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

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Ingediend door

Katrijn Vanhees

(studentnr. 00704830)

Promotor: professor Eva Brems

Commissaris: Yaiza Janssens

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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 rights¹ for women in mainly male-dominated societies is a long-term work. Even though law initiatives² 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. First of all, 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 daytime. 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 nighttime because women *“will know how to obtain what they want.”*³

Therefore, 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 remain unprotected, neither by law nor by culture or tradition.

Following argument can explain why improving land rights for women is such a complex process to realize. 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, the 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

¹ The term ‘land rights’ or ‘property rights’ will be used interchangeably.

² For an analysis of the legal framework guaranteeing access to land and in addition inheritance rights for African women see: RICHARDSON A.M., “Women’s inheritance rights in Africa: the need to integrate cultural understanding and legal reform”, *Human rights brief*, 11 (2), 2004, p. 20-22; HOME R. (ed.), *Local case studies in African land law*, Pretoria, Pretoria University Law Press, Pretoria, 2011, 216 p.

³ KEVANE M., GRAY L., “A woman's field is made at night: gendered land rights and norms in Burkina Faso.”, *Feminist Economics*, 5 (1), 1999, 1.

*that entrenches the power relations between and among individuals and social groups.*⁴

Up to now, research on women's land rights focusses on the problem in general in the Great Lakes region.⁵ To begin with, when analysing legal instruments in this area, the influence of the concept of legal pluralism must be taken in account.⁶ 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.*"⁷ In addition, much attention is given by NGO's and governmental institutions on the implementation of land laws and sensitization on the subject.⁸ 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.⁹

General concern has been raised by different authors about the lack of protection for women living in de facto unions in Rwanda.¹⁰ 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'¹¹ or even worse 'illegal' or 'unlawful' marriages.¹²

⁴ DALEY E., PARK C.M., "Governing land for women and men. Gender and voluntary guidelines on responsible governance of tenure of land and other natural resources", FAO, Land tenure working paper, 2011, 2.

⁵ MCAUSLAN P., "Personal reflections on drafting laws to improve women's access to land: is there a magic wand?", *Journal of Eastern African Studies* 2010, 1, 114-130 ; GRAY L.; KEVANE M., "Diminished access, diverted exclusion: women and land tenure in Sub-Saharan Africa", *African Studies Review* ,1999,42(2), 15-39; KAPUR A., "Catch-22: the role of development institutions in promoting gender equality in land law. Lessons learned in post-conflict pluralist Africa", *Buffalo Human Rights Law Review*,2011, 17, 75-116.

⁶ ANSOMS A., CLAESSENS S., "Land relations and local livelihoods in the Great Lakes region" in ANSOMS A., MARYSSE S. (eds.), *Natural resources and local livelihoods in the Great Lakes region in Africa : a political economy perspective*, New York, Palgrave Macmillan, 2011, 17.

⁷ MEINZEN-DICK R., MWANGI E., "Cutting the web of interests: pitfalls of formalizing property rights", *Land Use Policy*, 26(1),2007, 36.

⁸ RWANDA WOMEN NETWORK, "Experiences of women in asserting their land rights: the case of Bugesera district. Research report", 2011, 34p.; CARPANO F., "Strengthening women's access to land into IFAD projects: the Rwandan experience", *IFAD report*, 2011, 18p.; USAID, "Rwanda: assistance with land law and implementing laws and regulations" 2005, 13p.

⁹ BOND, J.E., "Culture, dissent and the state: the example of commonwealth African marriage law", *Yale Human Rights & Development L.J.*, 14, 2011, 52.

¹⁰ MUSAHARA H., HUGGINGS C., "Land reform, land scarcity and post-conflict reconstruction: a case study in Rwanda" in: HUGGINS C., CLOVER J., *From the ground up: land rights, conflict and peace in Sub-Saharan Africa*, Pretoria, Institute for Security Studies, 2005, 323-325; MUSAHARA H., "Improving tenure security for the rural poor", LEP working paper, FAO, 2006, 12; POTTIER J., "Land reform for peace? Rwanda's 2005 land law in context", *Journal of Agrarian change*,6(4), 2006, 519; RWANDA WOMEN NETWORK, "Experiences of women in asserting their land rights: the case of Bugesera district. Research report", 2011, 10; ISAKSSON A., "Unequal property rights: A study of land rights inequalities in Rwanda", *Working papers in Economics*, 507, 2011, 6; ANDRE C., PLATTEAU J.P., "Land relations under unbearable stress: Rwanda caught in the Malthusian trap", *Journal of Economic Behaviour and Organization*, 34(1), 1998, 41, DALEY E., DORE-WEEKS R., UMUHOZA C., "Ahead of the game: land tenure reform in Rwanda and the process of securing women's land rights", *Journal of Eastern African Studies*, 2010, 4(1), 141-142.

¹¹ MUKAMUYANGO F., "Effets juridiques de la rupture du concubinage au Rwanda", Independent University of Kigali, 2010, unpublished thesis, 9.

¹² *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.

These stigmatizing terms will only be used in this thesis when citing interviewees or legal provisions. Even though the authors all address the problem of the de facto unions, their analysis is limited to describing the fact that persons who are involved in informal relationships, 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.

The gender bargaining pattern is 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.¹³ 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 female orphans found themselves as the head of their household but without any legal claims to the land.¹⁴ Research estimated that women headed 34% of the households after the genocide of 1994.¹⁵ 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.¹⁶ 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 family¹⁷ but have in addition an equal share in the conjugal property, of course depending on which matrimonial regime the couple had chosen.¹⁸

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.¹⁹ This means that women living in de facto or consensual unions²⁰ cannot inherit from their partner, nor do they have any rights to the matrimonial property.

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 (further referred to as GBV Law,2008) art. 39.

¹³ ROSE L.L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending law legislation", *Texas Journal of women and the law*, 13, 2003, 210.

¹⁴ 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", *The Yale Journal of International Law*, 36(46), 2011, 476.

¹⁵ CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", *California Law Review*, 94, 2003, 1488; POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", *Yale Human Rights & Development Journal*, 14 (3), 2011, 112.

¹⁶ Republic of Rwanda, National parliament, minutes of proceedings, doc. N°561-572, 25/02/1999, 12.

¹⁷ Republic of Rwanda, law N° 22/1999 supplement to book one of the civil code and to institute part five regarding matrimonial regimes, liberalities an successions. Official gazette 22/1999 of 15/11/1999 (further referred to as 'Succession Law,1999'), art.43 j. art.50.

¹⁸ Succession Law,1999, art.2 j. art.66-71.

¹⁹ Succession Law, 1999, art.70

²⁰ *These terms will be used interchangeably.*

Knowing that in Rwanda many different forms of relations exist besides an official marriage²¹, 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.²² 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.²³ In case that the marital union has produced descendants, a woman can have indirect inheritance rights through her minor children.²⁴ Yet this only applies when the father has previously recognised the children by registering them, which is not always the case.²⁵ 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 gender²⁶, it stipulates that the only recognised form of marriage is civil monogamous marriage.²⁷ Among the methods issued by the Rwanda's Ministry of Gender and Family are the organization of mass weddings and the sensitization of rural populations about the advantages of official marriages.²⁸

These appear to be shortsighted 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.

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

²¹ Throughout the whole thesis, different terms will be used for 'legal marriage', such as official marriage, formal marriage, civil marriage and registered marriage.

²² Republic of Rwanda, National Institute of Statistics of Rwanda, *National Gender Statistics report*, 2013, 11.

²³ MOHAN S.S., "The battle after the war: gender discrimination in property rights and post-conflict property restitution", *The Yale Journal of International Law*, 36(46), 2011, 483.

²⁴ Succession Law, 1999, art.66-70.

²⁵ On national level, 82.4% of Rwandan children are registered at birth.

<<http://devinfo.statistics.gov.rw/di7web/libraries/asp/Home.aspx>>[accessed 17/08/2014]

²⁶ The Constitution stipulates in the preamble its commitment to "ensuring equal rights between Rwandans and between women and men without prejudice to the principles of gender equality and complementarity in national development".

Republic of Rwanda *Constitution* 2003, Official gazette special number 04/06/2003 (further referred to as 'Rwandan Constitution, 2003'), preamble; POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", *Yale Human Rights & Development Journal*, 14 (3), 2011, 112.

²⁷ Rwandan Constitution, 2003, art.26.

²⁸ Republic of Rwanda, East African Community, Gender and community development analysis in Rwanda, 2009, 24.

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. Lastly, the impact of the incomplete legal regulation on the local level and more specific on the household relations will be examined from a gender bargaining perspective. Not only the causes of unequal bargaining power will be analysed but also 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 which alternative systems occupy the place of formal law in society in these countries.

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 Rwanda. During the summer of 2012, I worked for the project IMPORE, situated in Huye.²⁹ After this experience, the country and its culture intrigued me. Nevertheless, most of all I got inspired by the stories of the women with whom I worked.

Choosing Rwanda as a geographical setting implies an adjusted and flexible view on judicial systems. One has to not only deal with a very 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. Westerns jurists might interpret a concept like legal pluralism as the co-existence of formal and customary law. However, 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 male 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. Nonetheless, this situation was perceived differently and brushed aside. Difficult

²⁹ Huye is a district that is situated in the South of Rwanda.

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.³⁰ 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.³¹ 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 Pélégie 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 2013. The VLIR Commission unfortunately denied this request. 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.³²

³⁰ WANYEKI L.M., *Women and land in Africa: culture, religion and realizing women's rights*, Londen, Zed Books, 2003, 384p.; ENGLERT B., DALEY E. (eds.), *Women's land rights and privatization in eastern Africa*, Woodbridge, E&D Vision, 2008, 179p.; Ansoms, A. en Claessens, K., "Land relations and local livelihoods in the Great Lakes region" in Ansoms, A. en Marysse, S. (eds.), *Natural resources and local livelihoods in the Great Lakes region in Africa : a political economy perspective*, New York, Palgrave Macmillan, 2011, 265p.

³¹ Professor Paul Rutayisire, director Centre for Conflict Management, National University Rwanda, (prutayisire@nur.ac.rw).

³² *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 until 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	
Profemme	http://profemmes-twesehamwe.org/
Haguruka	/
USAID Land Project	http://usaidlandtenure.net/projects/rwanda
RCN Justice et démocratie	http://www.rcn-ong.be
Centre for Gender, Culture and Development	http://www.kie.ac.rw/
Reseau des femmes oeuvrant pour le developpement rural	http://www.lereseaudesfemmes.org/
Action Aid Rwanda	http://www.actionaid.org/rwanda

PUBLIC INSTITUTIONS	
Gender Monitoring Office (GMO)	http://gmo.gov.rw
Ministry of Gender and family promotion	http://migeprof.gov.rw
Ministry of Justice	http://minijust.gov.rw
Rwandan Natural Resources Authority	http://rnra.rw
Parliament	http://rwandaparliament.gov.rw
Commission for politics and gender	/
Conseil National des femmes (CNF)	/

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.³³ In the end, thanks to RCN Justice et Démocratie, I also managed to participate in a meeting where all the stakeholders were represented and where they were able to answer my questions.³⁴ 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 recommendations on their provisional results. The researchers of RCN Justice et Démocratie merely focused on Rwandan women in general and were interested to hear about my research on consensual unions.

³³ 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.

³⁴ The invitation can be found in APPENDIX I.

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 of the laws that concern property rights, inheritance and marriage.³⁵ 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 will 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 and that the language was 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. Consequently, I had to rewrite the questions and test 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. (*APPENDIX 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* committees³⁶, 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 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.

³⁵ *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*

³⁶ *Local mediation committees.*

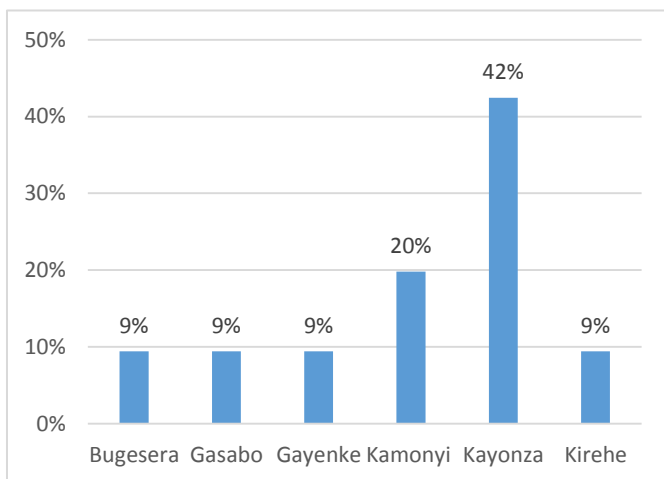
Therefore, with the paralegals as my local contact persons, I was able to start the field research. One of the first things I had to do once I arrived in a village was to ask permission for interviewing women. This consent was granted by the executive secretary of the sector council. Most of the time, before they would give me permission, I had to show them documents such as 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. In addition, the number of children was not relevant. 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, fourteen minors, who complied with the previously mentioned criteria, 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 seen as a separate administrative unit on the same level as the provinces. The different provinces are subdivided in districts. A map of the districts can be found below. A district consists of sectors. The sector level is responsible for granting permission for the interviews. Sectors on their turn are partitioned in cells. Lastly, the lowest administrative level is the village.

