have equal rights over land. REPUBLIEK RWANDA, No. 08/2005 - 14/07/2005 Organic Law determining the use and management of land in Rwanda, 2005.
laatste haar ook een stuk grond schenken (inkuri). Bovendien wanneer de vrouw wordt verlaten door haar echtgenoot en noodd gedwongen moet terugkeren naar haar ouders, is het mogelijk dat haar ouders haar van een klein stuk grond voorzien om te bewerken. (igiseke) Hoewel de recente wetten m.b.t. eigendomsrechten aanvankelijk zeer goed onthaald werden door de internationale gemeenschap, doken er verschillende problemen op met betrekking tot de implementatie van de wet en categorieën van vrouwen die buiten de wet vallen. Er werden drie obstakels vastgesteld die vrouwen verhinderden om ten volle van het eigendomsrecht te kunnen genieten. Ten eerste heerst er een negatieve ingesteldheid onder de bevolking om dochters met betrekking tot erfrecht op gelijke voet te behandelen als zonen. Bovendien is er een maatschappijvisie die vrouwen en dochters als minderwaardig beschouwen en aversie ten aanzien van (economisch) onafhankelijke vrouwen. Daarnaast is er het bestaan van informele samenlevingsrelaties, zoals het gewoonterechtelijke en polygaam huwelijk die buiten de toepassing van de wetten vallen. Deze laatste hindernis vormt het centrale uitgangspunt van het onderzoek naar eigendomsrechten voor vrouwen. Vrouwen kunnen namelijk voornamelijk rechten genieten onder het Rwandees formee stelsel, indien ze wettelijk getrouwd zijn. (art. 26 grondwet) Een wettig huwelijk kan worden afgesloten op het district bureau en dient voor het religieus huwelijk te gebeuren. Vrouwen die een niet-erkende huwelijksovereenkomst of informele relaties aangaan, blijven volledig onbeschermd en kunnen geen aanspraak maken op eigendom of erfenisrechten. Daarnaast genieten kinderen uit een 'illegaal' huwelijk eveneens geen enkele bescherming. Ze kunnen pas aanspraak maken op erfenis- en eigendomsrechten van hun vader, wanneer deze laatste zijn kinderen formeel erkend op het district bureau. Hoewel de Rwandese overheid dit probleem erkent en inspanningen levert om het wettelijk huwelijksstelsel te promoten, door onder meer en masse legale huwelijken te voltrekken, blijven er nog steeds belangrijke obstakels die er op duiden dat sensibilisering omtrent het wettelijk huwelijk niet voldoende is om de rechten van alle vrouwen te waarborgen, zoals in de grondwet wordt vooropgesteld. Het voorstel om deze de facto huwelijken om te zetten in wettelijke huwelijken negeert echter de sociaal-culturele hindernissen die vrouwen, verbonden door een informele relatie, tegenkomen wanneer ze hun rechten trachten op te eisen. Men kan een aantal problemen onderscheiden die ervoor zorgen dat een huwelijk er in aanleg ontbreekt. Inspanningen van de Rwandese overheid, zoals het kwijtschelden van registratiekosten voor behoeftige, kunnen niet verhinderen dat huwelijksrituelen zoals onder meer het geven van een bruidsschat en dure cadeaus onlosmakelijk verbonden zijn met het aangaan van een wettelijk huwelijk.

625 M. VELDMAN et al., Legal empowerment and customary law in Rwanda: report of a pilot project concerning community level dispute resolution and women's land rights, 2011, 21-22.
Daarnaast wordt een informeel huwelijk ook gezien als de gemakkelijkste oplossing voor zwangerschap van een ongehuwde vrouw en als overlevingsstrategie, waarbij het (informeel) samenleven in beide gevallen de zekerheid op voldoende bestaansmiddelen verhoogd.

