



Linking Land Tenure and Use for Shared Prosperity

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THE GENDERED NATURE OF LAND AND PROPERTY RIGHTS IN POST-REFORM RWANDA

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Abstract

Rwanda has provided a picture of promising change for improving gender equalities in land rights. After the genocide, many households were headed by women and orphaned children, and the urgent need to protect their rights to remain on and manage the land of their husbands or fathers prompted the development of the Law of Matrimonial Regimes, Liberalities and Successions.

Knowledge of this law and others is widespread, due to the substantial investments by the Rwandan Government, civil society organizations and international partners in awareness raising. Importantly, these land-related legal interventions and their implementation have also been transforming not only the knowledge, but also the actions and beliefs of both men and women.

The 1999 Succession Law, among others in Rwanda's progressive legal framework, has had a broad impact. Because of the law and because of extensive sensitization on gender equality, more and more women are receiving inheritance and are more often receiving it in equal shares.

Daughters are increasingly laying claim to umunani, which was almost unheard of before the genocide. Formally married women can now be joint owners of property and have greater decision-making power over it, which according to participants has decreased distress sales and mismanagement of household land resources.

Key Words: Rwanda, gender, land policy, customary rights

While there has been some empirical research on the gendered outcomes of the legislative framework governing land in Rwanda, the breadth of these studies has been limited. This study seeks, through rigorous field research, to inform the further development of policies in Rwanda that can create a gender equitable society, and ensure women and men have adequate control over the land they need to be secure, to flourish and to reach their full human potential.

Rwanda has provided a picture of promising change for improving gender equalities in land rights. After the genocide, many households were headed by women and orphaned children, and the urgent need to protect their rights to remain on and manage the land of their husbands or fathers prompted the development of the Law no. 22/99 of 12/11/1999, the Law of Matrimonial Regimes, Liberalities and Successions, commonly referred to as the 1999 Succession Law.

Knowledge of this law and others is widespread, due to the substantial investments by the Rwandan Government, civil society organizations and international partners in awareness raising. Importantly, these land-related legal interventions and their implementation have also been transforming not only the knowledge, but also the actions and beliefs of both men and women.

The 1999 Succession Law, among others in Rwanda's progressive legal framework, has had a broad impact. Because of the law and because of extensive sensitization on gender equality, more and more women are receiving inheritance and are more often receiving it in equal shares. Daughters are increasingly laying claim to *umunani*, which was almost unheard of before the genocide. Formally married women living under community of property marital regimes are now joint owners of property and have greater decision-making power over it, which according to participants has decreased distress sales and mismanagement of household land resources.

There are many positive changes brought by this legal reform, good governance, and the land tenure regularization process. However, women in Rwanda still experience some challenges in accessing land to farm, and in controlling the land that they do have access to. These challenges include:

1. Women who are not formally married have no legal right to land in the case of separation or widowhood. While the numbers of informally married couples appear to be decreasing, informal marriage is still very common. In such marriages not only do women face eviction upon separation or widowhood, but also lack decision-making power within the household regarding the land's use, management and control.
2. Despite women's legal right to equal shares of inheritance, and equal opportunity for receiving

inter-vivos gifts from their parents (commonly referred to as umunani in Rwanda), women still have many difficulties claiming their umunani and inheritance. They typically receive smaller or less fertile land as inheritance, and are often prevented by male relatives from inheriting land. Strong social norms and traditions give men the right to receive umunani land, while women hesitate to ask for it, and face consequences for doing so.

3. While formally-married women must provide written consent to any sale or other transfer of jointly-held land, they lack bargaining power regarding other issues within the household (including the management, use and control of land). Additionally, even though many couples say that they make decisions together, women's role in decision-making at the household level is often restricted to "veto" power.
4. Women generally experience fair hearings of their land-related disputes at the administrative levels. But before going to the administrative level, they must first bring their case to the "family" or village level to be heard. Women participants say that these hearings are not always fair, and that arbiters can be influenced by other family members or village residents. And, if women attempt to bring their case to the authorities before the family, they can face dire consequences, including physical violence, by their husband and his family.

INFORMALLY-MARRIED WOMEN'S INSECURE RIGHTS TO LAND

Informally married women's rights to property are particularly vulnerable. While the law protects formally married women's rights to joint property under the community property of marriage regime, women in informal marriages have no such protections. Women in such situations lack bargaining power within their relationships, have little or no say in whether or not the property they use is sold by their spouses, and are typically unable to remain on that property in the case of abandonment, divorce or separation. During the registration process, there was not a systematic approach for documenting the property of these women's families. Some were registered as co-owners (as "partners," or even sometimes as spouses), while others were not registered at all, and are left without the legal protection that offers.