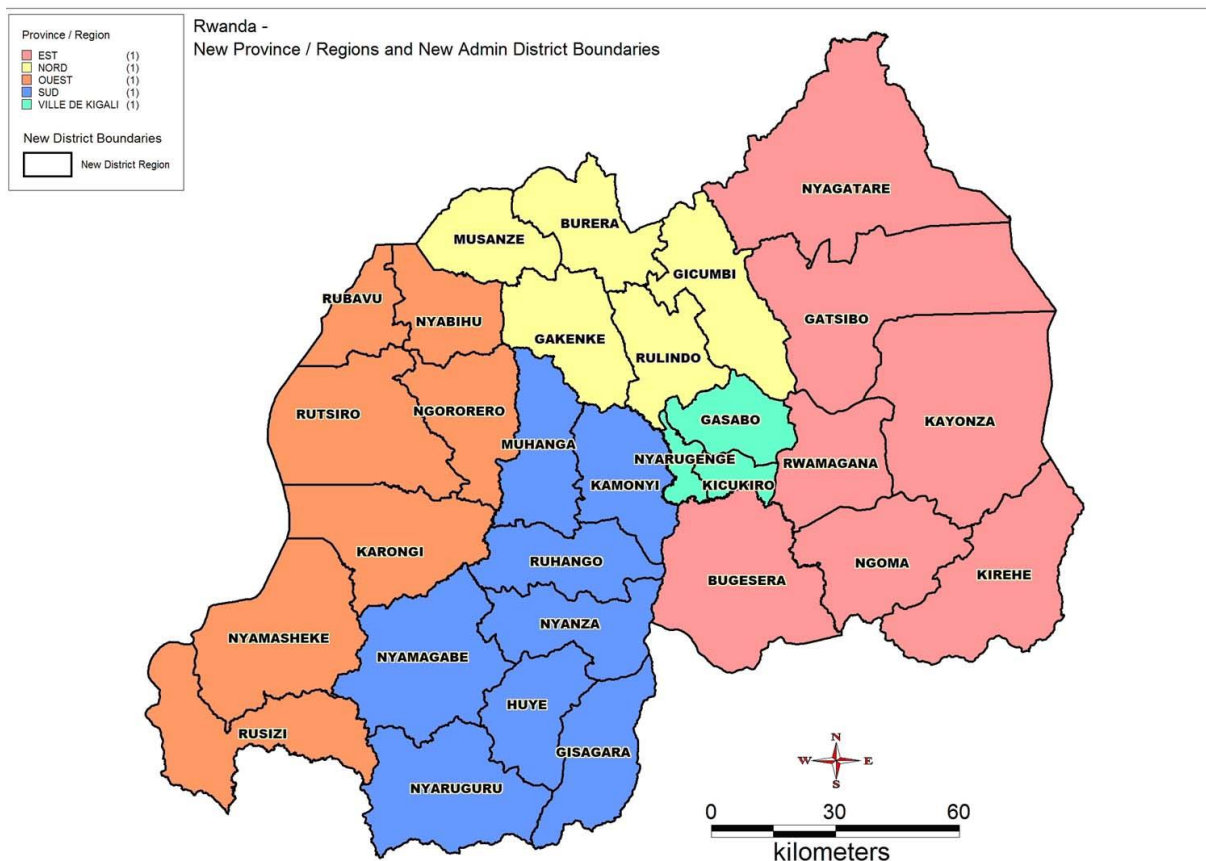
The amount of women I daily interviewed depended on the region where I was working. In the beginning, I planned on interviewing ca. 10 women per province and in the capital, which would result in a total of 50 interviews. My first intention was to interview the same amount of women per province, to make 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 easily find ten households within a radius of one km. So on a daily basis I interviewed around four to five women, but I made sure that I interviewed at least ten women per district.



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. Almost half of the interviews took place in this district. 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, the geographical settings and population density were favourable.



At the beginning of each 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 interview³⁷, we searched for a quiet and private place in or around the

³⁷ 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.

house. 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.³⁸ Nevertheless, 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 useful for qualitative research. Further research should definitely also focus on the male side of the story.

Besides the interviews that I held in Kigali, I interviewed 106 women and ten men on an individual basis. In addition, I conducted an interview with one *abunzi* committee in Bugesera and held two focus group interviews with men. The following table provides a general analysis of the interviewed women. The following table indicates average data about the group of interviewed women.

AGE	29 years
AGE START RELATIONSHIP	23 years
AVERAGE DURATION RELATIONSHIP	6 years
NUMBER OF CHILDREN	1.95
CURRENT NUMBER OF BROTHERS	2.02
CURRENT NUMBER OF SISTERS	2.07

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 was officially recognised. The other two percent lived together with a partner who was officially married to another woman.

The level of education of the interviewed group of women is rather low, namely the majority went to primary school but did not finish their education.

EDUCATION LEVEL	% OF THE INTERVIEWED WOMEN
NO EDUCATION	11%
PRIMARY SCHOOL (UNFINISHED)	43%
PRIMARY SCHOOL	33%
SECONDARY SCHOOL (UNFINISHED)	10%
SECONDARY SCHOOL	2%
UNIVERSITY	0%
TOTAL	100%

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 cultivating fields. Another eight percent earned their living as a saleswoman, working in small shops. Others worked as a tailor, a barmaid or a teacher and one minor still attended school.

³⁸ 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. Nevertheless, 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. Therefore, 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 have a suspicious attitude. 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.³⁹

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 interviews. During an 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, a direct translation allowed me to intervene during the interview when necessary. 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 in advance 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 their partner might be. In addition, the man could interfere in the interview by influencing the woman's opinion or even answering on her behalf.

³⁹ C.J. SCOTT, *Domination and the arts of resistance: hidden transcripts*, New Haven, Yale University Press, 1990, 1-5.

In a society where the male partner has the dominant position in the household, it was difficult to ask the male head of the household to talk to the women alone. Even though women are involved in the decision-making process at national level, e.g. 64 % of the parliamentarians are female, patriarchal ideas still prevail in rural areas.⁴⁰ In order to interview a woman, permission was required, 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. On the other hand, 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 is 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. Therefore, 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 of the field research.

⁴⁰ MUKARUSAGARA B. (et al.), "NGO Shadow report to the committee on the elimination of discrimination against women", 2009,22; DALEY E., DORE-WEEKS R., UMUHOZA C., "Ahead of the game: land tenure reform in Rwanda and the process of securing women's land rights", *Journal of Eastern African Studies*, 2010, 4(1), 140; POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011,130; NDUNGU I., *Does The Dominance Of Women In Rwanda's Parliament Signify Real Change?* Institute for Security Studies, 12-11-2013, <<http://www.issafrica.org/iss-today/does-the-dominance-of-women-in-rwandas-parliament-signify-real-change>>[accessed 17/08/2014].

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."*⁴¹ Despite the non-binding character of the declaration, the core body of the declaration has been implemented in different binding treaties over the years.⁴² The International Covenant on Civil and Political Rights (hereinafter ICCPR) of 1966 does not mention the right to property in a specific way; however, the treaty provides a non-discrimination clause⁴³ and installed a Human Rights Committee to hear individual claims.⁴⁴ Unfortunately, the Human Rights Committee has not yet dealt with a case concerning land rights and gender discrimination.⁴⁵ 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.⁴⁶

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.⁴⁷ The Convention specifically prescribes, *"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."*⁴⁸ 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.⁴⁹ Despite the fact that CEDAW does not have an individual complaint mechanism, its impact on

⁴¹ Universal Declaration of Human Rights, UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10/12/1948, art.17.

⁴² MOHAN S.S., "The battle after the war: Gender discrimination in property rights and post-conflict property restitution", 2011, 470.

⁴³ UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, 16/12/1966., art.26.

⁴⁴ *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.*

UN General Assembly, *Optional Protocol to the International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, 19/1/1966.

⁴⁵ MOHAN S.S., "The battle after the war: Gender discrimination in property rights and post-conflict property restitution", 2011,470.

⁴⁶ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, 16/12/1966, art.2.

⁴⁷ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women (further referred to as CEDAW, 1979)*, United Nations, Treaty Series, vol. 1249, 18/12/1979, art.2 (e).

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.⁵⁰

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.⁵¹ But most notably are the provisions on women's property rights during and after marriage.⁵² 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.⁵³

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 issues⁵⁴ and more specific for the improvement of women's land rights, the existence of an international recognised framework can serve not only as a guidance for drafting domestic legal provisions on land rights⁵⁵ but can be a strong signal to domestic decision-makers to put the improvement of equal property rights high on the political agenda.

⁵⁰ 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.

⁵¹ African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (further referred to as Maputo Protocol, 2003)*, 11/07/2003, art.21.

⁵² Maputo Protocol, 2003, art.6, 7, 21, 16, 19.

⁵³ Maputo Protocol, 2003, art 21.

⁵⁴ For a critical note on formal legal intervention in land tenure matters, see:

BALLARD M.J., "Post-conflict property restitution: flawed legal and theoretical foundations", *Berkeley Journal of International Law*, 28, 2010, 462-482; WHITEHEAD A., TSİKATA D., "Policy discourses on women's land right in Sub-Saharan Africa", *Journal of Agrarian change*, 3 (1-2), 2003, 67-112; POTTIER J., "Customary land tenure' in Sub-Saharan Africa today: meaning and context", in HUGGINS C., CLOVER J., *From the ground up: land rights, conflict and peace in Sub-Saharan Africa*, Pretoria, Institute for Security Studies, 2005, 66-75.

⁵⁵ 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. A person entitled to this right is allowed to harvest the land. Third, *abusus* is seen as the right to sell or rent the land.⁵⁶

The current land registration process has a 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, is 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.⁵⁷ In addition, especially widows face several difficulties claiming their deceased husband's land when the plot of land is registered solely on his name.⁵⁸

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.⁵⁹ 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.⁶⁰ To illustrate this matter: one hectare of land in rural areas costs on an average around 1.2 million FrW⁶¹ in 2008. An amount that is four to five times as high as the average annual Rwandan income.⁶² Since women do not have sufficient means to exclusively own land, there are 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.⁶³ This dependency is manifested the most in the situation of widows. After the dead of

⁵⁶ TUYISENGE C., "Les inégalités de genre en matière d'accès à la terre et leurs conséquences sur les populations rurales au Rwanda", in FAO, *Accès à la terre en milieu rural en Afrique : stratégies de lutte contre les inégalités de genre*, 2008, 155 ; UWAYEZU F., *La problématique de la propriété foncière au Rwanda: étude de régime juridique et contentieux*, Independent University of Kigali, 2007, unpublished dissertation, 16.

⁵⁷ KEVANE M., GRAY L., "Diminished access, diverted exclusion: women and land tenure in Sub-Saharan Africa", *African Studies Review*, 42 (02), 1999, 12.

⁵⁸ KEVANE M., GRAY L., "Diminished access, diverted exclusion: women and land tenure in Sub-Saharan Africa", 1999, 13.

⁵⁹ KEVANE M., GRAY L., "Diminished access, diverted exclusion: women and land tenure in Sub-Saharan Africa", 1999, 2.

⁶⁰ KEVANE M., GRAY L., "Diminished access, diverted exclusion: women and land tenure in Sub-Saharan Africa", 1999, 4.

⁶¹ *Approximately around 1302.80 Euro.*

⁶² VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women's land rights", RCN Justice&Démocratie, 2011, 11.

⁶³ TUYISENGE C., "Les inégalités de genre en matière d'accès à la terre et leurs conséquences sur les populations rurales au Rwanda", 2008, 156; LANKHORST M., VELDMAN M., "Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda."

their husband, widows have to rely on the goodwill of their in-laws, instead of being allowed to manage the inheritance herself. Moreover, some judicial systems make the children heirs, which cause the widow to depend on her children.⁶⁴ Kevane and Grey, who conducted a fascinating study in Burkina Faso on land rights for women, describe this phenomenon aptly by stating that female land rights are only reserved for 'mothers, wives, sisters and daughters'⁶⁵ instead of women as such.

As a consequence, the interpretation of women's land rights depends 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 each case into account. In other words, there are no well-defined land rights, they depend on negotiations and are granted on a case-by-case basis.⁶⁶ Despite many variations on the continent, 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 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.⁶⁷ Furthermore, a second wife can also threaten 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.*'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 landowners, since generally speaking women are economically not strong enough to purchase land.⁶⁹ As land ownership shifts from a family context to being incorporated in a profit-making oriented market, women are even more pushed in the corner when claiming land.⁷⁰ The majority of land is acquired through inheritance (46%) and donation (11%).⁷¹ The immense land pressure explains the existence of many land disputes.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 about land rights to dispute resolutions bodies on a local level. The main advantages are their

Working Paper Series, 5, 2011, 94; PALLAS S., "Women's land rights and women's empowerment: one and the same?" in VERSCHUUR C., *Du grain à moudre. Genre, développement rural et alimentation*, Geneva, IHEID, 2011, 270.

⁶⁴ 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", *Legal empowerment working paper*, 13, 2010, 3.

⁶⁵ KEVANE M., GRAY L., "A woman's field is made at night: gendered land rights and norms in Burkina Faso", *Feminist Economics*, 5(1), 1999, 2.

⁶⁶ LANKHORST M., VELDMAN M., "Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda", 2011, 94.

⁶⁷ KEVANE M., GRAY L., "Diminished access, diverted exclusion: women and land tenure in Sub-Saharan Africa", 1999, 4.

⁶⁸ Interview 52, district Gayenke.

⁶⁹ LANKHORST M., VELDMAN M., "Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda", 2011, 94.

⁷⁰ CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", *California Law Review*, 94, 2006, 1511.

⁷¹ Republic of Rwanda, National Institute of Statistics of Rwanda, *National Agriculture Study*, 2008, 37.

⁷² *The majority of disputes in Rwanda deal with land conflicts.*

POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 133.

accessibility and the informal way of solving disputes. Nowadays land claims are dealt with by a judicial system that is characterized by a bureaucratic complexity that might disproportionately 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 its 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.⁷³ 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.*"⁷⁴ 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.⁷⁵ For example, several customary regulations tend to favour boys over girls with regard to inheritance rights.⁷⁶ 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.⁷⁷ Legal pluralism also incites forum shopping, where people choose to rely on those formal or traditional provisions that are the most advantageous for them.⁷⁸ This can have a negative outcome for women, who are less powerful to bargain, which will be further explained later.⁷⁹

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.⁸⁰ 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 to land.⁸¹ However, when analysing the content of customary norms, one must not throw out

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.

⁷⁶ ROSE L.L., "Orphan's land rights in post-war Rwanda: the problem of guardianship", *Development and Change*, 36(5), 2005, 921; CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", 2006, 1505-1506.

⁷⁷ CHIRAYATH L., SAGE C., WOOLCOCK M., "Customary law and policy reform: engaging with plurality of justice systems", World Development Report, 2006, 1.

⁷⁸ ROSE L.L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending law legislation", *Texas Journal of women and the law*, 13 (2), 2003, 218.

⁷⁹ MEINZEN-DICK R.S., PRADHAN R., "Legal pluralism and dynamic property rights", *CAPRI Working Paper*, 2002, 15.

⁸⁰ For the most well-known supporter of this view, see: OKIN S. M., "Is multiculturalism bad for women?" in COHEN (et al.) (eds.), *Is multiculturalism bad for women?* Princeton, Princeton University Press, 1999, 7-26.

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.

the baby with the bathwater. Despite the fact that customary norms in general tend to favour man over women concerning land allocation⁸², 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.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.”⁸⁴

Rwandan culture has indeed a history of disadvantaging women, but cultural norms are dynamic and 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 men and they 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.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, an international framework 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.

⁸² CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2006, 1505-1506.

⁸³ 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, 4; POTTIER J., “Customary land tenure in Sub-Saharan Africa today: meaning and context” HUGGINS C., CLOVER J., *From the ground up: land rights, conflict and peace in Sub-Saharan Africa*, Pretoria, Institute for Security Studies, 2005, 66-67.

