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Article

Procuring Meaningful Land Rights for the Women of Rwanda

Aparna Polavarapu[†]

Land reform and gender equality are important development issues in post-Genocide Rwanda. Beginning in 1999, the government of Rwanda passed and implemented reforms which granted women rights to own and use land on an equal status with men. However, as is expected with widespread social reform, obstacles continue to inhibit widespread gender equality in practice. In Rwanda, major social obstacles manifest in the form of (1) resistance to allowing daughters to inherit land from their parents, (2) adherence to assumptions of female inferiority, and (3) the persistence of informal marriages, in which wives remain unprotected by the new laws. Interested actors have documented these obstacles and proposed legal and policy solutions to overcome them. This article seeks to identify the causes underlying these obstacles to gender equality. Through this analysis, I find that land scarcity, vestiges of discriminatory legal systems, and gendered power structures are significant underlying causes of these social obstacles. I argue that many of the currently proposed solutions are inadequate because they do not address these underlying causes, as is necessary to better secure women's land rights.

The question currently before Rwanda – how to ensure gender equality in the face of continuing social obstacles – has importance outside Rwanda's borders. The underlying causes discussed in this Article are not unique to Rwanda. Understanding the ways in which these factors inhibit gender equality, and finding solutions to overcome them, are lessons learned not just for Rwanda, but also for the international development community.

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INTRODUCTION

After the 1994 Genocide, land reform and gender equality became important issues for governmental, nongovernmental, and international aid actors concerned with the rebuilding and development of Rwanda. Beginning in 1999, the government of Rwanda passed and implemented a series of laws, regulations, and policies designed to reform the land tenure system as well as grant women rights to own and use land on an equal status with men. The reforms represent some of many great strides Rwanda has made in establishing gender equality not just in law, but also in practice. However, as is expected with widespread social reform, social obstacles continue to inhibit gender equality in practice. That is, certain behaviors prevent women from exercising their new land rights. In Rwanda, major social obstacles manifest in the form of resistance to allowing daughters to inherit land from their parents and resistance to allowing women to exercise their new authority to own and use land. They also appear in the persistence of informal marriages, in which wives remain unprotected by the new laws. This Article seeks to understand the underlying causes of these obstacles. Through this analysis, I seek to narrow the field of proposed solutions and direct the conversation towards the types of solutions which directly address the causes of these social obstacles and are thereby more effective.

Post-Genocide reconstruction and development implicates both land and women. Rwanda has long suffered from land scarcity. Conflict over land is often cited as one of the major drivers of ethnic conflict in Rwanda throughout the twentieth century and is considered by many to be a cause of the Genocide.¹ In post-Genocide Rwanda, land continues to be scarce and population density continues to increase, especially as former refugees have begun returning home. With multiple, competing claims to land creating confusion over land ownership and potentially planting the seeds for future conflict, the ongoing land reform process is essential.

Immediately post-Genocide, women made up a majority of the population and headed more than a third of all households.² Post-conflict reconstruction and development thus also hinges on whether women's

1. See, e.g., Peter Uvin, *Reading the Rwandan Genocide*, 3 INT'L STUD. REV. 75, 79 (2001). Uvin finds that "[f]rom the literature [discussing the topic], we can distinguish three fundamentally different paradigms for explaining the genocide. . . . The paradigms explain the genocide, in order of how frequently they appear, by elite manipulation, by ecological resource scarcity, and by the sociopsychological features of the perpetrators." *Id.* Uvin notes that the ecological scarcity paradigm, which relies on the understanding that overpopulation and land scarcity contributed or led to the violence, "is very popular among medical doctors; economists; specialists in public health, family planning, agriculture, and the environment; as well as part of the general press." *Id.* at 81. In this article, I present Rwanda's history with a focus on land, as I believe it is an important component of the conflict and Rwanda's history. However, I do not claim that it is the single driver of the Genocide, nor am I attempting to make definitive claims about various causes of the Genocide.

2. Catharine Newbury & Hannah Baldwin, *Aftermath: Women in Postgenocide Rwanda* 6 (U.S. Agency for Int'l Dev. Center for Dev. Info. and Evaluation, Working Paper No. 303, 2000).

rights are appropriately recognized and addressed. Understanding this, Rwanda has demonstrated noteworthy dedication to empowering its women. Article 9 of the Rwandan Constitution affirms the country's commitment to gender equality and requires women to be granted "at least thirty per cent (30%) of posts in decision making organs."³ As of 2006, women comprised almost half of the national parliament, "giving Rwandan women a legislative position unique in the world that will hopefully contribute to their overall empowerment."⁴ To ensure the protection of women's rights, the Ministry of Gender and Family Promotion, created in 1994, is charged with developing programs and policies to eliminate gender inequality, "to accelerate women's participation in economic development," and to assist in the implementation of women's self-determination programs.⁵ Specific to land, it has worked with the Ministry of Justice to identify discriminatory legislative provisions and has contributed to the drafting of the Succession Law.⁶ It is precisely this dedication to gender equality that makes Rwanda an informative study on how to achieve gender equality in land rights.

Working with international agencies, international NGOs, and domestic NGOs, Rwanda has implemented land reforms which, among other things, grant women new land rights. New laws were drafted which grant women inheritance rights and the right to own, sell, and use land, and empower local councils to settle land disputes. More recently, these agencies and NGOs, working with the Rwandan government, have focused on how to ensure that women are able to benefit from these law and policy changes. Overhauling a system requires overcoming certain obstacles. Implementing gender equality in particular requires the difficult task of combating entrenched customary views on appropriate gender roles and on who can benefit from legal and economic rights. Representatives and consultants for the United States Agency for International Development (USAID); the Rural Development Institute, an international non-profit organization; African Rights, an international NGO; and the Rwandan Ministry of Lands' National Land Tenure Reform Programme,⁷ among others, have all conducted field studies to determine how effectively women's rights are being implemented. These studies suggest that while

3. RWANDA CONST. 2003, art. 9.

4. THE WOMEN'S LEGAL RIGHTS INITIATIVE, U.S. AGENCY FOR INT'L DEV., GENDER-BASED VIOLENCE PROGRAMMING IN RWANDA: ACTORS, ACTIVITIES, COLLABORATION, COORDINATION 11 (2006) [hereinafter Women's Legal Rights Initiative].

5. GOVERNMENT OF RWANDA, *Combined Fourth, Fifth and Sixth Periodic Reports of States Parties to the Committee on the Elimination of Discrimination Against Women*, ¶ 37, U.N. Doc. CEDAW/C/RWA/6 (Dec. 19, 2007) [hereinafter CEDAW REPORT].

6. *Id.* ¶ 38.

7. This article relies on the results of the African Rights and NLTRP studies as they were presented and analyzed in an article by Elizabeth Daley, an independent consultant, Rachel Dore-Weeks, a professional affiliated with the Women, Peace, and Governance Unit at UNIFEM-Afghanistan, and Claudine Umuhzoza, a professional affiliated with National Land Centre in Rwanda. Elizabeth Daley et al., *Ahead of the Game: Land Tenure Reform in Rwanda and the Process of Securing Women's Land Rights*, 4 J. E. AFR. STUD. 131, 131 (2010). Results of other studies upon which this article relies are cited from publications by the study authors.

the land laws have created positive change, certain obstacles and limitations to gender equality continue to exist. Such obstacles and limitations include legal exclusions of groups of women,⁸ as well as problems of implementation, such as difficulties with enforcement.⁹ Others are what I term “social obstacles,” or continuing social behaviors which inhibit the operation of the laws and gender equality. It is these social obstacles which are the focus of my analysis.

Several of the aforementioned studies identified three major social obstacles inhibiting gender equality: (1) resistance to granting daughters their rights to inherit land, (2) adherence to assumptions of female inferiority, and (3) the continued entry by couples into informal marriages, in which wives cannot benefit from the new laws. My own field research in 2009 confirmed the existence of these obstacles. The studies also suggested several legal and policy solutions to overcoming these obstacles. Many of these solutions focus on countering a lack of awareness of the new laws and wearing down social resistance. This is where my conclusions differ. I argue that these obstacles arise out of more than just lack of awareness or desire to maintain status quo in order to adhere to custom. I argue that they are also the result of economic disincentives arising from land scarcity, legal reinforcement of customary beliefs, and gendered power structures, which are deep-seated and underlying issues that must be addressed for any legal or policy solution to be effective.

The analysis in this article relies on the laws, published field studies, and my own qualitative field research. My field research, comprised of semi-structured interviews of seventy-three people in Rwanda in 2009, was exploratory in nature. The data are not statistically significant but provide anecdotal evidence of broad thematic issues related to gender equality and land rights. Interviewees included public officials, civil servants, men, women, farmers, non-farmers, local dispute resolution actors, microcredit officers, public officials and members of civil society organizations.¹⁰

In Part I of this Article, I provide a historical overview of land laws and practices in Rwanda as they related to women through the end of the Genocide. In Part II, I give an overview of the development of Rwanda’s land reforms and provide a description of the post-land reform framework in Rwanda and the new rights afforded to women. In Part III, while acknowledging improvements in the realm of land rights and gender equality, I analyze those social obstacles which continue to inhibit women’s exercise of their new land rights.

Using the laws, published field studies, and my own qualitative field research, I demonstrate that these obstacles arise in part due to land scarcity, legal reinforcement of customary beliefs, and gendered power

8. For example, the Succession Law grants inheritance rights to wives and daughters, but excludes widows and orphans of the Genocide. See discussion *infra* Part II.

9. Some studies have found that although dispute resolution actors may rule in favor of women, the rulings might not be enforced. This is discussed in the section entitled “Dispute Resolution,” see *infra* Part II.

10. For a more detailed discussion of my fieldwork, see Appendix.

structures. These deep-rooted and underlying causes must be addressed when considering how to better secure women's land rights.

I. A CONTEXTUAL UNDERSTANDING OF WOMEN AND LAND IN RWANDA

Laws relating to land ownership have gone through many permutations in Rwanda, but in the years leading up to and immediately after the Genocide, one theme remained constant: women were denied the right to own land. Although customary practices, in principle, had built-in protections for women, these protections disappeared when land became scarce.

In pre-colonial Rwanda, land ownership was determined by the customary systems of *ubukonde* in the North and Northwest, and *isambu-igikingi* in the other regions known as the Central Kingdom. The former was a system in which land was owned by a particular lineage, with the head of the lineage granting access and occupation rights to others. The latter was a system in which individual land tenure (*isambu*) was granted by a political authority and *igikingi* was identified as common grazing land. In both systems, the land clients held the land in usufruct and ultimate ownership rights remained with the applicable political authority or head of lineage.¹¹

During the years of German colonization, the colonial government introduced and enforced the written law of private property under the Napoleonic Code. When Rwanda was transferred to Belgium, the Belgian government applied the Central Kingdom's system of land administration but expanded the powers of the political authorities, who in turn abused their rights of land withdrawal and expulsion. A result of the colonial changes was a dualist system in which the question of whether customary or written law was applied depended on the region, who was applying the law, and the land in question. The colonial government, and later the independent Rwandan state, attempted to unify the land system and implement written law. Land reform projects in 1967, 1978, and 1991 attempted to create a unifying written law and recognition of individual tenure, but were ultimately unsuccessful.¹²

One common aspect of each of the customary, colonial, and Rwandan regimes was that matrimonial and inheritance matters continued to be governed by custom, pursuant to which women were not granted the right to inherit or otherwise own land.¹³ Any rights women had were merely secondary rights; women were considered to own land only through their fathers or husbands, who were the holders of primary land rights.¹⁴

11. Catherine André, *Rwandan Land: Access, Policy & Land Reform* 3-4 (Antwerp University, Centre for Development Studies, Working Paper Series 29, 1998), available at <http://www.grandslacs.net/doc/1450.pdf>.

12. *Id.* at 4-8.

13. HAGURUKA, ETUDE SUR L'APPLICATION ET L'IMPACT DE LA LOI NO. 22/99 RELATIVE AUX REGIMES MATRIMONIAUX, LIBERALITES ET SUCCESSIONS SUR LES DROITS DE LA FEMME AU RWANDA 11 (2005) [hereinafter HAGURUKA STUDY ON SUCCESSION LAW].

14. Krishna Kumar et al., *Rebuilding Post-Conflict Rwanda*, in THE INTERNATIONAL RESPONSE

According to some customary practices in Northern Rwanda, a woman could receive a gift of land from her father upon her marriage or the birth of her first child.¹⁵ However, these gifts of land were merely rights of use – they were presented to the daughter with the expectation that she would maintain them for her future sons.¹⁶

Inheritance practices also discriminated against women: women who were widowed, divorced, or separated had no ownership rights to marital property. As daughters, they were prohibited from inheriting land from their fathers.¹⁷ Under the customary ideal, these women were not left unprotected. A daughter lived and was provided for on her father's land before she was married, and after marriage she lived and was provided for on her husband's land. If a woman became widowed, she was granted the right to use her husband's land until her sons became old enough to inherit the land.¹⁸ If a woman became widowed without having borne her husband any children, she was denied any rights to her husband's land unless she married one of his brothers, at which point that brother became the new owner of the land.¹⁹ Theoretically, a woman who was (1) widowed without children and who did not remarry, (2) separated or divorced, or (3) never married, could ask her brothers or father for some land on which to live and cultivate.²⁰

The customary ideal was not reflected in reality. Women were, in principle, able to rely on customary protections because of the value they provided to the lineage: they cultivated their husbands' lands and ensured the continuation of the line by bearing children. However, "as land becomes scarce, this social model becomes perverse, particularly for women, whose value is no longer recognized and [who] no longer have any power."²¹ Thus, under increasing land scarcity, brothers and fathers contested their obligations to their sisters and daughters who were widowed, separated, divorced, or unmarried. The children of these women also suffered, as they were not recognized as the legitimate heirs of their mothers' side. If they were not recognized by their fathers or their fathers' families, they had no recourse and no means of obtaining support. This lack of recognition could occur if their mother was not married to their father, if their mother was divorced or separated from their father, or if their father simply refused to recognize them as his children.²²

TO CONFLICT AND GENOCIDE: LESSONS FROM THE RWANDA EXPERIENCE 72 (1995), available at http://pdf.usaid.gov/pdf_docs/PNABY108.pdf.

15. REPUBLIC OF RWANDA, MINISTRY OF LANDS, ENVIRONMENT, FORESTS, WATER AND MINES, NATIONAL LAND POLICY 20 (2004) [hereinafter NATIONAL LAND POLICY].

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. "[W]idows, women in free love, [and] separated or divorced [women]" could, in principle, rely on their husbands or fathers to grant them some land. André, *supra* note 11, at 12 n.24. The Rwandan National Land Policy notes that clan chiefs could reserve land to grant to his "repudiated" daughters. NATIONAL LAND POLICY, *supra* note 15, at 20.

21. *Id.*

22. See *id.*; JENNIFER BROWN & JUSTINE UVUZA, LES DROITS DES FEMMES EN MATIERE

The negative effects of land scarcity were felt not only by the women of Rwanda. Land scarcity is one of the most commonly proposed causes of the ethnic violence committed before and during the 1994 Genocide.²³ During the colonial era, German and Belgian colonial governments privileged the Tutsis, one of the two major ethnic groups in Rwanda, over the Hutus, the other major ethnic group.²⁴ The result was that politically powerful Tutsis controlled land at the expense of the poorer Rwandans, both Hutu and Tutsi.²⁵ With independence came large-scale ethnic conflict, known as the “social revolution,” in which a Hutu-led political party overthrew the Tutsi-dominated political system in 1959.²⁶ Political instability and ethnic conflict continued to be an unfortunate reality for Rwanda for most of the remainder of the century, which included another coup in 1973. Throughout these conflicts, land was abandoned, confiscated and redistributed.²⁷

In the years immediately preceding the Genocide, Rwandans were facing an environmental and economic crisis: land was becoming increasingly scarce and the agricultural productivity of the land was decreasing.²⁸ Traditionally in Rwanda, households with multiple children divide household land among each of the male children. With each new generation, smaller and smaller parcels of land were passed down to each child. Decreasing household farm size coincided with a decline in both per capita food production and agricultural productivity.²⁹ Farmers no longer had the capacity to let land lie fallow and began to cultivate their land continuously.³⁰ At the same time, the growing population was moving out to more fragile lands and steep slopes, which hastened land degradation by soil erosion. This overcultivation and decreasing soil fertility, along with low fertilizer usage, resulted in overall underproductivity of the land.³¹ As land produced less, it became more important to hold on to as much land as possible. This is precisely the cycle that creates the perverse effect of preventing women from relying on customary protections. It can also serve

FONCIERE AU RWANDA: COMMENT PEUVENT-ILS ETRE PROTEGES ET RENFORCES AU MOMENT DE LA MISE EN ŒUVRE DE LA LOI FONCIERE? 16 (2006).