De weigerachtige positie van Rwandese mannen ten aanzien van het wettelijk huwelijk vormt tevens een belangrijk obstakel ten nadele van het formele huwelijk. Een formele samenlevingsvorm brengt volgens deze mannen ongewenste rechten en plichten mee die gerespecteerd zouden moeten worden. Vandaar dat ze een informeel huwelijk prefereren, waarbij de gewoonterechtelijke hiërarchie tussen man en vrouw wordt gewaarborgd. 630 Een vaak voorkomende (schijn) oplossing is vrouwen en mannen meer bewust maken van de voordelen van een legaal huwelijk, maar zoals hierboven aangehaald zijn er belangrijke, zeer moeilijk te overwinnen structurele obstakels in de Rwandese samenleving. Vandaar dat het interessant zou zijn om via het gewoonterecht te onderzoeken welke tradities voldoende waarborgen bieden voor de vrouw, die daarna ook eventueel wettelijk kunnen geïmplementeerd worden.

Het legaliseren van zulke de facto huwelijken zou een mogelijke oplossing kunnen zijn opdat vrouwen van de rechten, gewaarborgd in de grondwet en de nieuwe erfenis- en landwetten, te kunnen genieten. 631 Daarnaast zou het in de wet verwerken van een aantal gewoonterechtelijke eigendomsrituelen meer afdwingbare bescherming, op voorwaarde dat deze ook gelden voor niet-officieel gehuwde vrouwen. Zo zou het bijvoorbeeld nuttig kunnen zijn om de praktijk van intekeshwa, inkuri en igiseke niet enkel op een discretionaire, gewoonterechtelijke wijze, maar ook op een formele manier uit te werken? Veel studies kaarten het probleem van de informele huwelijken aan, maar bieden geen echte oplossing aan. De laatste vernieuwing ten voordele van vrouwen werd ingevoerd in de Gender-based Violence Law van 2009. Artikel 39 stelt dat koppels die samenleven een wettelijk huwelijk zouden moeten sluiten, tot zover dus niets nieuws onder de zon. Maar in lid 2 stelt de wet dat indien een wettelijke gehuwde partner ook samenleeft met een andere man of vrouw, dan moet deze laatste aanspraak kunnen maken op de helft van het gemeenschappelijk vermogen van beide partners. De wet is echter zeer vaag hoe dit gemeenschappelijk vermogen precies moet ingevuld worden en het is bovendien niet evident om tijdens het huwelijk een procedure tegen de partner in te stellen. 632 Samengevat, de meeste mannen weigeren een wettelijk huwelijk aan te gaan omdat ze vrezen dat de macht in het huishouden zou worden aangetast. Deze vrees wordt versterkt door verschillende mythes die in de Rwandese maatschappij leven over het wettelijk

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630 A. POLAVARAPU, “Procuring meaningful land rights for the women of Rwanda”, Yale Human Rights & Development L.J. 2011, 142-144.
632 Artikel 39 : Legalizing unlawful marriages and commun assets distribution. Those people entertaining unlawful marriages shall be married in accordance with the monogamous principle. If a person concerned with the provision of previous paragraph of this Article was living with many husbands/wives, he shall first of all share the commonly owned belongings with those husbands/wives equally.

huwelijk. Indien men eigendomsrechten voor vrouwen wil verbeteren, dan moet men ijveren voor een economisch onafhankelijker positie van de vrouw om haar te bevrijden uit de negatieve vicieuze cirkel van een informele huwelijk.
APPENDIX I

Kigali, 30 octobre 2013

Objet/Subject: Invitation à la présentation des résultats de l’enquête sur l’accès des femmes à la terre
Invitation to the presentation of survey results related to women’s access to land
(Please refer to the English text hereunder)

Réf.: 190/13/CdM

Chère Madame, cher Monsieur,

RCN Justice & Démocratie et ses partenaires de la Coalition rwandaise pour l’accès des femmes à la terre (CRAFT) ont le plaisir de vous inviter à la présentation des résultats des enquêtes visant à évaluer le respect des droits fonciers des femmes,

le 08 novembre 2013, de 09h00 à 12h00
au Restaurant Mickey Mouse à Kimihurura.


Outre l’agenda de la rencontre, vous trouverez en annexe la draft concept note, en français, présentant en résumé les observations faites suite à la réalisation des enquêtes. Le document complet de présentation des résultats en version pré-éditio ne sera envoyé au cours de la semaine prochaine. Lors de la rencontre, un exposé en sera fait sous forme d’un “Power Point” en anglais.

