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## Culture, Practice, and Law: Women's Access to Land in Rwanda

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# Women and Land in Africa: Culture, Religion and Realizing Women's Rights

**edited by**  
**L. Muthoni Wanyeki**



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## **FIVE**

# **Culture, Practice and Law: Women's Access to Land in Rwanda**

## **Jennie E. Burnet and the Rwanda Initiative for Sustainable Development**

Women constitute the majority of the Rwandan population and labour force, particularly in agriculture, but have faced substantial constraints on their participation in the economy and society. The discriminatory laws and practices in education, employment, inheritance and finance have marginalized women. Consequently, the majority of women in Rwanda remain poor and vulnerable. (Rwanda Development Indicators, Ministry of Finance and Planning, 1999)

§ AS in other African states, women in Rwanda face numerous cultural, 'customary', economic, legal and social constraints to their access to land and ownership of property in general. The above quotation summarises what is generally accepted to be the status of women's rights in Rwanda. As for their rights to land, 'the discriminatory laws and practices' have an even greater impact on women and on female-headed households because of the scarcity of land. Rwanda has an average population density of over 300 people per square kilometre and more than 91 per cent of the population depend on agriculture for their livelihoods. Therefore, access to and control over land is crucial for all Rwandans, but especially for women, since the number of women- and child-headed households (the majority of these 'children' being girls) has greatly increased as a result of the war and genocide of 1994, the 1996–99 insurgency in the northwest and the HIV/AIDS epidemic.

The post-conflict and post-genocide context has thrown into conflict several cultural and legal assumptions previously controlling women's access to land. Furthermore, Rwandan women have been forced into new roles in the family and society because many men were killed in the 1994 genocide and massacres and many others have been imprisoned. Other recent developments in Rwanda have transformed the ways in which decisions about land are made. For example, the

government of Rwanda (GOR) has implemented a new rural settlement policy that requires the population to build their homes in grouped settlements or villages (known as *imidugudu*<sup>1</sup> in Kinyarwanda). In the past, Rwandans lived scattered over the hills and not in villages as in other parts of Africa. The intent of the new policy is to increase the amount of land available for agricultural activities and encourage a shift towards large landholdings and commercial agriculture, but so far its negative impact on Rwandans and their ways of life has outweighed the positive development (Hilhorst and van Leeuwen 1999; Musahara 1999; RISD 1999a, 1999b).

The Rwanda Initiative for Sustainable Development (RISD) carried out this research to establish what rights in practice Rwandan women have to access and own land. The study began from a broad notion of rights, considering what is due to a person according to culture, custom, Rwandan statutory law and international human rights law.

The specific objectives of this RISD study were to establish the main forces influencing women's access to and control over land; to understand how ordinary citizens as well as decision-makers (such as government authorities) at the local and national level conceive of women's land rights; and to delineate the vectors that protect or guarantee women's control of land. Of particular interest were the influences of cultural values, customary norms and laws, religious institutions and norms, statutory law and national policies in relation to the actual reality on the ground. Particular attention was paid to cultural ideas regarding women and their capacity to control land, the two major customary systems (*ubukonde* and *igikingi*) controlling land tenure in Rwanda, statutory law controlling land tenure in Rwanda (in particular the new inheritance law promulgated in 1999), recent national policies impacting land tenure (in particular the villagisation policy implemented since 1994), the mechanisms by which disputes over land are resolved and the impact of women's associations and cooperatives on women's access to land.

### Research Design and Methodology

This RISD study was based on the complete model approach. The research design was developed to include as much field research and grassroots input as possible, in addition to standard literature reviews and national policy analysis. To account for substantive regional differences in terms of cultural and family norms, customary land practices, economic activities based on different ecological zones and implementation of national policies influencing land distribution, research was carried out in communes in four regions of the country.

The first region was Kinigi commune in Ruhengeri prefecture. Customary land tenure in northwestern Rwanda (*ubukonde*) differs substantially from other regions. This region is also known for a 'traditional' acceptance of polygamy due, in part, to intense cultivation of the especially fertile soil. Kinigi commune was in

the thick of the insurgency crisis from 1996–99 because it borders the Birunga National Park, which was the operational base for rebel forces trying to destabilise the Rwandan government. Insecurity from the insurgency significantly influenced implementation of the villagisation policy here.

The second region was Mugina commune in Gitarama prefecture. This commune was chosen because it falls in the central region of Rwanda, controlled by *igikingi* customary land tenure. In addition, Mugina has known two different national land policies, the *paysannat* system of the First Republic, and the villagisation policy of the post-genocide government. Finally, RISD has a long-term sustainable development project in the commune and wanted to build up its knowledge base of local land issues.

The third region was Kahi commune in Umutara prefecture. Kahi is a new commune created following the 1994 genocide and war. It is a semi-arid region, largely settled by old-caseload refugees<sup>2</sup> from Uganda and dominated by pastoral activities, although there is also some agriculture. Prior to 1994, most of Kahi commune was part of the Akagera National Park.

The fourth and final region was Kigarama commune in Kibungo prefecture. This commune reflects the particularities of Kibungo prefecture, which has been almost completely ‘villagised’ according to the national villagisation policy. The installation of large numbers of old-caseload refugees, as well as the return of new-caseload<sup>3</sup> refugees, required land sharing and redistribution that have affected virtually the entire population.

Women’s rights in these different cultural, ecological and socio-economic settings were studied in the context of family and community norms, with a view to establishing the nature of women’s rights to access and/or control land and how these rights have been influenced by custom, religion and statutory law. The study also focused on whether initiatives to raise awareness about family property laws have influenced opinions on these issues, and what the level of women’s participation has been in land policy formulation and the land reform process.

Primary data collection for the study was conducted at the grassroots level in the four communes using participatory rural appraisal (PRA) techniques. The field research teams used direct observation, open-ended interviews, semi-structured focus group sessions, mapping, diagramming and other PRA exercises to gather data from local residents, community elders, communal officials, elected members of grassroots structures, church members and leaders, agricultural cooperatives, members and leaders of local women’s associations and other organisations.

Literature reviews were conducted to study the evolution of land law and land policy in Rwanda from pre-colonial days through the colonial and post-colonial periods. These reviews included published statutory law, government studies and reports, non-governmental and intergovernmental organisation reports and studies, academic research, National University of Rwanda student theses and other materials.

At the national level, semi-structured interviews (SSI) were conducted with staff of relevant GOR ministries and other GOR institutions and commissions concerned with land, legal matters, women's affairs and human rights. SSIs were also carried out with representatives of international and national non-governmental organisations, UN agencies and other key informants knowledgeable about land, statutory law, customary practices, women's affairs, human rights and advocacy on land issues.

Following the field research, RISD conducted a focus group to seek input from representatives of selected government ministries and commissions, human rights and women's organisations and key informants knowledgeable about customary and statutory law, life in rural Rwanda and Rwandan history.

An initial version of this report was presented at a workshop on women and land held by RISD from 24–25 April 2001. This final study includes pertinent information gathered during that workshop, as well as the final recommendations and action plan endorsed by workshop participants.

A comment should be made about the research methodology *vis-à-vis* gender. Some participants in the workshop on women and land took offence at the idea that the workshop discussed women's access to and control over land to the exclusion of men. However, this study is based on a gender approach that neither privileges women over men nor excludes men from the picture. A gender approach looks at a person's position in society, in the family, in the economy and so on in relation to power. A gender approach includes the biological sex of a person (male versus female) combined with issues related to age, stage in life and even sexual orientation. For instance, with the division of labour in Rwandan society, children (*abana*) under the age of six years are assigned light tasks without much distinction between boys and girls. However, at a later stage in life, girls start doing household tasks like fetching water, and boys start looking after livestock and other energy-demanding tasks. In Rwandan society, women (*abategarugori*) can be said to have a different gendered position from widows (*abapfakazi*) although they share the same biological sex.

### History of Land Tenure in Rwanda

**Pre-colonial period: *ubukonde* and *igikingi*** On the arrival of Europeans at the beginning of the twentieth century, two principal systems controlled land tenure in Rwanda: *ubukonde* in the north and northwest (currently Byumba, Gisenyi and Ruhengeri prefectures) and *igikingi* in central, eastern and southern Rwanda (Andre 1998: 142; Cyiza 2000). These systems were different, but shared notions of collective ownership of land among members of patrilineages (*imiryango*).

In the *ubukonde* system, people gained rights to large tracts of land by being the first to clear and valorise the land (known as *gukonda*). In this system, a lineage held rights to land corporately and major decisions about managing landholdings

were taken by the lineage chief (*umutware w'umuryango* or, in speaking of land specifically, *umukonde*). The *abakonde* lineages held economic and political power over their *ubukonde* and could grant rights to others to use land in their territory through a form of clientship known as *ubugererwa* (Cyiza 2000). Clients were required to make payments to their patrons, most often in the form of a portion of the harvests or in manual labour in the patron's fields or enclosure (Newbury 1988: 79).