23. See Uvin, *supra* note 1, at 79. Uvin’s article provides an overview of what he describes as the three main paradigms for explaining the Rwandan Genocide, including land scarcity.

24. Whether or not these ethnic divisions were as rigid in the pre-colonial era is debated among scholars. Some argue that the two groups lived together peacefully, with the designations “Tutsi” and “Hutu” depending mostly on economic status. According to this history, rigid ethnic divisions were not created until colonization. In another version of history, the Tutsis were outsiders who migrated into the region and oppressed the Hutus while establishing themselves as the ruling class. Under this view, the Germans and later the Belgians only intensified these pre-existing divisions. For one take on this debate, see Catharine Newbury, *Ethnicity and the Politics of History in Rwanda*, 45 AFR. TODAY 7, 9 (1998).

25. Shinichi Takeuchi & Jean Marara, *Conflict and Land Tenure in Rwanda* 8-9 (Japan Int’l Cooperation Agency Research Inst., Working Paper No. 1, 2009).

26. See *id.* at 8 n.14.

27. See *id.* at 11-14.

28. See André, *supra* note 11, at 20.

29. See Kumar et al., *supra* note 14, at 26.

30. See *id.*

31. See *id.*

as a driver of conflict.

Tensions between ethnic groups exploded in April of 1994, with the beginning of a three-month genocide during which Tutsis and moderate Hutus were targeted. The impact on both women and competition for land was substantial.

Two years after the Genocide, in 1996, the government of Rwanda estimated that women made up approximately 54% of the population and headed an estimated 34% of all households.³² Of the 34% of households identified as female-headed, 60% were headed by widows.³³ The violence suffered by women during the Genocide is well-documented.³⁴ Post-Genocide, economic violence³⁵ manifested in the form of laws and practices preventing widows and orphaned girls from inheriting land, especially in light of the ever-increasing competition for land.

After the Genocide, competition over land continued to increase, especially as refugees returned and laid claim to their abandoned lands.³⁶ Over the course of the twentieth century, lands were abandoned and redistributed, creating multiple claims to the same land. In addition, returning refugees caused a rapid and dramatic post-Genocide population increase, exacerbating competition for the already-scarce land.³⁷

Widows attempting to recover land belonging to their husbands or from their own families faced opposition from their husbands' families or male members of their own families.³⁸ Women also lost traditional support networks, as trust was not easily rebuilt between Hutus and Tutsis. Widows who had been in a mixed marriage (a marriage between a Tutsi

32. Newbury & Baldwin, *supra* note 2, at 6.

33. *Id.* Newbury and Baldwin also note that the number of female-headed households may be higher than estimated, due to reluctance among survey respondents to self-report as such.

34. See generally HUMAN RIGHTS WATCH, SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDAN GENOCIDE AND ITS AFTERMATH (1996), available at <http://www.hrw.org/legacy/reports/1996/Rwanda.htm>.

35. Economic Violence is a concept arising out of the Human Security field's "freedom from want" prong. In 1994, the United Nations Development Programme (UNDP) reconceptualized human security in its human development report, noting that "[t]he concept of human security stresses that people should be able to take care of themselves: all people should have the opportunity to meet their most essential needs and to earn their own living." U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1994, at 24 (1994), available at <http://hdr.undp.org/en/reports/global/hdr1994/chapters/>. Economic insecurity is thus a basic threat to human security. *Id.* at 24-25. Myriam Gervais notes that "[t]he economic security of Rwandan women is guaranteed only when they can satisfy their own basic needs and those of their dependents as economic producers and actors. With over 90 per cent of the population dependent on agriculture, access to the means of production is an essential condition for economic survival and a source of minimum income." Myriam Gervais, *Human Security and Reconstruction Efforts in Rwanda: Impact on the Lives of Women*, 13 DEV. IN PRACTICE 542, 546 (2003). Economic violence occurs when legal and structural barriers prevent many women from accessing land.

36. Kumar et al., *supra* note 14, at 54.

37. André, *supra* note 11, at 21. In 1996, the population of Rwanda was 6,167,000. In 1997, it increased to 7,651,800, an increase of almost twenty-five percent. *Id.*

38. UNIFEM, WOMEN'S LAND AND PROPERTY RIGHTS IN SITUATIONS OF CONFLICT AND RECONSTRUCTION 41 (2001), available at <http://www.unifem.org/attachments/products/WomensLandAndPropertyRights.pdf>.

and a Hutu) were often rejected by their in-laws and denied access to their deceased husbands' properties.³⁹ Daughters of mixed marriages also reported loss of social support,⁴⁰ likely due to the inability to claim membership of either group. Wives of men who were imprisoned for committing crimes during the Genocide faced stigma and social exclusion.⁴¹ In an environment where widows and orphaned daughters traditionally lacked primary rights to land and relied on family support to survive, the loss of familial support was particularly devastating. Many women were left destitute, landless, and homeless.⁴² Noting the lack of land rights for widows and daughters, a joint report of international donors to Rwanda noted that "there is an urgent need to change judicial guidelines and legal interpretations of laws pertaining to property, land and women's rights."⁴³

II. REBUILDING RWANDA: THE ROLE OF LAND REFORM

After the Genocide, Rwanda began an overhaul of its land laws, focused on encouraging a sustainable peace, bolstering economic development, and promoting gender equality. In a post-conflict environment, land reform is important for developing the rule of law, managing conflict, improving agricultural productivity, and supporting sustainable use of natural resources.⁴⁴ In a developing country, land reform is a key factor in reducing poverty and promoting economic growth.⁴⁵ Where women are disempowered by tradition and customary laws, gender equality is an important cross-cutting issue. In Rwanda, a post-conflict, developing country where women have traditionally been disempowered and lacked access to land, land reform needed to serve multiple purposes.

Unsurprisingly, the strategies to achieve conflict avoidance, economic development, and gender equality have been shaped by international discourse. Some of the largest international development and aid actors, including USAID and the World Bank, have been involved with Rwanda's land and agricultural reforms and are also directly engaged in the larger dialogue within the international community regarding how to develop effective land reforms and policies. Examining their part in the international dialogue, as well as the goals identified by the Rwandan government, illuminates the narrative under which Rwanda's land reforms were developed. A close look at the reforms themselves reveals that Rwanda has taken significant steps to achieve a visible improvement in women's lives. Together, the reforms provide an important context to the obstacles which continue to inhibit women's exercise of land rights.

39. Newbury & Baldwin, *supra* note 2, at 4.

40. *Id.*

41. *Id.* at 8.

42. *Id.* at 3.

43. Kumar et al., *supra* note 14, at 14.

44. U.S. AGENCY FOR INT'L DEV., LAND AND CONFLICT: A TOOLKIT FOR INTERVENTION 8-9 (2005) [hereinafter USAID CONFLICT TOOLKIT].

45. KLAUS DEININGER, LAND POLICIES FOR GROWTH AND POVERTY REDUCTION: A WORLD BANK POLICY RESEARCH REPORT, at xix-xx (2003).

A. Land Reform Goals for a Post-Genocide Rwanda

Rwanda's land reforms were shaped by the combined goals and strategies of the international development and aid communities, as well as by Rwanda's governmental and non-governmental actors. USAID and the World Bank, major players in the land policy discussion, have developed policies drawn from and applied in countries like Rwanda. Although each organization advocates a case-by-case approach, both identify some common factors which were or are present in Rwanda. Both also draw specifically from their own work in Rwanda, specifying particular interventions to address the post-conflict, economic development, and gender equality goals. The footprint of these recommendations is evident in Rwanda's land reforms.

International land policies have come to be understood as intersectional in nature, encompassing the previously separately considered interests of development, human rights, and conflict avoidance. Agnès Hurwitz, in her analysis of international strategies relating to housing, land, and property policies, distinguishes land policies reflecting mainstream development from those in transitional and post-conflict settings, noting that the former traditionally promoted free-market ideology, while the latter promoted redistributive policies.⁴⁶ In recent years, these approaches have merged into what she refers to as the "third way," which is more accepting of a middle-ground approach and emphasizes a case-by-case approach.⁴⁷ Hurwitz goes on to note that the links between development strategies and conflict have only recently been understood, and identifies three recent and important policy documents addressing these links:⁴⁸ Klaus Deininger's 2003 Policy Research Report for the World Bank,⁴⁹ the USAID Land and Conflict Toolkit,⁵⁰ and the OECD Land, Conflict, and Development Report.⁵¹ All three aim to impact the development of international land policies and interventions.⁵² The World Bank and USAID reports, which

46. Agnès Hurwitz, *Beyond Restitution: Housing, Land, Property and the Rule of Law*, in *CIVIL WAR AND THE RULE OF LAW* 193, 200 (Agnès Hurwitz & Reyko Huang, eds., 2008).

47. *Id.* at 200.

48. *Id.* at 281.

49. DEININGER, *supra* note 45.

50. USAID CONFLICT TOOLKIT, *supra* note 44.

51. Nicolas Pons-Vignon & Henri-Bernard Solignac Lecomte, *Land, Violent Conflict and Development* (OECD Dev. Ctr. Working Paper No. 233, 2004) [hereinafter OECD Report].

52. See DEININGER, *supra* note 45, at ix ("This report aims to strengthen the effectiveness of land policy in support of development and poverty reduction by setting out the results of recent research in a way that is accessible to a wide audience of policymakers, nongovernmental organizations, academics in World Bank client countries, donor agency officials, and the broader development community."); USAID CONFLICT TOOLKIT, *supra* note 44, at 1 ("In addition to covering key issues, discussing lessons learned, and suggesting relevant program interventions, this toolkit offers a rapid appraisal guide that can help determine which land issues are most relevant to conflict in a particular setting."); OECD Report, *supra* note 51, at 7-8 (noting that the relationship between land and violence was not fully "mapped out" and stating that "[t]his paper contributes to filling these gaps, and provides policy makers with useful directions on how to promote peace and development by better integrating land policy and conflict prevention").

draw from the institutions' own experiences in Rwanda, were published after the earliest of the land-related reforms but prior to the passage of the comprehensive Organic Land Law.⁵³ With respect to post-conflict environments, the World Bank report summarizes the following concerns: the need to house displaced populations or demobilized soldiers, the presence of large numbers of refugees, an increase in female-headed households and widows who lack access to land, a breakdown of traditional community structures, an increase in land disputes, and landmines or other physical obstacles to movement.⁵⁴

In Rwanda, all of these post-conflict concerns – with the exception of landmines – were or are relevant issues. Emergency housing was an immediate concern for the New Unity government installed after the Genocide.⁵⁵ With many landless refugees, the government needed to quickly implement a housing policy.⁵⁶ Additionally, equality among men and women became an important theme in the rebuilding process, in part due to the large number of widows and women heading households who were denied access to land and could no longer rely on traditional community structures.⁵⁷ Indeed, the importance of ensuring equality between men and women was identified in the National Land Policy.⁵⁸ Finally, land disputes are a significant issue in Rwanda: they are the most common type of legal dispute, are credited with contributing to ethnic tensions and conflict, and are considered to be one of the greatest obstacles to a sustainable peace.⁵⁹

Rwanda and its development partners have also emphasized the economic importance of the land reforms. Rwanda's Ministry of Natural Resources (MINIRENA) notes that land tenure and land management reforms are a core part of Rwanda's strategy for poverty reduction and economic development.⁶⁰ Rwanda's Economic Development and Poverty Reduction Strategy, drafted by Rwanda along with the World Bank and other development partners,⁶¹ similarly notes that “[l]and reform that

53. For a discussion of the Organic Land Law and accompanying reforms, *see infra* text accompanying notes 69-135.

54. *See* DEININGER, *supra* note 45, at 159.

55. Herman Musahara & Chris Huggins, *Land Reform, Land Scarcity, and Post-Conflict Reconstruction: A Case Study of Rwanda*, in *FROM THE GROUND UP* 326 (Chris Huggins & Jenny Clover, eds., 2005).

56. This policy is known as the “villagization” policy, pursuant to which the government of Rwanda addressed the need for housing by settling returning refugees and displaced groups into designated villages. This policy is heavily discussed in scholarship, but is outside the scope of this paper and will not be discussed herein.

57. *See* discussion *supra* Part I.

58. NATIONAL LAND POLICY, *supra* note 15, at 23 (stating that the policy would be guided by several principles, including that “women, married or not, should not be excluded from the process of land access, land acquisition and land control, and female descendants should not be excluded from the process of family land inheritance”).

59. BROOKINGS INITIATIVE IN RWANDA: LAND AND HUMAN SETTLEMENTS 26 (2001).

60. REPUBLIC OF RWANDA, MINISTRY OF LANDS, ENVIRONMENT, FORESTRY, WATER, AND MINES, STRATEGIC ROAD MAP FOR LAND TENURE REFORM 1 (2009) [hereinafter STRATEGIC ROAD MAP].

61. Int'l Monetary Fund, Poverty Reduction Strategy Papers, <http://www.imf.org/>

ensures effective administration, the rights and obligations of land users, . . . mechanisms for land use management and dispute resolution all provide scope to improve the welfare of the poor and vulnerable groups."⁶² Women are considered an important part of this plan. Land rights in particular are directly related to the economic empowerment of women. Rwanda's economy is primarily agricultural, and according to a 2002 government census, 92.6% of Rwandan women are engaged in agriculture.⁶³ Without access to land, the vast majority of Rwandan women are inhibited from effectively participating in the economy.

Designing and implementing land reforms such that they respond to post-conflict needs and promote economic development requires that certain elements be met. The USAID Conflict Toolkit notes that components of post-conflict land reform might include resolving land claims, improving land access, increasing tenure security, and engaging in complementary activities such as awareness-raising, capacity-building, and developing community-based legal assistance.⁶⁴ Land reforms for economic reconstruction and economic development share some of these components. Securing property rights – through means such as formalizing title and developing mechanisms for enforcement – will encourage landowners to invest in land and productive land use.⁶⁵ Indeed, Deininger notes that "the way in which land rights are defined, households and entrepreneurs can obtain ownership or possession of it, and conflicts pertaining to it are resolved through formal or informal means will have far-reaching social and economic effects."⁶⁶

The World Bank and USAID policy documents place great importance on resolving land claims without relying solely on the formal dispute resolution mechanisms of a traditional judiciary.⁶⁷ The World Bank report, for example, stresses the importance of developing informal, community-level conflict-resolution methods which are perceived as fair in order to prevent future conflict.⁶⁸ In addition, the USAID document emphasizes that where competing claims to land are caused by contradictions or uncertainties in a country's land laws, legislative and policy reform is required to introduce clarity.⁶⁹

Adding a gender equality element to the conflict avoidance and economic development goals requires that these interventions affirmatively consider women's unique concerns to avoid exacerbating gender

external/np/psrp/psrp.aspx (last visited Apr. 18, 2011). ("Poverty Reduction Strategy Papers (PRSP) are prepared by the member countries through a participatory process involving domestic stakeholders as well as external development partners, including the World Bank and International Monetary Fund.").

62. Int'l Monetary Fund, Rwanda: Poverty Reduction Strategy Paper 10 (2008), available at <http://www.imf.org/external/pubs/ft/scr/2008/cr0890.pdf> [hereinafter Rwanda PRSP].

63. CEDAW REPORT, *supra* note 5, ¶ 19.

64. USAID CONFLICT TOOLKIT, *supra* note 44, at 11.

65. DEININGER, *supra* note 45, at xix.

66. *Id.* at xx.

67. *Id.* at 162; USAID CONFLICT TOOLKIT, *supra* note 44, at 10-11.

