

# Legal Empowerment Working Papers

Paper No. 13

Women's Inheritance and  
Property Rights: a Vehicle  
to Accelerate Progress  
Towards Achievement of  
the Millennium Develop-  
ment Goals

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International Development Law Organization  
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## **LEGAL EMPOWERMENT WORKING PAPERS**

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## **WOMEN'S INHERITANCE AND PROPERTY RIGHTS: A VEHICLE TO ACCELERATE PROGRESS TOWARDS THE ACHIEVEMENT OF THE MILLENNIUM DEVELOPMENT GOALS**

Nina Berg,<sup>1</sup> Haley Horan<sup>2</sup> and Deena Patel<sup>3</sup>

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### **Executive Summary**

Women's inheritance and property rights constitute one of the main areas of focus for women's movements in developing countries. Strengthening women's legal position in these areas is an important and effective means to decrease poverty and increase gender equality, and a crucial vehicle to accelerate progress towards the achievement of the Millennium Development Goals (MDGs). The importance of this issue is accentuated by figures that show a sharp increase in widowhood in regions such as sub-Saharan Africa, where the impact of armed conflict, HIV/AIDS, and poverty has resulted in a widowhood rate of 25 percent. Since 1995, there has been growing attention to women's inheritance and property rights, drawing on evolving human rights-based frameworks. To illustrate the potential impact of legislative changes and their enforcement on the achievement of the MDGs in developing countries, this chapter presents two in-depth case studies from Rwanda and Ethiopia.

In Rwanda, women are the pillar of the economy as principal actors in the agricultural sector, and are becoming increasingly active in employment in other sectors. Further action to eliminate discrimination against women, especially in the strategic area of implementing inheritance and property rights for all Rwandan women, will therefore have an important impact on eradicating hunger and improving the social and economic life of the country. Although Ethiopia is moderately advanced from a formal legal perspective, the issue of women's inheritance and property rights is still complex and problematic. This situation is accentuated in the context of HIV/AIDS.

While legal reform is rarely sufficient per se to bring about change, it can open the door to greater opportunities for women to individually and collectively assert their rights. Several steps must be taken in order that national justice systems effectively guarantee the internationally recognized rights of women, in line with a state's commitments under international agreements and conventions: these steps are diverse and challenging. While there is no global blueprint for effectively guaranteeing women's inheritance and property rights, efforts must be focused on legislative reform, advocacy and enforcement. It is important to implement and enforce existing laws, as well as to build effective and efficient access to justice and awareness of these laws. Where protective

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laws do not yet exist, they must be drafted and adapted. Where conflicting laws are in place, their inconsistencies should be resolved and precedents established in ways that favour gender equality. Supporting civil society in its organizational, educational, advocacy, and legal services roles is an essential step toward ensuring that equality in the law on paper becomes equality in action.

## Introduction

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Women's inheritance and property rights constitute one of the main areas of focus for women's movements in developing countries. Strengthening their legal position in these areas is an important and effective means to decrease poverty and increase gender equality, and a crucial vehicle to accelerate progress toward the achievement of the Millennium Development Goals (MDGs). The consequences of this issue is accentuated by figures that show a sharp increase in widowhood in regions such as sub-Saharan Africa, where the impact of armed conflict, HIV/AIDS, and poverty has resulted in a widowhood rate of 25 percent.<sup>4</sup> In Rwanda, for example, 27 percent of the 5.5 million households are headed by women, a quarter of which are headed by girl-children.<sup>5</sup> Since 1995, there has been growing policy attention to women's inheritance and property rights drawing on evolving human rights-based frameworks.<sup>6</sup> Relatively recent legal changes in developed countries – such as legislation that formally recognizes domestic work as equal to work outside the home in terms of its contribution toward the acquisition of movable and immovable property of a married couple – have proven an essential step toward strengthening women's individual decision-making power within the family and creating a basis for them to leave situations of dependency and gain full control of their lives and livelihoods. As observed by the United Nations Millennium Project Task Force on Gender Equality, ensuring women's inheritance and property rights helps to empower them both economically and socially, and rectifies a fundamental injustice; the latter will have further positive outcomes, because women's lack of property has been increasingly linked to development-related problems, including poverty, HIV/AIDS and violence.<sup>7</sup>

To illustrate the potential impact of such legislative changes and their enforcement on the achievement of the MDGs in developing countries, this chapters presents two in-depth case studies from Rwanda and Ethiopia. The Rwanda case study focuses on examples of gender-sensitive policy making and innovative electoral mechanisms, whereas the Ethiopia case study explores the impact of the AIDS epidemic on these issues.