There were three specific types of *ubukonde*, including *ubukonde bw'inzogera* (hunting grounds), *ubukonde bw'inka* (grazing lands) and *ubukonde bw'isuka* (agricultural lands). In all three types, the *umukonde* (*ubukonde* owner) allowed others access to these lands in exchange for gifts and/or labour.

In the early nineteenth century, under the reign of Mwami Yuhi Gahindiro, another form of land tenure was introduced called *igikingi* (Newbury 1988: 81). When the colonialists arrived in Rwanda at the end of the nineteenth century, *igikingi* was the most common land tenure system in central and southern Rwanda. An *igikingi* was land distributed by the *mwami*<sup>1</sup> or his chiefs (*abatware b'umukenke*) on the approval of the *mwami* to either heroes (*intwari*) from war or other individuals commanding respect in society. *Ibikingi* were vast tracts of land designed for grazing cattle. During the pre-colonial period, these domains were especially under the control of important Tutsi pastoralists in the central and southern part of the kingdom. If the holder of an *igikingi* lost favour with the chief or lost his cattle through disease, mismanagement, or raiding, the chief seized his *igikingi* from him and gave it to someone else who had cattle (Cyiza 2000).

The recipient of an *igikingi* was expected to make regular gifts to the chief or *mwami* who had bestowed the *igikingi* on him. If his *igikingi* was transferred to another region, he would go and introduce himself to the new leader (called *gukeza*) and bring gifts. He also gave the new chief a cow, called *inka y'indabukirano*, to show him respect. Seasonal gifts (like pots of honey, milk and so on) were maintained in this relationship between patron and client. These obligations were fulfilled to stay on good terms with the chief, and included sending labourers to work at the home of the chief who had given the *igikingi*.

The holders of *ibikingi* had full control over the land and thus could partition it and allot plots (*amasambu*) to others in order to cultivate. These cultivators became clients and owed seasonal gifts and servitude to continue benefiting from the land bestowed on them. Following the harvest, the *igikingi* owner had the right to graze his herds in the fields before his client, even if the client had cattle (Cyiza 2000; Gasasira 1995: 38).

In the regions controlled by the *igikingi* land tenure system, land reserved for hunting was known as *ubukonde bw'inzogera*, as in the *ubukonde* system. The right to hunt on this land was granted by the *mwami* or a chief under his authority.

**Colonial period** In the colonial period, statutory laws regarding land ownership



were introduced to institute land titles, but these laws only applied to foreigners, while the 'natives' still relied on customary law. Titled properties (*parcelles cadastrées*) were limited to the colonisers and the few Africans who could prove that they were 'civilized' (*civilisé*).<sup>5</sup> No Rwandan, not even the *mwami*, met the *civilisé* standard and thus Rwandans remained governed by customary law and could not receive land titles. Furthermore, the *mwami* would not accept a title to land he already considered to be his.<sup>6</sup> The majority of landowners according to statutory law during the colonial period were religious institutions, especially the Catholic and Protestant churches, a few colonists and the so-called Bahindi who had immigrated as traders from East Africa.

Transformations occurred in the customary systems of land tenure due to shifts in political power under colonial rule. In the early part of the twentieth century, with the added military backing of first German and then Belgian colonisers, the Mwami Yuhi Musinga consolidated the central court's domination of the formerly independent chiefs in the northwest. The *ubukonde* system transformed because of the greater political control of chiefs (*abatware b'abanyabutaka*) under the authority of the *mwami* and the central kingdom. As political control increased, the means of gaining *ubukonde* rights changed. In the early part of this evolution, land was still gained through *gukonda*, but the meaning of the term changed. Chiefs began granting *ubukonde* based on how far the lineage chief could shoot an arrow (*ubukonde bw'umuheto*) or their capacity to clear the bush using a machete (*ubukonde bw'umupanga*),<sup>7</sup> rather than on who cleared and claimed land independently. During this period, lineages began making gifts to political chiefs in the form of cattle and agricultural products, in order to be considered for land allocation. Over time, the *ubukonde* system continued to evolve. Eventually, chiefs partitioned (*gukebera*) the virgin land, which was often referred to as *igisagara*, and the beneficiaries of this scheme would then be called *abakonde*.<sup>8</sup>

In the 1930s, the *ubukonde* system of the northwest was officially replaced by the *igikingi* system, on orders of Mwami Yuhi Musinga (Andre 1998: 144). Yet many former *abakonde* in the northwest did not recognize the new official owners of the land, all of whom were chiefs (*abashifu n'abasusehfu* or *ibirongozi*) sent from the central court to ensure the incorporation of the northwest into the central kingdom. Conflict between the former and new landowners was great, but people bided their time, waiting for an opportunity to reclaim their lands (Cyiza 2000).

Under the *igikingi* system of land tenure, patrons became more and more demanding of clients, thanks to additional backing from the monarchical regime and the colonisers. With increasingly scarce land, people living under particularly stringent patrons could no longer 'vote with their feet', move to another region and become the client of a different patron (Andre 1998; Uvin 1998; Newbury 1988).

The consolidation of the *mwami* and the central court's power during the colonial period resulted in the loss of common lands, whether they were *ubukonde* or *igikingi*.

In addition, it transformed notions away from corporate lineage groups to nuclear family units. By introducing the head tax (charged to male heads of household), reinforcing local indigenous authorities' ability to require *corvée* labour for road building and land clearing and encouraging the cultivation of cash crops such as coffee and tea, the colonial government vested the responsibilities of the lineage group in individual adult men. Colonialism eroded the remaining institutions that gave women access to resources, and intensified the development of institutions where women's labour was appropriated by the rulers and by the state. By the end of the colonial period, the vast majority of Rwandans relied primarily on women's labour and women's activities to support households (Jefremovas 1991: 382).

Between 1952 and 1954, Mwami Mutara Rudahigwa abolished the *ubukonde* system of land tenure and required all abakonde (*ubukonde* owners) to share their land with the clients exploiting it. At the same time, the *mwami* abolished the *ubuhake* system of cattle clientship, but the *igikingi* system of land tenure and clientship remained more or less intact (Newbury 1988: 145–6).

In 1959, a movement against the monarchy and colonialism began. Up until the installation of the First Republic in 1962, Rwandan politics was punctuated by violence. In certain regions of the country, instances of ethnically motivated violence broke out. In most cases, it took the form of threats, beatings and the burning of houses, but in some cases (such as Bugesera) there were massacres. During the period 1959–62, many former *abakonde* in the northwest took advantage of the instability to evict the newer (and unrecognised) chiefs who had been installed by Mwami Yuhi Musinga (Cyiza 2000).

With the transformations in land systems throughout the colonial period and the introduction of a monetary economy, Rwandan notions about family and land began to change as well (van Hoyweghen 1999: 358). Yet the legal individualisation of land rights occurred late in the colonial period, during the transition from colonial to indigenous rule. First, in 1960, an administrative decree suspended the *igikingi* land tenure system and vested decisions over pasture lands first in the hands of the *sous-chefferie* and later in the hands of communal authorities. This suspension became a total suppression over time (Gasasira 1995: 38). An edict of 26 May 1961 officially abolished the *ubukonde* land tenure system and gave clients ownership rights over their land. In practice, however, cliental relationships still existed between patron and client. The client was still expected to pay rent or dues on an annual basis to the patron, but the edict restricted the prerogatives of excessive patrons and protected the clients' rights to remain on the land (Gasasira 1995: 37–8). The long-term result of these two laws was the parcelling-out of lands held corporately into individually held agricultural plots. With the end of colonialism, there was an attempt to register land with communal authorities through ministerial instructions (No. 66/ORG of 26 April 1961) from the Interior Ministry. This attempt failed because the circular was never published. Thus these instructions were unknown by local authorities or by citizens (Gasasira 1995: 6).

**First and Second Republics** From about 1960 onwards, the colonial administration and then the independent Rwandan government introduced the *paysannat* system in some areas. This system had first been attempted in the early 1950s, when the government called on people to live in *insisiro*, which were agglomerations of people originating from one ancestor. This system did not become popular, as there were no financial or other incentives for people to move. Under the *paysannat* system, the government distributed plots of land to nuclear families. In most instances, recipients were young men who did not have sufficient land of their own to establish households. In the *paysannat*, houses were built in rows along a road and were surrounded by the families' fields. Families received a certificate 'guaranteeing' their rights to use the land as long as they met certain requirements, which varied from region to region. These *paysannats* usually had individual agricultural holdings as well as communal fields where cash crops were cultivated by the entire settlement (Olson 1994).

The *paysannat* system was limited to regions where the population was not dense and to uninhabited tracts of land. For example, the majority of Mugina commune was a royal hunting ground (*ubukonde bw'inzogera*) until the end of colonialism and thus uninhabited. In the 1960s, land in Mugina commune was distributed to peasants in the *paysannat* system. Each household was required to cultivate a certain number of hectares of coffee, and they were required to keep the land intact as a single parcel. In the Mugina *paysannats*, unmarried daughters and widows were allowed to inherit the house and land, but married daughters were required to live from their husbands' land.<sup>9</sup> Today in Mugina commune, recipients of *paysannat* landholdings still retain the rights to use and exploit this land. Many people even have the original certificates they received to guarantee their rights to exploit the land. Yet, in contravention of these original agreements, many *paysannat* recipients have divided the land among children or sold portions of their plots to others.