68. DEININGER, *supra* note 45, at 162.

69. USAID CONFLICT TOOLKIT, *supra* note 44, at 10.

inequalities. In a report culling best practices for ensuring women's property rights, USAID noted that land reform projects that fail to think about gender concerns as a separate issue and include women from the beginning can result in women being ignored by the project or losing what few rights they had.⁷⁰ A gendered analysis demonstrating how women access and use land in formal and informal systems, and the ways in which social structures impact women's access to land, is particularly important.⁷¹ In Rwanda, this analysis, discussed in Part I of this Article *supra*, demonstrates that women were denied inheritance of property, rights to marital property, and rights to own or sell property. Gender-sensitive reforms thus required affirmatively granting inheritance rights, ensuring equality with respect to marital property, and granting equal rights to own and sell property. Further, because these reforms would dramatically change the way land ownership has historically been conceptualized, beneficiaries and service providers must be trained and educated regarding women's new land rights.

B. Post-Land Reform Framework

Gender equality is a visible component in Rwanda's land reforms. The constellation of laws, programs, and policies comprising recent land reforms includes, but is not limited to, the Organic Land Law,⁷² the Succession Law (a 1999 statute amending the matrimonial and inheritance regime),⁷³ the Abunzi Law,⁷⁴ the Strategic Road Map for Land Tenure Reform,⁷⁵ and the National Land Policy.⁷⁶ Provisions relevant to gender equality can be grouped into two categories: those that exist to affirmatively

70. U.S. AGENCY FOR INT'L DEV., *STUDY ON WOMEN AND PROPERTY RIGHTS: PROJECT BEST PRACTICES 7-8* (2006), available at http://pdf.usaid.gov/pdf_docs/PNADJ420.pdf. USAID argues that "[i]f gender issues are to be effectively integrated into a land project (or land component of a project), the project design must explicitly include gender equity as one of the principal goals of the project, define participation by and integration of women as an integral factor of implementation, and include gender indicators as measures of success in monitoring and evaluation." *Id.* at 7. In addition, in its synthesis of findings, USAID notes that "failure to include gender in project design limited the project's ability to address potential gender inequities, a failure that either perpetuated inequities or may have even exacerbated them." *Id.* at 8. The report later notes that "[t]he most successful strategy for considering gender differences in the design phase was to identify or hire a gender expert as part of the design, implementation, or monitoring team," and that "[a] second strategy that was uncommon but extremely successful was to include the knowledge and concerns of local women in designing the project." *Id.* at 14.

71. *Id.* at 11-12 (noting the importance of examining socio-cultural factors, as well as customary laws and practices).

72. Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda.

73. Law No. 22/99 of 12/11/1999 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions, O.G. No. 22 of 15/11/1999.

74. Organic Law No. 31/2006 of 14/08/2006 on Organisation, Jurisdiction, Competence and Functioning of the Mediation Committee.

75. STRATEGIC ROAD MAP, *supra* note 60, at 1.

76. NATIONAL LAND POLICY, *supra* note 15, at 5.

ensure gender equality, and those that further post-conflict and economic development goals while also having an impact on gender equality. In the first category are laws which affirmatively grant women equal rights to own and use land, ownership interests in marital property, and the right to inherit land, as well as programs which raise awareness of women's new rights. In the second are provisions relating to the formalization and clarification of land tenure, dispute resolution, and land use regulation. Under this new framework, Rwandan women have moved closer to equal and effective exercise of land rights, but limitations continue to exist.

1. Equal Rights to Own and Use Land

The Organic Land Law explicitly provides for gender equality with respect to possession and use of land. Equality between men and women begins with the Rwandan Constitution, in which Rwanda affirms its adherence to the principles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and states that it is "[c]ommitted to ensuring equal rights between Rwandans and between women and men without prejudice to the principles of gender equality and complementarity in national development."⁷⁷ The Organic Land Law reaffirms the principle of equality set forth in the constitution and applies this principle to land rights: "Any person or association with legal personality has the right over the land and to freely exploit it as provided for by this organic law Any discrimination either based on sex or origin in matters relating to ownership or possession of rights over the land is prohibited."⁷⁸ This equality in land ownership laws allows for women's exercise of land rights. A change in marital and succession regimes, described below, is also required before this exercise can become a reality.

2. Rights to Marital Property

Women are finally able to access marital property, and exercise the equal right granted under the Organic Land Law, via the Succession Law's amendments to the marital regime. However, although the Organic Land Law provides that men and women have equal rights to own and use land, and the Constitution provides that "[p]arties to a marriage have equal rights and duties during their marriage and at the time of divorce,"⁷⁹ the Succession Law increases women's rights, but does not necessarily create equality between spouses. In addition, the Constitution and the Succession Law, taken together, grant rights to women in civilly-registered marriages, but not to women in common law or polygamous marriages.

The Succession Law creates a presumption that spouses jointly own all marital property, but allows for property to be titled only to one spouse.

77. RWANDA CONST. 2003, pmb1.

78. Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, art. 4.

79. RWANDA CONST. 2003, art. 26.

The law allows legally-married spouses to choose among three marital regimes at the time of marriage: “community property,” “limited community of acquests,” or “separation of property.”⁸⁰ Of these, the community property regime is the only one that provides for equality with respect to all household property.

Under the community property regime, spouses maintain joint ownership of all their movable, immovable, present, and future property.⁸¹ Any person in a community property marriage who is applying to register household land must also include the name of his or her spouse.⁸² With joint title, spouses become joint owners. As joint owners, both spouses must provide prior consent before the transfer of land⁸³ or before any such land is mortgaged, leased, or rented over a long term.⁸⁴ In addition, this regime also recognizes both a husband’s and wife’s ability to manage property, stating that “spouses shall choose who, among themselves, shall be responsible of the management of the common patrimony.”⁸⁵ Under this regime, on paper, wives and husbands have equal responsibilities and rights to all of their property during marriage, and divide the property equally upon divorce.

The limited community of acquests and separation of property regimes limit the household property to which both spouses can claim rights. In the limited community of acquests, spouses, at the time of marriage, identify the property that is to be considered community property.⁸⁶ Any other property will be considered personal property. As with community property, the limited community of acquests allows spouses to choose who will manage the common property.⁸⁷ During marriage and upon divorce, each spouse has a fifty percent share only in the property designated as common property. Finally, in the separation of property regime, spouses agree to contribute to the expenses of the household but retain “the right of enjoyment, administration and free disposal of their personal property.”⁸⁸ Thus, each spouse only has rights to his or her own property.

The law creates a presumption in favor of equality: if no affirmative choice of regime is made, the spouses are deemed to be married under a

80. Law No. 22/99 of 12/11/1999 to Supplement Book 1 of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions, O.G. No. 22 of 15/11/1999, art. 2.

81. *Id.*, art. 3.

82. Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, art. 32.

83. *Id.*, art. 35 (“Final transfer of rights on land like sale, donation or exchange by a representative of the family requires the prior consent of all other members of the family who are joint owners of such rights.”).

84. *Id.*, art. 38 (“Consent mentioned in article 35 of this organic law is also necessary in land mortgaging, lease, long term renting or in case there is mutual consent on the right of servitude.”).

85. *Id.*, art. 17.

86. *Id.*, art. 8.

87. *Id.*, art. 17.

88. *Id.*, arts. 2, 3, 7, 8, 11.

community property regime.⁸⁹ In practice, at least one study has found the community property regime to be the most common, with the other two regimes selected more often by widows and widowers seeking to protect their estates upon remarriage or by legally-recognized wives protecting their own interests against other wives in a polygamous marriage.⁹⁰

In addition, even when a wife with no such property interests is married under a limited community of acquests or separation of property regime, her rights to household land are protected in other ways. During marriage, a legally-married wife's interests in land are protected regardless of the governing matrimonial regime. Under any regime, the agreement of both spouses is required for the donation of any immovable property, including land.⁹¹ The future rights of children of the family are also recognized: children of majority age, minor children, and incompetent children must also provide consent before any owner of household land attempts to transfer his or her land rights.⁹²

Despite the advances in ensuring women's rights during marriage and upon divorce, limitations remain. Pursuant to Article 26 of the Constitution, only civilly-contracted, monogamous marriages between a man and a woman are recognized by law.⁹³ Common law and polygamous marriages are not recognized; thus, common law wives and junior wives in polygamous marriages do not receive the marital rights granted in the Constitution or the Succession Law. As part of its reforms, the government of Rwanda has addressed this issue by conducting mass marriages in various districts to formally register informal marriages.⁹⁴ More recently, the government has enacted formal penalties against parties in polygamous marriages.⁹⁵ However, despite these measures, as I discuss in Part III, the

89. *Id.*, art. 2.

90. Daley et al., *supra* note 7, at 134. The authors note:

The most common regime is that of "community property." It is applied as the default regime where no other is chosen and it is by far the most popular choice for couples entering their first marital union. . . . The other two marital property regimes - "separate property" and "limited community of acquests" - are much rarer in practice and tend to be utilized by widows and widowers on remarriage or by couples legally marrying where the husband may also have other "wives;" these regimes are also more likely to occur in urban than rural areas.

91. Law No. 22/99 of 12/11/1999 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions, O.G. No. 22 of 15/11/1999, art. 21.

92. Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, arts. 35, 36, 38.

93. RWANDA CONST. 2003, art. 26 ("Only civil monogamous marriage between a man and a woman is recognized.").

94. Brown & Uvuza, *supra* note 22, at 12.

95. Law No. 59/2008 of 10/09/2008 on Prevention and Punishment of Gender-Based Violence, art. 22 ("Any person guilty of getting married while there still exist a valid marriage contract between him/her and someone else shall be liable to imprisonment of three (3) years to five (5) years and a fine between three hundred thousand (300,000 Rwf) Rwandan francs and five hundred thousand (500,000 Rwf) Rwandan francs."). The law also penalizes informal polygamy. Gender-Based Violence Law, arts. 2, 21 (Article 21 states that "Any person guilty of concubinage shall be liable to imprisonment of two (2) years to four (4) years and a fine

existence of common law unions, and to a lesser extent polygamous marriages, continues to prevent many women from accessing land.

3. Inheritance Rights

Widows and daughters, previously denied rights to inherit land from their husbands and fathers, are afforded inheritance rights under the new reforms. The Succession Law, which governs testamentary and intestate succession, made important changes to women's inheritance rights, granting these rights to both wives and daughters. As with the newly-granted rights to marital property, however, these inheritance rights also suffer some limitations.

Under the Succession Law, widows married in community property and limited community of acquests regimes now have the right to inherit the common assets and liabilities of the marriage.⁹⁶ These spousal inheritance rights, however, suffer the same limitation as the new marital rights: they are only available for spouses in civil, monogamous marriages. Thus common law wives and junior wives in polygamous marriages cannot inherit from a deceased husband, even if they had lived, for all intents and purposes, as a married couple. Another important limitation of this law is that it is not retroactive: that is, women who were widowed prior to the entry into effect of the Succession Law in 1999, including all the widows of the Genocide, have no legal rights to inherit their husbands' property.

The law also makes an important change to the practice of filial inheritance, requiring that parents' property be divided among both sons and daughters, whether that division occurs during the parents' lifetime or at death. Article 43 of the Succession Law states that both girls and boys have a right to any partition of the patrimony – the inheritable estate – made by their ascendants while they are still living, excluding only those children who have been “banished due to misconduct or ingratitude.”⁹⁷ Upon the death of the parents, Article 50 mandates that all legitimate children, male and female, have rights to inherit in equal parts. Again, however, the law is limited because it is not retroactive. Daughters orphaned prior to 1999, including female orphans of the Genocide, cannot benefit from these new inheritance rights.

The law also recognizes testamentary succession, but it does not

between one hundred thousand (100,000 Rwf) Rwandan francs and two hundred thousand (200,000 Rwf) Rwandan francs.” Article 2 defines concubinage as “the fact that two people live permanently as if they were spouses though they are not married while one of them is legally married.”).

96. Law No. 22/99 of 12/11/1999 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions, O.G. No. 22 of 15/11/1999, arts. 70, 71. Under the separation of property regime, the first rights to intestate succession belong to the children of the deceased, and if there are no children, to the members of the deceased's family. *Id.*, art. 66.

97. *Id.*, art. 43. The article reads in full: “All children, without distinction between girls and boys, alive or where deceased before parents their descendants, excluding those banished due to misconduct or ingratitude, have a right to the partition made by their ascendants.”

explicitly state whether testamentary documents can supersede any other provisions of the law. Article 53 lists the grounds on which a child “shall” be excluded from succession: causing the death of the decedent, attempting to cause the death of the decedent, committing false accusation or perjury which could have caused the decedent to be imprisoned, deliberately breaking off his or her relationship with the decedent, neglecting to care for the decedent during the decedent’s last days of illness, abusing the physical or mental incapacity of the decedent to obtain the inheritance, and intentionally altering a will without the decedent’s consent.⁹⁸ Importantly, although Articles 53 and 43 specify the circumstances in which children are excluded from succession or their rights to patrimony, the law does not otherwise mention when children may be disinherited by a testamentary instrument. Thus, whether testamentary instruments can be used to disinherit certain family members is ambiguous under the law.⁹⁹

The Succession Law does, however, protect the patrimony from being given away to persons other than the heirs of the deceased. Regardless of which marital regime is chosen, the Succession Law restricts transfers or donations of property of married couples. When the donor has a spouse but no child, the donor is limited to transferring up to one third of the patrimony.¹⁰⁰ When the donor has a child, the donor is limited to transferring up to one fifth of the patrimony.¹⁰¹ These provisions will protect the spouse and children from being effectively disinherited due to *inter vivos* donations of the patrimony to another party.

Attempts are also made to ensure equality even when there is not enough land to distribute to all the children of a household, which is the case for the majority of households in Rwanda. When the land to be inherited is too small to be partitioned,¹⁰² the law provides alternatives. The

98. *Id.*, art. 53. Article 53 reads, in its entirety:

- Every legal heir or legatee shall be excluded from succession if he or she:
1. was convicted of having intentionally caused the death of the de cujus or had made an attempt on his or her life;
 2. was convicted of false accusation or perjury which could have resulted in the de cujus being sentenced to six months, at least, in prison;
 3. has, during the lifetime of de cujus, deliberately broken off the parental relationship with the latter;
 4. has deliberately neglected to provide the needed care to the cujus during his or her last days of illness, although he or she was bound by law or by tradition to do so;
 5. has abused the physical or mental incapacity of the de cujus by taking the whole or part of the inheritance;
 6. has intentionally disposed, destroyed or altered the last will of the de cujus without his or her consent or has taken advantage of a will which became worthless.

99. *Id.*, arts. 43, 50, 56-64.

100. *Id.*, art. 31.

101. *Id.*

102. The Organic Land Law effectively prohibits the partition of land smaller than one hectare. See discussion *infra* Part II, *Regulating Land Use to Encourage Agricultural Productivity and Economic Growth*; Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, art. 20. The average parcel of land per household is less than one hectare. Valerie Kelly et al., *Agricultural Intensification in Rwanda: An Elusive Goal* 5

owners can “agree on the modalities of their sale or exploitation and share the fruits therefrom.”¹⁰³ Thus, the land should either be sold and the proceeds shared among the children, or the land should be cultivated and the fruits of such cultivation should be shared among the children. Alternatively, under another provision, the land can be granted to only some of the heirs, who in turn will provide adequate compensation to the heirs receiving less.¹⁰⁴

The Succession Law transforms women’s position as non-inheritors under customary law by granting both widows and daughters the right to inherit. Whereas under customary law, women were considered provided for as daughters on their fathers’ land, and as wives on their husbands’ land, the Succession Law recognizes daughters and widows as persons with rights to care for themselves on their own land. Although these new rights are limited, they for the first time require that women receive some share of inheritance as widows and daughters, a key step in giving women property rights.

4. Formalizing and Clarifying Land Tenure

Formalization and clarification of land tenure can achieve economic development, conflict avoidance, and gender equality goals. To reduce tenure insecurity and create predictability in the land ownership system, the Organic Land Law mandates registration of all individually-owned land and specifies the procedures for registration.¹⁰⁵ Registration of land allows the titled owner to enforce his or her land rights, facilitates land transactions, and grants titled owners confidence and security in their land ownership. For vulnerable groups, a registered title to land is an important tool preventing more powerful parties from laying claim to or confiscating their lands. For women, it serves as protection from their own family members or in-laws seeking to deny their rights.