### 1. The current legal landscape and the Millennium Development Goals

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Access to assets through various channels of transfer, one being inheritance, enhances women's livelihood options and is vital to their decision-making power and economic empowerment.<sup>8</sup> Yet, women continue to be routinely denied land and property rights in much of the developing world. As a result, if their fathers, husbands, or, even in some cases, brothers or uncles die, they are often left destitute, making it difficult to care for themselves and their dependents. In turn, women find themselves with limited options and opportunities to improve their situations.

Many justice systems seek to protect women when their husbands die. However, these provisions create or reinforce forms of dependency, rather than granting women decision-making power on their own terms. A widow ends up being cared for by relatives of her deceased husband, or in some cases, the justice system may dictate that inheritance passes to the children only, effectively turning a widow into her child's

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<sup>4</sup> Centre on Housing Rights and Evictions (COHRE), *The Denial of Women's Inheritance Rights: Middle East and North Africa and sub-Saharan Africa Region*, Fact Sheet (2005).

<sup>5</sup> See <[http://www.presidency.gov.rw/index.php?option=com\\_content&view=article&id=203:kigali-6-april-2007&catid=34:speeches&Itemid=34](http://www.presidency.gov.rw/index.php?option=com_content&view=article&id=203:kigali-6-april-2007&catid=34:speeches&Itemid=34)>.

<sup>6</sup> C Grown, G R Gupta and A Kes, *Taking action: achieving gender equality and empowering women*, UN Millennium Project Taskforce on Education and Gender Equality report (2005) available at <<http://www.unmillenniumproject.org/documents/Gender-complete.pdf>> at 8 December 2009.

<sup>7</sup> Ibid.

<sup>8</sup> See citations below.

dependent. Dependency and protection norms in informal or non-state legal systems are frequently further reinforced by formal legislation stipulating that women are considered subordinates to their husbands.

Further, many developing countries are also experiencing changing social realities and the breakdown of customary norms and cultures. When combined with growing populations and increasing resource-scarcity driving up the value of land, norms that traditionally sought to protect women are turned into a pretext for abuse; the woman loses everything to “property grabbing” and is often excluded from the family of her husband on whom she had been dependent. This situation is compounded by the stigma and discrimination faced by AIDS widows.

This state of affairs is incompatible with the international commitments to which most countries have agreed. Under the Convention on the Elimination of All Forms of Discrimination against Women 1979, for example, signatories commit to ensure “*the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.*”<sup>9</sup> Further, the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa states that “*a widow shall have the right to an equitable share in the inheritance of the property of her husband*”, including the right to continue to live in the matrimonial home, and that “*women and men shall have the right to inherit, in equitable shares, their parents’ properties.*”<sup>10</sup> The latest Security Council resolution on women, peace and security, Resolution 1889 (October 2009), recognizes the need to ensure women’s livelihood, land and property rights in the context of post-conflict peacebuilding.<sup>11</sup> In addition, under *MDG 3: Promote gender equality and empower women*,<sup>12</sup> the international community has committed itself to gender equity that includes inheritance and property rights.<sup>13</sup>

The United Nations Millennium Declaration (2000)<sup>14</sup> identifies good governance and rule of law as the bases for the achievement of the MDGs. Although the MDGs do not include a specific justice-oriented goal, ensuring women’s inheritance and property rights provides an example of how a democratic governance intervention in the field of rule of law and justice can be a crucial instrument to enable and support the achievement of multiple MDGs. Although not an official MDG target, in 2005 the United Nations Millennium Taskforce identified the guarantee of women’s inheritance and property rights as a strategic priority toward the achievement of MDG 3. Its proposed indicators to monitor progress toward this priority<sup>15</sup> relate to land ownership and housing title, disaggregated according to gender or jointly held. Moreover, women’s right to own and inherit property is also closely linked to MDGs 1, 6, and 7, as described below.

### **1.1 MDG 1: Eradicate extreme poverty and hunger**

Women’s poverty is directly related to the absence of legal and economic independence and autonomy. Lack of opportunities and effective access to economic and natural resources, including rights over land, is compounded by normative and legislative frameworks that only provide women with subsidiary inheritance and property rights.<sup>16</sup> This situation limits women’s options to enter into production on their own terms; it

<sup>9</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, U.N. Doc. A/34/46, entered into force on 3 September 1981, Art. 16(1)(h).