The *paysannat* system was carried out as a pilot project financed by the Belgian government. For several reasons, the Rwandan government did not implement it in all regions of the country. First, it was politically difficult to implement in regions that had already been settled as this would require the redistribution of land. Second, the financing for *paysannats* eventually evaporated because other financiers were not interested.

With increasing land scarcity due to the population explosion, the 1970s saw growing out-migration from Gikongoro, Gisenyi, Kibuye and Ruhengeri to the east and central parts of Rwanda. In the 1980s, this migration from the highlands to the foothills continued and began spilling over into the savannah areas of the east. Because the soil quality and rainfall were lower in the savannah, agricultural productivity was lower (Bart 1993; Olson 1994). Historically, the eastern savannah areas of Bugesera, Kibungo and Umutara have known numerous famines. Today these areas remain particularly vulnerable to food insecurity.

### Post-conflict and Post-genocide Context

The political crisis of 1959–61 led to the flight of thousands of Rwandan refugees, who left behind their property and land. Subsequent political crises, especially in 1964 and 1973, forced other Rwandans to follow suit. The return of these refugees became an important political question for the Habyarimana regime in the 1980s. Negotiations for the return of these refugees failed (Hilhorst and van Leeuwen 1999: 6), and Habyarimana maintained the position that their return was impossible because of land scarcity.

Beginning in October 1990, the Rwandan Patriotic Front (RPF) waged a war against Habyarimana's regime to unseat his government and to guarantee refugees' right of return to Rwanda. Around the same time, a multiparty system was instituted inside Rwanda, allowing the political opposition to take to the public stage. In 1993, the Rwandan government, opposition political parties and the RPF reached a peace agreement and signed the Arusha Accords. These Accords were not implemented, as foreseen, because of stalling on the side of Habyarimana's government and the increasing power of hardliners in the government who did not want to share power with the opposition or the RPF.

This crisis culminated in the 1994 genocide and war. These upheavals brought about the almost total destruction of Rwanda's physical and administrative infrastructure. The genocide ended when the RPF took control of most Rwandan territory in July 1994. About two million Rwandans fled the RPF forces and went into exile, along with the genocide planners and killers (Hilhorst and van Leeuwen 1999: 6). They stayed in refugee camps in Tanzania and Zaire.

The new Rwandan government, known as the government of national unity, called all Rwandans to return from exile. Between 1994–96, approximately 800,000 Rwandan refugees flowed in from neighbouring countries (Hilhorst and van Leeuwen 1999: 6). Most of them had spent many years in exile and some had never seen Rwanda. Upon return, most returnees were initially obliged to occupy properties abandoned by those who had fled in 1994. Eventually, many of these exiles were settled in *imidugudu* (villages) constructed by the United Nations High Commission for Refugees (UNHCR) and international non-governmental organisations (NGOs).

In late 1996 and early 1997, the new-caseload refugees returned en masse from the camps in Tanzania (an estimated 480,000) and Zaire (an estimated 720,000) (Hilhorst and van Leeuwen 1999: 6). At the time, the GOR promised to respect these new returnees' entitlements to property abandoned in 1994. This resulted in an immediate need for housing that was answered by the *imidugudu* settlement policy (Hilhorst and van Leeuwen 1999: 6).

The 1993 Arusha Accords had provided for the return of Rwandan exiles by creating a villagisation programme, known as *imidugudu*, as a means to resettle Rwandans who were willing to come back to Rwanda. This programme resembled

the *paysannat* system and had some of the same intentions: to group the population in the hopes of intensifying and modernising traditional agriculture, and to provide services more easily to a grouped population. An added aim was to reduce conflicts over land. The 1993 Arusha Accords stipulated, in Article 4 of the chapter relative to the repatriation of refugees, that refugees returning after more than ten years should not reclaim their lost property but instead be resettled in unoccupied land with government assistance.

Following the end of the war in 1994, the new Rwandan government began to plan *imidugudu* sites with the support of UNHCR (Hilhorst and van Leeuwen 1999: 8), but as there was no urgent housing need, progress was slow. Finally in December 1996, the Cabinet passed a resolution making *imidugudu* the only form of rural settlement allowed. The subsequent ministerial directive (MINITRAPE 01/97) explicitly stated that 'building on a plot other than MUDUGUDU is hereby prohibited' (as quoted in RISD 1999a: 4). While the original conception of *imidugudu* in the 1993 Arusha Accords created grouped settlements in uninhabited lands, in 1996 the aim of national policy became to regroup the entire population in villages over time (Hilhorst and van Leeuwen 1999: 8). This new goal required the redistribution of land, but no policy was in place to handle such a redistribution. To date, the Rwandan government has not yet put into place a national land policy, although it is in the process of drafting one.

The problems and controversies of the *imidugudu* policy are well documented elsewhere (Hilhorst and van Leeuwen 1999; Human Rights Watch 2001; Laurent and Bugnion 2000; Musahara 1999; RISD 1999a, 1999b). In the context of this study, RISD looked at this policy's implications for women's access to and control over land. Although RISD found problems with the policy in general, only its relevance to women's access to and control over land will be discussed.

Beneficiaries of the *imidugudu* housing programmes include shelterless people of all categories: old- and new-caseload returnees, genocide survivors afraid to return to the site of their homes before the war, those on whose land the *imidugudu* were constructed and young people seeking to set up homes apart from their parents (RISD 1999a: 8). For the most part, *imidugudu* have provided housing to female-headed households without discrimination. In many cases, genocide survivors, single mothers, widows and female-headed households were given preferential treatment in housing assistance through *imidugudu* resettlement. In some *imidugudu*, female-headed households far outnumber male-headed households. Some respondents in all regions complained that not enough housing assistance was provided to vulnerable groups such as the disabled, the elderly and widows. In Kinigi commune, some respondents complained that they were still living in grass shelters or tents with sheeting, because they were unable to build houses on their own. Widows find it particularly difficult to build houses when there are no programmes for the provision of labour or metal roofing.

Both those who have benefited from land redistribution and those who have

given up land have objected at certain points. In certain instances, there has been injustice in land sharing, which has impacted women as well as men. Land belonging to influential people in the Rwandan government was not tampered with and some powerful individuals among the returnees got larger shares of land than others.<sup>10</sup> RISD found that the *imidugudu* policy did not result in widespread discrimination against women in terms of allocation of land, but in certain instances (especially in Kinigi commune), the elderly, widows and child-headed households (most of which are headed by girls) did not have the means to construct adequate housing for themselves and have not yet received any assistance to do so.

### Use or Ownership?

The current Rwandan land tenure system is two-fold, consisting of customary and statutory land tenure systems. Gasasira (1995) links this duality of legal settlements to 'the discrimination established by the colonial authorities between native populations and foreigners. Foreigners' lands were submitted to statute law whereas those belonging to natives were governed by customs' (Gasasira 1995: 7). Gasasira's accurate analysis leaves Rwanda with a difficult legacy to manage, especially in the post-genocide context.

In the comprehension of most Rwandans, they own the land that they occupy and use. This is land that they have inherited, bought or taken possession of through government-sponsored land distribution (or redistribution) such as the *paysannat* system or the newer *imidugudu* policy. Yet according to the 1976 Decree Number 09/76, all land in Rwanda belongs to the state (aside from cadastral properties) and citizens retain only usufruct rights. This same decree prohibits any Rwandan from buying or selling customary rights to land without authorisation from the Ministry of Land. Nevertheless, Rwandans have regularly sold and bought these rights without asking for such authorisation, and conceive of themselves as the owners of such land. The government-sponsored land distribution programmes (the *paysannat* and *imidugudu* systems) are not governed by any specific Rwandan legislation, but rather reside on government policy, general understanding and occasionally contracts between local government bodies and individual landholders (Gasasira 1995).

As will be demonstrated, the fundamental contradiction between popular conceptions and state practices is at the root of many land disputes today. Rwandans familiar with statutory laws and the court system and with economic means may exploit the current situation to take land away from someone with a customary or traditional claim to it. Women are particularly vulnerable in this situation, especially when they do not have a legal (civil) marriage to protect their rights. With the further complications arising from the 1994 genocide and war, the massive displacement of the population and the new villagisation policy, land conflicts arise more and more frequently, because there are more legitimate

disputes over property and because certain opportunists want to manipulate the situation in their favour.

Neither colonial statutory law nor post-colonial statutory law specifically protected women's rights to land. In virtually all instances, it was assumed that the men associated with women, whether fathers, brothers or husbands, would protect their rights. In many instances, statutory law specifically limited women's rights. The laws on commerce stated that women could not engage in commercial activities or in paid labour or enter into a contract without the express consent of their spouses (Article 4 of Law No. 2/08/1913). In 1998, this law was modified slightly (Number 42/1998) to allow women to open a bank account without their husbands' consent (United Nations Fund for Children 1988), but women still did not have the right to enter into contractual agreement or work without their husbands' consent.