Taking a lead role in land tenure regularization is the National Land

(FSRP/DSA Publication No. 3E, January 2001). Thus, partitioning the patrimony among children of a household is problematic.

103. Law No. 22/99 of 12/11/1999 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions, O.G. No. 22 of 15/11/1999, art. 91.

104. Article 77 of the Succession Law states in full:

In principle, the partition of the property in the succession shall be made in kind.

However, where it is impossible to establish equal shares in kind, the council of succession determines the compensation to be given by the heirs who receive a share greater than their legal or testamentary share of the succession, for the benefit of the heirs who received a smaller share.

Id., art. 77. Article 81 provides the makeup of the Council of Succession, which includes: the surviving spouse, a child delegated by the children of the deceased, a delegate from the deceased’s family, a delegate from the family of the surviving spouse, a friend “or a person of good behavior” appointed by the family of the surviving spouse, and a friend or person of good behavior appointed by the family of the deceased. *Id.*, art. 81.

105. Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, arts. 30-32.

Centre, the central land administration authority in Rwanda, which in 2010 was in the midst of implementing a country-wide land registration program to ensure that all plots of land are formally registered under the Organic Land Law.¹⁰⁶ Implementation and service delivery occur in a decentralized fashion, with District Land Commissions and District Land Bureaus implementing land use planning and land registration policies at the district level, and the more local Sector and Cell Land Committees collecting information and increasing local awareness of land laws and regulations.¹⁰⁷ The Organic Land Law, reflecting the constitutional requirement that all decision-making bodies include men and women, requires that every level of land commission be comprised of both sexes.¹⁰⁸ Ideally, this participation would ensure that women's interests are represented in the titling of land.

5. Dispute Resolution

Ensuring adequate dispute resolution mechanisms is a key part of granting women land rights: without an accessible and fair judiciary, women will not be able to enforce their new, and controversial, rights. The dispute resolution mechanisms are also vital to Rwanda's land reforms in other ways. Given the high number of competing claims to land as a result of years of conflict and mass migrations, dispute resolution is a key factor in preventing future conflict. In addition, given the inevitable disruption to customary systems caused by streamlining national land administration and implementing gender equality measures, dispute resolution actors are needed to ensure peaceful implementation of the reforms.

Rwanda's approach to land disputes begins at the local level. With the enormous number of land disputes, sending all land disputes through the court system could generate a substantial backlog of cases. Instead, with the passage of the Abunzi Law, the *abunzi*, a type of local mediation committee, was granted mandatory and primary jurisdiction over "lands . . . whose value does not exceed three million Rwandan francs."¹⁰⁹ Thus, such cases cannot be filed in a formal court without first being heard by the *abunzi*.¹¹⁰

Formerly a customary village-based mediation system, the system of *abunzi* was formalized by law in 2006. The *abunzi* are community-based mediation committees, operating at the cell level. Each committee is comprised of twelve members plus three substitute members, all residents of the cell. Members of the *abunzi* are elected for two-year terms by other

106. Interview with Didier Sagashya, Director of Land Administration, National Land Centre, in Kigali, Rwanda (Aug. 26, 2009); STRATEGIC ROAD MAP, *supra* note 60, at 12.

107. STRATEGIC ROAD MAP, *supra* note 60, at 8-9. The hierarchy of administrative divisions is as follows: central government, province, district, sector, cell, and at the most local, village.

108. Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, art. 8.

109. Organic Law No. 31/2006 of 14/08/2006 on Organisation, Jurisdiction, Competence and Functioning of the Mediation Committee, art. 8.

110. *Id.*, art. 3.

residents of the cell, and cannot also hold an administrative position in local government or sit on the *Gacaca*¹¹¹ bench.¹¹² As with all other public institutions in Rwanda, women must comprise at least thirty percent of the *abunzi*.¹¹³

The lifecycle of a typical land dispute begins with the family, then moves through the *abunzi*, and finally to the formal court system only if necessary. As explained by several interviewees, the first level of dispute resolution is often conducted by the family, neighbors, or the head of the village. If no resolution can be reached, parties to the dispute bring their dispute before the *abunzi*. The dispute is then mediated by the committee, and the case is only referred to the formal court if the disputants are unhappy with the recommendation of the *abunzi* or are unable to come to any form of resolution.

Land disputes that are referred from the *abunzi* to the formal court system begin with the court of first instance at the District level. They are not, however, subject to the typical appeals process. If the judiciary authorities at the District and City of Kigali level are unable to resolve a land-related dispute, instead of moving up to the High Court, the National Land Centre is given the responsibility of acting as the relevant dispute resolution actor.¹¹⁴ Most land dispute resolution begins and ends with the *abunzi* – a 2005 survey showed that seventy-three percent of the cases concluded by the *abunzi* were not later referred to the court system.¹¹⁵

111. *Gacaca* courts, modeled on traditional dispute resolution mechanisms, were empowered by the government to specifically adjudicate certain types of criminal acts related to the Genocide. The administration of justice via the *Gacaca* courts has been heavily discussed in scholarship and media. For the relevant laws establishing the *Gacaca* courts and granting them the competence to adjudicate crimes against humanity and the crime of genocide in Rwanda, see Organic Law No. 40/2000 of 26/01/2001 setting up “*Gacaca* Jurisdictions” and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Between October 1, 1990, and December 31, 1994; Organic Law No. 33/2001 of 22/06/2001 Modifying and Completing Organic Law No. 40/2000 of 26/01/2001 setting up “*Gacaca* Jurisdictions” and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Between October 1, 1990, and December 31, 1994; Organic Law No. 16/2004 of 19/06/2004 Establishing the Organization, Competence, and Functioning of *Gacaca* Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and other Crimes Against Humanity, Committed Between October 1, 1990, and December 31, 1994; Organic Law No. 28/2006 of 27/06/2006 Modifying and Completing Organic Law No. 16/2004 of 19/06/2004 Establishing the Organization, Competence, and Functioning of *Gacaca* Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and other Crimes Against Humanity, Committed Between October 1, 1990, and December 31, 1994.

112. Organic Law No. 31/2006 of 14/08/2006 on Organisation, Jurisdiction, Competence and Functioning of the Mediation Committee, arts. 1-4.

113. *Id.*

114. Law No. 20/2009 of 29/07/2009 establishing the National Land Centre (NLC) and Determining its Responsibilities, Functioning, Organization and Competence (2009), art. 5(24) (“NLC shall particularly have the following responsibilities: . . . 24[.] to act as an organ to resolve conflicts relating to land use and management which were not resolved by relevant authorities at the District or City of Kigali levels which were referred by appropriate authorities.”).

115. REPUBLIC OF RWANDA, JUSTICE, RECONCILIATION, LAW & ORDER SECTOR STRATEGY AND BUDGETING FRAMEWORK: JAN. 2009 – JUNE 2012 36 (2008), available at

Thus, the *abunzi* have a significant impact on reducing the caseload of the formal courts.¹¹⁶

The *abunzi* are also vital to women's realization of their land rights. They are often both the first and last resort for dispute resolution. Because they are installed at so local a level and are free, the *abunzi* are more accessible than District Courts, which serve larger geographic areas.¹¹⁷ Early research found that women were able to obtain rulings in favor of their legal land rights, but suggested that ensuring enforcement of such rulings remained a problem.¹¹⁸ The government of Rwanda similarly noted complaints about cell officials' failure to enforce *abunzi* decisions.¹¹⁹ Next steps identified by the government include review of "procedures for enforcing . . . determinations made by Abunzi, . . . and if necessary appropriate amendments made to the law to ensure that enforcement is effective."¹²⁰

6. Education and Training

Following the land reforms, non-governmental, governmental, and international actors implemented education and training programs aimed at dispute resolution actors and advocates as well as beneficiaries of the reforms. Local dispute resolution processes were supported by a Land Dispute Management Project (LDMP), developed and managed by USAID, in partnership with the government of Rwanda.¹²¹ Field trainings were conducted to educate dispute resolution actors, including the *abunzi*, land committees, and land adjudication committees, as well as advocates for women, such as the National Women's Council, about the new laws. Training topics included the substance of the new laws, as well as dispute settlement and conflict resolution skills. Special attention was paid to how dispute resolution and the new laws affected women and other vulnerable groups.¹²²

http://www.primature.gov.rw/index2.php?option=com_docman&task=doc_view&gid=883&Itemid=95 [hereinafter RWANDA JUSTICE AND BUDGETING FRAMEWORK].

116. Organic Law No. 31/2006 of 14/08/2006 on Organisation, Jurisdiction, Competence and Functioning of the Mediation Committee, art. 8 (granting mandatory jurisdiction over disputes relating to "lands . . . whose value does not exceed three million Rwandan francs"); U.S. AGENCY FOR INT'L DEV., LAND DISPUTE MANAGEMENT IN RWANDA: FINAL REPORT 8 (2008) [hereinafter LDMP FINAL REPORT].

117. Districts are divided into sectors, which are divided into cells. See *supra* note 107. Cell-based institutions thus serve smaller communities than district-based institutions. Rwanda has thirty districts, containing 2,150 cells. See RWANDA JUSTICE AND BUDGETING FRAMEWORK, *supra* note 115, at 33.

118. Daley et al., *supra* note 7, at 141.

119. RWANDA JUSTICE AND BUDGETING FRAMEWORK, *supra* note 115, at 38. The report does not discuss why officials are failing to enforce *abunzi* decisions.

120. *Id.* at 64.

121. U.S. AGENCY FOR INT'L DEV. RWANDA, WOMEN AND VULNERABLE GROUPS IN LAND DISPUTE MANAGEMENT: A PLAN TO ENSURE THAT THEY FULLY PARTICIPATE AND BENEFIT 1 (2008).

122. U.S. AGENCY FOR INT'L DEV. RWANDA, FIELD TRAINING REPORT: TRAINING LOCAL INSTITUTIONS IN KABUSHINGE AND NYAMUGALI CELLS ON LAND DISPUTE MANAGEMENT AND

Awareness activities aimed at the general population have been carried out by a variety of groups. As an example, Haguruka, a Rwandan NGO, has been educating the general population on women's rights, especially their rights to property and inheritance.¹²³ Since 1995, these efforts have been supported by the UN Refugee Agency. Haguruka's campaign includes the use of posters and legal education booklets to educate the population about women's new rights. In addition, the organization provides legal aid to women attempting to secure their rights, and trains paralegals to give basic advice to women regarding dispute settlement. These activities are directed towards local authorities and women's organizations, but some services are also directly provided to women.¹²⁴

LDMP also conducted education and awareness campaigns in its pilot areas. To ensure that the message being perceived was the same as the message intended to be delivered, LDMP assembled focus groups including single and married adult males, single and married adult women, women legally married in polygamous relationships, widows, and orphans.¹²⁵ Awareness activities appear to have been sustained and widespread among various population groups and conducted by various organizations, although knowledge of the new rights varies with respect to the specific area of rights and from region to region.¹²⁶

The continued emphasis on raising awareness among women, men, legal authorities, and legal service providers is a positive step. If women are not aware of their rights, they cannot demand them. Additionally, if enforcement actors within institutions such as the *abunzi*, the judiciary, and local government are unaware of the changes to the law, they will not enforce them. Finally, those who would be advocates for women need to be not only educated about the new laws, but also trained in how to effectively assist women seeking to benefit from their new rights. These awareness-raising activities are necessary to generate the social change that the laws create on paper.

7. Regulating Land Use to Encourage Agricultural Productivity and Economic Growth

Land use regulations are particularly important for economic growth objectives, but they also have an impact on gender equality. To encourage agricultural productivity and economic growth, land regulations mandate

LAND-RELATED LAWS 18-19 (2008).

123. UNIFEM, *supra* note 38, at 43; Interview with Haguruka employee, in Kigali, Rwanda (Aug. 24, 2009).

124. UNIFEM, *supra* note 38, at 43; Interview with Haguruka employee, in Kigali, Rwanda (Aug. 24, 2009).

125. LDMP FINAL REPORT, *supra* note 116, at 10-11.

126. Interview with International NGO employee, in Kigali Rwanda (Sept. 4, 2009); Interview with Haguruka employee, in Kigali, Rwanda (Aug. 24, 2009); Daley et al., *supra* note 7, at 137 (summarizing the work of two prior fieldwork teams, which found "relatively high levels of awareness as to the existence of the Succession Law, but much less so in the case of the National Land Policy and the [Organic Land Law]").

productive land use, prohibit the partition of small parcels of land, and encourage the consolidation of small parcels of land. These regulations, while encouraging economically productive behavior, also create perverse incentives when it comes to women's rights.

In an attempt to combat the low productivity of land, the Organic Land Law directly mandates "productive" land use, stating that the land must be used "in accordance with its nature and intended purpose."¹²⁷ The law further elaborates on the meaning of productive use, stating that such use would "protect [the land] from erosion, safeguard its fertility and ensure its production in a sustainable way."¹²⁸ Local authorities are authorized to confiscate the land if landowners fail to exploit it diligently and efficiently.¹²⁹

The law also attempts to encourage "economically viable development of land" by discouraging the partition of small land parcels and encouraging consolidation of property.¹³⁰ Based on the U.N. Food and Agriculture Organization's standard that plots smaller than 0.90 hectares are not nutritionally viable,¹³¹ the Organic Land Law does not allow registration of plots smaller than one hectare.¹³² Partition of plots smaller than one hectare is thus impossible.

Correspondingly, the government envisions a consolidation program that encourages households with small parcels of land to consolidate their land, aiming to establish "normal and adjoining plots of land with as much independent access as possible, such that, in the public interest, a more economical use of land resources according to their purpose will be realized."¹³³ A program of consolidation is not yet a reality but is anticipated by current laws and policies. The Organic Land Law already permits local authorities to approve the consolidation of small plots of land to improve land management and productivity.¹³⁴ In addition, one of the future responsibilities of the National Land Centre will be to facilitate land consolidation once nationwide titling and registration is complete.¹³⁵ The laws and policies do not yet specify how consolidation is to occur, although the National Land Policy envisions at least one method of consolidation: relatives buying back land inheritance from heirs.¹³⁶

127. Organic Law, No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, art. 62.

128. *Id.*

129. *Id.*, arts. 62-65; Johan Pottier, *Land Reform for Peace? Rwanda's 2005 Land Law in Context*, 6 J. AGRARIAN CHANGE 509, 521 (2006).

130. NATIONAL LAND POLICY, *supra* note 15, at 28.

131. Pottier, *supra* note 129, at 521.

132. Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, art. 20.

133. NATIONAL LAND POLICY, *supra* note 15, at 42.

134. Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, art. 20.

135. RWANDA MINISTRY OF NATURAL RESOURCES, NATIONAL LAND CENTRE PROFILE, available at http://www.minela.gov.rw/fr/IMG/pdf/NLC_profile.pdf (last visited Apr. 18, 2011).

136. NATIONAL LAND POLICY, *supra* note 15, at 29 ("The process of consolidation will be

A system in which landowners can lose land when their land use is not “productive” can discourage landowners from giving land to women. As I describe in Part III *infra*, enormous importance is placed on keeping land within the family. The idea that land will be lost if it is granted to women arises in two ways. First, there is a perception among men that women are incapable of adequately using land.¹³⁷ It follows, then, that women may be perceived as incapable of using land in a “productive” manner, and ownership of land by women can therefore potentially lead to land confiscation. Second, among daughters and sons, daughters are typically viewed as the children who move away from the household, while sons remain.¹³⁸ If daughters inherit land and move away, they will not be able to use the land in a “productive” manner because of distance, and again the land may be confiscated. Consolidation, although meant to increase economic productivity and presumably prevent confiscation due to underproductivity, has no clear, identifiable methodology. In its preconceived state, consolidation does not appear to mitigate any of the disincentives to granting women land.