⁸⁴ POTTIER J., “Customary land tenure in Sub-Saharan Africa today: meaning and context”, 2005, 70, citing WHITEHEAD A., TSIKATA D., “Policy discourses on women's land right in Sub-Saharan Africa”, *Journal of Agrarian change*, 3 (1-2), 2003, 95.

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.⁸⁶ Therefore, empowering women through guaranteeing land rights is a popular approach in developing countries.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."*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.⁸⁹

First of all, equal land rights have a positive effect on women's economic empowerment.⁹⁰ Secure land rights enable women to manage and control land independently and it provides them with a stable income. Moreover, access to land can create economic benefits, not only for women but society in a whole.⁹¹ Since 95% of the Rwandan livelihoods depend on agriculture, access to land is a key development goal.⁹² According to FAO, women are responsible for 60%-80% of the food production in developing countries.⁹³ In addition, 92.6% of Rwandan women work in the agricultural sector, thus improving their land rights will affect the completely household economy.⁹⁴ Studies have shown that equal property rights are a key element for improving agricultural production and optimise yield rates on the fields.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.⁹⁶ Several other studies worldwide confirm this causal link between securing equal land rights and improved agricultural outcomes on the household

⁸⁶ 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, 1.

⁸⁷ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 113.

⁸⁸ PALLAS S., "Women's land rights and women's empowerment: one and the same?", 2011, 274.

⁸⁹ PALLAS S., "Women's land rights and women's empowerment: one and the same?", 2011, 270; GROWN C., GUPTA G.R., KES A., "Taking action: achieving gender equality and empowering women", UN Millennium Project Taskforce on Education and Gender Equality report, 2005, 30-33.

⁹⁰ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 116.

⁹¹ MOHAN S.S., "The battle after the war: Gender discrimination in property rights and post-conflict property restitution", 2011, 464-465.

⁹² *Or to put in a different way, only 20% of the people that have a non-agricultural job are female.*

CROOK J., "Promoting Peace and economic security in Rwanda through fair and equitable land rights", 2003, 1529.

⁹³ USAID, "Land tenure, property rights and gender. Challenges and approaches for strengthening women's land tenure and property rights", 2011, 1.

⁹⁴ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 116.

⁹⁵ MOHAN S.S., "The battle after the war: Gender discrimination in property rights and post-conflict property restitution", 2011, 465.

⁹⁶ MASON, "The development impact of gender equality in land rights", in ALSTON P., ROBINSON M., *Human Rights and Development: towards mutual reinforcement*, Oxford, Oxford University Press, 2012, 114-132.

level.⁹⁷ In addition, evidence shows that women use their earnings more carefully than men do. 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.⁹⁸

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.⁹⁹ 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 insecure 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.¹⁰⁰ Moreover, they have a stronger and independent position in relationships. Women, who have to depend on their association with men to survive economically, are more vulnerable to end up and stay in an abusive situation.¹⁰¹ A specialist in gender discrimination in property rights, Sharanya S. MOHAN summarizes the issue aptly 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.'¹⁰² 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."*¹⁰³

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

⁹⁷ ALLENDORF K., "Do women's land rights promote empowerment and child health in Nepal?", *World Development*, 35 (11), 2006, 1975-1988; DEERE (et al.), "Female land rights and rural household incomes in Brazil, Paraguay and Peru", *Economics department working paper series*, 75, 2004, 1-47; ALI D.A., DEININGER K., GOLDSTEIN M., "Environmental and gender impacts of land tenure regularization in Africa. Policy evidence from Rwanda", *Policy Research Working Paper*, 5765, 2011, 6.

⁹⁸ 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, 5.

⁹⁹ USAID, "Land tenure, property rights and gender. Challenges and approaches for strengthening women's land tenure and property rights", 2011, 2.

¹⁰⁰ USAID, "Land tenure, property rights and gender. Challenges and approaches for strengthening women's land tenure and property rights", 2011, 2.

¹⁰¹ MOHAN S.S., "The battle after the war: Gender discrimination in property rights and post-conflict property restitution", 2011, 465.

¹⁰² MOHAN S.S., "The battle after the war: Gender discrimination in property rights and post-conflict property restitution", 2011, 465.

¹⁰³ Interview 66, district Kirehe.

order to strengthen their economic situation.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.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, which allows them 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.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.¹⁰⁷ Nevertheless, legislative initiative must be considered as a crucial step to guarantee gender equality.

¹⁰⁴ KURSHAN L., "Rethinking property rights as human rights: acquiring equal property rights for women using international human rights treaties", *American University Journal of Gender, Social Policy and the Law*, 8(2) 2000, 357.

¹⁰⁵ 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", RISD, 2012, 23; 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, 5.

¹⁰⁶ USAID, "Land tenure, property rights and gender. Challenges and approaches for strengthening women's land tenure and property rights", 2011, 3.

¹⁰⁷ DALEY E., PARK C.M., "Governing land for women and men. Gender and voluntary guidelines on responsible governance of tenure of land and other natural resources", 2011, 19.

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 and 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.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 with a gender perspective.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.¹¹⁰ Therefore, it is no surprise that recent challenges concerning land are scarcity of land, increasing population growth, and an enormous amount of land disputes due to multiple land claims caused by successive waves of refugees.¹¹¹ Intricate land problems are often the main issue of conflict and a leitmotif throughout Rwandan history.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.¹¹³

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

¹⁰⁹ Republic of Rwanda, organic law N° 08/2005 determining the use and management of land in Rwanda. Official gazette 08/2005 of 14/07/2005; Republic of Rwanda, organic law N° 03/2013 repealing organic law N° 08/2005 determining the use and management of land in Rwanda. Official gazette 03/2013 of 16/06/2013 (further referred to as Land Law, 2005; Land Law, 2013)

¹¹⁰ Statistics from 2011 stated that there are 384 inhabitants per km² in total and 526 inhabitants per km² for agricultural land.

ALI D.A., DEININGER K., GOLDSTEIN M., "Environmental and gender impacts of land tenure regularization in Africa. Policy evidence from Rwanda", 2011, 6.

¹¹¹ 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", RISD, 2012, 4.

¹¹² RURANGWA E., "Perspective land reform in Rwanda", Paper presented at FIG international congress", 2002, 3.

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*.¹¹⁴ 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 (*ubureetwa*).¹¹⁵ In the north and north-west of Rwanda, land tenure was based on the principle of *ubukonde*.¹¹⁶ 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.¹¹⁷ Another difference with the practice of *isambu* is the inalienable character of the usufructuary rights granted by the *umukonde*.¹¹⁸ 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.¹¹⁹

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.¹²⁰ Due to a fast growing population, land became exceedingly scarce. Since fathers, who had several sons, kept dividing their land to 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.¹²¹ 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.¹²² 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.¹²³

¹¹⁴ *The practice can be translated as 'divine-right ownership'.*

CROOK J., Promoting peace and economic security in Rwanda through fair and equitable land rights", 2003, 1492; UWAYEZU F., *La problématique de la propriété foncière au Rwanda: étude de régime juridique et contentieux*, Independent University of Kigali, 2007, unpublished dissertation, 8-9.

¹¹⁵ POTTIER J., "Land reform for peace? Rwanda's 2005 land law in context", *Journal of Agrarian change*, 6(4), 2006, 512-513.

¹¹⁶ UWAYEZU F., *La problématique de la propriété foncière au Rwanda: étude de régime juridique et contentieux*, Independent University of Kigali, 2007, unpublished dissertation, 6-7.

¹¹⁷ MAMDANI M., *When victims become killers: colonialism, nativism, and the genocide in Rwanda*, Princeton, Princeton University Press, 2001, 65; ROSE L.L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation", 2003, 207; CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", 2003, 1492.

¹¹⁸ CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", 2003, 1492.

¹¹⁹ CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", 2003, 1493

¹²⁰ RURANGWA E., "Perspective land reform in Rwanda", 2002, 5.

¹²¹ *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.*

POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 106, 111.

¹²² POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 106, 112.

¹²³ 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 both formal and customary law silenced them. 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 their 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.¹²⁴

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.¹²⁵ 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.¹²⁶ This plot of land is called *umunani* and will be given to grandsons when there are no sons in the family.¹²⁷

According to customary law, married women are 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.¹²⁸ After the dissolution of a marriage, caused by death of one of the spouses or in rare cases by divorce, women face several difficulties claiming inheritance rights in the traditional way. 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.¹²⁹ The widow would have to return to her family and ask for a plot of land. However, this request is difficult to fulfil since family land is reserved for male members of the family.¹³⁰ In most cases, widows or repudiated women, have to live with their parents and cultivate the family land.¹³¹

¹²⁴ ROSE L.L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending law legislation", 2003, 210; ALI D.A., DEININGER K., GOLDSTEIN M., "Environmental and gender impacts of land tenure regularization in Africa. Policy evidence from Rwanda", 2011, 8.

¹²⁵ LANKHORST M., VELDMAN M., "Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda", 2011, 96.

¹²⁶ 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, 6.

¹²⁷ LANKHORST M., VELDMAN M., "Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda", 2011, 96.

¹²⁸ VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women's land rights", RCN Justice&Démocratie, 2011, 20.

¹²⁹ ALI D.A., DEININGER K., GOLDSTEIN M., "Environmental and gender impacts of land tenure regularization in Africa. Policy evidence from Rwanda", 2011, 8.

¹³⁰ VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women's land rights", 2011, 21; MUJIJIMA J., *Le phénomène de concubinage au Rwanda. Cas du secteur Masoro 2000-2010*, Independent University of Kigali, 2010, unpublished dissertation, 48-49; MUKADISI M., *Les conséquences du concubinage sur la femme en milieu urbain. Cas du secteur Muhima (2003-2008)*, Independent University of Kigali, 2009, unpublished thesis, 55-56.

¹³¹ VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women's land rights", 2011, 22.

Moreover, this right of usufruct only lasts until a son would reach the age of majority. In that event, he would inherit the property of his father.¹³² Moreover, if she remains childless or without sons, her land rights depends strongly on the goodwill of her husband's family.¹³³ Sometimes they would only even let the widow stay on the land, on condition that she marries one of her deceased husband's brothers.¹³⁴ 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.¹³⁵

Women can also receive land from their birth family but this is less common in Rwanda tradition. 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*.¹³⁶ They can also give her land when she shows her newborn to her parents for the first time, 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.¹³⁷ In the worst-case scenario when a widow or a returning daughter has no family left, she could be assigned a piece of land called *ingalingali* by the clan chief.¹³⁸ In the event of a funeral, if a woman would be the one responsible for burying the deceased, she would get a piece of land, which is called *inkuracyobo*.¹³⁹ However, one must keep in mind that these female land rights are limited to a use right.¹⁴⁰ Besides land donations, women can also have access to land through inheritance. Normally, sons are entitled to inherit the remaining land

¹³² 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", 2011, 6.

¹³³ CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", 2003, 1506.

¹³⁴ CARPANO F., "Strengthening women's access to land into IFAD projects: the Rwandan experience", 2011, 5; CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", 2003, 1506; VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot concerning community level dispute resolution and women's land rights", 2011, 21; MUKAMUYANGO F., *Effets juridiques de la rupture du concubinage au Rwanda*, Independent University of Kigali, 2010, unpublished dissertation, 17; MUHAWENIMANA V., *Les causes et conséquences de concubinage sur la population du secteur de Muhoza (1995-2005)*, Independent University of Kigali, 2006, unpublished dissertation, 21.

¹³⁵ Interview 20, district Gasabo.

¹³⁶ *When translated literally intekeshwa 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.*

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.

¹³⁷ 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

¹³⁸ Republic of Rwanda, National Land policy, 2004, 20

¹³⁹ *This practice is also known as 'inkuramwabo' or 'inkurashyamba'.*

VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women's land rights", 2011, 22; NTAMPAKA C., "Ce que la femme et la fille rwandaise doivent savoir de leurs droits", HAGURUKA, Volume I la femme et la fille ans leur famille d'origine, 1993, 27-29.

¹⁴⁰ VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women's land rights", 2011, 21.

that a father did not 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 they operate 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 women's parents since male members are strongly favoured over girls when it comes to dividing heritage or donating land. The family wealth is decisive for 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 this land scarcity in Rwanda, male members often compete with their sisters to have access to family land. Since customary norms are not static, men are able to interpret 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 are still minors, the widow will hold the matrimonial land and house in trust for her sons until they reach 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

¹⁴¹ NTAMPAKA C., "Ce que la femme et la fille rwandaise doivent savoir de leurs droits", 1993, 27-29.

¹⁴² ALI D.A., DEININGER K., GOLDSTEIN M., "Environmental and gender impacts of land tenure regularization in Africa. Policy evidence from Rwanda", 2011, 4.

¹⁴³ LANKHORST M., VELDMAN M., "Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda", 2011, 97.

¹⁴⁴ WYSS K., "A thousand hills for 9 million people. Land reform in Rwanda: Restoration of feudal order or genuine transformation?" Swisspeace, 2006, 6.

¹⁴⁵ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 110.

¹⁴⁶ ALI D.A., DEININGER K., GOLDSTEIN M., "Environmental and gender impacts of land tenure regularization in Africa. Policy evidence from Rwanda", 2011, 4.

¹⁴⁷ LANKHORST M., VELDMAN M., "Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda", 2011, 97.

¹⁴⁸ Interview Madina Ndagiza, October 2013, Kigali. Madina Ndagiza 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 were 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 their land back. 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.¹⁴⁹ As a consequence of this female majority, women had to fulfil roles that were normally reserved for male members of the society.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 made less rigid by stating that a woman could open a bank account without their husband's permission.¹⁵¹

For all previously mentioned reasons, 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 female 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.¹⁵² However, all parliamentarians agreed that a revision of the Civil Code was necessary in order to restore peace and rebuild the country.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 the 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.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 consulting many different instances, such as representatives of the sectors, women's organisations, religious bodies and wise, elder villagers."*¹⁵⁵

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.

¹⁵⁰ 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", RISD, 2012, 6.

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.

¹⁵² 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.

¹⁵³ Republic of Rwanda, National Parliament, minutes of proceedings, doc. N°561-572, 25/02/1999, 12.

¹⁵⁴ Republic of Rwanda, National Parliament, minutes of proceedings, doc. N°561-572, 25/02/1999, 5.

¹⁵⁵ Republic of Rwanda, National Parliament, minutes of proceedings, doc. N°561-572, 25/02/1999, 23.

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.¹⁵⁶

Three major improvements for female land rights can be distinguished. However, each of these improvements will also be criticised on their shortcomings. To begin with, the Succession Law of 1999, which is a supplement book to the Civil Code, stipulates an equal inheritance right for all children, without any discrimination based on sex.¹⁵⁷ 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 cuius are transferred to the heir. The succession goes through probate at the death of the de cuius, (...).”*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 drawn 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 allowed 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,

¹⁵⁶ Republic of Rwanda, National Parliament, minutes of proceedings, doc. N°561-572, 25/02/1999,26.