While these statutory limitations to women's rights to own property or control financial resources were technically eliminated by the 1999 inheritance law (Number 22/99), it is unclear whether limitations still exist for married women in the community of property regime.

### **Women's Access to and Control over Land**

According to Rwandan custom, women's land rights are guaranteed by men because they are dependent upon the men in their families; they are 'managed' but also protected by their fathers, then their husbands and finally by their male children. In general, land was inherited patrilineally from father to sons (Gasasira 1995). Although land was held commonly by the lineage, each male descendant was allocated a plot for constructing a house and fields for cultivation. Forests and grazing land remained the common holding of the lineage, and the lineage chief (*umutware w'umuryango*) managed this common holding. This practice maintained the family's legacy intact, but also guaranteed the sons' rights to marry and procreate. In turn, women were guaranteed access to land through their husbands' families.

When a woman was married, she automatically gained access to her husband's fields to cultivate for her husband, their children and herself. If, or when, her husband died, a widow remained on the husband's land, holding it in trust for her male children. If the widow was still within her reproductive years, levirate marriage (a brother of the deceased husband marrying the widow) was often practised. Through levirate marriage, the brother-in-law became responsible for the two separate households, but he produced children in place of his brother (the sons he produced with his brother's wife were considered his brother's sons and not his own). Yet levirate marriage sometimes caused conflicts between the different children's competing interests. If there were no children, a widow most often returned to her own family in the hopes of marrying again. Thus, according to

Rwandan customary practices, a widow possessed usufruct rights over the land of the deceased husband until her sons were mature enough to manage the family property. These usufruct rights were conditional on a widow's 'good conduct', that is to say, they lasted as long as she remained faithful to her husband's lineage either through sexual abstinence or levirate marriage.

There were other provisions by which women could gain access to land. In many regions of Rwanda, a woman could receive outright gifts of land from her father or use of land from her father's family. For example, before the genocide, a woman, married or not, could at times receive land 'as a gift (*urwibutso*) from her elderly father. The gesture [wa]s denoted by the verb *kuraga*' (Pottier 1997: 17). In Ruhengeri, a newly wed girl could receive a gift of land known as *intekeshwa* from her parents when they came to help her 'get used to her new home' (*gutekesha*) following her wedding ceremony.<sup>11</sup> Similarly, a married woman in Ruhengeri would often receive a gift of land known as *inkuri* when she presented a newborn baby to her father's family.<sup>12</sup> Both of these land gifts remained the outright property of the woman and were inherited by her sons. In other regions of Rwanda, gifts made on these occasions were most often made in the form of cattle, so did not have the same implications for land access and ownership as in the northwest.

Other forms of access to land existed for women in the form of temporary user rights over land held by their fathers' patrilineage. For example, a daughter rejected by her husband or his family (known as *indushyi*) could be given a portion of land (called *ingarigari* in the centre and south or *ingaragaza* in the northwest) from lands held in reserve by the patrilineage for such emergencies (Andre 1998; de Lame 1996; Pottier 1997).<sup>13</sup> Similarly, a woman who never married and did not bear children (*uwagumwe*) could also receive an allocation of land from the lineage's holdings.<sup>14</sup> The *ingarigari* land was controlled by the lineage chief (*umutware w'umuryango*) who was supposed to permit access to it in the interests of the entire lineage. According to Pottier, a woman 'would have access to it for as long as she was deemed in need, if necessary, for life. After her death however, the land would be reclaimed by her late husband's nearest patrikin' (Pottier 1997: 17). Yet, according to RISD field research, the *ingarigari* land reverted to the woman's brothers when she no longer needed it (in the case that she remarried or was reconciled with the husband who had rejected her).<sup>15</sup>

Even before the genocide, these cultural protections for women's access to land were under attack. In general, Rwandan customary norms and practices allocated plots to women and other secondary right holders only as long as this land was not needed by the household. If a man or his family found themselves in need of land, a woman's field (allocated under the customary systems delineated above) could be taken from her for reallocation. Constraints on women's access to land were heightened when land became increasingly scarce, and men's landholdings came under pressure.



### Conceptions of Women's Land Rights Today

Custom plays a major role in determining land claims today in rural Rwanda. Among rural respondents, both men and women held a strong conviction that the family land and property belong to the head of the family (*umutware w'urugo*), who is often a man, but in certain circumstances can be a woman.<sup>16</sup> This is a significant shift from earlier ideas that land belonged to the lineage and was controlled by the lineage chief.

Today, in most regions, land is considered to be family property and is used by either men or women in the best interests of the family. In an ideal situation, decisions about land are made through mutual understanding between husband and wife. Yet many male and female respondents declared that a woman could never be equal to a man in terms of knowing how best to manage family resources. They backed this argument by citing Genesis 2: 18, 20–23:

*Kandi uwiteka Imana iravuga ati 'si byiza ko uyu muntu aba wenyine; reka muremere umufasha umukwiriyeye' ... Uwiteka Imana isinziriza uwo muntu ubuticura, arasinzira: imukuramo urubavu rumwe, ihasubiza inyama: uwo rubavu Uwiteka Imana yakuye mure uwo muntu, iruhindura umugore imushyira uwo muntu. Aravuga ati 'uyu ni igufwa ryo mu magufwa yanjye, N'akara ko mu mara yanjye. Azitwa Umugore kuko yakuye mu mugabo.'*<sup>17</sup>

The Lord God said 'it is not good for the man to be alone; I will make a helper suitable for him' ... So the Lord caused the man to fall into a sleep; and while the man was sleeping, He took one of the man's ribs and closed up the place with flesh. Then the Lord God made a woman from the rib He had taken out of the man. The man said 'this is now bone of my bone and flesh of my flesh; she shall be called "woman" for she was taken out of man.' (Genesis 2: 18, 20–23)

Thus for many Rwandans, Christianity (and in particular Roman Catholicism) has been synthesised with traditional notions to justify the belief that women should act as a companion or a helper whose duty is to assist men in effecting their duties.

Although many Rwandan women accept the notion that women should be less than equal partners in marriage, they insist that land and property are held in common by a husband and his wife and that decisions about it should be taken together. Yet most male respondents argued that men have greater rights over land as land has 'always belonged to men'. Men used several Rwandan proverbs to justify their arguments:

*Umugore abyara umuryango w'ahandi.*

A woman gives birth to an outside lineage (and thus cannot herself own land in that lineage).

*Umugore ntagira ubwoko, afata ubw'umugabo.*

A woman does not have an identity, she takes her husband's.

*Nta mugore ugabana iz'uvabo, azihabwamo.*

A woman does not inherit from her family, it is given to her.<sup>18</sup>

In general, men believe that women cannot be landowners because they cannot go to war to become heroes (*intwari*).<sup>19</sup> In men's conception, women have no legitimate claims to land ownership or control – they have access to land only through their relationships to men. A few respondents did, however, cite two historical exceptions. In one case, Nyirakigwene, a woman in Gitarama, inherited cattle, *igikingi* and power upon the death of her husband. While her husband was still alive, Nyirakigwene had shown her capacity to 'be a man'<sup>20</sup> and exploit resources effectively. In the second case, from Kibungo, Nyirakabuga had influence because she had once been the wife of Mwami Yuhi Musinga.

In Kahi commune, Umutara prefecture, research respondents, especially men, were outspoken about women's lesser rights to family property. They asserted that men and women could only have equal rights to land as brothers and sisters inheriting their father's land. Yet in marriage, women could not hold equal claim over the home or land, because 'it is men who toil to secure the needs of the home', while women come and find everything in situ 'except for a few domestic utensils such as plates, saucepans and her clothing'. Their conclusion was that men own everything and have the right to own it.<sup>21</sup>

The proverbs used by respondents, as well as their generalisations about women and land, point to the risk for Rwandan women *vis-à-vis* land: their access to land depends on their good relations with men, whether they are their fathers, their husbands, their husbands' families or their brothers. While women accept that it is 'good enough' to use their husbands' lands, they recognise that their rights are guaranteed only if they have loving husbands who respect them. Furthermore, the former customs through which women gained land independently have largely passed away, due to the problems of land scarcity and population pressures. Before the genocide, in the early 1990s, *ingarigari* land was still given to daughters, but their brothers were likely to pressure them into giving the land up early (Pottier 1997: 17). Since the genocide, however, women and girls are unlikely to have access to their own lineage's land except in cases where everyone else in the lineage was killed.<sup>22</sup>

### Vulnerable Populations

A traditional notion in Rwanda is that of protecting 'vulnerable' individuals, including girls rejected by their husbands (*indushyi*), widows and orphans. Rwandan culture respected provisions to guarantee land, and therefore survival, to these individuals. This notion still exists today. In ranking exercises performed in Kahi and Kinigi communes, respondents indicated that widows with children should have the highest priority in receiving land.<sup>23</sup> Yet the realities of the post-genocide

context have challenged this notion in practice. Today, widows, orphans and women whose husbands are in prison constitute the vast majority of family heads of households. The intensity of need is such that families and communities are not capable of assisting all those in need. Thus, in some cases, widows, orphans and other vulnerable individuals are denied their cultural and statutory rights to land and other resources.