* * *

Under the new laws, a practice of granting daughters and wives land rights has begun to develop. Many of the respondents I interviewed, noting that women were starting to exercise greater rights to land, expressed a belief that gender equality was being incrementally implemented with respect to land rights.¹³⁹ One research team in Rwanda, based on its 2006 fieldwork, argued not only that women were able to exercise greater land rights, but also that these laws appear to have “increased legally married women’s bargaining power, security and autonomy within their household[s].”¹⁴⁰ In addition, the Rwandan government has exhibited a political will to implement the principle of gender equality with respect to land reform: working with local and international organizations, the government has taken significant steps by amending laws, training government and dispute resolution actors, raising awareness among the population of the new laws, and taking other

fostered and the regulation of buying back land among inheritors will be established so as to render the consolidation of plots effective.”).

137. Daley et al., *supra* note 7, at 140.

138. The idea that women move away to live in their husbands’ homes is reinforced in law. See discussion *infra* Part III. Under Rwandan law, the husband chooses the matrimonial home. The assumption and probable reality, then, is that wives move to wherever the husbands are.

139. For example, one woman noted that conditions are better now for daughters than they were under the previous laws. Interview with 55-year-old widow (Aug. 3, 2009). Another noted that although families continue to favor boys, she could see a change, as families were beginning to give land to daughters as well. Interview with 25-year-old unmarried female (Aug. 6, 2009). Please see Appendix for discussion of the methodology and locations of interviews. Unless otherwise noted, interviews with citizens took place in the Northern and Southern provinces.

140. Daley et al., *supra* note 7, at 138.

measures to ensure that women's rights are protected.

Although the land reforms have begun to change behaviors in a way that benefits women, obstacles to women's land rights continue to exist. Some, such as the exclusion of widows of the Genocide from the Succession Law, are clear limitations in the law. Other obstacles are behavioral, and solutions are not easily identified. For example, the exclusion of common law and polygamous wives from the Succession Law can be viewed as a problem with a non-legal solution: if women are increasingly sensitized to the importance of being in a civilly-registered, monogamous marriage to obtaining land rights, then they can avoid common law and polygamous unions. Similarly, any resistance to granting women land inheritance rights could be explained by a natural resistance to such a dramatic social change or by a desire to adhere to customary rules which had governed since the pre-colonial days. Theoretically, these too could be overcome by awareness-raising and time.¹⁴¹ However, as I argue below, the existence of informal marriages and continued resistance to granting women land rights are rooted in land scarcity, other sex-discriminatory laws, and gendered power structures, which require more than sensitization and time to overcome.

III. OBSTACLES TO WOMEN'S EQUAL EXERCISE OF LAND RIGHTS

In spite of the demonstrated will for change and the extensive legal changes and program implementation, there remain significant social obstacles inhibiting women's exercise of their rights to land. As discussed above, some obstacles exist merely as limitations in the law, such as the exclusion of women who were widowed prior to 1999 from gaining inheritance rights. Others arise, at least in part, out of the behaviors of Rwanda's population. It is these obstacles which I refer to as "social obstacles." In the year following the passage of the Organic Land Law, several studies and reports examining gender equality with respect to land rights were carried out, identifying three of the main types of social obstacles. The first comes in the form of resistance among the population to granting daughters rights to inherit land equally with sons.¹⁴² The second is adherence to assumptions of female inferiority both as daughters and as wives.¹⁴³ The third is the persistence of informal marriages, both common

141. At least one set of authors argues for a combination of time and sensitization, stating that "some men retain similar doubts [about the validity of women's equal rights to land], on similar grounds, and do not want change. What is therefore needed is continuing sensitization about women's land rights, and a calm acceptance that fundamental change in both gender and land relations will take a long time; some people will always take longer to internalize new norms than others, although the process will speed up with sufficient widespread sensitization to achieve critical mass." *Id.* at 146.

142. *Id.* at 140.

143. Beata Mukarusagara et al., NGO SHADOW REPORT TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 22 (2009) [hereinafter CEDAW SHADOW REPORT] (stating that, "[t]he traditional superiority of the man still weighs in the spirit of certain Rwandan including a great number of women. The division of the labour, the right to the property and the succession are so related to the culture which the lately adopted laws

law and polygamous, in which "informal" wives are left unprotected by the new laws.¹⁴⁴

My own interviews conducted in 2009 indicate that these obstacles continue to be significant for women. I argue that these obstacles will continue to significantly inhibit women's rights to land because researchers, advocates, development actors, and other policymakers are not addressing their deep and underlying causes. Most of the policy solutions proposed by these players fail to respond to these underlying causes and are thus inadequate.

With respect to the first two obstacles, researchers, advocates, and development actors have suggested maintaining and increasing awareness and sensitization campaigns.¹⁴⁵ Although sensitization may hasten the slow social process of changing a population's mindset, relying on it assumes that the resistance to gender equality arises mostly from social resistance to change. This is not unreasonable on its face. Customary practices in Rwanda carry weight, creating such social resistance. However, forces beyond custom sustain these forms of resistance. As I demonstrate below, two important factors strengthen customary resistance. The first, and most difficult to overcome, is land scarcity, which fuels the resistance against granting daughters equal inheritance rights. The second is the continued existence of laws asserting male superiority in household matters. These laws contribute to the persistence of customary principles preventing daughters from inheriting land and wives from exercising decision-making authority over household land. More than sensitization and time will be required to overcome this resistance. Instead, solutions should directly address the ways in which land scarcity and legal reinforcement contribute to resistance to gender equality.

As for informal marriages, proposed solutions are varied. The Rwandan government suggests increasing awareness of the importance of formalizing a marriage and the dangers of entering a polygamous or common law marriage.¹⁴⁶ Indeed, government agencies, international organizations and NGOs have already implemented awareness programs

cannot change them easily."); Daley et al., *supra* note 7, at 140 (noting, "there is a strong cultural presumption in favour of the husband as head of the family in Rwanda. It therefore remains common for men to consider that all land belongs to them and for them to be considered as the main decision-maker in their family, both within their family and by those outside of it.").

144. Pottier, *supra* note 129, at 519-20; Daley et al., *supra* note 7, at 138-42 (although this article was published in 2010, the findings were based on fieldwork conducted in 2006); BROWN & UVUZA, *supra* note 22, at 12-25.

145. See, e.g., Daley et al., *supra* note 7, at 146 (arguing that in light of men's and women's doubts of the validity of women's rights to land, "[w]hat is therefore needed is continuing sensitization about women's land rights, and a calm acceptance that fundamental change in both gender and land relations will take a long time."); BROWN & UVUZA, *supra* note 22, at 30; CEDAW SHADOW REPORT, *supra* note 143, at 22 (stating that "the aspects of the habit aiming at the discrimination of the woman must be changed. Of this, one needs an education and a sensitizing for the change of mentalities").

146. REPUBLIC OF RWANDA NATIONAL UNITY AND RECONCILIATION COMMISSION, COMMUNITY CONFLICTS IN RWANDA: MAJOR CAUSES AND WAYS TO SOLUTIONS 60 (2007) [hereinafter NURC].

to educate women about the rights accompanying civil marriages,¹⁴⁷ and the government is encouraging women to formalize their marriages.¹⁴⁸ These programs, of course, assume that the crux of the problem lies in lack of awareness of the rights attaching to formally registered marriages. Another set of solutions is based on the idea that ensuring access to and improving existing government services will remedy the problem. Government programs have focused on developing titling practices that protect women in common law and polygamous marriages.¹⁴⁹ Recently, to address the problem of polygamy, Rwanda has enacted criminal penalties against parties who enter into polygamous marriages.¹⁵⁰ Specifically with respect to common law marriages, it has been suggested that spouses may avoid formally registering their marriages due to the associated costs.¹⁵¹ A component of the policy solution would then also include some fee waiver for those who cannot afford formal registration. The government's mass marriage ceremonies are also designed to combat the existence of common law marriages. An ultimate solution, proposed by some women's groups and NGOs in Rwanda, falls outside the categories of awareness-raising and increasing access to civil registration: amending the laws to recognize common law marriages and grant spouses in such marriages the same rights associated with formal marriages.¹⁵²

An examination of the motivations of men and women entering marriage reveals that social forces and gendered power relations pressure women to agree to common law or polygamous marriages. This is true even when these women know that only formally registered marriages will protect their rights. Many of the proposed initiatives to stop informal marriages – focusing on awareness and access – do not appropriately acknowledge these forces or power relations and thus will have only limited impact. To adequately protect the rights of women in informal marriages, the government must instead develop solutions which acknowledge and directly combat existing power relations. For wives in common law marriages, this can be achieved by legally recognizing common law marriage as proposed by some of the women's organizations.

147. For example, an aim of the UN-funded Haguruka educational campaigns was to raise awareness of the inheritance rights granted to wives. UNIFEM, *supra* note 38, at 43. These necessarily require educating people that inheritance rights attach to a legal marriage.

148. The mass marriages implemented by the Rwandan government can be viewed not just as a means of formalizing marriage, but also as a way of spreading the message that married couples should enter into formal, rather than informal, marriages.

149. BROWN & UVUZA, *supra* note 22, at 36 (suggesting that wives in common law marriage can be protected when spouses in common law marriages who purchase land together are both included on the title document); Daley et al., *supra* note 7, at 142-43 (noting that some women in polygamous marriages manage to acquire parcels of land independently of their husbands, and thus will be protected if they are registered as sole owners of this independently-acquired land).

150. Law No. 59/2008 of 10/09/2008 on Prevention and Punishment of Gender-Based Violence, arts. 21-22.

151. Pottier, *supra* note 129, at 519 (arguing that "[t]he situation [of informal marriages] is unlikely to change in the near future, since the cost of a legally recognized marriage is rising fast").

152. BROWN & UVUZA, *supra* note 22, at 15, 37.

The question with respect to polygamy is more complex, but shifting the criminalization conversation to acknowledge and respond to the needs of vulnerable wives and children in polygamous marriages is an important first step.

Women face resistance to their inheritance rights as daughters, resistance to equal decision-making authority as wives, and pressure from gendered power structures as soon-to-be-wives. When examining each of these situations separately, the underlying causes – lack of land, legal reinforcement of male authority, and gendered power structures – come to light.

A. As Daughters: Facing Resistance to Equal Inheritance Rights

Respondents in my interviews commonly referenced resistance to granting equal inheritance to daughters and sons as the source of many local-level disputes. The statutory grant of inheritance rights to daughters runs contrary to customary law, pursuant to which land was passed down from father to son. Unsurprisingly, a desire to adhere to custom fosters some of the resistance to passing land to daughters. This adherence to custom can be chipped away with time and education. However, another significant cause of this resistance is land scarcity: with limited land to pass on to heirs, parents do not want to give land to their daughters. Policies aiming to encourage changed behavior with respect to inheritance should thus address scarcity-rooted resistance.

Land disputes are the most common type of disputes in Rwanda.¹⁵³ Of these, inheritance disputes, often among children of the deceased, were cited as the most common by the members of the *abunzi* who were interviewed.¹⁵⁴ Even those outside the dispute resolution field noted the frequency of inheritance disputes: the majority of my respondents, when asked if they knew of any land disputes, referenced inheritance disputes. When asked about current succession practices, nearly all respondents in the South and several respondents in the North stated that daughters would not receive parcels of land equal to those received by their brothers. This inequality could manifest as daughters receiving smaller shares than

153. BROOKINGS INITIATIVE, *supra* note 59, at 26.

154. Several members of the *abunzi* offered estimates as to how many of their land disputes involved inheritance. Although the estimates ranged, all estimates were significant percentages. Interview with male member of the *abunzi* (Aug. 26, 2009) (estimating that 30% of land disputes he mediated involved inheritance); Interview with female member of the *abunzi* (Aug. 7, 2009) (estimating that 80% of land disputes she mediated involved inheritance); Interview with male member of the *abunzi* (Aug. 26, 2009) (estimating that 10% of land disputes he mediated involved a daughter attempting to exercise her right to inherit). Other members of the *abunzi* did not provide percentages but made note of the frequency of inheritance disputes, generally. Interview with female member of the *abunzi* (Aug. 7, 2009) (estimating that 89% of the disputes she heard were land disputes, and stating that the majority of those were inheritance disputes.); Interview with male member of the *abunzi* (July 24, 2009) (estimating that 80% of the disputes he heard were land disputes, and that the majority of those were inheritance disputes).

sons¹⁵⁵ or receiving lower-quality land than sons.¹⁵⁶

Custom is the most obvious and most oft-cited reason for such inequality. A broad principle in Rwandan customary law is that land must stay with the sons of the family. One 55-year-old female respondent nearly laughed out loud when asked if she would receive an equal amount of land inheritance as her brothers: "My father would not allow it."¹⁵⁷ A 25-year-old female respondent expressed similar sentiment: "That's how it is, it cannot be changed."¹⁵⁸

Even those applying the succession law felt the pull of custom. All of the members of the *abunzi* who were interviewed agreed that they would divide the land equally among sons and daughters if the parents died intestate. However, nearly all of them also expressed discomfort or outright disagreement with this result. One male *abunzi* member stated that if he could change one thing, it would be that children of a woman be prohibited from inheriting property from their maternal grandfather, because, "I want the land to stay with the family."¹⁵⁹ Similarly, a female member of the *abunzi* noted that she preferred not to go against custom, stating, "The sons are the true children of the household. The daughters go elsewhere."¹⁶⁰ Under this view, if daughters are given family land and they get married, then that land has gone to another family. Another female *abunzi* member, noting that sons are given more land by their parents, stated, "I find that to be just."¹⁶¹

Various institutional actors have acknowledged resistance to the idea of equal inheritance rights. In a recent evaluation of Rwanda's promotion of gender equality and women's empowerment, the Ministry of Gender and Family Promotion noted that resistance continued to inhibit implementation of the gender equality measures in the Succession Law.¹⁶² A 2009 Shadow Report submitted by Rwandan civil society members to the CEDAW committee specifically identified custom as a driver of such

155. As an example, one young man interviewed that his sisters would not receive as much land as him, because a small parcel is enough for daughters. Interview with 23-year-old unmarried male (July 29, 2009). Both women and men noted that in reality, daughters inherit smaller parcels than sons. See, e.g., Interview with 25-year-old unmarried female (July 30, 2009); Interview with 23-year-old unmarried female (Aug. 26, 2009); Interview with 18-year-old unmarried male, (Sep. 2, 2009). Interviews conducted by African Rights, an international NGO, similarly revealed that many men felt that women should only be given small parcels of land, if any at all. Daley et al., *supra* note 7, at 140.

156. U.S. AGENCY FOR INT'L DEV., FORUM ON THE ACHIEVEMENTS AND LESSONS OF THE RWANDA LAND DISPUTE MANAGEMENT PROJECT 33 (2008).

157. Interview with 55-year-old widow (Aug. 3, 2009).

158. Interview with 25-year-old unmarried female (Aug. 7, 2009).

159. Interview with male member of the *abunzi* (July 24, 2009).

160. Interview with female member of the *abunzi* (Aug. 7, 2009).

161. Interview with female member of the *abunzi* (Sept. 3, 2009).

162. REPUBLIC OF RWANDA MINISTRY OF GENDER AND FAMILY PROMOTION, *National Evaluation Report on Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000)* 19 (September 2009), available at http://www.migeprof.gov.rw/index.php?option=com_docman&intemid=136 (follow "Gender Promotion Reports" hyperlink; then follow "[Ascendant]" hyperlink; then follow "BEIJING FINAL REPORT" hyperlink).

resistance, noting, “[t]he traditional superiority of the man still weighs in the spirit of certain Rwandans including a great number of women. The division of the labour, the right to the property and the succession are so related to the culture [that] the lately adopted laws cannot change them easily.”¹⁶³

Custom does stand out as a significant source of resistance, but it is not the only one. An overall lack of land seriously inhibits effective and meaningful implementation of gender equality in land rights. In fact, the scarcity of land is such a significant issue that I argue it is a core driver of the continued reliance on customary practices which keeps land in the hands of only the male portion of the population.

Just as land scarcity was important in shaping Rwanda’s history and land reforms, it also shapes how land reforms, and the gender equality measures within them, are implemented. In interviews, parents discussing their own land noted that they could not give land equally to all their children because there was not enough land. This was one of the most commonly expressed concerns among respondents. With the majority of families owning less than one hectare of land, land is limited.¹⁶⁴ Two disincentives to grant land to daughters stem from this reality. The first lies in the law; the second, in the desire to hold onto land in any way possible.

