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# THE RIGHTS OF WOMEN IN DE FACTO UNIONS TO LAND AND PROPERTY

POLICY RESEARCH BRIEF NO. 7

LAND Project



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## 1.0 INTRODUCTION

This research brief explores the rights to land and natural resources of women in de facto unions. The brief aims to (1) improve understanding of the experiences and rights to land of women living in de facto unions as opposed to those living in formal unions; (2) identify root causes of women's decisions to live in de facto unions; and (3) offer practical recommendations that can strengthen the land rights of informally-married women.

De facto unions are unions in which women and men live together without registering the marriage with the civil authorities.<sup>1</sup> The types of unions are as diverse as the circumstances of the people that enter into them, and include traditional monogamous unions in which bride wealth has been paid; consensual unions in which couples cohabit without observing traditional rites; concubinage unions in which one partner is formally married to another; polygamous unions in which the man has more than one informal wife; and religious polygamous unions, which are sanctioned by Islamic institutions. Colloquially, these unions are referred to as informal marriages, traditional marriages, informal unions, and illegal marriages. The rare cases of Islamic polygamous unions are sometimes called religious marriages. For purposes of clarity, this brief will use *de facto unions* or *informal unions*, unless specifically referencing one type of union.

Building off literature review, legal analysis, and primary research with Focus Groups and key informants, the brief explores and analyzes women's ability to claim rights through their husbands or partners in case of separation, women's ability to claim rights from their families-in-law in case of widowhood, and women's ability to claim rights from their natal families. The brief also seeks to elucidate the social and economic impacts of the lack of legal recognition for women in de facto union, as well as the social and economic reasons for the prevalence of such unions.

## 2.0 METHODOLOGY

The research team for this brief was multidisciplinary and was comprised of three LAND Project Researchers: a Social Scientist and Land Tenure Specialist, an Attorney and Land Justice Specialist, and a Monitoring and Evaluation Specialist. The brief was informed by primary and secondary research, including Focus Group Discussions (FGDs), Key Informant Interviews (KIIs), literature review, and legal analysis.

*Focus Group Discussions.* Between August 28 and September 11, 2015, the research team facilitated five Focus Group Discussions (FGDs) with Haguruka paralegals and National Women's Council (NWC)<sup>2</sup> members at Haguruka offices in Kigali, Nyanza, Nyamasheke, Musanze and Kayanza Districts. A total of 130 Haguruka and NWC volunteers participated

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<sup>1</sup> Recognition of de facto union varies by jurisdiction and entity. In some countries, certain de facto unions are recognized, such that members of those unions are eligible for the same rights as a legally married person. In Rwanda, however, de facto unions are not recognized by law regardless of the length of time that the couple has cohabited. This has legal implications for the land and property rights of women in such unions.

<sup>2</sup> Haguruka and NWC are organizations with an active role and a broad understanding of women's land rights and, particularly, the rights of women in de facto unions.



in the FGDs. In each session, there were between 12 and 25 participants, primarily women, though men also participated in each session. The research team used a historical matrix to capture trends and changes over time and facilitate discussion on the rights of women in de facto unions to land. This participatory research tool engaged participants and served as an opportunity to dig deeper into the issues discussed. The research questions for the FGDs are included in Annex 1.

*Key Informant Interviews (KIIs).* Over the course of two months, the research team also met with 26 key informants representing government, local non-governmental organizations (NGOs), and international NGOs. The research questions for the KIIs are included in Annex 2. The list of key Informants is included in Annex 3.

*Primary Court Case Analysis.* The research team collected and analyzed six court judgements dating from 2012-2014 on file with the non-governmental organization Haguruka to investigate the court interpretation and application of the relevant laws. Analysis focused on the rights of women in de facto unions to land, whether the legal procedures were fully respected, and whether judges rendered a fair trial without any form of discrimination based on gender, nature of marriage contracts, etc.

### 3.0 LITERATURE REVIEW

Traditionally, marriage in Rwanda was seen as a union between two families. Marriages could be monogamous or polygamous and were entered into via religious or traditional practices (Vanhees, 2014). Formal, civilly registered marriages (henceforth “civil unions” or “formal marriages”) were uncommon and largely restricted to urban areas.<sup>3</sup> Rather than civil recognition, the practice of giving bride wealth<sup>4</sup> was a required step in order for a marriage to be considered valid within the community (Vanhees, 2014). Then, as now, women primarily accessed land through their husbands, who received inter vivos gifts of land (*umunani*) during their parents’ lifetime or a share of land inheritance after their parents’ death. According to traditional belief and practice, a man is the sole owner of the land if he brings it into the marriage, though his wife might cultivate it throughout their marriage (Jones-Casey, Dick, & Bizoza, 2013).

With a governmental push to promote civil unions, de facto unions are a decreasing - yet persistent - phenomenon in Rwanda. Research undertaken in 2003 found that 60% of households were in such unions (Polavarapu, 2011). Over ten years later, this number has decreased significantly. While Abbott and Alinda (2012) found that nearly one third of Rwandans were in informal unions, a 2015 study led by the National Institute of Statistics of Rwanda (NISR) found that 17.2% of women and 17.2% of men were “living together” (NISR, 2015). In a recent USAID-funded study, Radio Ishingiro found that 24.5% of survey respondents in four districts of Rwanda<sup>5</sup> were in monogamous de facto unions, while only 1.1% were in polygamous unions (Radio Ishingiro, 2015). Traditional polygamous marriages

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<sup>3</sup> FGDs in Kayonza, Kigali, Musanze, Nyamasheke, and Nyanza

<sup>4</sup> “*Inkwano*” is the practice of the groom’s family giving bride wealth to the bride’s family. Traditionally, the groom’s family gave a cow. In both urban and rural areas, this practice is evolving into a gift of money (Vanhees, 2014) or “cows in an envelope,” though actual cows might still be given.

<sup>5</sup> These districts included Gicumbi in the Northern Province, Gatsibo in the Eastern Province, Gisagara in the Southern Province, and Nyamasheke in the Western Province.

in which one man lives openly with multiple wives is illegal and uncommon throughout Rwanda, though it is popularly reported to be more prevalent in the Northern Province (empirical data on this is lacking). It is more common for a man to maintain one or more informal wives in separate households, in a practice akin to concubinage (Polavarapu, 2011).

In Rwanda, a woman's civil marital status determines her ability to own, access, and control land (Jones-Casey, Dick, & Bizoza, 2013). Today, the land rights of women in civil unions are protected under the legal framework. They have equal rights to marital property, including land that their husband received as *umunani* or inheritance, and are thus protected in case of widowhood, divorce, or separation (Jones-Casey, Dick, & Bizoza, 2013). This has come to be acknowledged, if not fully accepted and supported, by many in Rwanda. For example, Radio Ishingiro (2014) found that 94% of survey respondents (all men) believe that women in civil unions should have rights to the household land after the death of her husband, and 65.2% believe that the land should be divided equally following the dissolution of a civil union. Women in civil unions also have a legal right to refuse or accept the sale or transfer of land jointly owned with their spouse, though they generally do not participate as equal partners in household decision-making (Jones-Casey, Dick, & Bizoza, 2013).

In contrast, the legal framework fails to protect the rights of women in *de facto* unions to access and control marital land. According to Polavarapu (2011), "The lack of regulation of common law marriage denies women the rights protections they would otherwise receive through civil registration" (p. 140). The "rights protections" referenced here are an entitlement to joint ownership and administration of marital property, including the right to refuse a land transfer or sale, and an entitlement to retain a share of property<sup>6</sup> upon divorce or widowhood. Instead, women in *de facto* unions have only insecure rights to land that are controlled by their husbands and in-laws. As a result, they face eviction in case of widowhood, divorce, or separation (Jones-Casey, Dick, & Bizoza, 2013) (ILPD, 2015). The weakness of informally married women's land rights is well-understood by the population. Radio Ishingiro (2014) found that 84% of survey respondents reported that women in informal marriages do not have the same legal rights as men over household property.

Registered, joint ownership of land can be a source of protection and security for women in *de facto* unions. Some couples in monogamous *de facto* unions registered both names on their land title certificate during the Land Tenure Regularization Program, most frequently in the Eastern Province (Jones-Casey, Dick, & Bizoza, 2013). However, there was not a systematic approach for the registration of land to both spouses in *de facto* unions. According to ILPD, "Some informally married wives were registered as co-owners, while others were not registered at all, thereby leaving them without legal claim to the land shared with their husband" (2015, p. 55).

A majority of women in *de facto* unions are not listed on land title certificates (Santos, Fletschner, & Daconto, 2012) (Abbott & Alinda, 2012) (Jones-Casey, Dick, & Bizoza, 2013). Only 27% of informally married couples surveyed by ILPD (2015) co-own land. Women in polygamous unions have still lower rates of registered land ownership; a 2013 study found

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<sup>6</sup> If married under the community of property marital regime, the woman in a civil union is entitled to an equal share of the property in case of divorce or widowhood.

that 67% did not have their names on the title certificate (RCN Justice & Democratie, 2013). As a result, women in de facto unions frequently lack rights to land through both marriage and registered land ownership, and can be forced off the land by their husbands or their families-in-law (Jones-Casey, Dick, & Bizoza, 2013).

The paucity of legal protection for the land rights of women in de facto unions is compounded by poor societal respect and recognition for their rights. Traditionally, the customary land tenure system provided all women with minor economic protections, including *ingarigari*, which was a small parcel of land that women in failed marriages could receive from their parents to ensure their survival (Jones-Casey, Dick, & Bizoza, 2013). However, with increasing land scarcity, practices such as *ingarigari* and other traditional gifts of land reserved for women have all but disappeared (*Ibid.*). And, societal beliefs have not shifted toward the protection of women in de facto unions. Such women are commonly referred to as *indaya* (prostitutes) (Vanhees, 2014). Men do not believe that their informal wives are entitled to share of the marital property in the event of separation, though their wives may have contributed to its acquisition (Radio Ishingiro, 2015). Further, while Radio Ishingiro (2015) found that 20% of surveyed men believe that widows in de facto unions should have rights to *some* of the land and that the rest should go to the children or the husband's relatives, another 23.0% believe that the land rights should pass to the children or husband's relatives, and that widows of de facto unions should rely on their relatives to care for them (*Ibid.*). ILPD (2015) found that 66% of survey respondents believe that women in de facto unions have *no* rights to their husbands' land.

Children of informal unions also have insecure rights to the household land because of their illegitimacy, particularly if their fathers refuse to recognize them (Polavarapu, 2011). In a qualitative study of four cells in Nyagatare and Kayonza Districts in the Eastern Province, researchers from Landesa found that, "When both parents die, all legitimate sons and daughters have a right to an equal share upon the death of their parents, regardless of whether the parents had a will. This means that illegitimate children, such as those born to informal relationships, may be excluded from inheritance unless they have been legally recognized" (Kaiser Hughes, Richardson, & McClung, 2013, p. 14). This is supported by Radio Ishingiro's survey, which found that 50.4% of respondents believed that children born of de facto unions have rights to a portion of their father's land only when they are legally recognized (Radio Ishingiro, 2015). This is yet another source of insecurity for women in informal marriages, who are only able to access land through their children if they have been recognized by their father.