Espérant pouvoir compter sur votre participation et sur la contribution de votre expertise dans le domaine, nous vous prions d’agréer, Madame, Monsieur l’expression de nos salutations distinguées.

Veuillez avoir l’obligeance de confirmer la représentation de votre institution à cette réunion à la date proposée, pour nous en faciliter la préparation.


APPENDIX II

QUESTIONNAIRE A: GENERAL INFORMATION

1. Village – cell- sector – district – province
2. Name
3. Age
4. Civil status
5. Does your partner have other wives? Is this relationship officially registered?
6. Do you have children?
   a. No
   b. Yes
      i. What is their age?
      ii. Are they registered?
         1. Yes -> on whose name? Why?
         2. No -> why not?
7. What is your educational level?
8. What is your occupation?
9. Do you know how to read/write?
10. How many brothers do you have at this moment?
11. How many sisters do you have at this moment?
12. Are you parents still alive?

QUESTIONNAIRE B: SPECIFIC INFORMATION ON INFORMAL MARRIAGE

1. How many months/years do you live together?
2. Why did you not register your relationship?
3. Does your partner want a civil marriage?
   a. Yes -> Why did you not register the marriage yet?
   b. No -> Why not?
4. Did your family receive inkwano?
   a. Yes -> What?
   b. No -> Why not?
5. Did you contribute something to the household (ibirongoranwa)?
   a. Yes -> What?
   b. No -> Why not?
6. Did you receive a donation on the occasion of your marriage from your parents?
   a. Yes -> What?
   b. No -> Why not?
7. Did you receive a parcel from your parents?
   a. Yes -> Size?
   b. No -> Why not?
8. If your partner would pass away, what would be your part of his inheritance?
   a. Nothing -> why?
   b. (Something) -> Why
9. (If the interviewee does not have children with her current partner.)
   Would your inheritance situation be different if you had children with your partner?
10. Did your sisters/brothers receive something from your parents as a donation?
   a. Brothers
      i. Yes -> Why? What?
      ii. No -> Why?
   b. Sisters
      i. Yes -> Why? What?
      ii. No -> Why?

11. If your parents would pass away, do you think you will inherit something?
    a. No -> Why?
    b. Yes -> Why? What?

12. If your parents would pass away, do you think your brothers/sisters will inherit something?
    a. Brothers
       i. Yes -> Why? What?
       ii. No -> Why?
    b. Sisters
       i. Yes -> Why? What?
       ii. No -> Why?

13. Did your parents donate anything to their children during their life?
    a. To the interviewee
       i. Yes -> Why? What?
       ii. No -> Why
    b. Brothers
       i. Yes -> Why? What?
       ii. No -> Why
    c. Sisters
       i. Yes -> Why? What?
       ii. No -> Why

14. Did you receive an inheritance from your parents?
    a. Yes -> Why? What?
    b. No -> Why?

15. Did your brothers/sisters receive an inheritance from your parents?
    a. Brothers
       i. Yes -> Why? What?
       ii. No -> Why
    b. Sisters
       i. Yes -> Why? What?
       ii. No -> Why

16. Do you rent the house you live in?
    a. No
    b. Yes -> who pays the rent?

17. Is the house you live in bought/constructed
    a. No
18. Was the house you live in a donation?
   a. From who?
   b. Registered on whose name(s)? + why?
      1. Interviewee
      2. Partner
      3. Partner and interviewee
      4. Other

**QUESTIONNAIRE C: OPINION QUESTIONS ON MARRIAGE**

1. What are the benefits of a civil marriage? Why?
2. What are the differences between a civil marriage and informal marriages?
3. What are the causes of informal marriages?
4. Do people who are involved in informal marriages experience problems after the breakup?
   a. No -> why?
   b. Yes -> What kind of problems?
5. Are there obstacles to enter into civil marriage?
6. What is the opinion of men on civil marriage?
7. Why may someone refuse to enter into a civil marriage?
8. What is the reputation of people living in informal marriages?
9. Do you know other persons in the village who are not officially married? How many?
APPENDIX III (*)