The Organic Land Law, by prohibiting division of property smaller than one hectare,¹⁶⁵ effectively prohibits many households from transferring property to all the children of the household. In the event that a parent does not have enough land to be partitioned among all the children, the Succession Law provides alternatives meant to achieve equality in inheritance. Respondents, however, do not perceive these alternatives as viable.

The first alternative, selling the land and dividing the profits among the children,¹⁶⁶ is not a palatable option given the high social and economic value attached to land. When asked, respondents said that selling was not advisable. One respondent noted that people who sell land become poor and turn to thievery.¹⁶⁷ Another male respondent said that he “cannot just sell. Land is the source of everything.”¹⁶⁸ Several noted that even if one family member wanted to sell the land, the other family members would not agree to it.¹⁶⁹

The other alternative offered by the Succession Law, equal sharing in

163. CEDAW SHADOW REPORT, *supra* note 142, at 22.

164. Kelly et al., *supra* note 102, at 5.

165. The Organic Land Law does not allow the registration of, and thus effectively prohibits the division of, property smaller than one hectare. See *supra* text accompanying notes 124-135.

166. Law No. 22/99 of 12/11/1999 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions, O.G. No. 22 of 15/11/1999, art. 91.

167. Interview with 19-year-old unmarried female (Aug. 26, 2009).

168. Interview with 24-year-old unmarried male (Aug. 28, 2009).

169. See, e.g., Interview with 21-year-old unmarried female (Aug. 7, 2009); Interview with 66-year-old widow (July 22, 2009); Interview with 48-year-old married male, (Aug. 28, 2009).

the cultivated product from the land in question,¹⁷⁰ is also not practicable. Many farmers in Rwanda currently engage in subsistence farming, producing just enough to meet the nutritional needs of their households.¹⁷¹ If an existing household parcel is inadequate or barely adequate to meet the nutritional needs of a household, it cannot be expected to meet the nutritional needs of the future spouses and children of each child in the household.

A third alternative provides that children who receive smaller or no parcels of land will receive appropriate compensation from their luckier siblings.¹⁷² Unfortunately, when the parents or children have no extra income or other property, this alternative is also impossible. As one member of the *abunzi* put it, unequal inheritance practices “occur because the parents are poor.”¹⁷³

In addition to the legal concerns described above, three factors taken together – the unwillingness to sell land, land fragmentation, and land scarcity – generate and maintain community resistance to extending land rights to women. As noted above, inadequate supply of land was cited as a major reason for limiting daughters’ inheritance of family land. With a high population density and a continuously increasing population, the average household farm size in Rwanda continues to decrease. From 1991 to 2000, average household farm size dropped from 1.06 hectares to 0.71 hectares.¹⁷⁴ In addition, the Rwandan economy is primarily agricultural.¹⁷⁵ The necessity of land for livelihood and income, along with its scarcity, creates a strong incentive for landowners to avoid disposing of it. Under customary law, this incentive manifested in the denial of wives and daughters of the right to temporarily use land. Under the current system, it manifests in the aversion to granting them rights to inherit and own land.

As noted above, many interview respondents stated that selling land is a bad idea. Reasons for this stemmed from the perceived importance of land. Responses included: “There is no other fortune than the land in the village;”¹⁷⁶ “Selling is not in your interest;”¹⁷⁷ “Land is the source of everything.”¹⁷⁸ Several respondents expressed a desire to learn a trade, believing it was a faster and more effective means of income generation and economic advancement than cultivation. However, even these respondents expressed a desire to keep or purchase land in order to pass it on to their

170. Law No. 22/99 of 12/11/1999 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions, O.G. No. 22 of 15/11/1999, art. 91.

171. Rwanda PRSP, *supra* note 62, at 97 (noting that “[o]ver 87% of the [Rwandan] population depends on subsistence agriculture for its livelihood”).

172. Law No. 22/99 of 12/11/1999 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions, O.G. No. 22 of 15/11/1999, art. 77. *See supra* note 104.

173. Interview with member of the *abunzi* (Aug. 26, 2009).

174. Kelly et al., *supra* note 102, at 5.

175. Rwanda PRSP, *supra* note 62, at 97.

176. Interview with 55-year-old widow (Aug. 3, 2009).

177. Interview with 21-year-old unmarried female (Aug. 7, 2009).

178. Interview with 24-year-old unmarried male (Aug. 28, 2009).

children.¹⁷⁹ Sale of one's own land is thus not a light undertaking in Rwanda. Indeed, of the three respondents who did admit to selling land to people outside of their families, one stated that she did so to obtain money to buy medical care for her child and another stated that she did so to pay for expenses related to her child's schooling.¹⁸⁰ The third respondent did not provide a reason.¹⁸¹

The lack of land, combined with a deep-seated unwillingness to sell land, has contributed to land fragmentation. As land is partitioned and passed on from parents to multiple children, individual parcels of land shrink in size. In addition, the unwillingness to sell land exists even among those landowners who move or live far away from the land. Several respondents indicated that they lived on one small parcel of land and owned another small parcel that was far away from where they lived. These respondents also indicated that because of distance, this far away parcel was not cultivated often.¹⁸² Agricultural studies have shown that this level of fragmentation has a negative impact on land use and land quality. Even those far away parcels that are cultivated show statistically significant decreases in conservation investment and organic inputs, as well as an increase in erosive cropping patterns.¹⁸³ These behaviors lead to a loss of land productivity, already a significant problem in Rwanda due to over-cultivation and cultivation of fragile lands. The low productivity of the land further contributes to the lack of land, as the total amount of arable and productive land is decreasing.

Lack of land, unwillingness to sell, and increased fragmentation create a feedback loop, with each factor exacerbating the next, further inhibiting the extension of land rights to women. The scarcity of land provides an incentive for those with existing rights to the land to fiercely guard those rights. Dilution of rights is never likely to be openly embraced by those experiencing the dilution. In Rwanda, dilution via gender equality is even more heavily resisted because of the already extremely high competition for land, which is worsening with time.

Effectively encouraging gender-equal behavior requires addressing these three factors. Sensitization campaigns alone will not be sufficient to overcome the negative impact that the lack of land has on the implementation of gender equality. As long as the problem of land scarcity remains unaddressed, mandating gender equality in succession and land

179. See, e.g., Interview with 19-year-old unmarried male (Aug. 6, 2009) (noting that he wants to have a trade and does not want to cultivate land, but wants to have land to pass on to his children); Interview with 22-year-old unmarried male (Aug. 26, 2009) (noting that he wants to learn a trade but also wants to own one plot of land for each child he has); Interview with 18-year-old unmarried female (Aug. 26, 2009) (noting that she wants to learn a trade to earn income, but also wants land to cultivate).

180. Interview with 66-year-old widow (July 22, 2009); Interview with 58-year-old widow (Aug. 21, 2009).

181. Interview with 55-year-old widow (Aug. 21, 2009).

182. Daniel Clay et al., *Input Use and Conservation Investments Among Farm Households in Rwanda: Patterns and Determinants* 12, 13 (Mich. St. U. Policy Paper, 2002).

183. *Id.*

rights can only go so far. Teaching or sensitizing the population about women's new rights will not change the overriding reality that land is scarce and no one wants to give it up. However, while more land cannot simply be created, the unwillingness to sell land and the increasing land fragmentation are factors that can be mitigated.

To some degree, Rwanda does directly engage with these two factors in its economic policies. Many of Rwanda's land reform policies were crafted with the intent of achieving economic development and creating a private market for land. If these are successful, then the unwillingness to sell land will have been addressed. If off-farm economic opportunities continue to expand, then perhaps the perceived need to own land will lessen. The government of Rwanda has also addressed some of the symptoms of fragmentation by reserving the right to confiscate any land that is not being used productively.¹⁸⁴ However, the discretionary power in land confiscation is cause for concern, as local authorities may exploit such powers. In addition, the threat of confiscation can feed into the rationale against giving daughters their inheritance, as parents will have an even greater fear of losing family land: if they gift land in their village to their daughters, but their daughters live elsewhere with their husbands, then that land may be used less productively due to distance and be subject to confiscation.

Fragmentation might also be mitigated by allowing people to "swap" parcels of land. With the National Land Centre administering a nationwide registration program and creating cadastral surveys, and District, Sector, and Cell level commissions gathering title information,¹⁸⁵ the infrastructure is already in place to implement this program. A household wishing to swap far away family land with other unused parcels closer to its own residences could potentially submit requests to the local land commission and find other interested parties to engage in swaps. If people are able to swap far away land for a parcel closer to their residences, they are more likely to cultivate this second parcel of land and invest in it.¹⁸⁶ Encouraging a land swap could mitigate some of the factors feeding into resistance to granting women land rights. There is some evidence that farmers already engage in land swaps on an individual level to create agriculturally-productive fragmentation.¹⁸⁷ However, on a national scale, such a program could be very difficult to implement.

Overcoming resistance to granting women land rights requires more than just sensitization; it also requires tackling economic questions relating to land scarcity. It is important to note that raising awareness and changing the laws have had some impact, as although daughters may be receiving smaller or lower-quality parcels than sons, they are for the first time receiving land pursuant to law. However, moving towards equality between sons and daughters means addressing these underlying economic

184. See *supra* text accompanying notes 127-138.

185. See discussion *supra* Part II.

186. See *supra* text accompanying note 182.

187. Pottier, *supra* note 129, at 523.

issues. These issues raise questions with no easy answers, but they are inextricably intertwined with women's land rights. The land rights discussion must be paired with the economic discussion of productivity, scarcity, encouraging a land market, and fragmentation.

B. As Daughters and As Wives: Facing Legal Reinforcement of Custom

As daughters and as wives, women face resistance that is rooted in custom but reinforced by laws which continue to assert male authority. Some of the customary resistance to gender equality in inheritance rights arises from the belief that daughters don't need as much land as sons because daughters will eventually get married. Respondents particularly emphasized that if women get married, they will leave their parental home and live with their husbands. Thus, women do not need family land to cultivate or build their homes. Other respondents noted that because daughters leave to live with their husbands, giving them land is undesirable. As one respondent put it, "parents give more to their sons because their sons build their world there. Daughters leave."¹⁸⁸

Under customary law, women had no primary rights to own land; they were deemed protected because while they were unmarried, they lived on their fathers' land, and while they were married, they lived on their husbands' land. This customary conceptualization, although legally removed from the inheritance and land laws, continues to be reinforced by other laws. In particular, article 83 of the Rwandan Civil Code states that a woman legally resides where her husband lives.¹⁸⁹ In other words, a woman's home is chosen by her husband. This directly reinforces the idea put forth by respondents that daughters go on to live on the land of their husbands, and therefore do not need to inherit family land.

Respondents who were parents acknowledged that a daughter in a bad marriage has the right to leave her husband and his land, many even stating that they would want their daughters to be able to return home if they found themselves in bad marriages. For these returning daughters, respondents offered several options, all based on customary practices. Those who had given their daughters small parcels of land stated that returning daughters could return to those small parcels to build a house and live.¹⁹⁰ Others stated that if they had not received land from their parents, daughters could return home and ask their parents or their brothers for land.¹⁹¹ The fact that returning daughters received any land at

188. Interview with 60-year-old married woman (Aug. 11, 2009).

189. U.S. AGENCY FOR INT'L DEV. RWANDA, WOMEN'S LEGAL RIGHTS INITIATIVE CONFERENCE 9 (2006) [hereinafter WOMEN'S LEGAL RIGHTS INITIATIVE] (citing article 83 of the Rwandan Civil Code); CEDAW SHADOW REPORT, *supra* note 143, at 18.

190. Interview with 18-year-old unmarried female (Aug. 26, 2009); Interview with 30-year-old unmarried male (Aug. 28, 2009).

191. Interview with 74-year-old married male (July 21, 2009) (stating that his daughters could return and ask their brothers for land); Interview with 39-year-old married male (Aug. 6, 2009) (stating that divorced women generally could return home and demand land from their parents, or if the land was already partitioned, their brothers).

all represents a step forward for women, as prior to the passage of the Succession Law women were only granted use rights to family land until they remarried.¹⁹² However, the idea that a daughter moves from her family's land to her husband's land, and back again if needed, persists. A final option offered was closer to this pre-Succession Law practice: returning daughters could live in their parents' home instead of receiving land. One young female respondent expressed the indignity of this option: "you have to be a child in the house, the charge of your parents . . . it's not good. You have to live in the house like a child."¹⁹³

Adherence to these customary principles also prevents women from exercising the land rights granted to them as legally-married spouses. The Rwandan Constitution recognizes equal rights and duties among spouses during a marriage, and the Organic Land Law and Succession Law create opportunities for wives and husbands to exercise equal authority over household land.¹⁹⁴ However, respondents noted that in fact, the husband made the decisions, and the wife could not contradict him. The administration of the household and household land is considered to fall under the husband's domain, and the husband is considered the key decision maker.

The heightened authority of the male head of household is codified in other areas of the law. Pursuant to the Rwandan Civil Code, "the husband is the head of the family."¹⁹⁵ In addition, although the law recognizes that both the father and mother have parental authority, "in the case of discord, the father's decision prevails."¹⁹⁶

The effect of this is that while women are granted rights to inherit land and to decide how household land is used or disposed, in actuality these rights can be superseded by male authority. As one respondent noted, it is always the father who makes the inheritance decisions.¹⁹⁷ In addition, although sale or other disposition of land requires consent of both spouses, respondents noted that this standard was unequally applied. One member of the *abunzi* noted that although the law states that if a man wants to sell household land, he must first ask his wife and majority-age children for consent, in reality the wife cannot effectively refuse.¹⁹⁸ In other words, while a wife is not in a position to act without her husband's consent, a husband does not feel similarly constrained by his wife's lack of consent. Another member of the *abunzi* noted that disputes related to sale of land were most often the result of a man selling household land without his

192. Daley et al., *supra* note 7, at 138.

193. Interview with 25-year-old unmarried female (July 30, 2009).

194. See discussion *supra* Part II, text accompanying notes 76-92.

195. WOMEN'S LEGAL RIGHTS INITIATIVE, *supra* note 189, at 9 (citing to article 206 of the Rwandan Civil Code); CEDAW SHADOW REPORT, *supra* note 143, at 18-19.

196. WOMEN'S LEGAL RIGHTS INITIATIVE, *supra* note 189, at 9 (citing to article 354 of the Rwandan Civil Code); CEDAW SHADOW REPORT, *supra* note 143, at 18-19.

197. Interview with 20-year-old married female (Aug. 11, 2009) (noting that "it's always the men who make inheritance decisions.").

198. Interview with female member of the *abunzi* (Sept. 3, 2009).

wife's consent, rather than the other way around.¹⁹⁹ Respondents who were not members of the *abunzi* made similar observations; one stated that although women must first find approval from their families to sell land, "men can sell when they want."²⁰⁰ Similarly, two other studies – one conducted by African Rights, an international NGO, and the other by Rwanda's National Land Tenure Reform Programme (NLTRP) – documented behaviors indicating "a strong cultural presumption in favour of the husband as head of the family in Rwanda."²⁰¹

The impact of women's lack of authority and decision-making power is significant. Many of the protections in the Succession Law and the Organic Land Law rely on mechanisms in which both spouses must consent to certain dispositions of land. However, when reality and other laws dictate that men's household decisions always prevail over women's, these protective mechanisms are compromised.

The aforementioned customary principles privilege men and support rationales to avoid giving women equal rights to land.²⁰² Supported by certain outdated provisions in the law, these principles undermine Rwanda's constitutional principles of gender equality, the effectiveness of the gender equality provisions in the land reforms, and women's empowerment. Eliminating these provisions will undermine support for discriminatory customary beliefs and contribute to the gradual move toward acceptance of gender equality.