The GOR, the United Nations, other inter-governmental organisations and international NGOs have tried to take into account the special needs of vulnerable individuals. For example, in many instances, implementation of the *umudugudu* policy attempted to assist vulnerable individuals. In the communes involved in the study, women-headed households received equal consideration for land grants with male-headed households under the *umudugudu* policy.<sup>24</sup> In Kigarama commune, Kibungo prefecture, certain vulnerable individuals were given special treatment in consideration for land grants. Single women considered 'too old for marriage', widows, genocide survivors and other female-headed households received land grants (between 4,800 and 1,000 square metres) equal to those received by male-headed households. Despite this 'equal treatment' *vis-à-vis* land redistribution in Kibungo, many former landholders in this region believe that their rights to land have been violated. The study was unable to establish whether women or other vulnerable individuals were unfairly treated in the redistribution of land they owned before implementation of the *imidugudu* policy.

One ethnic group of the population historically vulnerable to landlessness is the Batwa. In most regions of Rwanda, Batwa historically lived on the edges of natural forests, which they exploited for their survival through hunting and gathering. Over time, the natural forests have been reduced and most Batwa do not have sufficient land to sustain themselves through agricultural activities. They make their living from menial day labour and, in some places, pottery making. Batwa suffer from social marginalisation. For example, most other Rwandans will not share food or drink with them during festivities. Batwa also tend to live separate from others. To date, most of the land redistribution policies in Rwanda have ignored the Batwa. In Kinigi commune, RISR found that the Batwa have small plots with only enough space for a small grass shelter or house. They do not have land to cultivate.

The study also found that women who had not had a legally recognised marriage were the most vulnerable to losing their access to or control over land. The difficulties of these women are discussed below.

### The Marriage Problem

Today, marriage is a multi-step process requiring three different ceremonies: a customary marriage ceremony, a civil marriage ceremony and a religious marriage ceremony. To be considered a 'real' marriage by most Rwandans, any of these

three steps can be followed. Yet Rwandan law gives legal recognition only to civil marriages held before government authorities. Few marriages in the countryside today receive legal recognition, because few people go through the legal marriage process. Before the Rwandan Constitution of 1979, all three forms of marriage were legally recognised and protected.<sup>25</sup>

A customary marriage ceremony consists of a set of rituals culminating in the transfer of a cow or other property from the husband's family to the bride's family. Often, this part of the marriage ceremony is respected by Rwandans either in the regular exchange of bridewealth before other stages of the marriage ceremony, or, in instances of 'forced marriage', the exchange of cattle or other goods after the fact. The majority of marriages in the countryside today meet this minimum requirement of marriage in the social sense. However, marriages based on this exchange of bridewealth are not recognised by the Rwandan state. Thus in the event of divorce or other rupture, women's rights to land and property are not protected by law. Children born in such an arrangement have legal rights over their father's land or property only if they can prove their paternity, or if the father or his family accept paternity. In such marriage arrangements, women gain usufruct rights to their husbands' land. These rights depend upon the goodwill of her husband or his family, or eventually on her children's inheritance rights to such property.

A civil marriage ceremony consists of going to the commune office and taking an oath on the Rwandan national flag in the presence of local government officials. The marriage documents require the reporting of the amount of bridewealth paid by the husband's family to the woman's family.<sup>26</sup> In Rwanda today, few newly married couples are legally married. For example, in Kigarama commune, Kibungo prefecture, fewer than 60 per cent of women are legally married, according to communal authorities.<sup>27</sup> Numerous reasons were cited for the low number of legal marriages. The most frequently cited was the expense involved in a legal marriage. Such a marriage requires not only the bridewealth of the traditional marriage, but also commune fees for marriage certificates and the other identity papers required. Although not regularly enforced today, in the pre-genocide period young men had to prove that they had a house and plot in order to marry legally. In addition, married couples have the social obligation of throwing parties for both the customary and civil marriage ceremonies. This sort of money is out of the reach of the vast majority of rural Rwandans today. Other reasons cited were cultural or social. For example, in the case of recently repatriated Rwandans (old-caseload refugees) living in Kahi commune, Umutara prefecture, legal marriage was felt to be 'too legalistic'. Respondents said that going to the commune and 'swearing on the national flag' did not have any relevance to marriage.<sup>28</sup> The vast majority of these returnees came from Uganda, where common law and traditional marriages are legally recognised.

Polygamous marriage exists to a limited extent. In the northwest, it was fairly

common and traditionally accepted. The fertile land and need for agricultural labour made polygamous marriage useful for men with large tracts of land or enough wealth to procure additional land. In other regions of the country, polygamous marriage was less common, but not unknown. Prior to the genocide, each wife in a polygamous marriage generally had a house and fields for her and her children. This form of marriage was limited to wealthy men, as other men could not afford to buy sufficient land to maintain several households.

Rwandan law does not allow for polygamous marriage and requires all legal marriages to be monogamous. This has the effect that all additional wives remain in informal marriage arrangements that are not legally recognised. Second and third wives, as well as their children, are particularly vulnerable to losing access to land in cases of rupture with or death of the husband. In many instances, legal wives take advantage of their situation and attempt to take property and land away from additional wives. The only legal recourse in this instance is for the children of additional wives to secure legal recognition of their paternity. The new inheritance law has complicated this issue, because the legal wife must also agree to the paternity of these other children. Even if these 'illegitimate children' of polygamous marriages manage to secure legal paternity ties with their fathers, their claims to his property in inheritance disputes are much more limited than the children of legally recognised marriages.

Two cases from Kigarama commune in Kibungo prefecture illustrate the difficulties of polygamous marriages and the inconsistency in adjudicating conflicts over land arising from such marriages. In one case, decided by the Canton Court, Mukandoli was legally married to her husband and had children with him. Later, her husband married a second woman, Uwamahoro, who shared the family property with Mukandoli. Upon the husband's death, Mukandoli attempted to take all of the husband's land and property, leaving nothing for the second wife and her child. The court decided that the two women must share the land, holding it in trust for their children, who were the rightful heirs with equal rights. In a second case, Munyangoga and his wife Mukankusi migrated from another region to settle in Kigarama commune. On their arrival, they secured a piece of land and began exploiting it. Later, Munyangoga married a second wife and brought her to occupy the same land as his first wife. The first wife, Mukankusi, filed a complaint and brought the case before the Canton Court. This time the court ruled in favour of the first wife and forced the second woman to leave and find another property, whether or not her husband could help her.<sup>29</sup>

Rwandan law does not allow for common law marriage, nor does it protect women's rights in cohabitation or in informal marriage arrangements. Yet the majority of Rwandan women are now or have in the past been 'married' in a social sense. They do not receive the legal protections afforded by a civil (and thus legal) marriage. Accordingly, the majority of Rwandan women are left vulnerable to the goodwill of their husbands and their husbands' families to ensure their

access to land. Numerous conflicts over land adjudicated by the courts and local government officials concern women or children who have lost their usufruct rights to land as a result of informal marriage situations. According to the president of the Canton Court in Kinigi commune, 200 cases have been received so far by the court, among which 190 are related to land and 30 per cent involve women claiming their rights over land.

In a recent case heard by the Butare Court of First Instance, a woman had been married and cohabitating with a man for 18 years, but they had never legalised the marriage at the commune office. The woman already had a child from a previous liaison with another man. This girl lived with her mother, her mother's husband and their children. The man died in exile in Zaire in 1996. Upon return to Rwanda with their children, the woman went back to their house and land. In 1998, her husband's brothers forced her and the children to leave the fields, and asked the woman to leave the house along with the girl who was not from the same father. The brothers-in-law said that they would take their brother's children and raise them, but they no longer wanted the woman to use the house or fields. The woman first went to local officials, who adjudicated the case through *gacaca*.<sup>30</sup> The *gacaca* process found in favour of the woman and children and the brothers were ordered to allow them to return to the fields and stay in the house. The brothers never complied with the decision, so the woman took her case to the legal court system. So far, the tribunal has not yet decided the case. Women living in informal marriages are particularly vulnerable to losing their access to land.

### **New Inheritance Law**

After a long battle by children's and women's rights groups and the Ministry of Gender and Women in Development, the Rwandan Transitional National Assembly promulgated a new law to give equal inheritance rights to male and female children with respect to inheriting their parents' land and property. It supplemented the civil code and was published in the *Official Gazette* of the Republic of Rwanda in November 1999, thus becoming law (Rwanda 1999). This new law created three different property regimes within legal marriage to replace the previous system.

In the previous system, all property was held as community property within marriage, and both spouses were meant to take decisions about resources in the interest of the family. But in many cases, the husband alone managed the financial resources and property of the family. In general, women were happy with the arrangement, relieved that they did not have the responsibility and believing that their husbands acted in their and their children's best interests. In some instances, however, men abused this right and used family resources to maintain mistresses or second wives, or tried to take over resources gained through the wife's commercial ventures for other purposes (Jefremovas 1991).