Women have a right to receive umunani and an equal share of land inheritance, regardless of their marital status, which can be a source of security for women in de facto unions. However, women still face challenges in claiming their umunani and inheritance (RCN Justice & Democratie, 2013) (Jones-Casey, Dick, & Bizoza, 2013) (ILPD, 2015). In many cases, women do not receive an equal share of land inheritance as their brothers. In other cases, they do not inherit land at all (RCN Justice & Democratie, 2013). According to Jones-Casey et al., "[Women] 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” (2013, pp. 3-4).<sup>7</sup> A woman’s ability to receive umunani depends in part on her parents’ mindset or generosity. These challenges are potentially compounded for women in de facto unions, who have less social capital within their natal families and communities due to their weak position within their household and attendant lack of societal respect (FGDs in Nyamasheke and Nyanza).

The options and opportunities for women in de facto unions to secure land rights upon divorce or widowhood depend on their relationships with their husbands, children, and in-laws. Radio Ishingiro found that 15.6% of respondents believe that a woman in a de facto union should make sure that her name is included on the land title, as this entitles her to land rights should her husband pass away. Other respondents stated that a woman in a de facto union can present her land issue to local leaders, or make sure that she is in good relations with her husband and his relatives before her husband dies. Others did not know what a woman in a de facto union can do to secure rights on the household land. Another reported option for women in de facto unions is to assert moral authority over their children to allow them as mothers to use the land if they are widowed (Radio Ishingiro, 2015). However, this is not possible should the father refuse to recognize the children, as described above.

De facto unions persist despite the challenges that they present to women and women’s own recognition of the benefits of formal marriage (Vanhees, 2014). The reasons for this can be divided into direct and indirect causes. The direct causes for informal marriage include resistance by some men to the institution, which is in part due to their objection to the joint ownership rights inherent in a civil marriage (Jones-Casey, Dick, & Bizoza, 2013) (Polavarapu, 2011) (Vanhees, 2014). Men’s resistance to formal marriage has been attributed to their desire to preserve the traditional male-dominated household power dynamic, which can be upended when women have legal rights and decision-making authority over land, as granted in a civil union (*Ibid.*). Other direct causes include underage marriage, in which the bride, the groom, or both are not yet 21 years old; premarital sex and even rape, which is considered so indecent that a woman would rather cohabit with her partner or attacker than return home; an unplanned pregnancy that forces women to cohabit in order to avoid the shame and social rejection inherent in single motherhood; and the belief that a formal marriage cannot take place without the giving of bride wealth and expensive traditional ceremonies (*Ibid.*). Love and the desire to begin living together without performing the necessary social rites has also been identified as a direct cause of informal marriage (Vanhees, 2014).

The indirect causes of informal marriage are those that place women in positions of vulnerability and reduce their bargaining power even before they begin to cohabit. Polavarapu (2011) argues that, though women know that their rights are better protected within a civil union, “social forces and gendered power relations pressure women to agree to common law or polygamous marriages” (p. 129). These social forces include a cultural belief that unmarried women lack value within the community (*Ibid.*). Poverty and vulnerability also

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<sup>7</sup> Jones-Casey et al. (2014) also found that parents increasingly offer their children education in lieu of land umunani. With land scarcity, education could become a compelling substitute for gifts of land and provide children with professional skills that could reduce pressure on land. However, further research is needed to understand the linkages between education as umunani and the land rights of women in de facto unions. Specifically, such research could explore whether daughters who received education were more or less likely to enter into de facto unions, and the impact that education had on their access to and control over land within the household.

play a powerful role. Poverty on the side of the woman's family may lead her to leave home to try her luck with a man in her search for a modicum of power and wealth, while poverty on the side of the man's family may prevent him from paying bride wealth (Polavarapu, 2011). Similarly, vulnerable women, particularly orphans and illegitimate children, are more likely to enter into an informal union because of their poverty and lack of land inheritance (*Ibid.*). Finally, as often weaker partners within the household, women may not have the voice and authority to demand formal marriage from their partners, though they understand the benefits of formal marriage (Polavarapu, 2011) (Vanhees, 2014).

## 4.0 LEGAL ANALYSIS

This section includes an analysis of the legal framework governing women's land rights in Rwanda, in general, and specific analysis of the legal rights of women in de facto unions. The section also includes a comparative analysis of the legal framework governing the land rights of women in de facto unions in countries within the East Africa region, and an analysis of court judgements involving women in de facto unions.

### Rights of Women in De Facto Unions to Land and the Legal Practice

The Rwandan legal framework generally promotes equal rights for men and women to use and own land and property. Equality between men and women is enshrined in the Constitution of 2003, revised in 2015. The Constitution demonstrates a commitment to ensuring equal rights between Rwandans and between men and women without prejudice to the principles of gender equality and complementarity in national development<sup>8</sup>. Similarly, the 2013 Land Law prohibits all forms of discrimination, such as that based on sex or origin in relation to access to land and the enjoyment of real rights.<sup>9</sup>

The legal framework is largely silent on the rights of women in de facto unions, though legal analysis on their rights is guided by the following relevant laws: the Constitution,<sup>10</sup> the 2013 Land Law,<sup>11</sup> the 1999 Succession Law<sup>12</sup> and the draft Succession Law,<sup>13</sup> the Civil Code Book 1,<sup>14</sup> the Land Registration Law,<sup>15</sup> the 2008 GBV Law,<sup>16</sup> Law no. 45/2011 of 25/11/2011 governing Contracts, and Law no. 21/2012 of 14/6/2012 relating to the Civil, Commercial, Labor and Administrative Procedures. These laws are cited and analyzed in this brief.

The Constitution only recognizes civil, monogamous unions. Article 17 defines civil marriage as a marriage agreement between one man and one woman performed before a civil status officer. It further recognizes a monogamous marriage between a man and a woman

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<sup>8</sup> The Constitution as amended to date, preamble #5

<sup>9</sup> The Land Law, 2013, in its article 4

<sup>10</sup> Constitution of the Republic of Rwanda of 2003, revised in 2015, 24 December 2015

<sup>11</sup> Law no. 43/2013 of 16/06/2013 governing Land in Rwanda

<sup>12</sup> Law no. 22/99 of 12/11/1999 to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions

<sup>13</sup> Law governing Matrimonial Regimes, Donations and Successions, passed by the Senate in October 2015, but had not yet been published in the Official Gazette at the time that this brief was drafted.

<sup>14</sup> Law no. 42/1988 of 27/10/1988 on preliminary title of Civil Code Book 1

<sup>15</sup> Ministerial Order no. 002/2008 of 01/4/2008 Determining Modalities of Land Registration

<sup>16</sup> Law no. 59/2008 of 10/09/2008 on the prevention and punishment of Gender-Based Violence

contracted outside Rwanda in accordance with the law of the country of celebration of that marriage. Spouses are entitled to equal rights and obligations at the time of marriage, during the marriage and the time of divorce. In accordance with the draft Succession Law, a matrimonial regime is the system according to which spouses agree to manage their property.<sup>17</sup> Per the 1999 Succession Law and the draft Succession Law, matrimonial regimes are of three types: community of property regime, limited community of property regime, and separation of property regime.<sup>18</sup> Couples married under civil law are governed by the matrimonial regime for which they opted, both during their marriage and in the event of death or divorce. Alternative forms of marriages such as monogamous de facto unions, consensual unions, religious marriages, polygamous unions<sup>19</sup> and concubinage<sup>20</sup> are not legally recognized.

Women in civil marriages have rights to access and make decisions over marital property. The 2013 Land Law guarantees equal rights between a legally married man and woman with regard to the matrimonial regime for which they opted. The right of formally married women and women in de facto unions who are registered on the land title to veto land transfers is articulated in Article 22 of the 2013 Land Law, which states that any transaction on land rights made by a family representative requires the consent of all the registered right holders on the land title.<sup>21</sup> Unlike couples in civil unions, however, couples in de facto unions are not required to register their land jointly and registering land in the names of both partners depends solely on the will of the couple. If a woman in a de facto union is not jointly registered with her husband, she will not be able to veto a transfer of land registered only in his name.

The registration of one's interest in a land parcel offers further protections for women's land rights, regardless of civil marital status. Registration of land is obligatory for the land owner<sup>22</sup> and the Certificate of Registration filed in the register of land titles is full evidence of right of joint ownership once the couple has been married under the community of property regime. Spouses in de facto unions may also jointly register on the land title. In one Primary Court case, a woman in a formal union filed a divorce case before the court and won. However, the same court ruled that the husband's informal wives and their children remained the rightful owners of the property that had been allocated to them by the husband and which had been registered in their names.<sup>23</sup> Subsequently, the formal wife filed an appeal with the Intermediate Court refuting the decision made by the Primary Court recognizing the rights of the informal wives to land. The formal wife further claimed to share equally the matrimonial property with her husband, but the Intermediate Court granted her a "reasonable share" and upheld the recognition of the rights of the informal wives to the land registered in their names (it is unclear how this land was originally acquired).<sup>24</sup>

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<sup>17</sup> The draft Succession Law, article 3

<sup>18</sup> *Idem*, article 4; 1999 Success Law, article 2

<sup>19</sup> GBV Law, 2008, article 2(3)

<sup>20</sup> *Idem*, article 2(4)

<sup>21</sup> The Land Law, article 22

<sup>22</sup> Land Law 2013, article 20

<sup>23</sup> RC 0109/13/TB/KBH on 27/03/2014

<sup>24</sup> RC 0088/14/TGI/NYBE of 09/10/2014 Ntabudakeba Adele v. Siborurema Azarias

While spouses in a de facto union may jointly register on the land title, this is not required by law. According to the Ministerial Order determining the requirements and procedures for land lease, spouses who are married under full or limited community of property must be registered on the lease certificate as co-owners<sup>25</sup>. Hence, women whose marriages have not been performed under civil law are not assured a right to matrimonial property. In cases of divorce or separation, the 1999 Succession Law provides that spouses share common assets and liabilities,<sup>26</sup> but does not require them to be divided equally, though Constitutional provision of equal rights and duties in the event of divorce could be interpreted to extend to equal rights to property.

Formally married women also have clear rights to marital property in the event of widowhood or divorce. Article 70 of the 1999 Succession Law states that the surviving spouse under the community of property regime is responsible for administering the entire patrimony if the couple had children together, and half of the patrimony if the couple were childless. Additionally, Article 75 states that the surviving spouse has use rights to the marital home. The draft Succession Law reaffirms protections for women in formal unions in case of widowhood, whereby the surviving spouse is entitled to the entire property and shall take care of their children and the legitimate children of the deceased.<sup>27</sup> However, both the 1999 Succession Law and the draft Succession Law are silent on the rights of women in de facto unions.

The draft Succession Law requires a surviving spouse to take care of the legitimate children of the deceased. At the same time, article 50 of the 1999 Succession Law mandates that all legitimate children of the de cujus, in accordance with civil laws, inherit in equal parts without any discrimination between male and female children. Without legally recognized rights to property in the event of divorce or widowhood, women in de facto unions may be able to access land through their children until they reach the age of majority – but only if the children have been legally recognized by their father while he was still alive.