DIFFICULTY CLAIMING UMUNANI

As discussed in detail later in this report, while the number of women who receive umunani seems to be increasing, the cases are situation-dependent. Women told the research team that whether or not they receive umunani could depend on their household's economic status, their parents "kindness" or

“mindset,” the amount of land their parents hold, the number of siblings they have, and the mindset of the community around them. Depending on a variety of factors, including on the region, women often hesitate to claim umunani from their parents because they fear creating conflict, worry that their parents will not have enough land to survive on, and don’t want to deprive their brothers of land to live on and cultivate. Women who do claim umunani or inheritance may be refused by their parents, and may face conflict with their brothers. The effect of these kinds of conflicts on women should not be underestimated; women describe situations in which their brothers and sisters-in-law taunt them and torture them for years over similar issues, leading to psychological and emotional distress.

While mindsets are changing regarding women’s rights to umunani and inheritance,¹ there is still much work to be done. While many women receive umunani (and most receive inheritance), many parents said they give it to their daughters “because it is the law,” suggesting that their beliefs may not have actually changed to perceive these gifts as their daughters’ inherent right. Many older men and women told the research team that they would prefer to give larger portions of land to their sons. Young women in Burera informed the team “Men still have bad mindsets. People who train us on gender and land rights only train women, don’t train men. We need to be trained together so that we both have a common understanding.” There is thus a complex, gradual, ongoing dynamic where the law can have effects on mindsets, either through ‘sensitizations,’ trainings or the act of including women in land practices from which they had earlier been excluded. The proportion of individuals and families whose ‘mindsets had changed’ vary according to men and women around the country. Although participants in our focus groups, mindful of being in government offices, may have overstated the extent of this change in attitudes, it is nevertheless clear that there is a social transformation ongoing about gender and land in practice and attitudes.

WEAK BARGAINING POWER WITHIN THE HOUSEHOLD AND CONTROL RIGHTS OVER LAND USE AND MANAGEMENT

Both formally and informally married women have weaker bargaining power within the household compared to men when it comes to matters related to land use, management or control. And even though formally married women are technically joint owners of household property, they too are sometimes forced to make decisions they do not want to make. When a woman refuses to endorse the sale of a land parcel by her husband, for example, she may face any number of consequences, from being “convinced” or coerced, to suffering physical and/or emotional violence. A survey undertaken by RCN Justice et

¹ For example, our team heard statements like, “Our daughter is our child too,” or “Now our daughters stay a part of our family” (i.e. rather than marrying into a new family).

Democratie found that 30% of women, even those formally married with the right of refusal, did not actually consent to the sale of their joint property (RCN Justice et Democratie 2013b). Women in informal relationships do not even have the legal “right of refusal.” They have very little bargaining power within the household. However, daughters are increasingly requesting umunani from their parents, an exercise of bargaining power within their natal families

BARRIERS TO FAIR DISPUTE RESOLUTION

Women participants told us that women generally experience equal treatment from sector and district level officials. However, they do not feel they receive equal treatment when they bring their disputes to be resolved at the family or village level. For example, their cases may be heard by people who are biased against them (or who have been bribed by another party), the opposing party (like a husband or ex-husband) may gather support to testify against her, or she may be shunned by her family. Importantly, in many cases when women attempted to “jump ahead” in the dispute resolution procedure (i.e. going first to an administrative official rather than to the family), they not only are sent back by local authorities to go through the recommended process, but they may also face other consequences from their husbands or families. A husband may be angry that his wife “publicly accused [him],” and in turn beat her or use other forms of violence against her.

It was clear from our interviews and focus group discussions that we were collecting data during a pivotal point in Rwanda’s history. The recently completed land tenure regularization process has been lauded as “the most ambitious of its kind” (Ali et al 2011), and the country is known to have one of the most progressive succession laws in sub-Saharan Africa. This post-regularization period is an important window of opportunity to realize women’s property rights on the ground as they are granted by law. The following session lays out our recommendations to the government of Rwanda for doing just that.

Rwanda, with its robust and widely implemented legal framework, political will, and widely decentralized governance, is uniquely situated to be the foremost African country in realizing the property rights women have been granted by law. Today, thanks to the Succession Law of 1999, women have rights to equal shares of inheritance. And, formally married women under community of property matrimonial regimes, are joint owners of property, and are the first successors to the share of joint property when their spouses die.

RECOMMENDATIONS

Based on the challenges outlined above, we outline a series of recommendations designed to strengthen

women's ability to improve the tenure security of informally married women, claim their umunani and inheritance, improve women's bargaining power within the household, and improve women's access to fair dispute resolution mechanisms.

How to improve the security of informally married, widowed and divorced women's rights to land:

1. Include in the new draft Succession Bill a provision recognizing the property rights of informally married couples (those married in a traditional or religious ceremony or those in co-habitation arrangements) on-par with civilly married couples. Informally married women face extremely serious challenges providing for themselves and their children both within marriage and in cases of divorce, separation or widowhood. Granting the same rights to these women as are given to formally married women will improve their bargaining position within the household, and prevent mismanagement of property by their spouses. Furthermore, granting additional property rights to women in de facto unions would weaken men's incentives to resist formal marriage in order to retain control of property, and thus perhaps encourage formal civic unions.
2. Provide rural girls and young women educational opportunities that reduce their economic dependence on men. When women are economically independent, they are less likely to enter into informal marriage, and would likely have a stronger bargaining position in the household. Economically empowered women would be better able to purchase their own land, further reducing their dependency on men.