The 1999 inheritance law established three different property regimes in marriage: community property, separation of property and limited community property. A couple must choose a property regime at the time of their civil marriage ceremony before communal authorities. In community property, all property of either spouse becomes the community property of the household. In separation of property, each spouse manages his or her property separately and contributes to the household proportionally according to his or her means. In the limited community property regime, each spouse inventories his or her contribution to the community property of the marriage. This community property falls under the laws for community property regime, while other assets remain as individual property adjudicated according to the laws for separation of property.

The major change in this law comes in the areas of inheritance, where male and female children are given equal rights to inherit property. According to Rwandan customary practice, only male children inherit, because female children are expected to benefit from their husbands' land and property. The equality between the sexes guaranteed by the new law includes bequests made prior to the death of the parents (Article 42) and the division of property upon the death of a parent (Article 50).

The law attempts to preserve an important aspect of Rwandan tradition *vis-à-vis* inheritance of land. According to customary practice, a father divides his property before his death and allocates land to each of his sons, so that each son can build his house and marry.<sup>31</sup> The father retains a portion of the legacy to maintain himself, his wife and minor children. This portion of the land is then divided on his death and the sons are expected to support their mother. Article 43 of the new law preserves this practice, but includes girl children in the division of property. The Article states that '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'.

A major weakness of the new law is that it only governs instances of legal marriage, whereas a significant majority of marriages in Rwanda today are not legal. A second weakness is that it guarantees the inheritance rights only of legitimate children, as stated in Article 50: 'all legitimate children of the "de cuius", in accordance with civil laws, inherit in equal parts without any discrimination between male and female children'. In instances where a man had more than one wife, with only one legal wife, the 'illegitimate children' (the children of the non-legal marriages) do not have legally protected inheritance rights.

The study's field research found that Rwandans, particularly rural Rwandans, were confused by the new inheritance law and its motivations. Most respondents had heard about the new law on the radio, but they had no detailed information. Their general understanding was that it gave male and female children equal rights to inherit the family property, but they did not know about the three different

marriage regimes or other details of the law. Ownership and inheritance of land is not treated under the new inheritance law, as Rwandan law states that all land is the property of the Rwandan state. Although rural Rwandans' main concern is land, the new inheritance law does not address this issue. Because of these problems, most rural respondents felt that the new inheritance law is applicable only to urban Rwandans.

There are many cultural and customary impediments to implementation of this law for the reason that most rural Rwandans do not understand its underlying motivations. While both women and men believe that children should be treated equally in matters concerning the sharing of family property, they worry about the problems caused by land scarcity and small landholdings within a family. If a family has small landholdings and must include female children in the division of these properties, the resulting portions of land will be too small to sustain families. In general, men believe that the law should not be applied, because there is not enough land to be distributed among all children. Furthermore, they believe that the law is unfair because women will have two different shares of land (one from their parents and one through their husbands), while a man will have only the share inherited from his parents. Significantly, men generally do not believe that women, on their own, have the capacity to exploit land and property effectively.<sup>32</sup>

One case in Kigarama commune illustrates that men do not believe that their male children should inherit equally, much less their female children. Aloys Nyiringabo, 76 years old, has been married to Agnace Uzamukunda for over 44 years and they have nine children (four boys and five girls). Nyiringabo had already distributed plots to each of his sons so that they could build their houses and marry. He recently made a will giving all his remaining property (his own house and fields) to his first-born son. He made this bequest because he expects his son to take care of his sisters and mother.<sup>33</sup> If he and his wife are legally married, they fall within the community property regime, the only property regime that existed prior to the 1999 inheritance law. As long as Nyiringabo's will meets the requirements set forth in the 1999 inheritance law, his bequest should be respected by the courts.

In general, women agree that girls should use their husbands' lands and should not inherit from their own families' lands. Female respondents explained that only women who fail to marry, or rejected women (*indushyi*), should claim their customary portions of family lands. Most female respondents believe that women should not have equal shares of family lands as long as they are still married. However, women emphasised that they have a right to claim and use family lands if they do not have husbands or are rejected by their husbands. Male respondents, on the other hand, did not mention this customary right in the context of the new inheritance law. Rural women said that the inheritance law can only work in urban areas where both men and women work, or for wealthy families with large landholdings.



RISD found virtually no cases where the new inheritance law has played a role in adjudicating disputes over land. One case in Kinigi commune, Ruhengeri prefecture, involved the new inheritance law. The Canton Court made a judgment attempting to apply the new law, but it is unclear whether the law was appropriately applied since it is not retroactive. In the case, a man had two wives, one who produced only girls and the second who produced one son. On the death of the parents, the son inherited all the family land without giving any portion to the half-sisters. After the introduction of the new inheritance law, one of the half-sisters claimed her mother's share of the land, arguing that she was the rightful heir to her mother's land, even after a period of 20 years. Although local officials and the family elders decided that the girl should not have a portion of the land, the Canton Court gave a small portion of the land to the half-sister and left the rest for the brother, with the provision that he would have to share more of it if his sister was in need. It is unclear why the new inheritance law had any bearing on the decision of the case, as the death of the parents occurred well before this law came into effect.<sup>34</sup>

In general, the new inheritance law faces resistance, because of its collision with prevailing customs in terms of conceptions of marriage and inheritance. The question of the three property regimes poses problems for young couples planning to marry. In most cases, men do not bring up the question with their fiancées and assume that women will accept the community property regime since it is the 'custom'. Women often assume that the men will manage the family's financial resources in the best interests of everyone, so they do not bring up the question before marriage either. If women do have concerns about the property regime, they are often afraid to bring it up because they feel 'lucky' that they have fiancés and do not want to anger them.<sup>35</sup> Even where fiancés receive pre-marital counselling (for example, in the Catholic Church), they are reluctant to discuss the issue of property regimes, either through fear of creating conflict before the wedding ceremonies or because they assume that they will never have conflicts or problems over financial resources.<sup>36</sup>

Researchers found that the vast majority of respondents were ill-informed about the new inheritance laws and the three different property regimes available. Girls and women in particular are ignorant of the rights guaranteed them by the new inheritance law. The law does not address the problems of women who are not in legalised marriages, nor does it protect the rights of women involved in or children born of polygamous marriages.

### **Resolution of Conflicts over Land**

As the land tenure system in Rwanda amalgamates customary practices and statutory law, there are several mechanisms for resolving land disputes. These include appealing to family councils and *gacaca*, to local authorities or to courts.

Rwandans often begin by appealing to one body and continue appealing to another, more official, body if they are not satisfied with the outcome.

Most disputes are initially tabled in family councils (*imiryango*) where they are often resolved through *gacaca*. However, this type of *gacaca* should not be confused with the legalised *gacaca* currently being put into place by the GOR to hear the cases of the more than 100,000 people currently imprisoned and accused of genocide. *Gacaca* as customary conflict resolution involves calling together the family elders and other wise people from the hills. Everyone involved in the case gathers in the backyard of the family enclosure where *agacaca*, a short grass, used to grow (hence the name *gacaca*). The group then listens to testimony from the two sides of the case and calls other witnesses as necessary. In general, everyone is given the chance to speak, and the group then comes to a consensual decision about how to resolve the conflict. While still widely practised today, this customary *gacaca* has no legal basis. The decisions are not legally binding and thus depend on the goodwill of those involved in the conflict to back up the group's decisions.

For cases not resolved by *gacaca*, or where one of the parties is not happy with the decision, people often seek redress from local authorities. The cases are forwarded gradually from the *nyumbakumi*,<sup>37</sup> to the *responsable* at the cell level, to the *conseiller* at the sector level, and finally to the burgomaster at the commune level. It is not uncommon during this process for people to try to influence the decision or outcomes by courting the favour of people at each level. The field research found that local authorities rely on customary law as well as statutory law to resolve land disputes. While allowing for fluidity in decision-making, this practice also invites partiality into the system.

If an individual decides to pursue the case in the legal system, he or she first files a complaint with the Canton Court. If the Canton Court is not operating, or if the case involves claims related to the genocide, it is forwarded immediately to the Court of First Instance. Decisions of the Canton Court can be appealed within a certain amount of time to the Court of First Instance. Decisions of the Court of First Instance can, in turn, be appealed to the Appellate Courts. Decisions made at the courts rely on statutory law in most cases, but recourse is made to customary law when the statutory law does not cover the dispute at hand.

### **Women's Strategies for Accessing Land**

Beyond challenging the loss of land in the courts, women have adopted many other strategies to increase their access to land. Female genocide survivors often return to their own families' land. They feel safer living among the people they grew up with, where their surviving brothers can protect them. This strategy works well for genocide survivors who do not have many people left in their families, since land is abundant. In many instances, they are not capable of

exploiting all the land available to them because they lack the necessary inputs in terms of labour, seed or other materials.

Another strategy adopted by many women is that of joining farming co-operatives or women's associations. Many of these organisations access land by renting fields with the money raised through contributions and membership dues. Alternatively, they are allocated state-owned fields by communal agricultural technicians and local authorities. Some of the organisations interviewed by RISD had initially planned to raise money to buy land. These aspirations have not been met, owing to low agricultural yields and lack of income from agricultural activities. Members also expressed fears over the conflicts that could arise if their organisations bought land.