While the rights of women in formal marriages to land and property are well articulated, the legal framework is not inclusive and does not extend rights to women in de facto unions. Only Article 39 of the 2008 GBV Law affords some legal protection to women in de facto unions. Article 39 allows the sharing of commonly-owned property between spouses in de facto unions in case of separation and when one of the spouses intends to formally marry. The Supreme Court has set a precedent on Article 39 to apply to *all* de facto unions and not just those in which one partner intends to enter into a formal union.<sup>28</sup> The Supreme Court's 2011 decision quotes the Homesteads Act of Manitoba/ Canada which allows couples in informal unions to share their property. The Supreme Court also referred to Article 11 of the Property (relationships) Act 1976 of New Zealand which states that “on the division of

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<sup>25</sup> Ministerial Order no. 0001/2008 of 08/01/2008 determining the requirements and procedures for land lease, article 51

<sup>26</sup> 1999 Succession Law, article 24

<sup>27</sup> Idem, article 76 (1)

<sup>28</sup> Statement made by the Inspector of Courts at the validation session on the review of primary court judgments and MAJ legal guidance, 29 January, 2016

relationship property under this Act, each of the spouses is entitled to an equal share; a) family income; b) family chattels; and c) any other relationship property.<sup>29</sup>”

The Supreme Court also held that in order for the assets to be shared when spouses who entertain informal marriages separate, the assets must be jointly owned or acquired.<sup>30</sup> This relies on the existence of proof of their co-ownership or contribution. Unlike couples in civil unions, in order for couples in de facto unions to equitably share the commonly-owned property in the event of separation, the plaintiff is required to present credible evidence to prove that she jointly acquired the common belongings with the de facto partner or else significantly contributed to the acquisition of the property. Further, the 2008 GBV law and its interpretation are not retroactive. In a review of six Primary Court cases, three involved women suing for a share of commonly-owned property. All the female plaintiffs invoked article 39 of the GBV Law 2008. Two plaintiffs won the case, but in one case the court ruled that the claimant was not entitled to share the common belongings since the couple’s separation occurred before the enactment of the GBV Law and application of the law is not retroactive.<sup>31</sup>

Women in de facto unions may also be able to access land through donations or inheritance, affording them some measure of security regardless of their marital status. The 1999 Succession Law grants women the right to receive ascending partition, i.e. umunani, during their parents’ lifetime,<sup>32</sup> though the law does not guarantee all children equal shares of umunani. The law also grants children of the deceased the right to equal shares of land inheritance, regardless of sex.<sup>33</sup> However, there are still some cultural barriers that prevent women from claiming their umunani and inheritance rights (RCN Justice & Democratie, 2013; Jones-Casey, Dick, & Bizosa, 2013). How umunani and inheritance affect and are affected by informal unions is explored further in the research and analysis sections of this brief.

The rights of women in a formal marriage with regard to access, usufruct and control over matrimonial land are well articulated in the legal framework. However, with the exception of Article 39 of the 2008 GBV Law and the Supreme Court’s interpretation of this provision, women in de facto unions are not afforded the same protections as women in formal marriages. As a result, women such unions face additional challenges in regards to decision-making authority over land, access to land in case of divorce or separation, and inheritance.<sup>34</sup>

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<sup>29</sup> Court Decision Case no. RS/Inconst/Pen.003/10/CS rendered by the Supreme Court, January 7, 2011.

<sup>30</sup> Supreme Court case RCAA 0022/13/CS Ngangare v. Mukankuranga, 25 July 2014

<sup>31</sup> Case references. RC 0263/14/TGI/GSBO; RC 0088/14/TGI/NYBE; RCA 0173/14/HC/KIG

<sup>32</sup> 1999 Succession Law, article 43

<sup>33</sup> Ibid, article 50

<sup>34</sup> Women’s Land Rights in the context of the land tenure reform in Rwanda-the experience of policy implementers, Jeanette Bayisenge, PhD Candidate, 2014.

## Comparative Analysis of Legal Protections for Women in De Facto Unions: Tanzania and Uganda

This comparative analysis explores the legal frameworks of Tanzania and Uganda in order to identify possible legal methods and best practices that could be applied in Rwanda to protect the land and property rights of women in de facto unions.

Whereas the Rwandan constitution only recognizes civil monogamous marriage between a man and a woman<sup>35</sup> and penalizes polygamous unions<sup>36</sup> and concubinage,<sup>37</sup> Tanzania and Uganda recognize civil, religious and customary marriages, both monogamous and polygamous. In Tanzania, marriages wherein both parties are married according to religious rites and customary marriages performed according to the rites of customary law are treated as equivalent to civil unions when it comes to affording matrimonial rights to the spouses.<sup>38</sup> In a polygamous union, all wives are recognized as equal under the Law of Marriage Act, 1971 (LMA). Notably, Tanzania's LMA also recognizes a man and a woman who have lived together for two or more years as being a husband and a wife,<sup>39</sup> regardless of whether marriage rites have been performed.

The Rwanda 2013 Land Law articulates the rights of formally married couples to marital property, subject the matrimonial regime for which they opted. However, because only civil, monogamous marriages are recognized in Rwanda, the rights of spouses in other forms of marriage are not protected. In contrast, the broader definitions of marriage recognized in Tanzania and Uganda mean that women in customary, religious, and polygamous marriages have rights to marital property under law, though the inclusiveness of these rights varies according to the country. According to the LMA, in Tanzania a married woman has the same rights as the man to acquire, hold and dispose of the property whether movable or immovable and the same right to contract, the same right to sue, and the same liability to be sued in a contract, in a tort or otherwise.<sup>40</sup> The LMA further declares equality between multiple wives and stipulates that where a man has two or more wives, they have equal rights, are subject to equal liabilities, and have equal status in law. In Uganda, under the Marriage Act 1904, marriage may be celebrated in any licensed place of worship by any recognized clergyman, denomination or body to which the place of worship belongs, and according to the rites of marriage observed in that church, denomination or body.<sup>41</sup> Marriages celebrated before a clergyman or registrar duly licensed shall be good and valid in law for all intents and purposes. Married couples that have celebrated their marriages in accordance with the customary law who desire to convert their marriage into a marriage shall do so upon their will.<sup>42</sup> Hence, couples who were earlier married under customary law, and later agreed to convert their marriage into a legal marriage, are entitled to all rights and obligations granted by the Ugandan Marriage Act to married couples.

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<sup>35</sup> The Constitution as amended to date, article 17

<sup>36</sup> GBV Law 2008, article 22

<sup>37</sup> Idem, article 21

<sup>38</sup> Tanzania's Law of Marriage Act, 1971, article 25

<sup>39</sup> Law of Marriage Act, 1971, Tanzania article 160

<sup>40</sup> Tanzania's Law of Marriage Act, 1971, article 56

<sup>41</sup> Uganda's Marriage Act 1904, article 20

<sup>42</sup> Idem, article 29



Whereas Rwanda's and Uganda's laws do not have provisions allowing consensual unions to be recognized as marriages, the Tanzania LMA legitimizes couples that have cohabitated for at least two years. In Rwanda, marriage is an important way for women to access and have control over land. Failure to recognize consensual unions as marriage or at least the property of consensual union partner as equivalent to matrimonial property places the more economically disadvantaged partner, typically the woman, in a position of vulnerability.

In Rwanda, the minimum marriage age is 21 years, though some – especially women – choose to marry before reaching the minimum age.<sup>43</sup> However, underage couples cannot register their marriage before the civil status officer unless they seek emancipation through an order of the Minister of Justice, which refers to the "removal of some of the disabilities of minority" and allows marriage. Similarly, in Uganda, the minimum marriage age is 21,<sup>44</sup> while in Tanzania the minimum marriage age is 18 for males and 15 for females.<sup>45</sup> However, a person who wants to marry but has not yet reached the minimum age must merely seek prior consent.<sup>46</sup>

## **5.0 EXPERIENCES AND RIGHTS TO LAND OF WOMEN IN DE FACTO UNIONS**

Regardless of their civil marital status, Rwandan women increasingly claim rights to marital land in case of separation, divorce or widowhood from their husbands or partners, as well as umunani and land inheritance from their natal families. Women in formal marriages increasingly began to assert their rights to land following adoption of the 1999 Succession Law and attendant community sensitization campaigns. In addition, the Land Tenure Regularization Program empowered married women as spousal co-owners of land, enabling them to assert their rights and play a role in household decision-making. While women in de facto unions also increasingly claim rights to land, this shift is happening at a much slower pace. FGD participants reported that Article 39 of the 2008 GBV Law provides limited protection for women in de facto unions, though the provision is unclear, and some men see the benefits of sharing rights and responsibilities in the household, regardless of their marital status.<sup>47</sup>

Despite these gains, the patriarchal norms that limit women's rights to land inheritance and umunani, and uphold men's dominance over household decision-making, land, and property persist. Tradition requires women to be quiet and respectful in their households;<sup>48</sup> FGD participants articulated that few women enjoy full rights to decision-making authority since

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<sup>43</sup> Civil Code Book 1, article 431

<sup>44</sup> Uganda's Marriage Act 1904, article 17

<sup>45</sup> Law of Marriage Act, 1971, article 13

<sup>46</sup> In Tanzania, underage persons wishing to marry must seek consent from his/her father. If the father is dead, consent is required from his/her mother; if both parents are dead; consent is sought from a guardian. If a person is an orphan and does not have a guardian, no consent is required. In Uganda, in absence of a parent or a guardian of a party underage residing in Uganda and capable of consenting to the marriage, then the Minister or a judge of the High Court may consent to the marriage in writing upon being satisfied after a due inquiry that the marriage is a proper one (Uganda's Marriage Act 1904, article 19),

<sup>47</sup> The information in this paragraph was informed by FGDs in Kayonza, Kigali, Musanze, Nyamasheke, and Nyanza.

<sup>48</sup> KII with Haguruka and University of Rwanda

this has traditionally been a solely male domain.<sup>49</sup> Some women also believe that only men should control land and property.<sup>50</sup> Though women might be aware of their rights to participate in household decision-making, they only assert their rights in ways that do not overtly challenge traditional household gender dynamics.<sup>51</sup>

Women in formal marriages and women in de facto unions who claim rights to land are seen as challenging these traditional gendered norms and structures.<sup>52</sup> It is considered “bad behavior”, especially if the matter goes before the Abunzi or the court<sup>53</sup> and some women will experience great familial and social pressure, even harassment or violence, for publicly raising intra-family issues. According to one key informant from RCN, a woman’s extended family will “show her that they don’t agree with her views, they don’t prefer to stay with her,” meaning that she will be pressured to leave. Another key informant from Haguruka averred that a woman who claims rights to land will be more vulnerable to GBV at home. Further, because she has left home to live with a man, she is no longer considered part of the natal family and is not able to return to them.<sup>54</sup>

This was contrasted with the situation for men, who can reportedly raise their voices in any forum and say what they want without fear.<sup>55</sup> A key informant from ActionAid summarized the situation: “Men’s rights are guaranteed; women’s rights are not guaranteed.”

Though both formally and informally-married women increasingly claim rights to land, women who do so challenge gendered cultural norms. This is compounded for women in de facto unions because they lack strong legal rights to land and they can be stigmatized within their household and community for their status as informal wives.