C. As Soon-to-Be Wives: Facing Pressure in Gendered Power Structures

The 1999 Succession Law and the 2003 Constitution provide rights to spouses in civilly-registered, monogamous marriages, meaning that women

199. Interview with male member of the *abunzi* (Aug. 26, 2009).

200. Interview with 65-year-old female (July 22, 2009).

201. Daley et al., *supra* note 7, at 140.

202. It is important to note here that I am not asserting that all customary principles are discriminatory and need to be repealed. In fact, customary law is an important part of the culture of many post-colonial nations, and legal pluralism exists in these countries because of the importance of customary law to their indigenous populations. However, as discussed elsewhere in this volume by David Pimentel, "[c]ustomary law is irretrievably tainted by colonial rule, which reinforced gender distinctions consistent with the European values the colonizers brought with them. The influence of the colonial regime, therefore, interfered with women's ability to advocate for themselves *within* their traditional society. Most cultures and legal systems in the world . . . have gravitated . . . towards greater recognition of women's rights and interests. African customary law is likely to evolve in that same direction if women are allowed to advocate for themselves within that culture. Colonialism, however, impaired their ability to do so, and some versions of legal pluralism, which view traditional customary law as something static that must be preserved in the present (or ancient) form, would have the effect of perpetuating these inequalities." David Pimentel, *Legal Pluralism in Post-Colonial Africa: Linking Statutory and Customary Adjudication in Mozambique*, 14 YALE HUM. RTS. & DEV. L.J. 59, 70-71 (2011). In the context of women's exercise of land rights in Rwanda, the codification of sex-discriminatory customary principles has fixed such principles in law, rather than allowing them to evolve. It is my argument in this Article that to change the sex-discriminatory norms, such laws must be repealed. For a discussion exploring the ways in which customary and state legal systems can function together, *see id.*

in common law or polygamous marriages have no legally enforceable rights. Since the passage of the new laws, women's groups have campaigned to educate women about the importance of formally registering marriages in order to benefit from the new laws. Yet, common law and polygamous marriages remain. The immediately available causes of each – cost, lack of awareness, and vestiges of previous custom – do not fully explain why these types of marriages prevail. Instead, the existence of both phenomena can be better understood as a result of gendered power relations.

1. Common Law Marriages

Common law marriage, sometimes referred to in Rwanda as *concubinage*, refers to a union between two persons who are unmarried but who cohabit and behave, for all intents and purposes, as though they are married. These unions are essentially *de facto* marriages. Studies conducted in 2003 and 2006 indicated that this is a considerably widespread phenomenon.²⁰³ My own interviews conducted in 2009 reinforce these findings. Respondents indicated that not only did common law marriage leave common law wives at the mercy of their partners, but also children of these unions sometimes lacked any rights to ask for land because their fathers refused to recognize them.

As recently as 2003, after entry into force of the Succession Law, sixty percent of all households were based on common law marriages.²⁰⁴ Although the government of Rwanda has engaged in mass marriage ceremonies, several respondents indicated that common law marriages continue to exist. A 2006 study conducted by the Rural Development Institute (RDI) and funded by USAID reaffirms the 2003 findings, indicating that in some regions of Rwanda, there are more couples in common law marriages than in legally-recognized marriages.²⁰⁵

An in-depth study conducted by Haguruka in 2003 explored the causes of common law marriage. The most commonly cited cause of common law marriage was poverty; that is, couples do not formalize their marital unions because they lack the funds for a marriage ceremony.²⁰⁶ Haguruka's study indicated that many couples avoid entering into formal marriages because they believe that a formal marriage requires certain ceremonial components, including the giving of expensive gifts.²⁰⁷ Unable to afford these extravagances, couples opt to enter into common law marriages. With such emphasis on expensive traditions, waiving the registration fee has little impact. Of course, if cost were the only or the most substantial

203. Gervais, *supra* note 35, at 548; BROWN & UVUZA, *supra* note 22, at 14.

204. Gervais, *supra* note 35, at 548.

205. BROWN & UVUZA, *supra* note 22, at 14.

206. HAGURUKA, RECHERCHE SUR LE CONCUBINAGE AU RWANDA § 1.1 (2003) (noting that 81.7% of individuals interviewed viewed poverty as a leading reason for concubinage) [hereinafter RECHERCHE SUR LE CONCUBINAGE].

207. *Id.* at § 1.1.1.

concern, awareness campaigns could eventually convince people to formally register their marriages, while waiting to perform traditional marriage ceremonies until they could afford them. However, cost is neither the only nor necessarily the most substantial concern. The expense of getting married was cited by most of Haguruka's respondents, but it was not identified as the only or even the primary reason for entry into common law marriage. Other social forces are more pernicious and are likely the more important causes of common law marriage. It is more likely that because poverty, like custom, is an easier and more immediately available justification than gendered power structures or lack of land, it is the one that is cited most often.²⁰⁸

Gendered power structures motivate women to enter into unions – whether formal or informal – with men, and motivate men to avoid the trappings of formally-registered marriage. In Haguruka's study, after poverty, the most commonly cited causes for entry into common law marriage were consent, pregnancy, and survival.²⁰⁹ Consent merely means that the parties to a common law marriage consented to such a relationship, but it does not reveal much in the way of motivation. The next two most commonly cited causes, pregnancy and survival, speak specifically to the motivations of women. Pregnancy can propel women into common law marriage. Unmarried pregnant women are perceived as illegitimate or immoral and risk rejection by the community.²¹⁰ Cohabitation, even without formal marriage, can alleviate some of this vulnerability. Women are also reported to choose common law marriage as a means of ensuring survival; cohabiting with a man, to whom "the economic structure gives power and wealth," is safer than waiting to get formally married.²¹¹ Indeed, even legally-married women suffer from the social pressure to stay in relationships. In its study, Rwanda's NLTRP noted that "the social status of non-married women in Rwanda is generally low, and as a result, many women stay with husbands who are mistreating them."²¹²

The reasons pushing women into unions with men are counterbalanced by men's resistance to formalizing their cohabitation as marriage. In Haguruka's study, the fifth most commonly cited cause of common law marriage was the desire to remain unmarried.²¹³ This was specifically attributed to be an important motivator for men, who prefer to live in long-term, informal cohabitation while avoiding the rights and obligations that now accompany formal marriage.²¹⁴ Women's groups interviewed for the 2006 RDI study echo this theory, suggesting that resistance among men to formally enter into marriage may arise from a desire to avoid the rights that marriage grants to women.²¹⁵ RDI's study notes that in one region of

208. *Id.* at §1.1.

209. *Id.*

210. *Id.* at § 1.1.3.

211. *Id.* at § 1.1.4.

212. Daley et al., *supra* note 7, at 141.

213. RECHERCHE SUR LE CONCUBINAGE, *supra* note 206, at § 1.1.

214. *Id.*

215. BROWN & UVUZA, *supra* note 22, at 14 (the publication notes that a target group in

Rwanda, the majority of unions are legally-recognized marriages.²¹⁶ Women interviewed in that region, however, suggested that the awareness campaigns of marital rights had not effectively reached the region and men entered into formal marriage because they had not fully comprehended the additional legal protections formal marriage offers to women.²¹⁷

In this environment, in which (1) women enter into cohabitation arrangements out of need and pressure, (2) men do not face similar forces, and (3) men may even resist formal marriage, women do not have the power to demand formal marriage. With this power and incentive arrangement, the only viable solution is to legally recognize common law marriages and subsequently grant rights to common law wives. Educating the public of the dangers of common law marriage is unlikely to have any useful impact, as educating women about the benefits of entering into formal marriage will not alter their ability to effectively demand formal marriage. On the other hand, educating men may have the opposite effect and encourage even more men to avoid formal marriage. In addition, mass marriage ceremonies cannot work if men resist formalizing their marriages. Titling procedures would be similarly unhelpful: ensuring that joint acquirers are both represented on the title only helps a common law wife if she and her husband jointly purchase property. Finally, while waiving registration fees may alleviate some of the financial burden faced by couples, it would not address the social forces encouraging common law marriages.

Taking these realities into account, the government of Rwanda should officially recognize common law marriages. The lack of regulation of common law marriage denies women the rights protections they would otherwise receive through civil registration; it is thus necessary for Rwanda to ensure these protections for women in common law marriages.²¹⁸ Rwanda can look to neighbors such as Tanzania and Uganda for a starting point to such a law: Tanzania recognizes common law marriages in its Law of Marriage Act,²¹⁹ while Uganda's proposed Domestic Relations Bill would

Butare had found that more and more women are asking for legal marriage, but in some cases, men are resisting).

216. *Id.*

217. *Id.*

218. Indeed, in her article in this same volume, Johanna Bond explains why "[s]tates should enact legislation that establishes a floor for rights within marriage that applies whether the marriage was contracted according to statutory, customary, or religious law." Johanna E. Bond, *Culture, Dissent and the State: The Example of Commonwealth African Marriage Law*, 14 YALE HUM. RTS. & DEV. L.J. 1, 52 (2011). Bond reviews the various characteristics of marriages in Africa as they impact women, and argues that state regulation is needed to ensure women's human rights. See *id.* at 9-30, 52-58. As she notes, "[b]ecause customary marriage law often discriminates against women, the absence of a statutory alternative harms women." *Id.* at 58. Similarly, as I describe in this Article, informal common law marriage in Rwanda harms women because they are unable to access marital rights to property. State recognition and regulation of common law marriage would remedy this harm.

219. BROWN & UVUZA, *supra* note 22, at 15. The relevant text of the Tanzanian Law of Marriage Act reads: "Where it is proved that a man and woman have 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." If the

legally recognize common law marriage if enacted.²²⁰ To adequately protect women, Rwandan common law marriages should be considered within the default “community property” regime, subject to all the rights and obligations set forth in the Succession Law. These amendments, of course, would not provide immediate relief to common law spouses, but they do provide protection for those who have been part of a *de facto* marriage over the course of several years. I do not intend to minimize sensitization; awareness-raising will still play an important role. Men and women should continue to be educated as to the rights and obligations of a common law marriage, and women should continue to be encouraged to enter into formal marriages to better protect their rights. However, state law should also recognize common law marriage to ensure minimal protection of women’s rights to property to which they have contributed.

2. Polygamous Marriages

Although less researched and less common than common law marriage, polygamy²²¹ is also an important obstacle for women’s exercise of land rights. Although polygamy was outlawed in 1962,²²² several respondents indicated that polygamous marriages continue to exist and give rise to land disputes between the multiple wives.²²³ All respondents who mentioned polygamy were from the Northern Province. This is consistent with the understanding of women’s NGOs and government institutions, who have indicated that polygamy does exist, but predominantly in the northern part of the country,²²⁴ where it is associated with status or wealth.²²⁵ More recently, Rwanda has criminalized both formal and informal polygamous marriages, effective as of 2009.²²⁶ According to the National Unity and Reconciliation Commission, polygamy often occurs in the form of *concubinage* and “presents a non-negligible

presumption is rebutted in court, the woman may still apply for maintenance for herself and her children. Law of Marriage Act, § 160, TANZ. LAWS. [CAP 29, R.E. 2002].

220. BROWN & UVUZA, *supra* note 22, at 15.

221. Polygamy is a broad term which includes both polygyny (one husband, multiple wives) and polyandry (one wife, multiple husbands). In Rwanda, as in many countries, the problem of polygamy is actually a problem of polygyny. I use the term polygamy in this paper to maintain consistency with the terminology used by the government of Rwanda and by international and non-governmental groups in the country.

222. BROWN & UVUZA, *supra* note 22, at 16.

223. U.S. AGENCY FOR INT’L DEV. RWANDA, FORUM ON THE ACHIEVEMENTS AND LESSONS OF THE RWANDA LAND DISPUTE MANAGEMENT PROJECT 34 (2008); Interview with 56-year-old widow (Aug. 21, 2009); Interview with 18-year-old unmarried female (Sept. 2, 2009); Interview with male member of the *abunzi* (Aug. 26, 2009).

224. Interview with civil society employee (Aug. 24, 2009); Interview with Didier Sagashya, Director of Land Administration, National Land Centre (Aug. 26, 2009); NURC, *supra* note 146, at 43.

225. Daley et al., *supra* note 7, at 138. This article also notes that in southern Rwanda, “polygamy has often been associated with poverty and the need for cheap labour,” but it does not argue that polygamy occurs in southern Rwanda.

226. Law No. 59/2008 of 10/09/2008 on Prevention and Punishment of Gender-Based Violence, arts. 21-22.

gravity."²²⁷ When polygamy takes the form of *concubinage*, men have de facto marriages with several women, creating in essence a polygamous marriage. Rwanda's new law addresses both possibilities, criminalizing polygamy both via formal marriage and via *concubinage*.²²⁸ Within this existing legal regime, junior wives in polygamous unions, whether via *concubinage* or traditional polygamous marriage, cannot benefit from the new land rights. In addition, the way in which polygamy has been criminalized may harm, rather than help, these wives.

Because polygamous marriages are not recognized by the government, any wives after the first wife cannot be accorded legal protection. In theory, these wives do not need such protection, as there is an expectation that a man in a polygamous marriage gives different parcels of land to each of his wives.²²⁹ This arrangement is not always a reality, however, due to the lack of land. The first wife, provided that her marriage is formalized under civil law, is the only one with any rights to the titled property upon divorce or her husband's death. Later wives and their children remain unprotected. An NLTRP finding illustrates how problematic this can be: in practice, when a husband gives land to a junior wife, the junior wife defers to her husband as head of household and requires his consent for any decisions made with respect to that land.²³⁰ However, if he wants to sell that same land, the law requires that he obtain consent from the legal wife; the junior wife has no say.²³¹ Upon death of or divorce from her husband, a junior wife and her children may have no legally recognizable rights under the Succession Law.

In some situations, the children of junior wives are better positioned than the children of legal wives. Some junior wives acquire their own parcels of land "independently of their husbands."²³² Their husbands are not recorded as joint owners because their marriage is not legally recognized.²³³ If the children of these junior wives are recognized by their father, then they have the right to inherit, equally with all the other children of the father, from their father's share of the legally-recognized marital property, as well as the right to inherit from their mother's 100% share of her own property. Children of the legal wife, on the other hand, also have a right to inherit from their father's 50% share of marital property, but may only inherit from their mother's 50% share of that same marital property.

Despite this interesting legal loophole, the overall effect of polygamy is harmful to women. With respect to land rights, the National Unity and Reconciliation Commission notes, "The progeny from such unions are after

227. NURC, *supra* note 146, at 49.

228. Law No. 59/2008 of 10/09/2008 on Prevention and Punishment of Gender-Based Violence, arts. 21-22.

229. See Daley et al., *supra* note 7, at 143. See also Interview with 56-year-old widow (Aug. 21, 2009); Interview with 43-year-old widow (Aug. 21, 2009); Interview with male member of the *abunzi* (July 24, 2009).

230. Daley et al., *supra* note 7, at 142.

231. *Id.*

232. *Id.* at 143.

233. *Id.* This is also theoretically a possibility for common law wives.

deprived of their rights, chiefly when they are not recognized by their fathers. Furthermore, illegally espoused wives are after driven away at their husband's death."²³⁴

Rwanda has an interest in refusing to acknowledge polygamous marriages as legitimate. When *concubinage* leads to monogamous, common law marriages, women suffer because they cannot receive the legal benefits of the union. This can be remedied by the government recognizing common law marriage. However, when *concubinage* leads to de facto polygamous marriages, the harms extend beyond the lack of legal benefits. Polygamy is harmful to women²³⁵ and violates their legal rights: among other things, polygamous marriages violate the principle of gender equality set forth in the constitution and in the CEDAW,²³⁶ to which Rwanda is legally bound. NURC cites polygamy as "nurtur[ing] violence" against women,²³⁷ and contributing to the "pauperization" of the Rwandan population because multiple wives and children must share a meager income.²³⁸

At the same time, mere discouragement of polygamous marriages is unlikely to prevent them from occurring. As with common law marriages, gendered power structures inhibit women from controlling the types of marriages into which they enter.²³⁹ After the Genocide, women greatly outnumbered men, and polygamy was considered by some to be a solution to this imbalance.²⁴⁰ It follows then that in combination with the same social and economic forces pressuring women into common law marriages, the substantially reduced male population left women with no meaningful alternatives as either a first wife confronted with her husband's desire for multiple wives (especially as prior to 1999 she would have had no rights to property upon divorce), or as a second or third wife with few prospects. Unfortunately, even after the population leveled out and the demographic concerns decreased, women have continued to reside in a position characterized by a relative lack of power, meaning that when pushed into polygamous marriages, they have little choice. Additionally, the government must contend not just with traditional polygamy, which is prohibited, but also with the more commonly occurring *de facto* polygamy, which is caused by *concubinage*. The latter is difficult to clearly fit within

234. NURC, *supra* note 146, at 44.

235. For an overview of the harms of polygyny, see generally Susan Deller Ross, *Polygyny as a Violation of Women's Right to Equality in Marriage: An Historical, Comparative and International Human Rights Overview*, 24 DELHI L. REV. 22 (2002).