Women in Kinigi commune explained that they prefer women's associations because often men are dishonest and want to dominate female membership. They said that often men are merely 'thieves', hoping to benefit from aid or credit programmes targeting women. Such men often steal whatever money or other inputs come from the programmes, leaving the women to explain or repay the loans on their own.

Another advantage of belonging to women's associations is assistance (especially agricultural inputs) from national and international NGOs. In the communes visited during the study's field research, women mentioned Asoferwa, Care International, Communal Development Fund (CDF), the Dutch Government, Ingabo, International Rescue Committee (IRC), Lutheran World Federation (LWF), the Ministry of Gender and Women in Development, Women in Transition (WIT) and World Vision.

Women mentioned numerous benefits of belonging to women's associations:

- Associations are a source of group counselling and education.
- Associations encourage women to be self-reliant by engaging them in income-generating activities and reducing men's responsibility to buying everything at home, and thus lead to women's increased status within the family.
- Through participation in the day-to-day planning and organisation of association, women improve their decision-making capacities.
- Women gain access to land for cultivation through membership.
- Cooperatives improve food security and lead to improved welfare of family members.
- Cooperatives are a source of short-term credit and savings to cope with family emergencies or large expenses.

Despite these advantages, women's associations still face challenges. In some instances, men do not want their wives to participate in cooperatives because they feel that they are a waste of time. Many women are discouraged from joining if their husbands are not supportive. Women sometimes face exploitation by men involved in the cooperatives. Because the associations' fields are located far from

main roads, they have difficulty getting their produce to markets. They are forced to sell to middlemen at low prices because transportation is not available.

For poor women, it is often difficult to join associations because they cannot raise the necessary membership fees. Similarly, many women's cooperatives cannot find the required registration fee to pay at the commune office. This lack of registration puts them at a disadvantage, because the association is then denied access to communal land. In addition, agricultural inputs and other assistance coming from aid and credit organisations are channelled to officially registered cooperatives.

Land scarcity also affects women's associations. In Kinigi commune, one women's association had lost its fields because an *umudugudu* was built on them. To date, the association has not received replacement fields.<sup>38</sup> In other regions, all communal land is already under cultivation and associations cannot find the capital necessary to rent fields from other people.

### Relying on Men: Conclusions

Although a great deal has changed, in daily life Rwandan women still rely on their relationships with men to gain access to land for their own and their children's survival. While this situation is tenable for women in legally recognised marriages with men who respect their needs and rights, in most cases women's rights to land rely on men who are not there. According to the 1996 socio-demographic study, 34 per cent of households nationwide are female headed (ONAPO 1998: 44), and in Butare prefecture this rises to 43 per cent (ONAPO 1998: 44). While these are the most reliable statistics available, they are now outdated given the changes that have occurred since.

The number of female-headed households is higher today if the influx of new-caseload refugees in late 1996 and early 1997 is taken into account. Many women returned from the camps without their husbands or as widows. Many others saw their husbands imprisoned on return. These women, although not technically widows, live like widows in most senses. Another factor leading to the rising numbers of female-headed households is the 1996–99 insurgency. This uprising in the northwest resulted in many more widows and child-headed households. And finally, the HIV/AIDS epidemic is beginning to leave in its wake child-headed households where both parents have succumbed to the disease.

Women in informal marriages (especially those in polygamous marriages) and widows are among the women most vulnerable to losing their access to land in Rwanda. In many instances, widows find their land rights challenged by brothers-in-law who want to live in the house or exploit the fields. Widows who have children following the death of their husbands are particularly vulnerable to losing these battles. Women in polygamous marriages face similar problems on the death of their husbands, although their challenger is often a legally recognized co-wife.

Women in informal or polygamous marriages are often chased off their husbands' land when a dispute arises with their husbands or if the husband dies. Furthermore, since all land belongs to the state according to Rwandan statutory law, the 1999 inheritance law does not include land. Rwandan women therefore remain marginalised in terms of land ownership.

In addition to these gender-specific disadvantages, Rwandan women face the same problems of land scarcity and poverty as men. Since the 1980s, there has been a trend towards the buying up of small landholdings in the countryside by wealthy employed Rwandans, especially civil servants and state agents (Uvin 1998). In several cases cited by Uvin (1998), poor rural Rwandans sold their land under economic distress and then found their situation worsen. RISD's research for this study found instances of the distribution of larger landholdings to influential people in the government in the implementation of the *imidugudu* policy, confirming other research (Hilhorst and van Leeuwen 1999; RISD 1999a, 1999b). Access to land for poor rural Rwandans remains difficult and must be addressed by the national land policy and land bill currently under development.

While significant steps have been made in levelling the disparity between men's and women's rights in Rwanda, more work is needed. The promulgation of the new inheritance law was a step in the right direction, but more needs to be done to protect the rights of 'illegitimate' children and of women involved in informal marriages, including polygamous marriages.

### Recommendations

Based on the recommendations initially proposed by RISD, workshop proceedings and breakout sessions, participants at the women and land workshop unanimously adopted the following recommendations and action plan on 25 April 2001:

#### On the marriage problem

1. The Rwandan National Assembly should revise family law regarding marriage to recognise marriages according to the four marriage practices in Rwanda:
  - Civil marriage through local authorities.
  - Religious marriage (through the church, mosque or other recognised religious institution).
  - Traditional marriage through agreement between the two families.
  - Common law marriage based on length of cohabitation.
2. In order to increase the percentage of legally recognised marriages in Rwanda:
  - Raise awareness about the legal marriage process.
  - Simplify the legal marriage process.
  - Raise awareness about the issue of the bride-price.
  - Simplify customary marriage by reducing the costs involved.

3. In order to decrease the frequency of polygamous marriages, which are illegal according to Rwandan statutory law:
  - Raise awareness among young girls about marriage.
  - Raise awareness about the issue of polygamy, especially among men.
  - Encourage women to take legal action against their husbands in instances of polygamy (polygamy will die by itself due to economic hardship).
4. More research is needed on the issues raised around legally recognised marriages.

#### **On the new inheritance law**

5. The GOR and international, national and local NGOs should undertake an intensive education programme to help Rwandans understand the new inheritance law. This programme should:
  - Focus on all groups (children, women, men and so on).
  - Be broad-based and inclusive (address multiple issues and subjects, include other laws).
  - Work at different levels through different means (churches, government and so on).
  - Use varied media explaining the law in simple language (meetings and seminars in rural areas, theatre, brochures and posters, the press including the Kinyarwanda newspapers, radio and so on).
6. At the local level, committees should be set up to deal with inheritance issues.
7. The Rwandan National Assembly should revise the family law to:
  - Expand it and be more specific in terms of defining key terms.
  - Include 'illegitimate' children and increase their rights to inheritance.
  - Reduce fees for legal marriage and to give grace to the poor.
  - Empower local authorities to implement the law.

#### **On land scarcity and population growth**

8. The GOR and international, national and local NGOs should:
  - Expand the school curriculum (include gender and legal education).
  - Give increased attention to universal, basic education.
  - Provide free and universal primary school education for all Rwandan children, regardless of sex.
  - Give increased access to secondary education for Rwandan children.
  - Provide education and literacy programmes for adults.
  - Provide opportunities to women for higher education.
  - Improve the population's knowledge about the law and the legal system.
  - Provide effective economic assistance for the poor.

9. The GOR should put into place universal access to family planning in order to control population growth, with the National Population Office, in collaboration with the Ministries of Education and Health, becoming responsible.
10. The GOR should promote income-generating and employment activities outside of agriculture by:
  - Reviewing the education system in general.
  - Creating apprentice and technical training centres all over the country.
  - Diversifying professions and trades.
  - Professionalising Rwandans.

### **On the land policy and bill**

11. The GOR should formulate a sustainable national land policy and bill giving every Rwandan (regardless of sex) equal rights to land ownership.
12. The national land policy and bill should reaffirm every Rwandan's right to access and own land, as did the 1993 Arusha Accords. Furthermore, the new land policy and bill should specifically address women's rights to access, own and control land. Every Rwandan needs a piece of land to live, but they do not all need to be farmers. Access to land does not necessarily constitute control over land. Therefore, land is a cultural as well as a judicial issue.
13. The Ministry of Gender and Women in Development must take a leadership role in the development and drafting of the national land policy and bill to ensure that women's rights to access and control land are effective and to raise awareness among women of their rights.
14. Any further implementation of the *imidugudu* resettlement policy should be done with care so as to avoid the mistakes witnessed to date. Where possible, mistakes should be corrected.
15. As land has a greater cultural than economic value in the minds of Rwandans, they must be educated about the value of land as a means of production.

### **On the environment**

16. The education of women on environmental issues will have a positive impact on sustainable production, as well as on children's education. It should:
  - Raise awareness of women about environmental issues.
  - Target women farmers for agricultural extension and education.