## **All De Facto Unions are Not Created Equal**

Though all de facto unions are illegitimate according to Rwandan law, there are several types, and communities do not view all such unions as the same. Women may have more decision-making authority, rights to land, and command more familial and societal respect and support depending on the type of de facto union they enter into and whether or not they have children with their husband.

Informal monogamous unions may be traditional or consensual. In the former, the man pays bride wealth to the woman’s family and the couple observes other traditional marriage rites. Women in informal monogamous unions in which bride wealth has been paid are reportedly more respected by their families and in the larger community because their unions are considered legitimate.<sup>56</sup> These women may be able to return to their natal families in case of divorce or separation<sup>57</sup> and will receive support from their families when seeking to claim

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<sup>49</sup> FGDs in Kayanza, Kigali, Musanze, Nyamasheke, and Nyanza; KIIs with NWC and Benishyaka

<sup>50</sup> KII with Benishyaka

<sup>51</sup> FGDs in Musanze and Nyanza

<sup>52</sup> FGD in Nyanza

<sup>53</sup> KII with RCN

<sup>54</sup> KII with RCN

<sup>55</sup> KII with RCN

<sup>56</sup> KIIs with ActionAid, ILPD, Haguruka, Pro-Femmes

<sup>57</sup> KII with ActionAid

their rights to land and property.<sup>58</sup> In a consensual monogamous union, a woman and man cohabitate without observing civil, religious, or traditional marriage rites and no bride wealth is paid.<sup>59</sup> Women in these unions are less respected by their families and communities because their parents might not have sanctioned the union and they are not recognized as legitimate wives, unless they have lived together for many years.<sup>60</sup> In particular, key informants reported that a woman's natal family will find it difficult to accept their daughter's marriage if they did not receive bride wealth from her partner's family.<sup>61</sup> In general, however, the land rights of women in informal monogamous unions – traditional or otherwise – are more accepted by the community than those in concubinage or polygamous unions.<sup>62</sup>

Concubinage relationships are always informal, as such relationships are illegal and punishable by law under the 2008 GBV Law. The practice is considered very shameful in Rwandan culture<sup>63</sup> and women in concubinage relationships are referred to as “second offices” (*inshoreke*) or prostitutes (*indaya*) because they are in relationships with legally married men.<sup>64</sup> They are not respected or considered legitimate wives by the community.<sup>65</sup> A key informant from Benishyaka stated that, when concubinage relationships start, legally-married men take land and property from their formal wives and children to give to the woman and thereby hurt their families. Because of the shame and stigma associated with these relationships, and possibly because women in concubinage relationships shoulder the blame for their partners' choices, it is difficult for them to claim rights to land or property in case of separation from or the death of their partners.<sup>66</sup>

Like women in concubinage relationships, junior wives in non-religious, polygamous unions are considered “husband stealers” and are not considered legitimate wives by the community.<sup>67</sup> Women in polygamous unions do not assert their rights – such as asking their husbands why a plot of land was sold without their consent – because they fear being chased away by their husband or his family.<sup>68</sup> Regarding the situation of junior wives in polygamous unions, one key informant from Radio Ishingiro said, “It is better to be silent than to claim your rights if it brings you trouble.” In contrast, first wives are seen as victims of “husband stealers” and are more respected in the community, in part due to their larger contribution of labor to the household.<sup>69</sup> Again, like concubinage relationships, junior wives – rather than their husband – appear to shoulder the blame for the negative impacts of these relationships on first wives.<sup>70</sup> However, these relationships are uncommon in Rwanda,

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<sup>58</sup> KII with RRP+

<sup>59</sup> According to a key informant from RCN, “Rural communities care more about the payment of dowry than formal versus informal marriage.”

<sup>60</sup> KII with Haguruka

<sup>61</sup> KIIs with Haguruka, NWC

<sup>62</sup> KIIs with Benishyaka and ILPD

<sup>63</sup> KII with Pro-Femmes

<sup>64</sup> KIIs with Radio Ishingiro, Benishyaka, Haguruka

<sup>65</sup> KIIs with Haguruka, NWC, ILPD

<sup>66</sup> KIIs with Radio Ishingiro, Pro-Femmes, University of Rwanda, and Haguruka

<sup>67</sup> KII with Benishyaka

<sup>68</sup> KII with Radio Ishingiro

<sup>69</sup> KII with MIGEPROF

<sup>70</sup> KII with ILPD

except perhaps among very elderly couples, because they are widely understood to be illegal and are opposed by the Christian church.<sup>71</sup>

Women in any type of de facto union that do not bear children are vulnerable to being “chased away” by their partners or having their land grabbed by their partners’ families; women without children are typically expected to return to their natal families.<sup>72</sup> In the eyes of the community, children add legitimacy to a union and to a woman’s role in the union.<sup>73</sup> Additionally, concern for the welfare of the children increases community support for the rights of women in de facto unions.<sup>74</sup> However, a long union can provide a modicum of protection for childless women in de facto unions, as women who have been in the relationship for many years receive more community support.<sup>75</sup>

Unlike women in non-religious, polygamous unions, women in polygamous Islamic marriages are well-respected and protected within their communities. Though these unions are also illegal under the law, polygamous unions are considered legitimate by religious institutions and, as a result, these women are not stigmatized by their communities and are less vulnerable to social and physical abuse. Like non-religious, polygamous unions, polygamous Islamic marriages are reportedly uncommon in Rwanda.<sup>76</sup>

## **Benefits of De Facto Unions for Women**

The benefits of formal marriage were universally reported by FGD participants, who further added that there is widespread community understanding of the benefits of formal marriage due to government, CSO, and church-led sensitization campaigns. The primary benefit is that women in formal unions have secure rights to marital property, including land. Other reported benefits included the ability to assume public office, opportunities to acquire bank loans, higher levels of societal respect, and decreased vulnerability to GBV.

The research team sought to understand whether de facto unions might also offer some benefits to women. Key Informant Interviews revealed that the potential benefits are few and rare. For women who enter a marriage with property of their own, a de facto union will protect her from sharing her property with her husband in case of divorce.<sup>77</sup> For some women, de facto unions are the least unattractive option available to them. Uneducated and unmarried women who are past ideal marriage age, or women who fall pregnant out of wedlock, gain respect simply by living with a man, as they are otherwise ostracized in their communities.<sup>78</sup>

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<sup>71</sup> FGDs in Kayonza, Kigali, Musanze, Nyamasheke, and Nyanza. FGD participants in Musanze further stated that local authorities actively work to prevent polygyny. According to one woman, “If a man tries to bring another wife, the NWC members and the authorities will chase her away.”

<sup>72</sup> KII with Radio Ishingiro

<sup>73</sup> KIIs with ILPD, Radio Ishingiro, NWC, Haguruka,

<sup>74</sup> KIIs with ActionAid and MINIJUST

<sup>75</sup> KIIs with ActionAid and MINIJUST

<sup>76</sup> KIIs with Haguruka, RCN, Pro-Femmes, MIGEPROF

<sup>77</sup> KII with Avega

<sup>78</sup> KIIs with Haguruka, Radio Ishingiro, RRP+, RCN, RLRC

The negative impacts of de facto unions on women's rights to land and property strongly overshadowed the potential benefits. According to one key informant from the Independent Institute of Lay Adventists of Kigali (INILAC), women in such unions are very vulnerable, as "*kurira k'umpembyi*" (i.e. built on weak foundations and easily shaken by the wind). Their rights to marital property depend on the goodwill of their husbands or families-in-law, or through their role as mothers. As a result, they must seek to please their husbands and families<sup>79</sup> or risk being chased away empty-handed in the event of separation or widowhood.<sup>80</sup> Similarly, they lack bargaining power within their relationships;<sup>81</sup> have little or no say in whether or not the property they use is sold by their spouses;<sup>82</sup> are typically unable to remain on that property in the case of abandonment, separation, or widowhood;<sup>83</sup> are stigmatized by their communities as prostitutes;<sup>84</sup> and may be more vulnerable to GBV.<sup>85</sup>

## Challenges of De Facto Unions for Women

The research team sought to understand the particular challenges experienced by women in de facto unions and their rights to land in practice, which are detailed in this section.

### *Right of refusal over land transfers*

Women in de facto unions do not have a legal right of refusal over land transfers. While this was not deeply explored through the FGDs and KIIs, participants discussed women's inability to contest household land-related decisions, such as transfers.<sup>86</sup> Further, participants stated that women who object to transfers and other land-related decisions are more vulnerable to GBV.<sup>87</sup>

### *Rights to marital property in case of separation*

Women in de facto unions are not entitled to a portion of their husband's umunani or land inheritance, nor are they entitled to a portion of property acquired during the marriage that is not registered in their names or for which they do not have proof that they contributed. This differs from women in formal marriages under the community of property regime who are automatically entitled to 50% of the marital property and are not required to be co-registered on the land title certificate or to provide proof that they contributed to the acquisition of the land.

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<sup>79</sup> The ways in which a woman can please her husband – as reported by FGD participants in Nyamasheke – include buying meat, cooking well, and taking care of him “after he falls down drunk.”

<sup>80</sup> KIIs with ActionAid, Girl Effect, Haguruka, Radio Ishingiro, ILPD, GMO, MINIJUST, NWC, Pro-Femmes, University of Rwanda, and the Honorable Kayiranga, Chair of Parliamentary Committee on Political and Gender Affairs

<sup>81</sup> KIIs with Avega and ILPD

<sup>82</sup> FGDs in Kayonza, Kigali, Musanze, Nyamasheke, and Nyanza

<sup>83</sup> KIIs with ActionAid, Haguruka, Radio Ishingiro, RRP+, RCN, NWC, and University of Rwanda

<sup>84</sup> KIIs with University of Rwanda, Haguruka, Radio Ishingiro, ILPD, and Honorable Kayiranga, Chair of Parliamentary Committee on Political and Gender Affairs

<sup>85</sup> KIIs with Haguruka, Radio Ishingiro, RRP+, ILPD, MINIJUST, NWC, and Pro-Femmes

<sup>86</sup> FGDs in Kayonza, Kigali, Musanze, Nyamasheke, and Nyanza

<sup>87</sup> KIIs with ActionAid, Haguruka, and ILPD

Per the Supreme Court's interpretation of Article 39 of the GBV law, if a woman in a de facto union can prove her financial contribution to the acquisition of the property, then she can be eligible for a portion of the property.<sup>88</sup> However, women in de facto unions typically have no evidence to prove that they contributed to marital property acquired by the couple.<sup>89</sup> According to a researcher from the University of Rwanda, even if a woman contributed to the purchase of the land, or purchased the land herself, if it is not registered in her name and she does not have other evidence of her contribution, she will lose it in case of separation. As a result, women in de facto unions are usually forced to leave empty-handed by their husbands.<sup>90</sup> Childless women in de facto unions are very vulnerable since they can neither legally claim land on behalf of their children nor are they typically supported by the community.<sup>91</sup>

There are few safety nets for women in de facto unions who are facing separation from their husbands. In the past, when a woman separated from her husband, she could request a small plot of unproductive land from her natal family on which to build a house, i.e. *"ingarigari"* or *"uturima tw'indushyi"*, meaning literally "lands of sufferers." These are no longer viable options for many families due to the scarcity of land.<sup>92</sup> Instead, women may seek rights to land through their children, on behalf of whom they can claim land, but only if the children are officially acknowledged by their father.<sup>93</sup> Additionally, the community may support a childless woman if her relatives and neighbors testify that she contributed to the marital property, particularly if the couple lived together for many years.<sup>94</sup>

#### *Rights to marital property in case of widowhood*

In case of widowhood, women in de facto unions have no legal rights to marital property that is not registered in their names and for which they cannot provide proof that they contributed, and are dependent on the goodwill of their adult children or partners' families.<sup>95</sup> In contrast, women in formal unions under the community of property regime are entitled to at least 50% of the marital property according to the 1999 Succession Law.<sup>96</sup>

In rural areas, an informally-married woman who is widowed will be forced to leave by her partner's family so that they can acquire the marital property. This is because the family feels that the woman does not have a legitimate right to the property.<sup>97</sup> The family will first ask the woman if she contributed to the acquisition of marital land or property; however, this is

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<sup>88</sup> Judgment RS/Inconst/Pen.0003/10/CS rendered on 07 January 2011 on the petition filed by Gatera Johnson and Kabalisa Teddy.