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.*

Succession Law, 1999, art 50.

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.”* Succession Law, 1999, art.31.

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 cuius; 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 cuius.”*

Succession Law, 1999, art.81.

determined by the Council of Succession to those who received less.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.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.¹⁶⁵ Since the majority of the Rwandan population is female and statistics have shown that women live longer than men do the functioning of the Council of Succession limits equal access to land for women.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.¹⁶⁷ The range of these rights depends of course on the matrimonial regime the couple had chosen, which will be discussed below.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, its 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 and 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.¹⁶⁹

And the last improvement of the law of 1999 makes women more or less upgraded to co-decidors concerning the conjugal property. Three categories of matrimonial regimes can be distinguished. To begin with, there is the most frequently chosen regime¹⁷⁰, 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.*"¹⁷¹ When no preference of regime is made, the regime of community of property will automatically apply.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

¹⁶³ *Succession Law*, 1999, art. 77.

¹⁶⁴ *Succession Law*, 1999, art. 70,5-6.

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.

¹⁶⁶ CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", 2003, 1525.

¹⁶⁷ *Succession Law*, 1999, art.2 j. art.66-71.

¹⁶⁸ *Succession Law*, 1999, art 2.

¹⁶⁹ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 121.

¹⁷⁰ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 120; DALEY E., DORE-WEEKS R., UMUHOZA C., "Ahead of the game: land tenure reform in Rwanda and the process of securing women's land rights", 2010, 134.

¹⁷¹ *Succession Law*, 1999, art. 4.

¹⁷² *Succession Law*, 1999, art. 2,§2.

to the lineage of the husband. In this context, it is difficult for women to claim their share since they are seen as third parties by their husband's family.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.¹⁷⁴ Thirdly, the regime of separation of property requires couples only to contribute to the household "*in proportion of their respective abilities*".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 on matrimonial regimes declare, despite the choice of matrimonial regime, that mutual consent is necessary for the "*donation of immovable property and of any other property in the community*".¹⁷⁶ By only referring to donations, many other transactions can still be decided on an individual basis, made by only one spouse.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.¹⁷⁸ Article 206 of the Civil Code states that the husband is the one who controls the matrimonial community.¹⁷⁹ Moreover, women are considered in Rwandan society as "instruments of production, reproduction and always at the service of men".¹⁸⁰ In addition, traditionally men are the head of the household who have the sole decision-making power in the family.¹⁸¹ Because of this patriarchal structure of Rwandan society¹⁸², women will rarely be appointed as the one in charge of the management of the property.

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 provides that 'spouses shall share common assets and liabilities'.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.¹⁸⁴ Therefore, one could argue that the Succession Law indeed guarantees land rights for women, but leaves the practical details to land regulations. Since the Land Law was only

¹⁷³ NTAMPAKA C., "Family law in Rwanda" in BAINHAM A. (ed.), *The international survey of family law 1995*, s.l., The International Society of Family Law, 1997, 430.

¹⁷⁴ *Succession Law*, 1999, art. 7.

¹⁷⁵ *Succession Law*, 1999, art. 9.

¹⁷⁶ *Succession Law*, 1999, art. 21.

¹⁷⁷ *In addition the Land Law of 2013 remains silent on land transactions and mutual consent of spouses, which will be discussed below.*

¹⁷⁸ *Succession Law*, 1999, art. 17.

¹⁷⁹ 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)

¹⁸⁰ UMUHIRE J.M.R., *Problématique de la participation de la femme à la gestion du patrimoine familiale: cas des femmes bénéficiaires de l'association HAGURUKA (2000-2005)*, Independent University of Kigali, 2005, unpublished dissertation, 20.

¹⁸¹ UMUHIRE J.M.R., *Problématique de la participation de la femme à la gestion du patrimoine familiale: cas des femmes bénéficiaires de l'association HAGURUKA (2000-2005)*, 2005, 24.

¹⁸² MUKARUSAGARA B. (et al.), "NGO Shadow report to the committee on the elimination of discrimination against women", 2009,22; DALEY E., DORE-WEEKS R., UMUHOZA C., "Ahead of the game: land tenure reform in Rwanda and the process of securing women's land rights", 2010, 140; POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 130.

¹⁸³ *Succession Law*, 1999, art. 24.

¹⁸⁴ *Succession Law*, 1999, art. 90.

adopted in 2005, the outcome of inheritance and donation issues concerning land remained uncertain for a long time.

Granting women official property rights was a strong and 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.¹⁸⁵ 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.¹⁸⁶ The issue can be linked to the contested idea of inheriting in both consanguineal family and their husband's family.¹⁸⁷

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.¹⁸⁸ Different authors have denounced the incompleteness of the Succession Law.¹⁸⁹ 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.¹⁹⁰

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 is not complete since it does not extent 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."*¹⁹¹

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 is about to happen to this woman? And what about the children? Why doesn't

¹⁸⁵ 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", RISD,2012, 12.

¹⁸⁶ CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", 2003, 1530.

¹⁸⁷ ROSE L.L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation",2003, 239, 245.

¹⁸⁸ Succession Law,1999, art.70.

¹⁸⁹ CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights", 2003, 1525; ROSE L.L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation",2003, 210; VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women's land rights", 2011, 23.

¹⁹⁰ CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights",2003, 1525; ROSE L.L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation",2003, 210.

¹⁹¹ *Translated from Kinyarwanda to English.* Republic of Rwanda, National Parliament, minutes of proceedings, doc. N°561-572, 25/02/1999, 6.

*the law provide a solution? What are their rights? The law must make sure that these women and children have rights to claim.*¹⁹²

The Minister of Social Affaires replied to the 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 would not be possible to include this matter in the law proposal. Children, born out of an illegal marriage, can perhaps claim their rights from a new husband.”*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.

¹⁹² *Translated from Kinyarwanda to English.* Republic of Rwanda, National Parliament, minutes of proceedings, doc. N°561-572, 25/02/1999, 18.

¹⁹³ Republic of Rwanda, National Parliament, minutes of proceedings, doc. N°561-572, 25/02/1999,19.

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

Before the land policy in 2004, both formal and customary law regulated land ownership. However, in reality 90% of the land relations were based on custom.¹⁹⁴ 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, women did not have any power to control the matrimonial land. This meant that women's consent was not necessary if their husband wanted to sell their land.¹⁹⁵

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 1994.¹⁹⁶ As a consequence, inheritance of land is excluded from the protection of the Succession law of 1999.¹⁹⁷ 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 1999.¹⁹⁸

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.¹⁹⁹ Finally, in 2004 the policy-makers involved in the Land Tenure Regularisation Process (LTRP) introduced the Rwandan National Land Policy²⁰⁰ (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.²⁰¹ 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.²⁰² The women unfriendly outcome of this last principle will be more discussed in detail later.

Three main goals were distinguished in the Land Tenure Regularisation Process (LTRP), namely improving food security, equalizing social relations and restoring peace.²⁰³

¹⁹⁴ 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, 8.

¹⁹⁵ 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", 2011, 7.

¹⁹⁶ Republic of Rwanda *Law In The Purchase Or Sale Of Customary Rights Over Land Or Rights Of Occupation*. Official gazette N°09/1976 of 04/03/1976.

¹⁹⁷ Succession Law, 1999, art.90;

ROSE L.L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation", 2003, 243.

¹⁹⁸ Republic of Rwanda, National Parliament, minutes of proceedings, doc. N°561-572, 25/02/1999,30.

¹⁹⁹ WYSS K., "A thousand hills for 9 million people. Land reform in Rwanda: Restoration of feudal order or genuine transformation?", 2006, 6; POTTIER J., "Land reform for peace? Rwanda's 2005 land law in context", 2006, 509.

²⁰⁰ Republic of Rwanda, Ministry of Lands, Environment, Forests, Water and Mines, *National Land Policy*, 2004.

²⁰¹ ALI D.A., DEININGER K., GOLDSTEIN M., "Environmental and gender impacts of land tenure regularization in Africa. Policy evidence from Rwanda", 2011, 9.

²⁰² ALI D.A., DEININGER K., GOLDSTEIN M., "Environmental and gender impacts of land tenure regularization in Africa. Policy evidence from Rwanda", 2011, 8.

²⁰³ POTTIER J., "Land reform for peace? Rwanda's 2005 land law in context", 2006, 509.

The importance of the latter was confirmed by a nationwide sounding, held by the National Unity and Reconciliation Council in 2001. According to these consultations, land conflicts undermine maintainable peace.²⁰⁴

For the purpose of this thesis, only the realisation of gender equality in the land tenure system will be discussed in detail.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 *“all Rwandans enjoy the same rights of access to land without any discrimination whatsoever.”*²⁰⁶ The Land Policy illustrates this principle by explicitly stating that women, regardless if they are married or not, should be guaranteed equal access to the land tenure system. Moreover, discrimination based on sex should be banned from the land inheritance process.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 refer to gender issues in the household, by stipulating in article 4 the following:

*“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.”*²⁰⁸

At first sight, this article could be interpreted as an inclusive and general article, that refers to different sort of marriages. Nevertheless, 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:

*“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, (...).”*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 mention the notion of ‘family’ anymore, but just states that land rights can be transferred between ‘persons’.²¹⁰ However, the English version of the revised non-discrimination article 4 now replaces the terms ‘wife’ and ‘husband’²¹¹ by ‘woman’ and ‘man’. The article stipulates in the second paragraph that

²⁰⁴ POTTIER J., “Land reform for peace? Rwanda’s 2005 land law in context”, 2006, 510.

²⁰⁵ *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.”*

CROOK J., “Promoting peace and economic security in Rwanda through fair and equitable land rights”, 2003, 1526.

²⁰⁶ Republic of Rwanda, Ministry of Lands, Environment, Forests, Water and Mines, *National Land Policy*, 2004, 23.

²⁰⁷ Republic of Rwanda, Ministry of Lands, Environment, Forests, Water and Mines, *National Land Policy*, 2004, 23.

²⁰⁸ Land Law, 2005, art.4.

²⁰⁹ Land Law, 2005, art. 36.

²¹⁰ *“Without the prejudice to the provisions of this Law relating to the area of the land which cannot be transferred between persons through succession, gift, inheritance, ascending sharing, rent, sale, sublease, exchange, servitude, mortgage or any other transaction, in conformity with the conditions and methods provided for the laws and regulations.”*

Land Law, 2013, art.21.

²¹¹ *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”.*

inheritance rights between lawfully married couples should be regulated by the matrimonial regime they have chosen.²¹² 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.²¹³ 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.²¹⁴

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.²¹⁵ In addition, it decreases land disputes and facilitates loans since secure land rights can be used as collateral.²¹⁶ 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. Last, the government interpreted the land registration as a crucial step for the national peace-building process.²¹⁷

An important improvement of the Land Law of 2005 was the requirement for couples married under the regime of community property, to register the land on the names of both spouses.²¹⁸ As a result, spouses were considered joint owners and mutual consent was required for the transfer of land rights concerning the household property.²¹⁹ 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 (...)’.²²⁰ 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.²²¹ Land plots, intended to use for agricultural purposes, need to be

Land Law, 2005, art.4.

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.*

ROSE L.L., “Women’s land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation”, 2003, 246-249.

²¹⁴ POTTIER J., “Land reform for peace? Rwanda’s 2005 land law in context”, 2006, 531.

²¹⁵ 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, 8.

²¹⁶ 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, 9.

²¹⁷ 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, 8.

²¹⁸ Land law, 2005, art.32.

²¹⁹ Land law, 2005, art.35-38.

²²⁰ Land law, 2013, art.25.

²²¹ *This number is based on statistical data from 2008.*

POLAVARAPU A., “Procuring meaningful land rights for the women of Rwanda”, 2011, 136.

minimum one hectare in order to be registered.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.²²³ Since women mainly have access to land through inheritance²²⁴, they risk losing their exclusive right to land when the individual plots are less than one ha. Plots smaller than one ha are jointly controlled by all heirs; however, the Land Law of 2013 provides no guidelines on the management of these plots.²²⁵ Therefore, different decisions concerning the land can be made arbitrarily, such as selling the plot and sharing the exploitation of the land.²²⁶ Consequently, women have to compete with their male family members to control the consolidated land. This is, to put it mildly, in the patriarchal society Rwanda still remains nowadays, not an easy job to do.²²⁷ Secondly, registering land will be at the expense of the owner. The level of the cost depends on the size of the plot.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. 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.²²⁹

²²² Land Law, 2013, art.30.

²²³ POTTIER J., "Land reform for peace? Rwanda's 2005 land law in context", 2006, 521.

²²⁴ ROSE L.L., "Women's land access in post-conflict Rwanda", 2003, 210; TUYISENGE C., "Les inégalités de genre en matière d'accès à la terre et leurs conséquences sur les populations rurales au Rwanda", 2008, 156; KEVANE M., GRAY L., "A woman's field is made at night: gendered land rights and norms in Burkina Faso.", 1999, 2.

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.*

ROSE L.L., "Women's land access in post-conflict Rwanda", 2003, 210, 248.

²²⁶ *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.*

POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 135-136.

²²⁷ ROSE L.L., "Women's land access in post-conflict Rwanda", 2003, 210, 244; MUKARUSAGARA B. (et al.), "NGO Shadow report to the committee on the elimination of discrimination against women" 2009, 22; DALEY E., DORE-WEEKS R., UMUHOZA C., "Ahead of the game: land tenure reform in Rwanda and the process of securing women's land rights", 2010, 140; POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 130.

²²⁸ POTTIER J., "Land reform for peace? Rwanda's 2005 land law in context", 2006, 522.

²²⁹ ALI D.A., DEININGER K., GOLDSTEIN M., "Environmental and gender impacts of land tenure regularization in Africa. Policy evidence from Rwanda", 2011, 14.

To conclude, one could argue that the Land Law barely addresses gender issues that are linked with land ownership.²³⁰ After the Succession Law, which referred inheritance issues concerning land to new future land regulations²³¹, 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.²³² Therefore, 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.

²³⁰ POTTIER J., "Land reform for peace? Rwanda's 2005 land law in context", 2006, 531.

²³¹ Succession Law, 1999, art.90.

²³² Succession Law, 1999, art.91.