How to strengthen women's ability to claim their umunani and inheritance:

1. Continue to sensitize men on women's legal rights to inheritance and inter-vivos gifts (umunani). Our research showed that Rwandans are in the midst of significant cultural shifts regarding gender norms and gender equity, and women's rights to umunani and inheritance in particular. In order to continue the momentum of these "changing mindsets," continued sensitization of men on these rights, combined with the moral or fairness justification for these legal rights, is needed. Our team observed that there was widespread awareness of the law among both men and women, even in rural areas. However, men are slower to change their mindsets about women's property rights, given what they have to lose. We have confidence that emphasis on understanding the moral and human rights rationale for gender- equal rights rather than mere knowledge of legal rights will not only accelerate the rate of changing practices, but also have a stronger impact on mindsets and values. This sensitization could capitalize on the notable increase in parents who

spoke of sons and daughters being equally children, and encourage parents to envision the marriage they would desire for their daughters.

2. Provide for children to have rights to equitable values of umunani in the Succession Law. Given the immense pressures on land, there is a trend among Rwandans of thinking of education as kind of umunani. Forcing parents to divide ever-scarcer land umunani equally among all children could be counterproductive by encouraging further subdivision and potentially fueling intra-family disputes. Gender equality can still be promoted by legal norms that mandate fairness in providing gifts to their children, backed by sensitization campaigns that tap into parents' sense of morality in providing equally (even if not identically) for all their children, regardless of sex.
3. Invest significantly in the creation of rural livelihood opportunities, for both men and women that are not dependent on land. Reducing Rwandans' dependence on land is essential to decreasing the prevalence of conflicts over umunani and inheritance. Study participants were adamant in expressing how land scarcity and competition over land were creating conflicts in which "brothers were killing brothers," and offered cases they were familiar with of family members who had killed one another over land. While women's position is already weak within families, land scarcity exacerbates this weakness. These investments may focus on providing women and men, and especially youth, with technical and vocational training, leading to more employment and creation of small-scale businesses.

How to advance women's bargaining power within the household:

1. Sensitize communities on shared decision-making and joint control rights over land between couples. Women, and especially women in informal marriages, have very limited bargaining power within their households. However, both men and women alike agree that mindsets regarding gender equity and shared decision-making are changing due to a combination of protective legal frameworks and sensitization. It is important to leverage these shifting attitudes with messages that appeal to people's sense of what is right and also what good for them, such as casting marriage as an equal partnership built on love and respect and engaging male leaders as role models and advocates for these norms. Sensitization efforts could also include educational material guiding couples on how to make decisions together based on shared priorities, household budgeting, and communication skills.
2. Support skill-based trainings for women on how to communicate effectively, be leaders, present

alternatives and prepare budgets. Respondents often spoke about their strategies for convincing their spouse to make particular decisions about the land (i.e. selling the land, renting it out, building structures, etc.). We saw that men were responsive when their spouses “had good ideas,” or gave “good reasons” for disagreeing with them. While it is important to address men’s mindsets about women’s roles in decision-making within the household, it is also important to ensure that women have the skills and confidence to communicate their preferences, plans and strategies to their spouses. This skill will also serve them in dispute- resolution processes; women participants often told our research team that they were not as talented at presenting their cases as men were. These trainings could address that.

3. Create opportunities for rural young women to reduce their economic dependence on men, to purchase land if they so desire, and to choose the best time to marry. Our research found cases where women who were economically independent, particularly those who had their own land, had stronger bargaining positions when dealing with their husbands in conflicts about land and other issues. Furthermore, one of the primary determinants of whether a couple married formally or informally was the age at marriage. Providing young women with alternatives to depending on a man and farming (currently the dominant paradigm) would likely encourage delayed marriage and increase the likelihood of formal marriage, which under the current legal framework strengthens women’s control rights over land.

How to improve women’s access to fair dispute resolution mechanisms:

1. Promote women’s recruitment, training and instatement as local authorities at the village, cell, and sector levels. In order for women and girls to receive fair hearings for their cases, women must be meaningfully engaged in positions of power from the lowest to highest levels. Likewise, training both men and women in leadership positions on the law and reforming attitudes through appealing to notions of fairness and human rights are important measures for erasing gender biases that emerge in dispute resolution. Trainings can prepare both women and, importantly, men to be advocates for fair hearings for women in cases of dispute. While there are some women in local authority positions, they are often hired as Gender Focal Points or Social Affairs Representatives. Instead, we recommend that they be trained for a variety of positions, including Executive Secretaries and Agronomists.
2. Reform the chain of appeals in the dispute resolution process so that women can, if they so

choose, go directly to local authorities with their complaints, rather than to their families and neighbors. Because women reportedly faced significant bias at the family and village levels, we were told often that, “We give up,” instead of continuing through the appeals process until they receive a fair decisions.

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