<sup>89</sup> KIIs with Haguruka, NWC, and Benishyaka

<sup>90</sup> KII with University of Rwanda

<sup>91</sup> KII with International Alert

<sup>92</sup> FGDs in Kigali and Nyanza

<sup>93</sup> KIIs with Haguruka, Benishyaka, and ActionAid

<sup>94</sup> KII with MINIJUST

<sup>95</sup> KIIs with ActionAid, Girl Effect, Haguruka, Radio Ishingiro, ILPD, INILAK, GMO, MINIJUST, NWC, Pro-Femmes, University of Rwanda, and the Honorable Kayiranga, Chair of Parliamentary Committee on Political and Gender Affairs

<sup>97</sup> KII with Radio Ishingiro, Haguruka, and RCN



extremely hard for women to prove. When it is established that the woman cannot prove her contribution, she is expected to return to her natal family.<sup>98</sup>

Widows will claim rights through their children. According to a key informant from International Alert, women will say, “I have no land, I have five kids, and we are hungry.” The community will listen out of concern for the children’s welfare. Yet, this is only effective if the children have been officially acknowledged by the father. Without official acknowledgement, the man’s family can force the woman to leave her home and property.<sup>99</sup> As with women facing separation, however, the community may support the woman if relatives and neighbors testify that she contributed to the household property or if the couple lived together for many years.<sup>100</sup>

Childless widows and HIV positive widows are very vulnerable. In regards to the former, Rwandan culture sees children as proof of a family’s strength and affluence. Without children, a widow’s ties to her partners’ family are tenuous and easily severed. Women who are HIV+ are vulnerable because they are rejected by their partners’ families, many of whom believe that the women killed their sons. This becomes a permissible reason for property grabbing from widows.<sup>101</sup>

### *Rights to land from natal families*

In the past, women could not claim umunani or land inheritance from their natal families, as they were expected to access land through their husbands. This began to shift in the 1990s, particularly with the adoption of the 1999 Succession Law.<sup>102</sup> According to FGD participants in Nyanza, a few “enlightened” brothers encouraged their parents to share land with their sisters. As previously explained, the 1999 Succession Law guarantees all children rights to an equal share of land inheritance and equal rights to receive umunani from their natal families, regardless of sex or civil marital status. FGD participants in Nyamasheke, Nyanza, and Kigali<sup>103</sup> stated that this resulted in women increasingly seeking umunani or land inheritance from their natal families. They explained, however, that neither women in formal unions nor women in de facto unions frequently claim these rights because resistance to women’s rights to land inheritance and umunani persists. This was affirmed by multiple key informants,<sup>104</sup> one of whom further clarified that a woman’s family will not consider whether or not she is formally married if she returns to ask for land – in either case she is no longer a part of the family and, culturally, ineligible to inherit or be given land.<sup>105</sup>

Still, some women choose to claim land from their natal families and those who do may be influenced by their civil marital status and whether or not the union involved the payment of

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<sup>98</sup> KII with Haguruka

<sup>99</sup> KIIs with Haguruka, Benishyaka, and ActionAid

<sup>100</sup> KII with MINIJUST, International Alert, and Haguruka

<sup>101</sup> KII with RRP+

<sup>102</sup> FGDs in Kayonza, Kigali, Musanze, Nyagatare, and Nyanza

<sup>103</sup> This question was excluded from FGDs in Musanze and Kayonza due to time constraints.

<sup>104</sup> KIIs with National Women’s Council, Pro-Femmes, MIGEPROF, Benishyaka, ActionAid, Haguruka, Radio Ishingiro, and RCN.

<sup>105</sup> KII with RCN

bride wealth. While FGD participants and key informants<sup>106</sup> agreed that it is difficult for *all* women to seek rights to land from their natal families, several averred that women in de facto unions find it *more difficult*.<sup>107</sup> The reasons for this are both economic and social. On the economic side, many de facto unions do not involve the payment of bride wealth. Traditionally in Rwanda, the husband's family is expected to bring bride wealth to the wife's family when the couple marries and, if they fail to do so, the woman is "embarrassed" to ask her natal family for land.<sup>108</sup> This can be interpreted to mean that because their natal families did not receive financial benefits from the union, women do not feel comfortable claiming land from them. In contrast, women in traditional de facto unions in which bride wealth was paid feel more entitled to claim land from their natal families.<sup>109</sup>

Several key informants referenced a woman's social standing as an enabling factor in claiming land from her natal family. Women in formal unions – and even informally-married women whose partners paid bride wealth – can claim those rights with confidence and honor because they have been formally married and are therefore respected by their natal families and in-laws.<sup>110</sup> On the other hand, women in concubinage or consensual unions are reportedly less empowered to claim these rights because they are not recognized or valued by their families.<sup>111</sup>

## **Channels through which Women Claim Land Rights**

The initial channels through which women claim rights to land are similar, regardless of civil marital status. However, the outcomes of their efforts can vary depending on their marital status and, if in a de facto union, the type of union.

Rather than attempt to secure their rights, many women in formal and de facto unions remain silent, rather than attempt to secure rights to land. According to a key informant from Haguruka, women who abide by traditional values and are "quiet and respectful" in their households also do not fight for land rights. Other women know that their rights are insecure and do not speak up to avoid being forced to leave.<sup>112</sup> Still others opt for silence because they fear creating problems within their families or are threatened by family members, including members of their natal families if they seek to claim land inheritance or *umunani*.<sup>113</sup> Due to time constraints, this research did not delve into how common it is for women to remain silent rather than seek to secure rights to land.

When women do seek to claim rights to land – regardless of civil marital status – they will typically first go through the man's extended family, i.e. the family council. However, family councils are reportedly biased by culture and tradition and, if a woman does not feel that she

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<sup>106</sup> FGDs in Nyamasheke, Nyanza, and Kigali. This question was excluded from FGDs in Kayonza and Musanze due to time constraints. KIIs with RCN, Benishyaka, Haguruka, Pro-Femmes, MIGEPROF, and University of Rwanda.

<sup>107</sup> KIIs with Haguruka, Radio Ishingiro, RRP+, ILPD, and NWC

<sup>108</sup> KIIs with RRP+, ILPD and NWC

<sup>109</sup> KII with RRP+ and ILPD

<sup>110</sup> FGDs in Nyamasheke and Nyanza; KIIs with Haguruka, Radio Ishingiro, RRP+, ILPD, NWC,

<sup>111</sup> KII with ILPD

<sup>112</sup> KII with Radio Ishingiro

<sup>113</sup> FGD in Nyamasheke

has been heard, she will go to the local administrative authorities and then the Abunzi.<sup>114</sup> Women in religious marriages often seek support through their church or mosque.<sup>115</sup>

While some key informants stated that the Abunzi are primarily influenced by law,<sup>116</sup> others averred that the Abunzi have imperfect legal training and are primarily influenced by culture.<sup>117</sup> For example, one key informant pointed out that Abunzi do not know about Article 39 of the 2008 GBV Law, much less how to apply it.<sup>118</sup> Another asserted that some Abunzi do not even know that a woman has rights. This informant further explained that the Abunzi might accuse a women who is seeking rights to land of destabilizing her family and disrespecting her husband.<sup>119</sup> Key informants from Haguruka and Radio Ishingiro stated that, rather than granting women in de facto unions' rights to marital property, in some cases the Abunzi have ordered the man to pay the woman a small amount of money to help her and the children set up a home independently (RWF 50,000-55,000). The origins of this practice are unknown.

As a result of the perceived cultural biases in the Abunzi's decision-making, many women seek legal support from Haguruka paralegals or other CSOs,<sup>120</sup> or through community forums such as *Umuganda* or *umugoroba w'ababyeyi* (Parents' Forum). Several key informants<sup>121</sup> reported that community forums are effective in securing land rights for women in de facto unions, particularly when women seek rights on behalf of their children. According to a key informant from International Alert, even when the father has not officially acknowledged the children, the community will push for the children to be supported. If a childless couple has lived together for many years, the community would likely acknowledge the marriage and argue that the woman should receive part of the land in case of separation or widowhood. A shortcoming of community forums is that the outcomes are not legally binding, but social pressure from the community may encourage compliance on the part of the couple.<sup>122</sup>

Women in de facto unions rarely appeal their cases to the Primary Courts because it is too expensive (RWF 25,000 fee) and because their marriages are not legally recognized.<sup>123</sup> An exception to this is when they seek help from the courts on behalf of their children or if they have evidence to prove their contributions to the household property or land.<sup>124</sup> Conversely, women in formal marriages can take their cases to the courts with confidence because they know that the law protects them.<sup>125</sup> Regardless of marital status, decisions made by the

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<sup>114</sup> FGD in Kigali. This question was excluded from all other FGDs due to time constraints. KIIs with ActionAid, Haguruka, Radio Ishingiro, and RRP+

<sup>115</sup> FGD in Kigali. KIIs with Radio Ishingiro and Haguruka

<sup>116</sup> KIIs with Haguruka,

<sup>117</sup> KIIs with Radio Ishingiro, RCN, International Alert, and MIGEPROF

<sup>118</sup> KII with University of Rwanda

<sup>119</sup> KII with RCN

<sup>120</sup> KIIs with Haguruka, NWC, and University of Rwanda

<sup>121</sup> International Alert, Haguruka, and NWC

<sup>122</sup> KII with International Alert

<sup>123</sup> KIIs with Haguruka, RRP+, and MINIJUST

<sup>124</sup> KIIs with NWC and MINIJUST

<sup>125</sup> KII with Haguruka

Primary Court cannot be appealed to a higher court if the case was previously heard by the Abunzi.<sup>126</sup>

The Office of the Ombudsman receives some cases related to land rights of women in de facto unions, particularly when the Abunzi or Primary Courts have failed to recognize their rights. In such cases, the Office of the Ombudsman uses Article 39 of the 2008 GBV Law and “common knowledge” to urge men and women in monogamous de facto unions to share the household property equally because it can be inferred that women contribute to the acquisition of household property, even if their names are not on the land certificates. For other types of informal unions, such as of concubinage or polygamy, the Office of the Ombudsman recommends that they receive a share of the land to benefit their children only.<sup>127</sup>

Women in concubinage relationships have very few channels for claiming rights to land because they are not recognized by their partners’ families or communities as legitimate wives.<sup>128</sup> This could also be true for women in consensual and non-religious polygamous unions, in which bride wealth was not paid. A key informant from ILPD described the situation thus:

“Irrespective of the channels through which women in de facto union seek to secure land rights, they often end up paying for this by being stigmatized in their communities, facing more GBV, and sacrificing livelihoods opportunities that would help them and their children. That said, women who are informally married through tradition or religion are at an advantage because the institutions recognize them with respect, as opposed to those in concubinage, polygamous or consensual relationships.”