### **On discrimination**

17. The Rwandan National Assembly should appoint a subcommittee to review and revise all bodies of Rwandan law to ensure that no Rwandan (regardless of age, ethnicity, religion, sex or any other characteristic) is discriminated against. It should aim to:

- Raise awareness among illegally or unofficially abandoned women so that they know and understand their rights and how to use the legal system to reclaim those rights.
- Raise awareness in the rest of the population about individuals' rights and how to respect them.
- In order to protect the rights of vulnerable individuals and their ability to access land, the GOR should offer special intervention and protection programmes.

### Notes

1. *Imidugudu* is plural and *umudugudu* is singular.
2. 'Old-caseload refugees' is the term commonly used to refer to Rwandans returning to Rwanda between 1994 and 1996 who had been in exile from 1959–90.
3. 'New-caseload refugees' is the term commonly applied to Rwandans who fled the country in 1994 and returned from 1996–97.
4. The *mwami* was the political and spiritual leader of the central Rwandan kingdom. At the beginning of the twentieth century, the kingdom was in the midst of an expansion (through warfare) into bordering regions (present-day Kibungo and Cyangugu) of Kinyarwanda speakers.
5. *Civilisé* was legally defined by the colonial administration as any non-European who lived in a Western-style house, wore Western clothes, ate Western food with Western utensils, and so on. Anyone seeking classification as *civilisé* was subject to inspection at any moment by colonial administrators (interview with key informant, Kigali Town, January 2001).
6. Interview with key informant, Kigali Town, January 2001.
7. Interviews with key informants and community elders, Kinigi commune, Ruhengeri prefecture, November 2000.
8. *Ibid.*
9. Interviews with key informants, Mugina commune, Gitarama prefecture, November 2000.
10. Interviews with key informants, Kahi commune, Umutara prefecture; Kigarama commune, Kibungo prefecture, December 2000.
11. Interviews with key informants and community elders, Kinigi commune, Ruhengeri prefecture, November 2000.
12. *Ibid.*
13. Interviews in Kinigi commune, Ruhengeri prefecture, November 2000; and in Kigarama commune, Kibungo prefecture, December 2000.
14. Interviews in Kinigi commune, Ruhengeri prefecture, November 2000.
15. Key informant interviews, Kinigi commune, Ruhengeri prefecture, November 2000; and Kigali, January 2001.
16. The most common instance is that of a widow holding her husband's land in trust for her male children. The next most common is that of child- or girl-headed households.
17. Two important variants in translation are interesting to note. First, the word for 'man' in English is translated as *umuntu* in the Kinyarwanda. The word *umuntu* designates a person without indicating their sex. The word in Kinyarwanda most commonly used for man is *umugabo*, a word that necessarily implies the notion of marriage and is thus not



possible in this Bible verse, where the man is not yet married. Another interesting note about the Kinyarwanda translation is the word 'helper' of verse 18 in the English version, which is translated to an equivalent word, *umufasha*. In common parlance, Rwandan men often refer to their wives as *umufasha wanjye* or 'my helper', since the literal term *umugore*, meaning both wife and woman, has a negative connotation.

18. Informant interviews, Kinigi commune, Ruhengeri prefecture, November 2000; Mugina commune, Gitarama prefecture, November 2000; Kahi commune, Umutara prefecture, November 2000; and Kigarama commune, Kibungo prefecture, December 2000.

19. Land (*ikigingi*) under one of the traditional land tenure systems in Rwanda was awarded to heroes, defined either by heroism in battle or by political preference.

20. Even today in Kinyarwanda, one tells a woman that she is a man (*uri umugabo*) to convey that she is worthy of respect and has accomplished something remarkable.

21. Informant interviews, Kahi commune, Umutara prefecture, December 2000.

22. Informant interviews, Kigarama commune, Kibungo prefecture, December 2000 and Kinigi commune, Ruhengeri prefecture, November 2000.

23. Informant interviews Kahi commune, Umutara prefecture, December 2000 and Kinigi commune, Ruhengeri prefecture, November 2000.

24. Informant interviews, Kinigi commune, Ruhengeri prefecture, November 2000; Mugina commune, Gitarama prefecture, November 2000; Kahi commune, Umutara prefecture, November 2000 and Kigarama commune, Kibungo prefecture, December 2000.

25. Women and Land Workshop proceedings, Kigali Town, April 2001.

26. Although unknown by many rural Rwandans, the bridewealth can be a 'gift to be named later' in cases of poverty.

27. Interviews with local officials, Kigarama commune, Kibungo prefecture, December 2000.

28. Interviews with residents, Kahi commune, Umutara prefecture, December 2000.

29. Interview with Canton Court president, Kigarama commune, Kibungo prefecture, December 2000.

30. *Gacaca* is a traditional system of conflict resolution in which elders from the community and concerned parties call witnesses to explain the situation. The elders then make a recommendation to resolve the conflict and the group decides by consensus what the final decision will be.

31. The correlation in Kinyarwanda between building a house and marriage is close. For example, the phrase *yubatse inzu*, he built a house, is a euphemism meaning 'he is married'.

32. Interviews with local residents, Kigarama commune, Kibungo prefecture; Kahi commune, Umutara prefecture; Mugina commune, Gitarama prefecture; Kinigi commune, Ruhengeri prefecture, November–December 2000.

33. Interviews with residents, Kigarama commune, Kibungo prefecture, December 2000.

34. Interviews with Canton Court officials, Kinigi commune, Ruhengeri prefecture, November 2000.

35. Since the 1994 genocide and war, there are far fewer single men than women of marriageable age. The socio-demographic study conducted by the National Population Office shows that the overall sex ratio (number of males per 100 females) for the Rwandan population is 86, but in the 20–24 age group it drops to 71 and in the 25–29 age group it is only 69 (ONAPO 1998: 18).

36. Interview with a pre-marital counsellor in the Catholic Church, Gikondo, Kigali, November 2000.

37. *Nyumbakumi* is the administrator of ten houses, the smallest administrative grouping in Rwanda.
38. Informant interview in Kinigi commune, Ruhengeri prefecture, November 2000.

### References

- Andre, Catherine (ed.) (1998) 'Terre Rwandaise: acces, politique et reforme foncieres', *L'Afrique des Grands Lacs Annuaire*, 1997-98, Paris: L'Harmattan.
- Bart, François (1993) 'Montagnes d'Afrique, Terres Paysannes: le cas du Rwanda', *Espaces Tropicaux*, Vol. 7, Bordeaux: Presses Universitaires de Bordeaux.
- Cyiza, Augustin (2000) 'Land Use in Rwanda', Kigali: Rwanda Initiative for Sustainable Development.
- de Lame, Danielle (1996) 'Une Colline Entre Mille ou Le Calme Avant La Tempête: transformations et blocages du Rwanda rural', *Annales Sciences Humaines*, Vol. 154, Tervuren: Musée Royal de L'Afrique Centrale.
- Gasasira, Ephrem (1995) *The Land Issue After the War*, Kigali: MINAGRI/UNDP.
- Hilhorst, Dorothea and Mathijs van Leeuwen (1999) 'Imidugudu: Villagisation in Rwanda; a Case of Emergency Development', *Disaster Sites*, No. 2.
- Human Rights Watch (2001) *Uprooting the Rural Poor in Rwanda*, New York: Human Rights Watch.
- Jacob, Irene (1984) *Dictionnaire Rwandais-Français*. Vol. I (A-H), Kigali: Imprimerie Scolaire.
- Jefremovas, Villia (1991) *Loose Women, Virtuous Wives and Timid Virgins: Gender and Control of Resources in Rwanda*, CJAS.
- Laurent, Chantal and Christian Bugnion (2000) *External Evaluation of the UNHCR Shelter Programme in Rwanda 1994-1999*, Geneva: Reintegration and Local Settlement Section, UNHCR.
- Musahara, Herman (1999) 'Villagisation and Land Use in the Context of the Rwandan Economy', paper presented at a workshop, Kigali.
- Newbury, Catharine (1988) *The Cohesion of Oppression*, New York: Columbia University Press.
- Olson, Jennifer M. (1994) *Demographic Responses to Resource Constraints in Rwanda*, East Lansing: Michigan State University.
- ONAPO (1998) *Final Report: Socio-demographic Survey 1996*, Kigali: Ministry of Finance and Planning.
- Pottier, Johan (1997) 'Social Dynamics of Land and Land Reform in Rwanda: Past, Present and Future', paper presented at conference on 'Understanding the Crisis in Africa's Great Lakes Region'.
- RISD (Rwanda Institute for Sustainable Development) (1999a) 'Land Use and Villagisation in Rwanda', Kigali.
- (1999b) 'Land Use and Villagisation: Workshop Report', Kigali.
- Rwanda, Republic of (1999) 'Law to Supplement Book One of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions', Kigali: Official Gazette of the Republic of Rwanda 38(22).
- UNICEF (1988) *Situation Analysis of Children and Women in Rwanda*, Kigali: UNICEF.
- Uvin, Peter (1998) *Aiding Violence: The Development Enterprise in Rwanda*, Connecticut: Kumarian Press.
- van Hoyweghen, Saskia (1999) 'The Urgency of Land and Agrarian Reform in Rwanda', *African Affairs*, No. 98.