▪ GENDER ISSUES ON THE POLITICAL AGENDA IN 2008

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 topics²³³, 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*’.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.²³⁵ Moreover, only formally married women are protected against the deprivation of their right to property.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.²³⁷ However, 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’.²³⁸

The GBV Law prescribes two measures to legalize ‘unlawful’ marriages.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]*’.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 marry officially one of his/her partners:

*If a person (...) was living with [multiple] husbands/wives, he [/she] shall first of all share the [common] belongings with those husbands/wives equally.*²⁴¹

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

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. 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.

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°.

²³⁵ GBV Law, 2008, art. 5.

²³⁶ GBV Law, 2008, art. 4, §3.

²³⁷ GBV Law, 2008, art. 2, 4°.

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.

²³⁹ GBV Law, 2008, art. 39.

²⁴⁰ GBV Law, 2008, art. 39, §1.

²⁴¹ GBV Law, 2008, art. 39, §2.

▪ RECENT JURISPRUDENCE CONCERNING WOMEN'S LAND RIGHTS

Since the majority of the disputes concern land²⁴², the rewriting of the judicial landscape after the genocide is an element that should be discussed briefly in order to fully comprehend the framework of the new laws on land and inheritance.²⁴³ 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 of 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'.²⁴⁴ If they are not able to reach a compromise on the conflict, parties apply for a dispute settlement by the *abunzi* committee.²⁴⁵ 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.²⁴⁶ Although the functioning of this local conflict resolution organism is codified, decisions are still justified by customary law and common sense.²⁴⁷ 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.²⁴⁸ Moreover; one must pass through the *abunzi* procedure prior to taking the matter up to primary court.²⁴⁹ However, statistics have shown that 73% of the cases that were dealt with by the *abunzi* committees were not appealed.²⁵⁰ 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.

²⁴² POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda.", 2011, 124, 133.

²⁴³ For an overview of Rwandan judicial organization, see figure in annex III.

VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women's land rights", 2011, 25.

²⁴⁴ LANKHORST M., VELDMAN M., "Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda", 2011, 99.

²⁴⁵ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 125.

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.

²⁴⁷ MUTISI M., "The *abunzi* mediation in Rwanda : opportunities for engaging with traditional institutions of conflicts resolution", *Policy & Practice Brief/Knowledge for durable peace*, 12, 2011, 2.

²⁴⁸ Converted to euro approximately 3256.99€.

²⁴⁹ Republic of Rwanda *Organic Law On Organisation, Jurisdiction, Competence And Functioning Of The Mediation Committee*. Official Gazette N°02/2010 of 09/06/2010, art.8.

²⁵⁰ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 125.

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.²⁵¹ I explained to them a fictional case of a woman 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 death 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.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.²⁵³ The facts of the case were 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 took the matter up to the Supreme Court.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.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.²⁵⁶ For instance,

²⁵¹ *The Law on the organisation, jurisdiction, competence and functioning of the Mediation committee prescribes that 30% of the abunzi members must be female.*

Republic of Rwanda *Organic Law On Organisation, Jurisdiction, Competence And Functioning Of The Mediation Committee*. Official Gazette N°02/2010 of 09/06/2010, art.4.

²⁵² Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011.

²⁵³ Rwandan Constitution, 2003, art.26.

²⁵⁴ Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011, §1.

²⁵⁵ Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011. §7-9.

²⁵⁶ *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.*

paragraph 5 of the judgement refers to the case of *Lothar 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.”²⁵⁷

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.²⁵⁸ As a result, the Supreme Court upheld the appeal.

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.²⁵⁹ 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.

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.

Supreme Court of Canada, *Lothar Pettkus V. Rosa Becker* (1980) 2 S.C.R. 834, Supreme Court of Canada, *Beaudouin-Daigeault v. Paul Eugene Richard*, (1984) 1 R.C.S.2.; High Court of Australia, *Baumgartner v Baumgartner* (1987) HCA 59; (1987) 164 CLR 137 (10) December 1987)

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

²⁵⁷ Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011, §5.

²⁵⁸ Republic of Rwanda, Supreme Court, RS/INCONST/PÉN0003/10/CS, 07/01/2011, §16.

²⁵⁹ Republic of Rwanda, National Parliament, *minutes of proceedings*, doc. N°91/PV/CD/UJ/2007, 11/08/2007.

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 in either 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. To begin with, customary marriages do not have to be exclusively based on the principle of monogamy. Men could form unions with different women.²⁶⁰ Customarily, marriage is seen as an association between two families, instead of a union between a woman and a man.²⁶¹ Normally a future partner should go to a girl's parents to formally ask for her hand. This customary practice is known as *gusaba*.²⁶² If her parents agree, negotiations on the *inkwano* can start.

According to Rwandan custom, a marriage is only valuable when the practice of '*inkwano*' or dowry takes place.²⁶³ 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.²⁶⁴ When the traditional steps are 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".²⁶⁵ 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 hotel 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".²⁶⁶ The Civil Code stipulates several formal and substantive requirements to enter in to a civil marriage. First of all, both partners must be minimum 21 years old.²⁶⁷ In

²⁶⁰ NTAMPAKA C., "Family law in Rwanda" in BAINHAM A. (ed.), *The international survey of family law 1995*, s.l., The International Society of Family Law, 1997, 419.

²⁶¹ UMUHIRE J.M.R., *Problématique de la participation de la femme à la gestion du patrimoine familiale: cas des femmes bénéficiaires de l'association HAGURUKA (2000-2005)*, 2005, 18.

²⁶² Interview 85, district Kayonza.

²⁶³ NTAMPAKA C., "Family law in Rwanda" in BAINHAM A. (ed.), *The international survey of family law 1995*, 1997, 428.

²⁶⁴ MUKAMUYANGO F., *Effets juridiques de la rupture du concubinage au Rwanda*, Independent University of Kigali, 2010, unpublished dissertation, 23.

²⁶⁵ MUJIJIMA J., *Le phénomène de concubinage au Rwanda. Cas du secteur Masoro 2000-2010*. Independent University of Kigali, 2010, unpublished dissertation, 35.

²⁶⁶ Rwandan Constitution, 2003, art.26.

²⁶⁷ Civil Code, 1988, art.171.

addition, a civil marriage is based on mutual consent. Moreover, a marriage is prohibited in 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 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 makes a distinction 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 is 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

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. Republic of Rwanda, National Institute of Statistics of Rwanda, *National Gender Statistics report*, 2013,11.

²⁷¹ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 143.

²⁷² MUREKATETE C., *Analyse des mécanismes à entreprendre pour éradiquer le concubinage en droit positif Rwandais*, Independent University of Kigali, 2008, unpublished dissertation, 19.

²⁷³ ROSE L.L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation", 2003, 210.

²⁷⁴ DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, Independent University of Kigali, 2007, unpublished dissertation, 20.

²⁷⁵ Rwandan Constitution, 2003, art.26.

²⁷⁶ National Institute of Statistics of Rwanda and ICF International. *Rwanda demographic and health survey: key findings:2010*, Calverton, Maryland, 2012, 4.

²⁷⁷ Rwandan Constitution, 2003, art.26.

²⁷⁸ Rwandan Constitution, 2003, art. 2, 4°.

²⁷⁹ GBV Law, 2008, art. 2, 3°.

²⁸⁰ Republic of Rwanda *Constitution 1962*, Official gazette 24/11/1962.

²⁸¹ Republic of Rwanda Constitution 1978, Official gazette 20/12/1978, art.25.

²⁸² Rwandan Constitution, 2003, art.26.

A study conducted by HAGURUKA in 2005 revealed that three motives can be found why women are engaged in de facto unions and similar reasons can be found in the field research. First of all, the most logical one, women said that they agreed to have an unregistered relationship because they fell in love with their partner.²⁸³ In this case, a young man and woman voluntarily start a relationship, a practice that is called *kwinyina*.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.²⁸⁵

Besides consent, women told during the interviews that they lived together with their partner because they had sex before being married or were pregnant outside marriage.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.²⁸⁷ Having sex or expecting a child outside marriage is seen as immodest and indecent in Rwandan culture. Alternatively, as A., living in the South of Rwanda puts it: "a woman cannot turn back into a girl."²⁸⁸ Therefore, as a solution, young girls leave their birth family and start living together with their partner.²⁸⁹ Living together with a man is perceived as being married, especially when the young family has children.²⁹⁰ Or as a woman from Kayonza district stated "*having five children with your partner is the same as being married.*"²⁹¹ A thirty-year old woman remembered how she ran away with her current partner.

*"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."*²⁹²

Since 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.²⁹³ A seventeen-year old girl told the story of how her partner suffered from *maladie de l'amour* and how she ended up living together with him.²⁹⁴

²⁸³ Interview 91, district Kayonza.

²⁸⁴ Literally translated *kwinyina* means 'to sneak out'.

MUJIJIMA J., *Le phénomène de concubinage au Rwanda. Cas du secteur Masoro 2000-2010*, Independent University of Kigali, 2010, unpublished dissertation, 21.

²⁸⁵ MUKAMUYANGO F., *Effets juridique de la rupture du concubinage au Rwanda*, Independent University of Kigali, 2010, unpublished dissertation, 17.

²⁸⁶ Interview 10, 70, 76, 87, 95, 101, 104, 105, 106

POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 143.

²⁸⁷ Interview 31, district Kayonza.

²⁸⁸ Interview 104, district Kamonyi.

²⁸⁹ Interview 11, district Gasabo, interview 61, district Kirehe, interview 88, interview 104.

MUJIJIMA J., *Le phénomène de concubinage au Rwanda. Cas du secteur Masoro 2000-2010*, 2010, 38 ; MUKADISI M., Les conséquences du concubinage sur la femme en milieu urbain. Cas du secteur Muhima (2003-2008), 2009, 44 ; MUHAWENIMANA V., Les causes et conséquences de concubinage sur la population du secteur de Muhoza (1995-2005), 2006, 44.

²⁹⁰ Interview 1, 13, 21, 35, 61, 64, 76, 87.

²⁹¹ Interview 47, district Kayonza.

²⁹² Interview 13, district Gasabo.

²⁹³ Interview 95, district Kamonyi.

²⁹⁴ GAFASI J., *Etude critique du concubinage en droit Rwandais*, Independent University of Kigali, 2004, unpublished dissertation, 15.

CASE I

*Before they lived together, they were a young couple. One time the man and the woman had a fight and she went back to her parents' house. The next day she worked on the field together with her partner's mother. His mother told her that her son thought that she was seeing someone else. Then suddenly someone came to the field saying that her lover is very ill and if she does not visit him hastily, he will die. Therefore, at that moment the girl rushes to his house to find him there suffering from "maladie de l'amour". That night they had sex and she decided to stay with him.*²⁹⁵

In some cases, the new couple would go to the girl's house for 'kwigera'.²⁹⁶ 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."*²⁹⁷

However, regrettably, not all the women, who stayed with their partner because of sexual intercourse, did this voluntarily. 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.²⁹⁸

*"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 was much stronger than I was and forced me to have sex with him. Afterwards he asked me to stay with him, which I did since I was too ashamed of what happened."*²⁹⁹

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'.³⁰⁰ 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 are five years later and nothing has happened. My partner did not keep his promise. I think it is possible that every man in this village tricks their partner with the same false promise."*³⁰¹

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

²⁹⁵ Interview 88, district Kayonza.

²⁹⁶ Interview 87, district Kayonza.

²⁹⁷ Interview 55, district Gayenke.

²⁹⁸ MUJIJIMA J., *Le phénomène de concubinage au Rwanda. Cas du secteur Masoro 2000-2010*, 2010, 40 ; MUHAWENIMANA V., *Les causes et conséquences de concubinage sur la population du secteur de Muhoza (1995-2005)*, 2006, 25.

²⁹⁹ Interview 12, district Gasabo.

³⁰⁰ Interview 1, 3, 66, 67, 73, 81, 92, 100.

³⁰¹ Interview 73, district Kayonza.

embarrassed by the incident.³⁰² 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 since there was no physical violence involved.³⁰³ Eventually a very vague article, one that is very difficult to interpret, was adopted in the GBV Law.³⁰⁴

Thirdly, women have de facto relationships as a method to survive.³⁰⁵ 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.³⁰⁶ 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.³⁰⁷ Many Rwandese orphans lost one or both parents mainly due to the genocide of 1994, HIV/AIDS and extreme poverty.³⁰⁸ 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.³⁰⁹ One of them is D., who lives together with her partner from the age of eighteen. She said that she settled with the decision to just live together. She thinks it is not the worst that could happen to her.³¹⁰ Another example is that from S., living in 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.³¹¹ C. who lives in Kamonyi, in the South province, told another different story. She and her partner were both orphans who lived in poor circumstances. Therefore, they decided to cooperate to survive and build their house together.³¹²

³⁰² Conversation research assistant Jean-Marie V.; MUKAMUYANGO F., *Effets juridique de la rupture du concubinage au Rwanda*, 2010, 12.

³⁰³ Republic of Rwanda, National Parliament, minutes of proceedings, doc. N°91/PV/CD/UJ/2007, 11/08/2007, p.17-18, 30.

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].*

GBV Law, 2008, art. 4

³⁰⁵ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 143; GAFASI J., *Etude critique du concubinage en droit Rwandais*, 2004, 15.

³⁰⁶ Interview 24, district Kamonyi.

³⁰⁷ ROSE L.L., "Orphan's land rights in post-war Rwanda: the problem of guardianship", *Development and Change*, 36(5), 2005, 929.

³⁰⁸ ROSE L.L., "Orphan's land rights in post-war Rwanda: the problem of guardianship", *Development and Change*, 36(5), 2005, 912.

³⁰⁹ Interview Abunzi Committee, Bugesera, December 2013; interview 24, interview Kamonyi, interview 75, district Kayonza, interview 104, district Kamonyi.

³¹⁰ Interview 75, district Kayonza.

³¹¹ Interview 104, district Kamonyi.

³¹² Interview 24, district Kamonyi.

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 the North were not officially married.³¹³ 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.³¹⁴ Children born out of polygamous unions have to deal with similar inheritance issues.³¹⁵ 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.³¹⁶ K., whose father had one official wife and a deuxième bureau, tells a similar story.³¹⁷ K.'s father had two wives, but he wanted to marry the second one officially; K.'s mother. When the sector's office 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 between the children of the official spouse.³¹⁸

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 since the woman's family already received this.*³¹⁹

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.³²⁰

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. 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

³¹³ *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.

³¹⁴ Interview 53, district Gayenke.

³¹⁵ Interview 10, district Bugesera; interview 92, district Kayonza.

³¹⁶ Interview 10, district Bugesera.

³¹⁷ *This term is often used in spoken language to describe the second unofficial wife or lover.*

³¹⁸ Interview 88, district Kayonza.

³¹⁹ Interview 20, district Gasabo.