<sup>10</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted by the African Union on 11 July 2003, Art. 21

<sup>11</sup> S/RES/1889 (2009)

<sup>12</sup> United Nations Millennium Declaration, A/res/55/2, adopted on 8 September 2000.

<sup>13</sup> MDG 3, however, has only one concrete target: educational parity. UNIFEM, *Who Answers to Women? Gender and Accountability, Progress of the World’s Women 2008/2009* (2009) 122.

<sup>14</sup> United Nations Millennium Declaration of September 8, 2000 (A/res/55/2).

<sup>15</sup> Grown, Gupta and Kes, above n 6.

<sup>16</sup> Beijing Platform for Action, A/CONF.177/20, 17 October 1995, Ch. IV (A)(51).

consequently limits their indirect opportunities to access credit, microfinance and employment. Women's contribution to the household through farming, work in the informal sector, caretaking and other activities is indispensable to reduce extreme poverty and hunger, and to ensure the well-being of their dependents and families. But their legal and socio-economic dependency reinforces the status quo without tapping the potential for socio-economic development underlying women's full participation in the human development process.

This untapped potential is further illustrated in the evidence that within their limited possibilities, women allocate their money more judiciously than men and spend more of their incomes on the health and nutrition of their family members and schooling of their children.<sup>17</sup> This has a positive impact on human poverty<sup>18</sup> and further contributes to the achievement of *MDG 2: Achieve universal primary education*, *MDG 4: Reduce child mortality* and *MDG 5: Improve maternal health*.

### **1.2 MDG 6: Combat HIV/AIDS, malaria and other diseases**

There are strong links between the spread of HIV and women's right to own and inherit property. Women with secure property rights are better able to cope with and mitigate the impact of HIV and AIDS, such as illness or widowhood, on themselves and their children.<sup>19</sup> With a legally secure resource base that can generate income, women are empowered to maintain their family's income and thus better able to bear the economic burden associated with AIDS. Upon widowhood, they are in a stronger position to retain their inheritance and property rights, and prevent having their property or land taken from them as a result of the stigma often associated with HIV and AIDS. Second, obtaining full inheritance and property rights also helps to prevent women from contracting the disease, by increasing their independence and bargaining power within the household, including their power to negotiate safe sex. Third, women who hold property in their own right are less likely to turn to transactional sex to support their families.<sup>20</sup> The case study on Ethiopia will discuss the impact of women's inheritance and property rights in greater detail.

### **1.3 MDG 7: Ensure environmental sustainability**

In their role as caretakers, women in much of the developing world have primary responsibility to obtain food, water, fuel wood and other basic necessities for their families. The environment has a direct impact on the subsistence economy and women's livelihoods. Consequences of climate change such as increased periods of drought, flooding and other environmental factors such as forest degradation make it increasingly difficult for women to obtain these necessities for their families.<sup>21</sup> Women are also responsible for saving seeds for the planting season and seed management is of great significance to biodiversity.<sup>22</sup>

Women thus have a special role and stake in ensuring environmental sustainability; hence, it is crucial to include them in environmental management and decision making, and to utilize their knowledge of the local environment. One way of doing this is to grant

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<sup>17</sup> S Jahan, *Reorienting Development: Towards an Engendered Employment Strategy*, UNDP International Poverty Centre Working Paper No. 5 (2005).

<sup>18</sup> Ibid.

<sup>19</sup> International Center for Research on Women, *Women's Property Rights, HIV and AIDS and Domestic Violence: Research Findings from Two Districts in South Africa and Uganda* (2007).

<sup>20</sup> R Strickland, *To Have and To Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in sub-Saharan Africa*, International Center for Research on Women-Information Brief (2004) available at <[www.icrw.org/docs/2004\\_info\\_haveandhold.pdf](http://www.icrw.org/docs/2004_info_haveandhold.pdf)> at 8 December 2009.

<sup>21</sup> P Kameri-Mbote, 'Women, Land Rights and the Environment: The Kenyan Experience' (2006) 49(3) *Development*.