In addition, it is difficult for women in concubinage relationships to claim land rights on behalf of their children because the children’s fathers need to officially acknowledge them. The fathers cannot do so because concubinage relationships are frequently conducted in secrecy and to officially acknowledge their children would expose their legal and social transgressions.<sup>129</sup>

## 6.0 ROOT CAUSES OF DE FACTO UNIONS IN RWANDA

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<sup>126</sup> This was highlighted in one of the six reviewed Primary Court cases. In an appeal case referred to the Intermediate Court by a woman in a de facto union, the judge referred to article 27 of the organic law no. 02/2010 of 9/6/2010 on organization, jurisdiction, competence, and functioning of the mediation committee: “Any party that is not satisfied with the decision of the mediation committee at the Sector level, may, within a period not exceeding one month from the day on which he/she was notified of the written decision of the panel, refer the matter to the Primary Court which shall render a judgment on merits at the first and last instance”. In accordance with this provision, the Intermediate Court dismissed the appeal case before entering into the merits of the case on the basis that a final judgment had been rendered at the last instance (the Primary Court) and thus the appellant could not refer the case to a higher level. However, this is specific to cases of appeal of *Abunzi* decisions to the primary court but does not prevent any other appeals of primary court decisions on family law to Intermediate Courts.

<sup>127</sup> KII with Ruth Vumilia, Acting Director for the Prevention and Fight against Injustice Department, Office of the Ombudsman

<sup>128</sup> KII with Radio Ishingiro

<sup>129</sup> KII with Benishyaka

The prevalence of formal unions has continued to increase. FGD participants<sup>130</sup> attributed this to an increasing number of educated people, sensitization campaigns, and church teachings on de facto unions as sinful, as well as church refusals to wed couples who have not registered their unions. Though the prevalence of formal marriage and the benefits that these provide have increased, de facto unions persist due to economic and sociocultural factors and to women's weak bargaining power. These factors frequently interact with one another to create an environment in which women and men face significant barriers to formal marriage.

Resistance among some young men to formal marriage is a cause of de facto unions, as reported by FGD participants and several key informants.<sup>131</sup> These men associate civil marriage with the community of property regime and resist formal marriage because they know that they would be required to share their property with their wives in case of divorce. Additionally, some men refuse to formally marry because they do not want to disrupt the traditionally male-dominated household gender balance. According to one key informant, some men believe that "Men who are legally married are not men at home," meaning that formally-married men no longer dominate in the household.<sup>132</sup>

Poverty was frequently reported by key informants as a cause for the prevalence of de facto unions. Some couples simply cannot afford the cost of a formal marriage, which according to cultural expectation includes up to eight cultural, civil, and religious steps.<sup>133</sup><sup>134</sup> While the marriage registration fee is relatively low in some districts,<sup>135</sup> the payment of bride wealth is the most expensive step.<sup>136</sup> These are imposing costs for couples with very little money. Similarly, women and men are expected to bring property to a formal marriage: A woman is required to bring domestic items such as kitchen utensils to her husband's home, while the man is expected to build a house. When either party cannot fulfill these requirements, they might instead choose to enter into an informal marriage.<sup>137</sup>

Poverty indirectly influences other reasons for de facto unions. According to a key informant from Girl Hub, young women with one or more deceased parents (whether in a foster home, heading a household, or living alone) are vulnerable to poverty. Similarly, if a young

<sup>130</sup> FGDs in Kayonza, Kigali, Musanze, Nyamasheke, and Nyanza

<sup>131</sup> FGDs in Kayonza, Musanze, Nyamasheke, and Nyanza. KIIs with Haguruka, RCN, NWC, Radio Ishingiro, MIGEPROF, Honorable Kayiranga, Chair of Parliamentary Committee on Political and Gender Affairs

<sup>132</sup> KII with RCN

<sup>133</sup> These steps are as follows: 1) Introduction (*Gufata Irembo*); 2) Dowry Ceremony (*Umuhango wo Gusaba no Gukwa*); 3) Civil Marriage (*Gusezerana imbere y'Ubuyobozi bwa Leta*); 4) Religious Marriage (*Gusezerana imbere y'Imana*); 5) ceremony in which the family of the bride officially "hands" the bride to the groom (*Guheka Umugeni*); 6) ceremony to officially permit the newlyweds to begin working in the support of their household (*Gutwikurura*); 7) ceremony in which the bride visits her family-in-law (*Guca mu Irembo*); and 8) ceremony in which the bride's family visits their daughter to see where she is living and to check on her welfare (*Ababyeyi gusura Umukobwa wabo (Umugeni)*).

<sup>134</sup> KIIs with ActionAid, Radio Ishingiro, MIGEPROF, NWC, RCN, RLRC, RRP+, and University of Rwanda.

<sup>135</sup> According to the Social Affairs Secretary of Gasabo District, the price varies by district. For example, in Gasabo District the total registration cost is RWF 3,900, but in Nyarugenge District, this price is as high RWF 30,000. (Phone conversation with Social Affairs Secretary, 16/2/16).

<sup>136</sup> According to the Social Affairs Secretary of Gasabo District, the price varies by district. For example, in Gasabo District the total registration cost is RWF 3,900, but in Nyarugenge District, this price is as high RWF 30,000. (Phone conversation with Social Affairs Secretary, 16/2/16).

<sup>137</sup> KII with Girl Hub

woman's parents cannot afford to send her to school, she may lack access to information about family planning and the benefits of delaying marriage.<sup>138</sup> Dysfunctional families and discord or abuse at home were also described as reasons for de facto unions.<sup>139</sup> Women in these vulnerable situations might see marriage – even an informal one with its attendant risks - as a means of changing their economic status or escaping from an otherwise detrimental situation.<sup>140</sup>

Poverty also contributes to certain social pressure and cultural norms which push couples into de facto unions. Some parents still demand a bride price. For some families, bride price has moved beyond a cultural symbol and become a business opportunity. When the potential groom cannot afford the bride price, the couple may choose to enter into a consensual union.<sup>141</sup>

There are also sociocultural reasons for the persistence of de facto unions. Underage and older marriages were reported by several key informants as common reasons for informal marriage. The legal age of consent in Rwanda is 21 years; young women may enter into de facto unions because they cannot legally marry.<sup>142</sup> On the other hand, single women aged 25 years and older<sup>143</sup> are pressured by their families and communities to marry.<sup>144</sup> They enter into informal unions to relieve this social pressure and stigma. According to a key informant from RCN:

“According to old customs, when a woman reaches a certain age and is still unmarried and living with her parents, people start thinking that she has problems. Even some parents start asking girls what is wrong with them if they haven't gotten married by a certain age. Sometimes, girls are threatened and they prefer to do what society demands and find a husband . . . When she's getting old, if a man proposes to enter into a consensual union she will agree. Even if she has some knowledge about legal rights, she will say 'Okay, let me first go and live with him and then try to convince him to get formally married.' But if the husband didn't plan to get legally married, it can become a threat that he can use against his wife. He starts mistreating her. He threatens to chase her away, saying 'If you want to get legally married, then go find another man to marry you.'”

In contrast, men are not pressured to marry and can get married later in life, if they wish.<sup>145</sup>

Other sociocultural reasons for de facto unions include unplanned pregnancy, cultural expectation that widows will not remarry, and a male desire to show wealth and status by having multiple wives. In regards to the first, if a young woman becomes pregnant, she will quickly move in with the baby's father to avoid social judgement. Otherwise, the young

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<sup>138</sup> KII with Girl Hub

<sup>139</sup> KII with International Alert

<sup>140</sup> KII with Haguruka

<sup>141</sup> KII with International Alert

<sup>142</sup> KIIs with University of Rwanda and Girl Hub

<sup>143</sup> The reported age at which social pressure to marry became extreme varied, but the highest reported was 35 years.

<sup>144</sup> KIIs with RCN, Haguruka, RRP+, RLRC

<sup>145</sup> KII with Haguruka



woman will be stigmatized for having done the “wrong” thing.<sup>146</sup> In some cases, women who find themselves pregnant out of wedlock are forced by their parents to live informally with their husbands.<sup>147</sup> In regards to the second reason, there is a cultural expectation that widows will not remarry. Those who do so are stigmatized, thus many widowed women hide their relationships and opt for informality.<sup>148</sup> Finally, wealthy men are respected for having multiple wives – though their wives might be stigmatized. Traditionally, the ability to marry multiple wives was attributed to wealth and property.<sup>149</sup> Today, polygamy is widely understood at the community level to be illegal and punishable by law;<sup>150</sup> FGD participants in Musanze also noted that community leaders actively work to prevent polygamy in their communities. While polygamy has declined precipitously, when men have issues with their wives (both in formal and de facto unions), some seek other women who will “not cause them any trouble”.<sup>151</sup>

Some couples simply do not see the value in formal marriage, especially the elderly and less educated. According to a key informant from Pro-Femmes, couples in these situations do not feel the urgency of formalizing their unions because the husband and the wife live in harmony with each other; however, if the relationship breaks down, the woman will begin to see the need to formalize the union in order to protect her rights to land property.

The benefits of formal marriage are widely understood, yet de facto unions persist and women are often the ones who are punished for failing to enter into formal marriages. Though not identified by key informants or FGD participants as a cause of informal unions, it is likely that women lack the bargaining power to convince their partners to formalize their union. Because women are pushed into marriage through the economic and sociocultural reasons outlined above and have weak authority due to traditional norms and gender roles, they may not be able to convince men that the union should be formalized. This is compounded when men resist formal marriage as a means of avoiding sharing property or household decision-making with their wives. Some men may refuse to formalize their unions because they fear it could threaten their dominant position over their wives and their masculinity, as perceived by society and themselves.

## **The Costs of Illegitimacy**

*Economic costs.* As previously described, women in de facto unions do not have decision-making authority over land and property, including land transfers. Similarly, they do not have strong legal rights to household land in case of separation, abandonment, or widowhood. According to a key informant from RCN, a woman may work on the land for many years, but if she is chased away she will have no rights to it. He added that, when a woman knows that her rights are insecure, she might be less inclined to make land-based investments, resulting in negative impacts on household food security and overall prosperity.