³²⁰ Interview 94, district Kamonyi.

will decide to start living together the next morning, as if they were married. Thirdly, poor women see an informal marriage as a 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 in order to monitor the implementation of women's rights and to lobby for women's empowerment in society. The Ministry cooperated with the parliamentary 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 in to civil marriage in order to benefit from the Succession Law.³²² Therefore, 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 the law should punish those who are unwilling to register their marriage.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

³²¹ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 107-108.

³²² Conversation with Lambert, Ministry of Justice, Kigali, October 2013; POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 131-132.

³²³ Interview 12, 16, 23, 28, 30, 36, 38, 53, 71, 96, 97, 102.

³²⁴ Interview 16, 30, 96, 97, 102.

³²⁵ APARNA, P., "Procuring meaningful land rights for the women of Rwanda", 2011, 120, 131-132.

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.³³³) 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 first analyse the level of awareness of women who live together with their partner without being officially married. Therefore, 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.

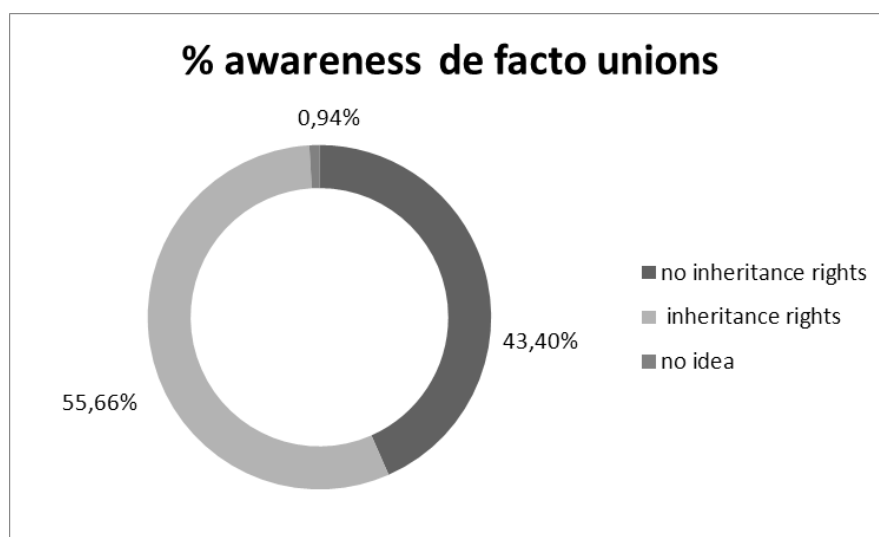
³³⁶ Interview 79, district Kayonza .

³³⁷ POLAVARAPU A., “Procuring meaningful land rights for the women of Rwanda”, 2011, 108.

³³⁸ *The same argument is supported by A. Polavarapu, who conducted a field research in 2009.* POLAVARAPU A., “Procuring meaningful land rights for the women of Rwanda”, 2011, 132.

▪ **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 of unmarried women about formal inheritance rights.³³⁹ Nearly 56% of the women answered that they could indeed inherit from their partner.³⁴⁰ 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.



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

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.³⁴¹ Nevertheless, children can only legally inherit if their father officially recognises them.³⁴² 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.³⁴³

³³⁹ For the purpose of this section, unmarried women must be interpreted as women who live together without begin formally married. Whereas married women are considered as officially married.

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 register their children at all.

REGISTRATION	% REGISTERED CHILDREN
BOTH PARENTS	8.89%
FATHER	63.33%
MOTHER	16.67%
NOT REGISTERED	11.11%

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.

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

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 without being married.

Nevertheless, different authors support this method as an important strategy to address the land issues of women involved in consensual unions.³⁴⁵ By recognising these women as official land titleholders, 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 titleholder 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 as much as I do. Therefore, I am sure that I will get the house in the event my partner passes away."*³⁴⁶

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 were 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. (*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. 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 studies³⁵⁰ 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.

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.*

³⁵⁰ ROSE L.L., “Women’s land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation”, 2003, 242.

³⁵¹ 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, 9.

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.³⁵³ 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."*³⁵⁴

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. They speak of an 'automatic' way of inheriting.³⁵⁵ 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.³⁵⁶

Furthermore, 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.³⁵⁷ 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."*³⁵⁸

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 the status as a married woman makes sure that they can claim a compensation from the insurance company.³⁵⁹ 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."*³⁶⁰

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.³⁶¹ But one also reasoned the other way around and said that her partner would not be

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.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.³⁶³ As explained above, the Succession Law requires mutual consent from the spouses for certain transactions.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.³⁶⁵ Therefore, women in de facto unions said that they did not have the power to demand anything in the household.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*.³⁶⁷ A married woman's opinion is respected in society and she enjoys a greater status.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.³⁶⁹ Furthermore, a married woman has a stable domicile; therefore, no one can chase her away.³⁷⁰ In addition, male spouses are more reluctant to look for another wife.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.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.”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.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*.³⁷⁵ A woman even declared that

³⁶² Interview 30, district Kamonyi.

³⁶³ Interview 37, district Kayonza; interview 42, district Kayonza

³⁶⁴ *Succession Law*, 1999, art. 21.

³⁶⁵ Interview 42, district Kayonza.

³⁶⁶ Interview 9, 16, 47, 48, 49, 51, 59, 60, 65, 66, 70, 84, 86, 89, 92, 93, 94, 97, 98.

³⁶⁷ *Kinyarwanda for prostitute, whore.*

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.

³⁶⁹ Interview 64, district Kirehe.

³⁷⁰ Interview 95, district Kamonyi.

³⁷¹ Interview 89, district Kayonza, interview 95, district Kamonyi.

³⁷² Interview 79, district Kayonza.

³⁷³ Interview 40, district Kayonza.

³⁷⁴ Interview 98, district Kamonyi.

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.

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] women are not respected in our village. Even poor women look down at me. I am seen as an idiot, who does not have a respectable position in 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.”*³⁷⁸

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 men 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 could 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 of their tarnished honour. They are said to live a life in sin.³⁸⁷ One of the consequences of stronger family associations is the facilitation of a more harmonious management of the family assets. Unofficial wives face more difficulties

MUKADISI M., *Les conséquences du concubinage sur la femme en milieu urbain. Cas du secteur Muhima (2003-2008)*, 2009, 54.

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.

³⁸⁴ ROSE L.L., “Women’s land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation”, 2003, 228.

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.³⁸⁸ 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.³⁸⁹ 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.³⁹⁰ Since in Rwanda 15.3% of all couples are not officially married, many children are excluded from this protection.³⁹¹ Several women told during the interviews that an official marriage would offer better protection of the inheritance rights of their children.³⁹² In addition, married women are considered as more capable of sustaining their children after a split-up.³⁹³

In general, the interviewed women feared that their children would 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.³⁹⁴ 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 Kayzona said that these children are seen as vagabonds because they do not have a fixed address.³⁹⁵ As a woman from Kamonyi enumerates:

*"My children will be in trouble if their father decides one day to refuse to pay for nourishment, school fees and health insurance."*³⁹⁶

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.³⁹⁷ Unmarried women are afraid that no one would take care of the children or that they would be badly taken care of.³⁹⁸

*"Children become victims after a relationship ends. They have to look after themselves because their parents are reluctant to make proper arrangements for them."*³⁹⁹

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.⁴⁰⁰ Therefore, automatic recognition of children with

³⁸⁸ Interview 50, district Gayenke.

³⁸⁹ Interview 26, 42, 50, 52, 53, 61, 63, 74, 75, 77, 83, 84, 91, 94, 98.

³⁹⁰ Succession Law, 1999, art 50.

³⁹¹ Republic of Rwanda, National Institute of Statistics of Rwanda, *National Gender Statistics report*, 2013, 11.

³⁹² Interview 14, 16, 29, 37, 38, 40, 49, 63, 65, 71, 72, 85, 91, 92.

³⁹³ Interview 75, district Kayonza; interview 88, district Kayonza.

³⁹⁴ Interview 93, district Kayonza; interview 95, district Kamonyi; interview 96, district Kamonyi.

³⁹⁵ Interview 83, district Kayonza.

³⁹⁶ Interview 94, district Kamonyi.

³⁹⁷ Interview 26, 42, 50, 52, 53, 61, 63, 74, 75, 77, 83, 84, 91, 94, 98.

³⁹⁸ Interview 11, 52, 55, 68, 84, 87, 91, 93, 95, 98.

³⁹⁹ Interview 42, district Kayonza.

⁴⁰⁰ LOTH-NIELSEN J., WAKEFIELD L., MURUNGI N.L., "Does the differential criterion for vesting parental rights and responsibilities of unmarried parents violate international law? A legislative and social study of three African countries", *Journal of African Law*, 55, 2011, 204-205.

married parents is pointed out as one of the advantages of a civil marriage.⁴⁰¹ 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 recognise the children. In that case court procedures might take a while.”*⁴⁰²

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.⁴⁰³ Details of the judgement show that the couple owned property with a value of 210.000 FrRw.⁴⁰⁴ In the end V. had to pay 3.900 FrRw litigation costs.⁴⁰⁵ 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 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.”*⁴⁰⁶

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.”*⁴⁰⁷

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.⁴⁰⁸

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.”*⁴⁰⁹

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.⁴¹⁰

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 well 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.”*⁴¹¹

⁴¹⁰ Interview 51, district Gayenke.

⁴¹¹ 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.

REASON DE FACTO UNION	% OF THE INTERVIEWED WOMEN
FINANCIAL COST	57%
MAN REFUSES	19%
IGNORANCE	9%
PREGNANCY	7%
NO OWN HOUSE YET	2%
DELAYED	2%
RELATIONSHIP PROBLEMS	2%
CHILDREN FIRST WIFE DO NOT APPROVE	1%

(*)⁴¹²

▪ 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 fallback 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 interviewees 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)

⁴¹³ DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, 2007, 63; GAFASI J., *Etude critique du concubinage en droit Rwandais*, 2004,12.

⁴¹⁴ Civil Code, 1988, art.171.

⁴¹⁵ UNICEF, *Adolescents (aged 15-19) currently married/ in union (%) 2002-2012, female*. <http://www.unicef.org/infobycountry/rwanda_statistics.html#123> [accessed 17/08/2014]

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 reached the age of majority.⁴¹⁷ However, some of them thought that the official age was twenty⁴¹⁸ or twenty-five.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.⁴²⁰

The second obstacle to fulfil substantive requirements is the prohibition of polygamous unions since the constitution only recognises monogamous civil unions.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.⁴²² Four women replied during the interviews that they did not enter in to a civil marriage since their partner was already officially married.⁴²³ A woman from Kayonza explained that her partner wants a divorce but he is still looking for financial resources to request one.⁴²⁴ A remarkable story was told by a fifty-one year old who did not want an official marriage.

CASE III

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 to his official wife.⁴²⁵

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.⁴²⁶

⁴¹⁷ Interview 29, 41, 57, 76, 81, 87, 88, 99, 106.

⁴¹⁸ Interview 87, district Kayonza.

⁴¹⁹ Interview 81, district Kayonza.

⁴²⁰ Interview 88, district Kayonza.

⁴²¹ Rwandan Constitution, 2003, art.26.

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.*

National Institute of Statistics of Rwanda and ICF International. *Rwanda demographic and health survey: key findings:2010*, Calverton, Maryland, 2012, 4.

⁴²³ Interview 56, 64, 71, 100.

⁴²⁴ Interview 71, district Kayonza.

⁴²⁵ Interview 100, district Kayonza.

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 marriage⁴³⁶ 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 FrW.⁴³⁹ This issue occurs when one of the partners is originated from another

⁴²⁷ 52% of the interviewed women.

⁴²⁸ Interview 96, district Kamonyi.

⁴²⁹ DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, 2007, 62; MUREKATETE C., *Analyse des mécanismes à entreprendre pour éradiquer le concubinage en droit positif Rwandais*, 2008, 21-22; MUKADISI M., *Les conséquences du concubinage sur la femme en milieu urbain. Cas du secteur Muhima (2003-2008)*, 2009, 41 ; MUHAWENIMANA V., *Les causes et conséquences de concubinage sur la population du secteur de Muhoza (1995-2005)*, 2006, 40-43.

⁴³⁰ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 142.

⁴³¹ ROSE L. L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation", 2003, 210.

⁴³² *Unfortunately no governmental documents can be found to verify the existence and the amount of the fee.*

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 closed 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."*⁴⁴⁰

Two different sorts of documents have to be submitted to the civil servant in order to register the marriage.⁴⁴¹ Firstly, a birth certificate is necessary to find out if applicants comply with the age requirements.⁴⁴² Secondly, since only monogamous marriages are permitted, one needs to submit a proof of celibacy. As a proof of dissolution of a marriage, an attest of divorce or decease of a former spouse is also accepted.⁴⁴³ 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.⁴⁴⁴

Therefore, the major financial obstacle is the cost of the wedding ceremony. Many customary rites involve great expenses, such as the practice of *inkwano*.⁴⁴⁵ 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.⁴⁴⁶ 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 money⁴⁴⁷ or beer and a shovel.⁴⁴⁸ 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.

Furthermore, people highly value the prestige associated with a great wedding.⁴⁴⁹ 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.⁴⁵⁰ The newlyweds are also supposed to provide their guest with drinks and food.⁴⁵¹ In addition, they attach importance to wearing nice clothes during the ceremony instead of their daily clothes, used to cultivate the fields.⁴⁵² 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°.

⁴⁴⁴ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 142.

⁴⁴⁵ DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, 2007, 62.

⁴⁴⁶ MUKAMUYANGO F., *Effets juridique de la rupture du concubinage au Rwanda*, 2010, 17.

⁴⁴⁷ Interview 51, district Gayenke.

⁴⁴⁸ Interview 34, district Kayonza, interview 59, district Gayenke, interview 75, district Kayonza.

⁴⁴⁹ SHERMAN K., *Legal marriage*. <http://www.huffingtonpost.com/karen-sherman/legal-marriage_b_2080914.html#>[accessed 17/08/2014]

⁴⁵⁰ Interview 25, district Kamonyi ; MUJIJIMA J., *Le phénomène de concubinage au Rwanda. Cas du secteur Masoro 2000-2010*, 2010, 37.

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.”⁴⁵³

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.”⁴⁵⁴

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.⁴⁵⁵ Since most of the assets belong to the male head of the household⁴⁵⁶, it is especially hard for women to convince their partner to spend the household money on a marriage.⁴⁵⁷ 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.”⁴⁵⁸

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.⁴⁵⁹

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.⁴⁶⁰ 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.⁴⁶¹ 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.”⁴⁶²

Different priorities were enumerated during the interviews. First of all, women are concerned about ensuring sufficient nourishment for the household.⁴⁶³ 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.”⁴⁶⁴

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”.