236. The Convention as a whole reinforces the importance of removing all forms of discrimination against women, and Article 15(1) requires that "States Parties shall accord to women equality with men before the law." Convention on the Elimination of All Forms of Discrimination Against Women, entered into force Sept. 3, 1981, ratified by Rwanda Mar. 2, 1981, available at <http://www2.ohchr.org/english/law/cedaw.htm>.

237. NURC, *supra* note 146, at 44.

238. *Id.* at 60.

239. See *supra* text accompanying notes 199-216.

240. Judy El-Bushra, *Transforming Conflict: Some Thoughts on a Gendered Understanding of Conflict Processes*, in STATES OF CONFLICT: GENDER, VIOLENCE, AND RESISTANCE 66, 73-74 (Susie Jacobs, Ruth Jacobsen & Jen Marchbank, eds., 2000).

legal parameters.

Ideal circumstances would yield a policy which effectively protects the property rights of wives and children in polygamous marriages while avoiding legitimizing those marriages. However, this does not seem possible working within the civil and land-related framework. Affording protection to polygamous wives as common law wives is untenable, as it would amount to government recognition and acceptance of polygamy. Another option under consideration by the government of Rwanda is granting junior wives a special lien or interest in household land.²⁴¹ However, this option is limited by mechanisms in the Succession Law which exist to protect the inheritance of wives and children. A married man with no children is limited to making *inter vivos* donations of property no greater than one third of the total household property, and a married man with children is limited to *inter vivos* donations no greater than one fifth of the total household property.²⁴² Respecting these protections means that second and third wives must share in a small fraction of their husband's property. This problem can be addressed by building in an exception to the limitations on *inter vivos* donations when the donation is to an additional wife. This type of exception, however, will again translate into government recognition and acceptance of polygamy. Working within the existing land and inheritance framework has the government of Rwanda attempting the impossible task of protecting wives in polygamous marriages without recognizing polygamy outright.

Treating polygamy as a crime could potentially protect the multiple wives in a polygamous marriage while allowing the state to condemn the practice; however, the way in which Rwanda has criminalized polygamy does not afford any protection to junior wives. How and whether the law impacts practice remains to be seen. As written, it is problematic. Rwanda's Gender-Based Violence Law provides that "any person guilty of getting married while there still exists a valid marriage contract between him/her and someone else" as well as "any person who accepts to get married to someone else knowing the latter has another valid marriage contract with someone else" are liable to three to five years of imprisonment and a fine between 300,000 and 500,000 Rwandan francs.²⁴³

241. Interview with Didier Sagashya, Director of Land Administration, National Land Centre, in Kigali, Rwanda (Aug. 26, 2009).

242. Law No. 22/99 of 12/11/1999 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions, O.G. No. 22 of 15/11/1999, art. 31.

243. Law No. 59/2008 of 10/09/2008 on Prevention and Punishment of Gender-Based Violence, art. 22. Article 22 states in full:

Any person guilty of getting married while there still exists a valid marriage contract between him/her and someone else shall be liable to imprisonment of three (3) years to five (5) years and a fine between three hundred thousand (300,000 Rwf) Rwandan francs and five hundred thousand (500,000 Rwf) Rwandan francs.

Penalties provided for in the paragraph One of this Article shall apply to any person who accepts to get married to someone else knowing that the latter has another valid marriage contract with someone else.

Similarly, any person who engages in polygamy via *concubinage*, including as a husband or informal junior wife, is liable to imprisonment of two to four years and a fine between 100,000 and 200,000 Rwandan francs.²⁴⁴ Interestingly, parties to an entirely informal polygamous marriage – that is, a polygamous marriage in which no party has a legally valid marriage contract with any other party – do not appear to fall within the penalty.²⁴⁵

While this law condemns the practice of polygamy, it fails to recognize the relatively powerless position of wives in situations of formal polygamy or *concubinage*. The burdens of being in a polygamous marriage fall squarely on the wives, who suffer from disempowerment, inequality, and being forced to share marital resources with the other wives.²⁴⁶ Any criminalization of polygamy should take this into account, acknowledging that many wives and children are victims. Rwanda's criminalization provides protection for senior, legally-married wives, in that they can

Any person involved intentionally in polygamy by issuing documents or officiating marriage shall be liable to imprisonment sentence of five (5) years to eight (8) years.

244. Gender-Based Violence Law, art. 21. Article 21 states in full:

Any person guilty of concubinage shall be liable to imprisonment of two (2) years to four (4) years and a fine between one hundred thousand (100,000 Rwf) Rwandan francs and two hundred thousand (200,000 Rwf) Rwandan francs.

Penalties provided for in the paragraph One of this Article shall apply to any person accepting to become a concubine.

Concubinage is defined as "the fact that two people live permanently as if they were spouses though they are not married while one of them is legally married." Gender-Based Violence Law, art. 2(4).

245. The law later states that those entertaining unlawful marriages shall be married monogamously, and any such person living with several husbands or wives must first distribute common property equally among those spouses. It is unclear what this provision is meant to do, but it appears to protect those men and women who are living as if in a polygamous marriage, without any valid contract of marriage between any of them. Gender-Based Violence Law, art. 39 (providing that, "[t]hose people entertaining unlawful marriages shall be married in accordance with the monogamous principle. If a person concerned with the provision of previous paragraph of this article was living with many husbands/wives, he shall first of all share the commonly owned belongings with those husbands/wives equally.").

246. Ross, *supra* note 235, at 34. Ross argues:

Although polygyny violates many different human rights of women, it violates their right to equality in marriage and in the most egregious way possible. To understand the violation in depth, it is necessary to consider the common legal "rights and responsibilities" states attach to marriage in their legal systems. They include child support, child custody, spousal maintenance, spousal property ownership and control, spousal and child inheritance, spousal obligations to care for their children and each other, divorce, matrimonial property rights, spousal sexual fidelity, and sexual intercourse.

In a polygamous system, equality of rights and responsibilities as to these subjects is literally impossible. If a man has four wives, each wife has only one-fourth a husband. Accordingly, he will be responsible to spend only one-fourth of the resources he has on the children he has with each of his wives. . . . With scarce resources the norm in the underdeveloped world, polygyny necessarily impoverishes the wives and their children. The wives have fewer rights than their husbands, and the husbands fewer responsibilities than their wives.

refuse to allow their husbands to take junior wives. However, this same criminalization does not protect junior wives. Nor does it provide protections for the children of junior wives, who may still not have any rights to the marital property. The law places junior wives at an equal risk of liability as their polygamous husbands, discouraging them from attempting to assert their own rights. Children of such wives run the risk of sending their mothers to jail if they assert inheritance rights to their father's land. In the case of polygamy via *concubinage*, the junior wives who were not committing a crime prior to this law will be committing a crime if they continue a relationship with their husband. They may also be guilty of adultery, which is criminalized pursuant to the same law.²⁴⁷ Additionally, women who are in polygamous relationships which were entered into prior to enactment of this law, although not liable to criminal penalty as the law does not contain retroactive provisions, are still unable to lay claim to marital property.

Although criminalization should certainly not be ruled out as an option, criminalization unaccompanied by protections for the wives and their children does not address the harms suffered by these wives and their children. Subjecting junior wives to automatic criminal penalty ignores their vulnerabilities. In addition, the economic harm suffered by wives and children in polygamous marriages remains unaddressed by this law. A more nuanced approach could begin with the understanding that wives and children may need to be legally recognized and compensated as victims. Children should not be discouraged from asserting claims to land because their mothers might be imprisoned for a *concubinage* relationship which was legal prior to the effectiveness of this law. The law should also be aware that senior wives may be complicit in coercing additional marriages. Women in polygamous marriages entered into prior to the entry into effect of this law are still unable to exercise land rights. Crafting such a criminal statute would by no means be easy, but ignoring the complexity may inadequately protect or actually harm vulnerable wives, as described above.

The conversation about polygamy is a necessary but complex one. As a continuing concern, the practice prevents women from benefitting from the new land reforms. Raising awareness about the harms of polygamy is insufficient, as gendered power structures, pushing women into polygamy via *concubinage*, cannot be countered solely by awareness. Legally recognizing polygamy is not desirable because of the harms it causes. On the other hand, simple criminalization which per se punishes junior wives neither protects vulnerable wives, nor does it address the land-related concerns. Nonetheless, fully securing the land rights of women requires addressing this problem.

247. Law No. 59/2008 of 10/09/2008 on Prevention and Punishment of Gender-Based Violence, art. 14. Article 14 provides that "[a]ny person convicted with adultery shall be liable to imprisonment sentence of between six (6) months and two (2) years." *Id.* Adultery is defined as "the fact of having sex with a person who is married to someone else." *Id.* art. 2(5).

CONCLUSION

Having already taken numerous steps to ensure gender equality in land law, it is now time for Rwanda to address those underlying forces inhibiting the implementation of gender equality. The generalized resistance to granting daughters inheritance rights and the continued assumptions of female inferiority, preserving ideas that women neither need land nor should have decision-making power with respect to land, cannot be explained simply by custom. At least some of the significant, underlying factors contributing to the generalized resistance are land scarcity and the legal reinforcement of customary ideas of male superiority. Similarly, the persistence of informal marriages, in which wives lack the legal protections afforded to wives in formal marriages, cannot be explained simply by lack of awareness or access. Informal marriages can be better understood as resulting from unequal and gendered power relations that place women at a disadvantage. Understanding these underlying causes of generalized resistance and informal marriages puts Rwanda in a better position to protect the new land rights granted to women.

Policies and legal changes targeted to counter these underlying factors will be more effective in removing the social obstacles inhibiting gender equality in land rights. Vestigial laws perpetuating gender inequality should be identified and repealed. Given the social factors encouraging women to enter into common law marriages, even when aware of the fact that land rights only accompany civilly registered marriages, Rwanda should recognize common law marriages. The disincentives arising from land scarcity and the continued existence of polygamous marriages are more difficult issues to address. Acknowledging them, however, is a starting point for developing policies which reduce resistance to granting women land rights and limit the number of women who remain unprotected by Rwanda's land reforms. One team of researchers has noted that "it may never be possible to secure *all* women's land rights."²⁴⁸ While that is probably true, Rwanda is still in a position to secure the land rights of more women than it currently does.

Land reform and gender equality are headline issues among development actors and developing nations. Rwanda, working with some of the major players in development, has already taken a number of steps to grant women rights to land and to protect those rights. As the successes and limitations of these reforms become more apparent, they shape the international dialogue relating to land reform, development, and conflict.

In addition, the question of how to ensure gender equality in the face of continuing social obstacles has importance outside Rwanda's borders. The decline of productive land is a problem throughout sub-Saharan Africa.²⁴⁹

248. Daley et al., *supra* note 7, at 145.

249. In a 1996 report, the Food and Agricultural Organization noted that in sub-Saharan Africa,

under increasing population pressure, available land per person is falling rapidly, and this means that fallow periods, the traditional resting time for

The persistence of customary norms asserting male superiority as well as informal marriages also exists elsewhere. In South Africa, for example, although statutes grant women in customary marriages capacity to administer household property, “many marriages remain governed by customary rules whereby men make most decisions on the administration of family property.”²⁵⁰ In Tanzania, although the Law of Marriage Act contains provisions protecting wives’ interests in marital property, many women cannot benefit from these provisions because their marriages are not legally registered.²⁵¹ Moreover, these problems are not limited to Africa. For example, although the Nepal Constitution provides sons and daughters with equal rights to “ancestral property,” inheritance of such property is typically patrilineal in accordance with customary norms.²⁵² In addition, the World Bank’s World Development Report notes that land scarcity is “acute” in most countries in Asia.²⁵³

Land scarcity, vestiges of discriminatory legal systems, and gendered power structures favoring men are not unique to Rwanda or to Africa. Understanding the ways in which these factors inhibit gender equality, and finding solutions to overcome them, are also lessons for the international development community.

land to recuperate its fertility, have been shortened. And in the absence of increased use of fertilizer . . . the result is fast declining soil productivity. Furthermore, crop cultivation is rapidly spilling into marginal and fragile lands, where yields are not only very low but unsustainable, and the risk of irreversible damage to the environment very high.

FOOD & AGRIC. ORG. OF THE UNITED NATIONS, *Food Supply Situation and Crop Prospects in Sub-Saharan Africa - May 1996*, available at <http://www.fao.org/DOCREP/004/W1144E/w1144e54.htm> (last visited Dec. 1, 2010).

250. FOOD & AGRIC. ORG. OF THE UNITED NATIONS, *Gender and Land Rights Database: South Africa Country Report*, available at <http://www.fao.org/gender/landrights/report/> (select “South Africa,” then select “OK”) (last visited Dec. 1, 2010).

251. FOOD & AGRIC. ORG. OF THE UNITED NATIONS, *Gender and Land Rights Database: United Republic of Tanzania Country Report*, available at <http://www.fao.org/gender/landrights/report/> (select “United Republic of Tanzania,” then select “OK”) (last visited December 1, 2010).

252. FOOD & AGRIC. ORG. OF THE UNITED NATIONS, *Gender and Land Rights Database: Nepal Country Report*, available at <http://www.fao.org/gender/landrights/report/> (select “Nepal,” then select “OK”) (last visited Feb. 5, 2011).

253. WORLD BANK, WORLD DEVELOPMENT REPORT 2008: AGRICULTURE FOR DEVELOPMENT 63 (2008).

APPENDIX: METHODOLOGY

The analysis in this article relies on the Rwandan laws and policies comprising Rwanda's land reforms, published data, and qualitative research. The qualitative research included semi-structured interviews conducted in Rwanda between July 16, 2009, and September 9, 2009. Interviews were conducted in the Kigali, Southern, and Northern Provinces of Rwanda. Seventy-three people were interviewed. Interviews in Kigali were primarily with public officials and those who worked for public agencies. In the Southern and Northern Provinces, men, women, farmers, non-farmers, members of the *abunzi*, microcredit officers, public officials, and members of civil society organizations were interviewed. Interviews in the Southern Province were mainly conducted in or near Rukoma Sector, in the Kamonyi District. Interviews in the Northern Province were conducted in or near Byumba Sector, in the Gicumbi District. Interviewees were not necessarily residents of either of these regions. To preserve anonymity, interviewees were not asked where they resided. Most interviews were conducted with the assistance of a translator, except when the respondents were able to express themselves in French or English.

The qualitative research was exploratory in nature. The interviews intended to identify areas of insecurity in land ownership and whether those insecurities were faced more by one sex than the other. The data collected from the respondents is not statistically robust, but can be used to identify trends and as a starting point for further research. Analysis of the qualitative questioning was combined with legal analysis and other data, when available, to determine whether and what obstacles inhibit gender equality with respect to land rights.

Respondents' answers are potentially subject to some level of bias. Respondents may have provided certain answers which they perceived to be "right," rather than true. Although every attempt was made to conduct interviews in private spaces, this was not always possible.

Respondents were not selected systematically, nor were the respondents selected entirely at random. People on the main roads and found working on their farms were approached at random. In some cases, as with some of the youth and widows, the researcher and her translator found meeting places or centers dedicated to certain groups of people, and asked to interview some of the group members. In other instances, people who were interviewed found their friends and brought them over to be interviewed. Some respondents, seeing that interviews were being conducted, affirmatively asked to be interviewed.

Every effort was made to interview people of all social strata and vocations. However, without a list of names and occupations, it was impossible to ensure inclusion of every possible group. In particular, while respondents include people of different sexes, age groups, and marital and land ownership statuses, the respondents did not include any domestic workers, who were in any event unavailable to be interviewed without being pulled away from their duties. The relative wealth of respondents

was not asked, although it could be estimated by certain responses (e.g., whether they had enough land to rent to others, or had the means to pay others to work on their land). In compliance with IRB protocol, persons under the age of 18 were not interviewed.

All data is on file with the author, but is kept private to preserve anonymity of respondents. Anonymity is maintained with respect to all respondents, with the exception of public officials who specifically stated that anonymity was not required.