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<sup>146</sup> KII with Girl Hub

<sup>147</sup> KII with University of Rwanda

<sup>148</sup> KII with Avega

<sup>149</sup> KIIs with Haguruka, MIGEPROF, Honorable Kayiranga, Chair of Parliamentary Committee on Political and Gender Affairs

<sup>150</sup> FGD participants in Kayonza, Kigali, Musanze, Nyamasheke, and Nyanza

<sup>151</sup> KII with Haguruka

*Social costs.* In the past, informal marriage predominated and women in both formal and informal marriages were respected equally by the community.<sup>152</sup> Instead, women were required to satisfy their husbands and bear children, preferably sons, to obtain societal respect. “To women in those early days, giving birth to baby girls was a bigger issue than living in informal marriages!” stated an FGD participant in Kigali. However, societal respect for women in informal marriages has gradually decreased with the adoption of the legal framework recognizing only formal, monogamous marriages, as well as increasing education and church pressure to wed formally.<sup>153154</sup> In Musanze, FGD participants reported that informal marriage began to be seen as disgraceful, and those in such unions were seen as “behind.” Further, women in de facto unions are less confident and feel inferior, and are shunned and judged by other women. Participants in several FGDs pointed out that women in informal marriages are referred to as prostitutes, a point that was also echoed by key informants.<sup>155</sup>

Women in de facto unions are less respected by their families and communities, and even by some policymakers. As previously discussed, this is less true for women in Islamic marriages or women in consensual monogamous unions, especially those in traditional marriages. On the other hand, women in concubinage relationships or junior wives in polygamous marriages are considered “husband stealers” and are stigmatized. Yet, all women in de facto unions can be referred to as prostitutes by their communities and local authorities, even if their partners paid bride wealth and they have been married for many years.<sup>156</sup> This is especially the case when conflicts arise within the family, such as when a woman claims rights to land.<sup>157</sup>

A high-level government official interviewed for this brief thought that all informally married women *should* be called prostitutes, as this could reduce the prevalence of informal marriages. However, the research team did not uncover evidence that this dialogue has reduced the prevalence of informal marriage. Rather, it is possible that delegitimizing women in informal marriages has empowered men and communities to disrespect them and deny them rights to land. According to one key informant:

"Before the introduction of these policies and laws, an informal union was considered a marriage if the couple respected all of the customary obligations . . . Since people

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<sup>152</sup> FGDs in Kayonza, Kigali, Musanze, Nyamasheke, and Nyanza

<sup>153</sup> In the 1990s, Christian churches began to teach that informal unions were “sinful” and also began refusing to perform religious ceremonies for couples that had not obtained a marriage registration. Today, informal, Christian marriages are reportedly very uncommon, though informal, Islamic marriages continue to be performed.

<sup>154</sup> FGDs in Kigali, Kayonza, Musanze, Nyagatare, and Nyanza.

<sup>155</sup> FGDs in Kayonza, Kigali, and Nyanza. KIIs with Haguruka, Radio Ishingiro, University of Rwanda, Benishyaka, Ruth Vumilia, Acting Director for the Prevention and Fight against Injustice Department, Office of the Ombudsman; Honorable Kayiranga Alfred Rwaso, Chair of the Parliamentary Committee on Political and Gender Affairs

<sup>156</sup> KIIs with Haguruka, University of Rwanda, and Ruth Vumilia, Acting Director for the Prevention and Fight against Injustice Department, Office of the Ombudsman

<sup>157</sup> Email exchange with the Executive Secretary of Haguruka, Ninette Umurerwa, on 18/2/2016.

started talking about the laws and the policies, even old women who have been living in informal unions know that they could be chased away by their husbands."<sup>158</sup>

The lack of legal recognition for de facto unions has trickled down to the community level where women who would once have been respected as wives can now be delegitimized.

*Health costs (GBV related to land).* Gender-Based Violence (GBV)<sup>159</sup> related to land among couples, either formally or informally married, was historically common in Rwanda and persists into the present day. In the past, GBV was accepted and even expected by society as a show of male dominance over women.<sup>160</sup> An FGD participant in Kayonza stated, "There were so many unreported cases of GBV because the culture condoned it. If you were abused, it was acceptable because it was the culture." In Musanze, FGD participants described a traditional expectation that men had to beat their wives during the first three months of marriage in order to show their dominance ("*niko gutera amashyiga*").<sup>161</sup>

FGD participants perceived that cases of GBV began to decline in the 1990s, as the GOR's reach expanded and men began to fear the legal repercussions of violence. With the adoption of the 1999 Succession Law, the GOR began advocating for women's rights more strongly, with mixed impacts on the prevalence of GBV. Today, GBV cases related to land have reportedly decreased significantly, especially among formally-married women, though participants in Kayonza pointed out that the number of *reported* cases have increased. Participants attributed the decrease to the adoption of the 2008 GBV Law and women's increasing economic independence. Women now have channels through which they can report cases of GBV and receive support. As a result, men fear being punished if they commit GBV.<sup>162</sup>

Yet, GBV persists and women in both formal and de facto unions are vulnerable.<sup>163</sup> When describing the situation, one key informant quoted an old Rwandan saying, "*Umugore n'ukubitwa*," meaning that a true woman is one who is beaten.<sup>164</sup> Another informant stated, "Formal marriage does not protect women from GBV because . . . formal marriage does not change men's mindsets. Regardless of marital status, women are below men."<sup>165</sup> In particular, women in both formal and informal marriages experience more GBV as they attempt to secure rights to land, as GBV is a strategy used by men to silence women.<sup>166</sup> However, KII participants largely believed that, though GBV is prevalent in both formal and

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<sup>158</sup> KII with RCN

<sup>159</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines GBV as "violence that is directed against a woman because she is a woman or that affects women disproportionately" and "acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."

<sup>160</sup> FGDs in Kayonza, Kigali, Musanze, Nyamasheke, and Nyanza

<sup>161</sup> In the Rwandan saying, this tradition as stated by focus group participants in the Northern region is called "Gutera Amashyiga" or "Setting stone stoves" that mean comparatively setting rules in the household by the husband to show who is boss

<sup>162</sup> FGDs in Kayonza, Kigali, Musanze, Nyamasheke, and Nyanza

<sup>163</sup> KII with GMO

<sup>164</sup> KII with RRP+

<sup>165</sup> KII with ActionAid

<sup>166</sup> KII with Haguruka, INILAK, Radio Ishingiro, RCN,

informal marriages, women in informal marriages are more vulnerable to GBV because they lack legal protection and societal respect.<sup>167</sup>

Because women in de facto unions are not legitimate in the eyes of the law, they are less respected by the community, less respected in the household, have no social safety net, and nowhere else to go. According to one key informant, men know that they can do anything to their wives and get away with it because their wives will keep silent knowing that the law does not protect them.<sup>168</sup> Women in de facto unions accept GBV in their households as an alternative to being chased away with nothing.<sup>169</sup>

## 7.0 RECOMMENDATIONS FOR STRENGTHENING THE RIGHTS OF WOMEN IN DE FACTO UNIONS

The following recommendations are derived from FGD participants, key informants, and the research teams' analysis. These recommendations seek to improve the land rights of women and men in de facto unions through legal and social approaches, and include opportunities for further research that could influence policy. Land tenure insecurity for women in de facto unions and its associated economic, social and health costs are products of weaknesses in the legal framework and patriarchal cultural norms. To paraphrase Polavarapu (2011), it might be impossible in the current economic and sociocultural environment to secure all women's land rights, but Rwanda has an opportunity to secure *more* women's land rights than it currently does.

### Legal Approaches

- Recognize property rights of couples in monogamous (traditional and otherwise) de facto unions to marital property. Protecting the land rights of couples in de facto unions is the only long-term approach to strengthening women's land tenure security because de facto unions will persist as long as economic and sociocultural factors challenge women, and some men, to formalize their unions. Further, women's and men's rights to land should not be based on their marital status. This is contrary to Rwanda's commitment to gender equality, as affirmed by Article 9 of the 2008 Constitution and the 2013 Land Law.

Article 17 of the Constitution narrowly defines marriage as "civil monogamous marriage between a man and a woman". In order to better protect both men and women's land rights, the Constitution could be amended to expand the definition of marriage to include monogamous de facto unions, which become legitimate after a set number of years of co-habitation, which is in keeping with the monogamous principle.

However, policymakers are divided on the issue of recognizing de facto unions as marriages— even monogamous de facto unions. According to one policymaker, "Lawmakers think that, if women enter into informal marriages, they shouldn't be protected. They know the constraints that women face, but they really want to

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<sup>167</sup> KIIs with Haguruka, ILPD, and RRP+.

<sup>168</sup> KII with RCN

<sup>169</sup> KIIs with GMO and Radio Ishingiro

discourage informal marriage.”<sup>170</sup> With this constraint in mind, another approach would be to recognize marriage-like rights to land and property of couples in monogamous de facto unions after a certain number of years have passed. This would not require amending the Constitution to expand the definition of marriage, but could be incorporated in the 1999 Succession Law, the 2008 GBV Law, and the 2013 Land Law to require joint registration of land belonging to couples in monogamous de facto unions.

- Strengthen Article 39 of the 2008 GBV Law to offer protection of rights to land for women and men in de facto unions. Currently, a person in a de facto union must prove that they contributed to the acquisition of household assets if their name is not on the land title certificate. Article 39 of the 2008 GBV Law could be revised to state that, after a certain number of years have passed, women and men in monogamous informal unions are entitled to an equal share of the household possessions without needing to provide proof of their financial contribution. The provision should apply regardless of whether one party elects to enter into a formal marriage.

### **Awareness Raising Approaches**

- Launch extensive advocacy and social change communications campaigns to encourage couples in de facto unions to jointly register their land. If both parties in the union are co-registered on the land, each will have clear, secure rights to land in case of separation or widowhood, regardless of their civil marital status.
- Comprehensive training for local authorities, including the Abunzi, on gender-equal land rights and Article 39 of the 2008 GBV Law. According to key informants, many Abunzi are not aware of Article 39 of the 2008 GBV or the Supreme Court’s interpretation of the law and do not know how to apply it. This should be remedied through comprehensive training for local authorities and Abunzi on the benefits of gender-equal land rights, as well as the practical applications of the GBV Law for protecting the land rights of women and men in de facto unions.
- Launch extensive communications campaigns to encourage men and women in de facto unions to record their contributions to the acquisition of land. This practice could be done regularly and strategically to ensure that women and men have a record of their contribution and ownership in case of divorce, separation, or death of their partner. This would further provide some protections for those who have jointly purchased land with their partner, though they are in a concubinage or polygamous union.
- Ensure that children are officially recognized by their fathers. Women in all forms of de facto unions can claim land on behalf of their recognized children; this is one of the few ways that women can ensure that they have access to productive assets in case of separation, abandonment or widowhood.

### **Social and Behavior Change Approaches**

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<sup>170</sup> KII with RLRC

- Shift official dialogue away from harmful terminology such as “indaya” in relation to women in de facto unions. Women in de facto unions are not prostitutes. By delegitimizing them and failing to similarly condemn men’s actions, some men and community members feel empowered to treat women in informal unions as undeserving of rights and respect. All people, including national and local authorities, should be discouraged from referring to women in de facto unions as “indaya.”
- Sensitization and social change communications campaigns to increase acceptance for gender-equal rights. These campaigns could focus on a number of issues that present sociocultural barriers to formal marriage. First, sensitization and social change communications campaigns could target men and boys and focus on overall gender equality, and the economic and social benefits of practicing gender equality in their homes and communities. These campaigns should also include a focus on the importance of respecting their wives – formal and informal – to a harmonious and prosperous household. Such campaigns would be a small step toward shifting patriarchal mindsets and norms that deny women land rights and limit their decision-making authority in the household. The campaigns could especially target school-aged youth who are at a phase in their lives in which they are assimilating social norms.