POLAVARAPU A., “Procuring meaningful land rights for the women of Rwanda”, 2011, 14.

⁴⁵⁷ interview 13, district Gasabo.

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."*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."*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. A couple that wishes to marry, 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 would get pregnant and therefore it will be more difficult for the head of the household to maintain the young extended family. Therefore, the girl would have 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.⁴⁶⁷

Despite the more restricted access to the institute of marriage, one could argue that the reasoning behind this approach considers women's interests. However, as indicated above, requiring extra documents and setting the ownership of a house as a prerequisite will hold 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 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.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.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."*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

⁴⁶⁵ Interview 91, district Kayonza.

⁴⁶⁶ Interview 98, district Kamonyi.

⁴⁶⁷ Interview 100, district Kayonza.

⁴⁶⁸ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 143.

⁴⁶⁹ GAFASI J., Etude critique du concubinage en droit Rwandais, 2004, 14-19.

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 district Kamonyi, which is 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 in to a civil union, but both think 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 marriage 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

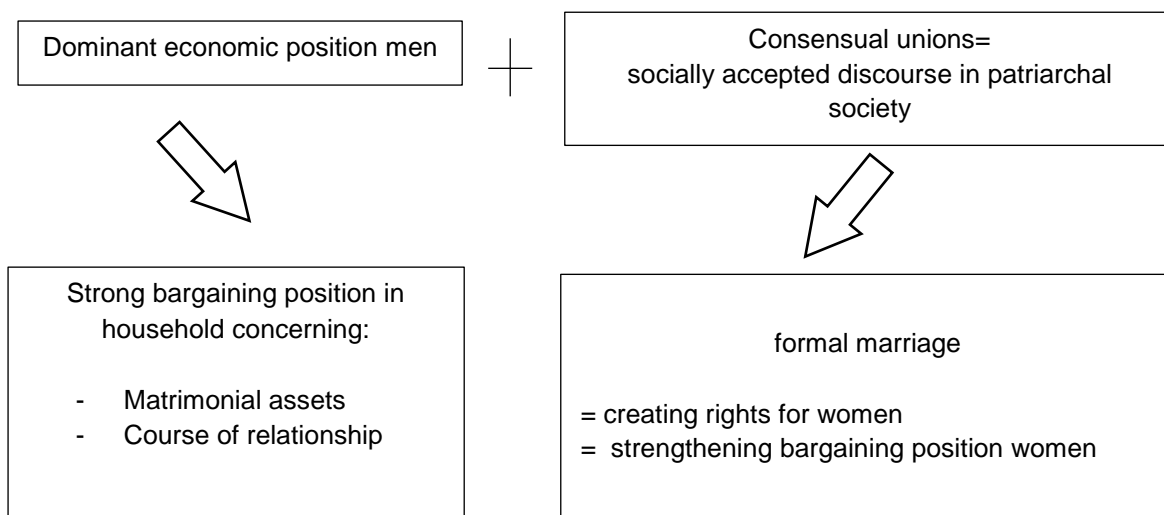
⁴⁷¹ Interview 95, district Kamonyi

▪ **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.⁴⁷² In general, bargaining power within the household is defined by how strong an individual's fallback position is. This means to what extent someone can survive without depending on family relations.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.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.⁴⁷⁵ However, several obstacles can be distinguished. The following figure demonstrates, broadly speaking, the working of this gendered bargaining pattern.



⁴⁷² AGARWAL B., "Bargaining and gender relations: within and beyond the household", *Feminist Economics*, 3(1), 1997, 4.

⁴⁷³ AGARWAL B., "Bargaining and gender relations: within and beyond the household", 1997, 9.

⁴⁷⁴ AGARWAL B., "Bargaining and gender relations: within and beyond the household", 1997, 2,14.

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, which 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.”⁴⁷⁶

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

⁴⁷⁶ Interview 104, district Kamonyi.

DOMINANT ECONOMIC POSITION MEN

Despite recent gender sensitive law initiatives and a noteworthy representation of women in parliament, society remains to be strongly based on patriarchal thinking.⁴⁷⁷ Several Rwandan sayings can illustrate the marginalized position of women in Rwandan culture. For instance, “*nta nkokokazi ibika isake ihari*”, which means, “no hen cackles in the presence of the rooster”. Or “*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 *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 *umunani* or on the occasion of their marriage, both a civil marriage as a consensual union.

UMUNANI	WOMEN	BROTHERS
BOTH PARENTS ALIVE	8	7
ONE PARENT ALIVE	1	4
PARENTS DEAD	14	17
TOTAL	23	28

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 *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 *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

⁴⁷⁷ MUKARUSAGARA B. (et al.), “NGO Shadow report to the committee on the elimination of discrimination against women”, 2009, 22; DALEY E., DORE-WEEKS R., UMUHOZA C., “Ahead of the game: land tenure reform in Rwanda and the process of securing women’s land rights”, 2010, 140; POLAVARAPU A., “Procuring meaningful land rights for the women of Rwanda”, 2011, 130.

⁴⁷⁸ USAID Rwanda, “Women’s legal rights initiative conference. The role of women’s legal rights in the family and in Rwandan society”, 2006, 14.

⁴⁷⁹ POLAVARAPU P., “Procuring meaningful land rights for the women of Rwanda”, 2011, 133.

⁴⁸⁰ *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.*

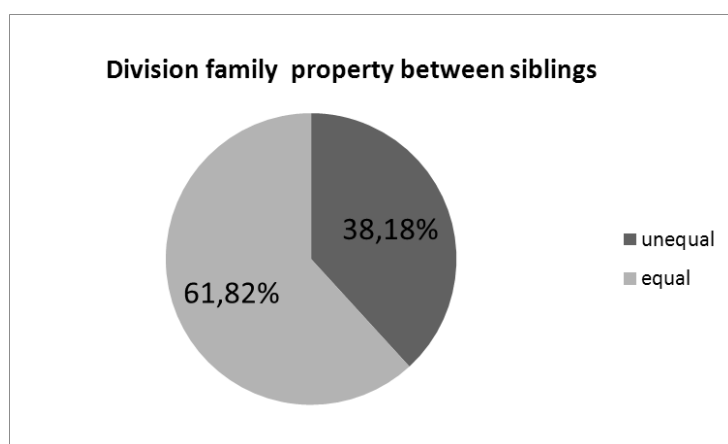
Conversation with assistant Jean-Marie; interview 2, district Bugesera.

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 those 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, formal law affirms this 'customary conceptualization'.⁴⁸⁴ For instance, article 83 of the Civil Code stipulates, "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.



Specifically 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 him 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 would accept what they will receive.⁴⁸⁷

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.⁴⁸⁸ In some cases women also reported that priority was given to others when dividing the family land. The most

⁴⁸² POLAVARAPU P., "Procuring meaningful land rights for the women of Rwanda", 2011, 134, 139.

⁴⁸³ LANKHORST M., VELDMAN M., "Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda", 2011, 100.

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.

common situation is the one where brothers receive land to start a family, even when they 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 are 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.

Ultimately, children born out of wedlock are more disadvantaged in the land distribution matters than registered children are. 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. However, this is an effort that will require time. In addition, land scarcity pushes women more in the corner and makes them easy victims of land grabbing. Another consequence is the fact that male members of the family are determined to keep the land in

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.

their own hands.⁴⁹⁷ The land crisis is a complex issue that will require overarching solutions and policies. In anticipation of these measures, men keep their economic position to dominate the gendered household conflicts.

⁴⁹⁷ POLAVARAPU P., "Procuring meaningful land rights for the women of Rwanda", 2011, 133-135.

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 with 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 patriarchy⁴⁹⁸, 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.⁴⁹⁹ Several women complained that their partners were persuaded by other men to not marry.⁵⁰⁰ 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."⁵⁰¹

During another interview, a woman from Kamonyi spoke about a 'new mentality' among men living on the countryside.⁵⁰² 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."⁵⁰³ One of her neighbours confirmed this by stating that no one in the whole street is formally married.⁵⁰⁴ In the district of this street, even several village heads, who normally practise an exemplary function, did not register their marriage.⁵⁰⁵ 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 solve problems when they occur."⁵⁰⁶

Different surveys also confirm that consensual unions, despite governmental sensitization campaigns, still exist in society.⁵⁰⁷

⁴⁹⁸ ROSE L.L., "Women's land access in post-conflict Rwanda", 2003, 210, 244; MUKARUSAGARA B. (et al.), "NGO Shadow report to the committee on the elimination of discrimination against women", 2009, 22; DALEY E., DORE-WEEKS R., UMUHOZA C., "Ahead of the game: land tenure reform in Rwanda and the process of securing women's land rights", 2010, 140; POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 130.

⁴⁹⁹ Interview 3, district Bugesera; interview 71, district Kayonza.

⁵⁰⁰ Interview 13, district Gasabo; interview 15, district Gasabo; interview 31, district Kayonza; interview 39, district Kayonza; interview 54, district Gayenke.

⁵⁰¹ Interview 23, district Kamonyi.

⁵⁰² Interview 27, district Kamonyi; interview 46, district Kayonza.

⁵⁰³ Interview 36, district Kayonza.

⁵⁰⁴ Interview 38, district Kayonza.

⁵⁰⁵ Interview 42, district Kayonza; interview 48, district Kayonza.

⁵⁰⁶ Interview 71, district Kayonza.

⁵⁰⁷ GERVAIS M., "Human security and reconstruction efforts in Rwanda: impact on the lives of women" in ASHAFAR H., EADE D. (eds.), *Development, women and war. Feminist perspectives*, Oxford, Oxfam, 548; BROWN J., UVUZA J., "Women's Land Rights in Rwanda: How can they be protected and strengthened as the Land Law is implemented?", 2006, 12; POLAVARAPU P., "Procuring meaningful land rights for the women of Rwanda", 2011, 142.

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.⁵⁰⁸ They worry that these laws forces them to accept new ideas about gender relations that are not originated in Rwandan culture.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.⁵¹⁰ These myths portray official wives as tyrants that terrorize the household since civil marriage grants them rights.⁵¹¹ Different metaphors were used describing this phenomenon of aversion to civil marriage. One woman told that men see an official marriage as a prison.⁵¹² Or others put it as being 'chained up'.⁵¹³ Ultimately, some spoke about being tied down to a bomb.⁵¹⁴ In general, one could say that official wives are seen as a burden.⁵¹⁵ Moreover, people believe that divorces only can end badly for men.⁵¹⁶ Remarkably there was also a general belief 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.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 had come 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."⁵¹⁸

Another man added that many problems arise after an official marriage and that it can even result in murder.⁵¹⁹ Similarly, to men, 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

⁵⁰⁸ Interview 44, district Kayonza.

DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, 2007, 63.

⁵⁰⁹ Interview 70, district Kayonza.

⁵¹⁰ Interview 70, district Kayonza.

⁵¹¹ VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women's land rights", 2011, 43; DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, 2007, 63.

⁵¹² Interview 53, district Gayenke.

⁵¹³ Interview 13, 28, 33, 40, 53, 66.

⁵¹⁴ Interview 64, district Kirehe; interview 73, district Kayonza.

⁵¹⁵ Interview 13, district Gasabo; interview 28, district Kamonyi; interview 54, district Gayenke.

⁵¹⁶ Interview 47, district Kayonza.

⁵¹⁷ Conversation JeanMarie, focus group discussion Rusumo.

⁵¹⁸ Interview 34, district Kayonza.

⁵¹⁹ Interview 47, district Kayonza.

*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.*⁵²⁰

These stories were not only shared among villagers, one woman recalled a radio broadcast about a couple that just got officially married. The story went as followed:

*“A man and a young woman 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.”*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.⁵²² A woman who lives in Bugesera gave the following analysis of the situation:

*“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.”*⁵²³

In addition, unmarried women have a worse reputation in society than men who are living in de facto unions.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.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.⁵²⁶

⁵²⁰ Interview 91, district Kayonza.

⁵²¹ Interview 100, district Kayonza.

⁵²² Interview 35, district Kayonza; interview 69, district Kirehe; interview 96, district Kamonyi. DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, 2007, 62; MUREKATETE C., *Analyse des mécanismes à entreprendre pour éradiquer le concubinage en droit positif Rwandais*, 2008, 22-23; GAFASI J., *Etude critique du concubinage en droit Rwandais*, 2004, 16 ; MUKADISI M., *Les conséquences du concubinage sur la femme en milieu urbain. Cas du secteur Muhima (2003-2008)*, 2009, 46.

⁵²³ Interview 6, district Bugesera.

⁵²⁴ Interview 55, district Gayenke; interview 98, district Kamonyi; interview 101, district Kayonza.

⁵²⁵ Interview 9, district Bugesera; interview 66, district Kirehe; interview 99, district Kayonza.

⁵²⁶ *These findings are confirmed by other authors, but no thorough explanations were given.* 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.”⁵²⁷**

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 in the previous section, 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 are 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*. 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.

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

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.

This practice is called ‘double dipping’ and is contested in Rwandan society. Despite the fact that both men and women can claim an inheritance in their consanguineal family and the family of their spouse, women are more likely to make use of these rights. However research needs to show how disputes concerning this matter are solved. It remains unclear if local dispute settlement bodies rely on the absoluteness of inheritance rights or grant a ‘double dip’ depending on one’s needs.

ROSE L.L., “Women’s land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation”, 2003, 239, 245.

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 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.

⁵³⁵ POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", 2011, 110.

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.⁵⁴¹ 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.”*⁵⁴²

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.⁵⁴³ 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.”*⁵⁴⁴

As a result of this male aversion to sharing, some women even spoke about the selfishness of men.⁵⁴⁵ Others complained that this conflict incites men to hide their property⁵⁴⁶ or to sell it without their partner knowing.⁵⁴⁷ 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.⁵⁴⁸

Interestingly in some rare cases of women who owned a house, the female partner appropriated the narrative that is normally put forward by men.⁵⁴⁹ 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).⁵⁵⁰ 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 contribute anything to our household. If I would marry him, I would be obliged to share my personal property with him.”*⁵⁵¹

Another woman concluded: *“If my partner would decide to leave me, he would lose anyway.”*⁵⁵²

Another characteristic of men’s unwillingness to marry is their cautious attitude and they are not keen on civil marriage. They want to wait and see in order to get to know their

⁵⁴¹ Interview 61, district Kirehe.

⁵⁴² BROWN J., UVUZA J., “Women’s land rights in Rwanda: How can they be protected and strengthened as the Land Law is implemented?”, 2006,12-13.

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.