Sensitization campaigns should also focus on the benefits of formal marriage for both women and men without condemning those that are in de facto unions; these should primarily target men and boys since some have been reported to resist formal marriage as a means of asserting control over land rights and maintaining traditional ideals of male authority in the household. The effects of these campaigns should be rigorously assessed to ensure that they are having an impact and not leading to unintended consequences such as increased male resistance for formal marriage.

- Advocate for women to receive umunani in the form of land or assets of equal value (e.g. education) from natal families, regardless of marital status. This can be a source of protection and bargaining power for women in informal unions, and provide a safety net if a woman is denied property as a result of separation, being widowed, or otherwise.
- Address the root causes of informal marriage to reduce its prevalence. While working to reduce the prevalence of informal unions through sensitization campaigns, the root causes of informal marriage should also be addressed. Poverty, its related issues, and sociocultural pressures push women, and some men, into informal unions.

To reduce these pressures on couples seeking to marry, interventions could focus on reducing the economic barriers to formal marriage. This could involve encouraging couples to register their marriages first and save money for a traditional wedding ceremony later, and implementing social change communications focused on shifting expectations around the marriage process to reduce the cost of religious and traditional rites – weddings need not be exorbitantly expensive. Mass weddings are already addressing this to some degree, but they are not always well-organized; two key



informants described mass wedding ceremonies in which officials failed to actually register the participants.<sup>171</sup>

To address the sociocultural barriers to formal marriage, interventions could focus on poverty alleviation and job creation for youth, reducing barriers to girls' education, and family planning to prevent unplanned pregnancy.

### **Opportunities for Further Research**

- According to one key informant, empirical research showing the economic and social costs of failing to protect the land rights of women in de facto unions would encourage policymakers to do more to protect their rights. With this in mind, further research could be on the economic and social costs of tenure insecurity faced by women in de facto unions, including the impacts on investment in land, productivity, food security and nutrition, and education. Research results could then be used to formulate policy recommendations.
- Additionally, more research could be done on the root causes of informal marriage. In particular, research could focus on the linkages between age, poverty, social standing, and education and informal marriage. This research would inform targeted interventions on reducing these circumstances for girls and boys, young women and men and thereby reduce the prevalence of informal marriage.

## **8.0 CONCLUSION**

While great gains have been made toward legal and practical gender equality, the legal framework is largely silent on the land and property rights of women in de facto unions. The legal protection that does exist for women in de facto unions (Article 39 of the 2008 GBV Law) is unclear, limited, poorly understood at the community level, and can be significantly strengthened. Combined with poverty, extreme land scarcity, and traditional beliefs that women have weaker entitlements to land, this facilitates an environment whereby women in de facto unions are disenfranchised. While law has provided a foundation from which women in formal unions can advocate for their rights, women in de facto unions do not have this strong foundation and are subject to patriarchal cultural practices. As a result, many are in a position of economic dependency, relying on the goodwill of their partners, their partners' families, natal families, and even communities to access land and provide for themselves and their children. When this goodwill is denied, women in de facto unions are often left without productive resources. Until policy and law protect the rights of women in de facto unions and people accept women in de facto unions as legitimate wives and contributors to household prosperity, they will continue to be chased away by their husbands or families-in-law, and endure the resulting negative economic, health, and social consequences.

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<sup>171</sup> KIIs with International Alert and RCN

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## ANNEX 1: FOCUS GROUP DISCUSSION QUESTION GUIDE

### Step 1: Warm-up Questions

- What is your name and where are you from?
- How many years have you been working with Haguruka/NWC?
- How would you define informal marriage?
  - What about polygamous marriage?
  - What about concubinage?

### Step 2: Historical Matrix

Variable	1980	1990	1999-2000	2010-Present
1. Prevalence of formal marriage (civil marriage)				
2. Prevalence of monogamous informal marriage (consensual union, religious marriage, traditional marriage)				
3. Prevalence of polygamous marriage				
4. Prevalence of divorce/separation, whether formal or informal				
5. # of women in informal marriage <b>gaining access or control</b> rights to land through husband/partner				
6. # of women in formal marriage <b>gaining access or control</b> rights to land through husband/partner				
7. # of women in informal marriage <b>gaining</b> rights to land through natal family (umunani)				
8. # of women in formal marriage <b>gaining</b> rights to land through natal family				
9. # of women in informal marriages experiencing GBV				
10. # of women in formal marriages experiencing GBV				
11. Level of societal respect for women in informal marriages				

**Follow-up Question:** What actions do paralegals and NWC members recommend to strengthen the rights of women in informal unions to land?

## ANNEX 2: KEY INFORMANT INTERVIEW QUESTION GUIDE

### Step 1: Warm-up Questions

- What is your name?
- Describe your role in X government agency/CSO
- How long have you been working in X government agency/CSO?

### Step 2: Follow-up Questions

- How do you define informal marriage? (Allowing the interviewee to define this will help us frame and clarify the subsequent questions)
- What is the practical situation for women in informal marriages? (We will use this question to test and enrich previous research findings)
  - What are the pros of informal marriage for women?
    - Are there differences dependent on the type of union (consensual, religious, concubinage, polygamous, etc.)? What are they?
    - Is this different for women in formal marriages? Explain.
  - What are the cons of informal marriage for women?
    - Are there differences dependent on the type of union (consensual, religious, concubinage, polygamous, etc.)? What are they?
    - Is this different for women in formal marriages? Explain.
  - What are the impacts of informal marriage on women? (If not clearly answered through the preceding questions)
    - Are there differences dependent on the type of union (consensual, religious, concubinage, polygamous, etc.)? What are they?
  - Are women in informal marriages any more or less vulnerable to GBV than women in formal marriages? If so, why?
    - Are there differences dependent on the type of union (consensual, religious, concubinage, polygamous, etc.)? Why?
  - In practice, do women in informal marriages have rights to land that are recognized by custom and community, if not by law? Explain.
    - Are there differences dependent on the type of union (consensual, religious, concubinage, polygamous, etc.)?
- Do women in **informal** marriages seek rights to land from their husbands? Under what conditions? (e.g. in divorce/ separation; abandonment by husband; widowhood; sale /transfer of land; other)
  - Does this differ for women in **formal** marriages? How?
- Do women in **informal** marriages seek rights to land from their natal families (*umunani*, inheritance, other)? Under what conditions (e.g. in divorce/ separation; abandonment by husband; widowhood; sale /transfer of land; other)?
  - Does this differ for women in **formal** marriages? How?
- Are there cultural/legal barriers to women seeking to claim rights to land and if so, what are they?
  - Do these barriers differ for women in **informal** marriages? How?
  - Do these barriers differ according to the type of informal union (consensual, religious, concubinage, polygamous, etc.)? How?
- What channels do women use to secure their land rights?

- Do these channels differ for women in **informal** marriages? How?
- What are common outcomes for women in **informal** marriages seeking to claim their rights through each of these channels (i.e. how do different institutions decide in cases involving women in informal marriages)?
  - Do the outcomes differ based on the type of informal union (consensual, religious, concubinage, polygamous, etc.)? How?
- What influences the decisions of these institutions (e.g. law, custom, their own values, values of the community, mediation techniques, arbitration etc.)?
- In your opinion, why do women and men enter into informal marriages? (Try to understand the root causes)
- What actions/interventions are successfully addressing the insecure land rights of women in informal marriages?
- What *additional* actions/interventions do you recommend to strengthen the rights of women in informal marriages to land?
- What windows of opportunity do you see to implement these actions/interventions?
- What actions/interventions do you recommend to decrease the prevalence of informal marriage?

## ANNEX 3: KEY INFORMANT LIST

Name & Position	Organization	Progress on Appointment
Judith Kanzaire/Advisor to the Minister  Met instead Boco, in charge of Women's Economic Development and Legal Advisory	Ministry of Gender & Family Promotion	Interview done on December 17, 2015
Rose Rwabuhiri/Chief Gender Monitor	Gender Monitoring Office	Interview done on December 5, 2015
Jacky Kamanzi/Executive Secretary	National Women's Council	Interview done on December 23, 2015
Emma Marie Bugingo/Executive Secretary	Pro-Femmes Twese Hamwe	Interview done on December 21, 2015
Umurerwa Ninette/National Executive Secretary  Mugabo Fidele/Landesia Program Manager	Haguruka	Interview done on November 20, 2015  Interview done on November 16, 2015
Betty Gahima/Executive Secretary	BENISHYAKA	Interview done on December 9, 2015
Dr Charity Wibabara/Researcher/Prosecutor	ILPD/National Public Prosecution Authority-NPPA	Interview done on November 19, 2015
Rubagumya Chrysostome	RCN Justice & Democratic	Interview done on December 1, 2015
Donatha Gihana/Country Director	Girl Effect Rwanda	Interview done on December 2, 2015
Iidephonse Sinabubarirwaga /Managing Director	Radio Ishingiro	Interview done on December 17, 2015
Dushimimana Lambert/Legislative Drafter	Rwanda Law Reform Commission	Interview done on December 8, 2015
Hon. Kayiranga Alfred Rwaswa /Chair of the Parliamentary Committee on Political and Gender Affairs	Parliament/Chamber of Deputies	Interview done on December 9
Jolly Rubagiza (PhD) Director  Met Hilaria instead.	Center for Gender and Culture Development Studies/KIE	Interview done on December 9, 2015
Edouard Munyamaliza, Executive Secretary	Rwanda Men Resource Center -RWAMREC	Interview done on December 22, 2015
Josephine Irene Uwamariya/Country Director	ActionAid	Interview done on November 25, 2015
Mupenzi Esperance/Coordinator	MAJ Gasabo	Do not need to meet them
Gasamagera Jean de Dieu/Ag ES	RRP+	Interview done on

Mutamuliza Florida/ In charge of Gender		November 25, 2015
Francoise Murekatete/Ag Executive Secretary	AVEGA Agahozo	Interview done on Tuesday, December 15, 2015
Annie Kairaba	Rwanda Initiative for Sustainable Development	Interview not to be conducted
Amb. Fatuma Ndagiza/Deputy CEO	Rwanda Governance Board/Research Department	Interview not to be conducted
Vumilia Ruth	Office of Ombudsman	Interview done on December 14, 2015
Maniriho Lionel Toussaint	Association Maison de Droit	Interview done on December 7, 2015
Valens Ntukanyagwe	MINIJUST – Abunzi Secretariat	Interview done on Tuesday, December 29, 2015
Karake Canisius/In charge of Legal Clinic	University of Rwanda – Legal Clinic - INILAC	Interview done on December 17, 2015
Jean Baptiste Ndabananiye	Search for Common Ground	Interview done on December 16, 2015
Betty Mutesi	International Alert	Interview done on December 15, 2015