UMUHIRE J.M.R, *Problématique de la participation de la femme à la gestion du patrimoine familiale: cas des femmes bénéficiaires de l’association HAGURUKA (2000-2005)*, 2005, 39.

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.

⁵⁵⁰ MUHAWENIMANA V., *Les causes et conséquences de concubinage sur la population du secteur de Muhoza (1995-2005)*, 2006, 22.

⁵⁵¹ Interview 99, district Kayonza.

⁵⁵² Interview 63, district Kirehe.

partner for what she is. This can be linked to the issue of the 'period of trial' as discussed above.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."*⁵⁵⁴

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.⁵⁵⁵ The cost and duration of a divorce are named as the major obstacles.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.⁵⁵⁷ This phenomenon was described as being 'gourmand' or greedy. Women referred to two sorts of situations. Firstly, men want or have multiple relationships at the same time.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.⁵⁵⁹ Some men prefer to have a younger woman. A thirty-eight year old woman thought about this issue for a second and answered gleefully:

*"My partner is much older than me, he's fifty years old. He won't find another woman; he is too old for that."*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."*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.⁵⁶²

⁵⁵³ DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, 2007, 62.

⁵⁵⁴ Interview 44, district Kayonza.

⁵⁵⁵ Interview 9, 18, 22, 26, 36, 37, 45, 47, 53, 57, 60, 78, 96.

⁵⁵⁶ Interview 45, district Kayonza.

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.

⁵⁵⁸ Interview 40, district Kayonza; interview 79, district Kayonza.

⁵⁵⁹ Interview 7, district Bugesera.

⁵⁶⁰ Interview 30, district Kamonyi.

⁵⁶¹ Interview 66, district Kirehe.

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.⁵⁶³ 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.”*⁵⁶⁴

Due to the many conflicts and imbalances in bargaining power, couples often experience several difficulties in their relationship.⁵⁶⁵ 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.”*⁵⁶⁶ 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.⁵⁶⁷ A lack of trust between both partners was one of the reasons brought up during the interviews.⁵⁶⁸

*“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.”*⁵⁶⁹

Or other complained that partners could be unbearable, such as alcohol-addicted persons.⁵⁷⁰

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.⁵⁷¹ 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

⁵⁶³ VELDMAN M., LANKHORST M., “Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women’s land rights”, 2011, 43 ; DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, 2007, 63.

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 39, district Kayonza; interview 66, district Kirehe.

⁵⁶⁹ Interview 39, district Kayonza.

⁵⁷⁰ Interview 42, district Kayonza.

⁵⁷¹ Interview 52, district Gayenke; interview 81, district Kayonza.

*go back home, the man followed the girl to her place and left his partner on the field.*⁵⁷²

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'*.⁵⁷³

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. However, the new gender ideas are at odds with a tradition that merely focusses on maintaining the patriarchal structure in society.

⁵⁷² Interview 88, district Kayonza.

⁵⁷³ Or similarly, *'When a girl is given land she may become stubborn'*.

TRIPP A.M., "Women's movements, customary law, and land rights in Africa: the case of Uganda", *African studies quarterly*, 7, 2004, 12.

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 insufficient 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 section 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 bill⁵⁷⁴ 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. In addition, it would include a regulation for cohabitating couples. Unfortunately, there is no political will to pass the bill because it clashes with cultural beliefs about marriage.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):

*“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.”*⁵⁷⁶

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.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.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 *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

⁵⁷⁴ Uganda *Marriage and Divorce Bill* N°19, 2009.

⁵⁷⁵ s.n., Discussion Ugandan Marriage and Divorce Bill. <<http://thinkafricapress.com/uganda/i-dont-controversial-marriage-and-divorce-bill-left-shelf>>[accessed 17/08/2014].

⁵⁷⁶ Tanzania *Law of Marriage Act N°5/71Chapter 29*. Gazette 12/02/1971, section 160 (1).

⁵⁷⁷ Tanzania *Law of Marriage Act N°5/71Chapter 29*. Gazette 12/02/1971, section 160 (2).

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 the 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.⁵⁷⁹ However, this would be a bad idea for two reasons. As stated above, women do not always have to free choice to enter in to 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 be based in theory 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".⁵⁸⁰

⁵⁷⁹ GBV Law, 2008, art. 21-22.

⁵⁸⁰ 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.

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, indirect land rights that are often merely usufruct rights characterize female land tenure. 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 impedes the protection of women's land rights.⁵⁸⁷ The co-existence of common and formal law causes uncertainty and complex land claims, which disadvantages women who do not have equal access to information and legal assistance.⁵⁸⁸ Moreover, Rwandan custom tends to favour men over women.⁵⁸⁹

⁵⁸¹ Rwandan Constitution, 2003, art. 26.

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.

⁵⁸⁴ DALEY E., PARK C.M., "Governing land for women and men. Gender and voluntary guidelines on responsible governance of tenure of land and other natural resources", 2011, 2.

⁵⁸⁵ WYSS K., "A thousand hills for 9 million people. Land reform in Rwanda: Restoration of feudal order or genuine transformation?", 2006, 6.

⁵⁸⁶ ROSE L.L., "Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending law legislation." 2003, 210.

⁵⁸⁷ ANSOMS A., CLAESSENS K., "Land relations and local livelihoods in the Great Lakes region", 2011, 17.

⁵⁸⁸ 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.

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.⁵⁹⁰

Several international legal instruments guarantee the protection of women's property rights, such as the Elimination of All forms of Discrimination Against Women.⁵⁹¹ 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.⁵⁹² Despite the fact that the government of Rwanda has been praised in the past for their efforts to improve gender equality in society⁵⁹³; 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.⁵⁹⁴ 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*.⁵⁹⁵ 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 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,

⁵⁸⁹ ROSE L.L., "Orphan's land rights in post-war Rwanda: the problem of guardianship", 2005, 921; CROOK J., "Promoting peace and economic security in Rwanda through fair and equitable land rights," 2006, 1505-1506.

⁵⁹⁰ VELDMAN M., LANKHORST M., "Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women's land rights", 2011, 20.

⁵⁹¹ *Other international instruments that protect women's rights are the following:* UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10/12/1948; UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, 16/12/1966; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, 16/12/1966; UN General Assembly, *Optional Protocol to the International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, 19/1/1966; UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, United Nations, Treaty Series, vol. 1249, 18/12/1979; Organization of African Unity, *African Charter on Human and Peoples' Rights ("Banjul Charter")*, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, 27/06/1981; African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11/07/2003.

⁵⁹² POLAVARAPU A., "Procuring meaningful land rights for the women of Rwanda", *Yale Human Rights & Development L.J.* 2011, p.116

⁵⁹³ s.n., Rwanda: *A revolution in rights for women. With women making up 56% of MPs in the Rwandan parliament life is changing fast for women.* <<http://www.theguardian.com/world/2010/may/28/womens-rights-rwanda>> [accessed 17/08/2014]

⁵⁹⁴ Succession Law, 1999, art.70; Land Law, 2013, art.4.

⁵⁹⁵ *Kinyarwanda for 'prostitute, whore'.*

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.⁵⁹⁶ For instance, the minimum age to enter into an official marriage (21 years old) was an obstacle for minors.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.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.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.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 a 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.⁶⁰¹ As a woman from Kayonza district stated:

"In general no woman refuses to get officially married because then their opinion on household matters is taken into account."⁶⁰²

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

⁵⁹⁶ DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, 2007, 63; GAFASI J., *Etude critique du concubinage en droit Rwandais*, 2004, 12.

⁵⁹⁷ Civil Code, 1988, art. 171.

⁵⁹⁸ DUSABE F., *Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)*, 2007, 62; MUREKATETE C., *Analyse des mécanismes à entreprendre pour éradiquer le concubinage en droit positif Rwandais*, 2008, 21-22; MUKADISI M., *Les conséquences du concubinage sur la femme en milieu urbain. Cas du secteur Muhima (2003-2008)*, 2009, 41; MUHAWENIMANA V., *Les causes et conséquences de concubinage sur la population du secteur de Muhoza (1995-2005)*, 2006, p.40-43.

⁵⁹⁹ GAFASI J., *Etude critique du concubinage en droit Rwandais*, 2004, 14-19.

⁶⁰⁰ AGARWAL B., "Bargaining and gender relations: within and beyond the household", 1997, 4-9.

⁶⁰¹ Succession Law, 1999, art. 21-22.

⁶⁰² Interview 44, district Kayonza.

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.⁶⁰³ 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 newborn for the first time to her parents.⁶⁰⁴ This imbalance influences the bargaining power of both parties when it comes to enter in to 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.⁶⁰⁵ In this reasoning women appropriate the male narrative by valuating their partner based on 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, 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."*⁶⁰⁶

⁶⁰³ CROOK J., *"Promoting peace and economic security in Rwanda through fair and equitable land rights"*, 2006, 1509-1510 j. 1525.

⁶⁰⁴ 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", 2011, 6.

⁶⁰⁵ Interview 35, district Kayonza.

DUSABE F., *"Analyse des facteurs favorisant la polygamie, le concubinage et les unions libres au Rwanda. Cas du district Gicumbi (2002-2007)"*, 2007, 62.

⁶⁰⁶ Interview 104, district Kamonyi.

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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.

Ces enquêtes ont été menées entre juin et juillet 2013 dans 15 districts^[1]; dans le cadre du projet «**Pour un meilleur accès des femmes à la terre**», financé par ONU Femmes – Fonds pour l'égalité des sexes. Les organisations de la société civile partenaires^[2] et le Conseil National des Femmes ont participé à ces enquêtes.

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-édition vous 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.

o o o

^[1] Province de l'Est : Gatsibo, Bugesera, Rwamagana, Kirehe. Province du Nord : Rulindo, Gakenke, Musanze. Province de l'Ouest : Rubavu, Rusizi, Nyamasheke. Province du Sud : Nyaruguru, Nyamagabe, Nyanza et Muhanga. Ville de Kigali : Gasabo.

^[2] Ces organisations sont : AVEGA, Réseau des Femmes, Association Nzambazamariya Veneranda, RRP+ et HAGURUKA

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?

PARENTS ALIVE -> questions 8-10

PARENTS DEAD -> question 11-12

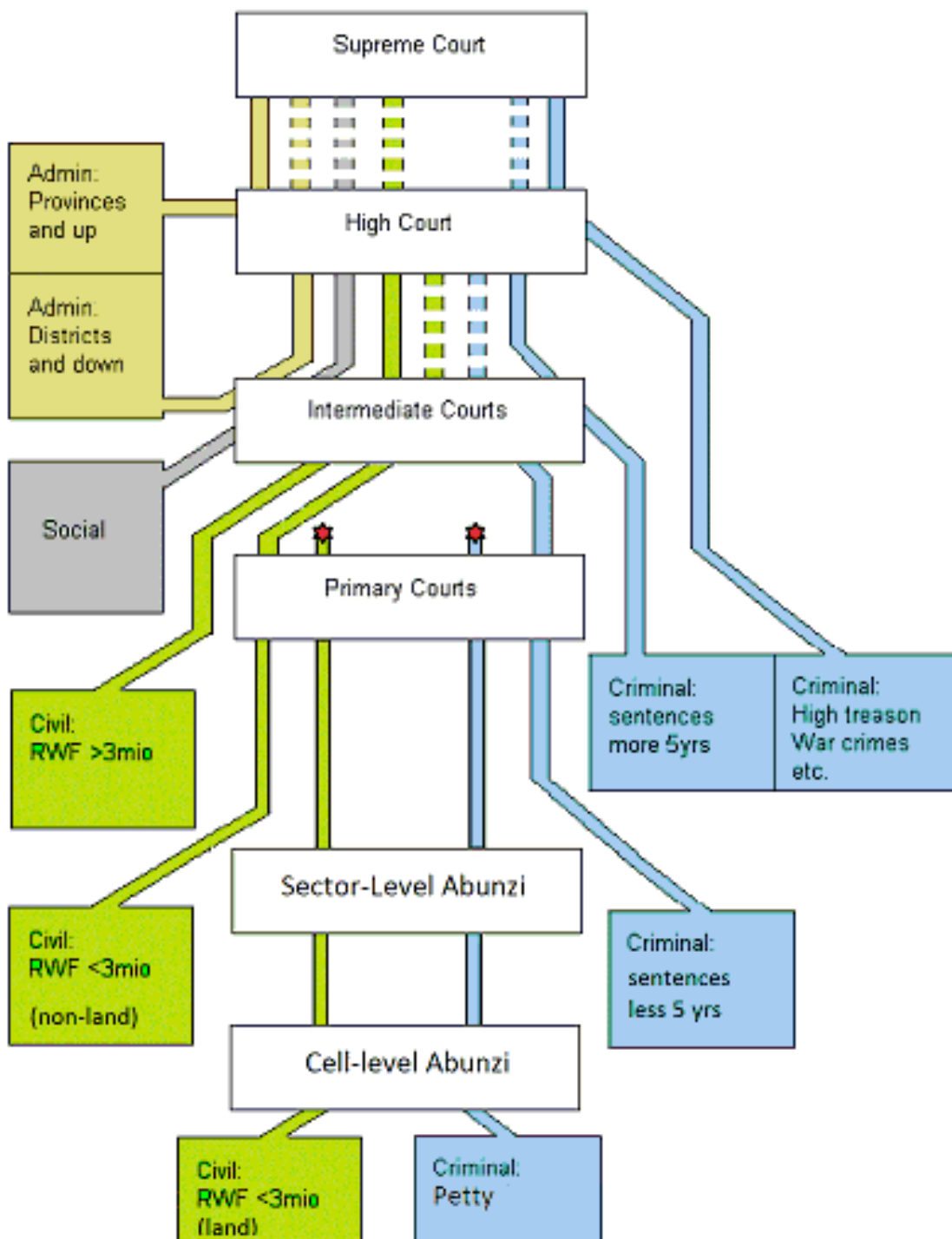
10. Did your sisters/brothers receive something from your parents as a donation?
- a. Brothers
 - i. Yes -> Why? What?
 - ii. No -> Why?
 - b. Sisters
 - i. Yes -> Why? What?
 - ii. No -> Why?
11. If your parents would pass away, do you think you will inherit something?
- a. No -> Why?
 - b. Yes -> Why? 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/sister 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

- b. Yes
 - i. By who?
 - ii. Registered on whose name(s)? + why?
 - 1. Interviewee
 - 2. Partner
 - 3. Partner and interviewee
 - 4. Other
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
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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 in to civil marriage?
6. What is the opinion of men on civil marriage?
7. Why may someone refuse to enter in to 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 (*)



(*) VELDMAN M., LANKHORST M., “Legal empowerment and customary law in Rwanda. Report of a pilot project concerning community level dispute resolution and women’s land rights”, 2011, 25