<sup>22</sup> J Gurung, *Gender Dimensions in Biodiversity Management: Bhutan and Nepal* (1997) unpublished paper on file with author.



them full and equal inheritance and property rights with men. In turn, this will increase their vested interests and influence in ensuring the sustainable use of land that directly impacts on their possibilities to protect and govern their economic interest and livelihoods, and to provide for their families. Increasing this potential would likely have spin-off effects in terms of possibilities to increase women's income generation and accelerate their entry and participation in the cash economy.

The case studies below illustrate how the United Nations and the international community may support legislative reform in the area of women's inheritance and property rights as a tool for promoting women's empowerment and supporting the achievement of the MDGs.

## 2. Advancing Women's Inheritance Rights: Rwanda and Ethiopia

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### 2.1 Rwanda

#### 2.1.1 Background

In the immediate aftermath of the civil war of the early 1990s and the genocide of 1994, which claimed the lives of almost one million people, or 10 percent of the population, 70 percent of the remaining population was female.<sup>23</sup> Many women were left as head of households to care for their own children and the orphans of other family members. In addition, according to a 1997 United Nations Children's Fund (UNICEF)/World Vision Study, there were approximately 85,000 child-headed households in Rwanda. However, under the patrilineal system of Rwandan customary law, women and girls were not allowed to inherit their parents' or their husbands' property: spouses were not considered part of the same lineage, and land passed from father to son. Thus, women returning from refugee camps were left with no legal channels to reclaim their property and girls heading households faced the risk that even if they worked hard to improve their house and land, these could be taken away from them in an unpredictable future. Despite a growing consensus that it was unacceptable that a distant relative of the deceased person could come to claim his or her assets under the pretext that an orphan or a widow did not have the right to inherit merely because she was a girl or a woman,<sup>24</sup> there was no law on inheritance and marriage settlements to remedy the situation.

#### 2.1.2 Advocating for women's rights and legislative change

In 1996, the Forum for Rwandan Women Parliamentarians was formed to champion women's issues, with particular reference to laws on inheritance and succession, as well as to strategize on how women could increase in numbers, have a critical mass in Parliament and make a significant contribution to nation- and state-building. At that time, women held one-fifth of the seats in the Parliament of the transitional government.<sup>25</sup> Through the Forum, women Members of Parliament (MPs) united on issues of common concern. One Rwandan MP, Hon. Connie Bwiza Sekamana, explained, "When it comes to the Forum, we unite as women, irrespective of political parties. So we don't think of our parties, [we think of] the challenges that surround us as women."<sup>26</sup>

<sup>23</sup> E Powley, *Women Lead the Way to Rwanda's Future* (2002) Peace Women

<<http://www.peacewomen.org/news/Rwanda/newsarchive02/Rwandafuture.html>> at 8 December 2009.

<sup>24</sup> Association 'HAGURUKA a.s.b.l' pour la défense des droits de la femme et de l'enfant. 2005. *Etude sur l'application et l'impact de la loi N.22/29 relative aux régimes matrimoniaux, libéralités et successions sur les droits de la femme au Rwanda*. Kigali: HAGURUKA. This study was conducted by the Rwandan NGO, HAGURUKA, in 2005 on the laws of succession and marital regimes; there were 1,227 participants (52% female, 48% male, representing all regions, adult age ranges, sectors of employment, levels of education, and urban and rural areas).

<sup>25</sup> UNDP Rwanda, *Millennium Development Goals Status Report* (2003).

<sup>26</sup> E Powley, *Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting Children and Families*, The State of the World's Children Background Paper (2006) 6 citing Connie Bwiza Sekamana.

The Forum had strong support in the government, and was backed by the Ministry of Gender, which was charged with coordinating the government's efforts regarding gender and women's issues. Furthermore, the Forum was linked to civil society by Profemme, an umbrella association of NGOs working to promote women's rights in Rwanda.

UNDP also worked to empower the Forum, including by supporting it to build international networks. A 1998 Workshop, organized by UNDP, the United Nations Human Settlements Programme (UN-HABITAT), the United Nations Development Fund for Women (UNIFEM) and United Nations High Commissioner for Refugees (UNHCR), and hosted by the Rwandan Government, enabled the Forum to forge ties with women parliamentarians from other countries, and reinforced its institutional and organizational capacity to lobby for the adoption of the legislative framework requisite to gender equality. The Workshop brought together over 100 women from Africa, Asia, Europe, and Latin America and the Caribbean to exchange experiences on problems faced by women in conflict and reconstruction phases, and on successful land reform and legislation initiatives that have empowered women and promoted gender equity in war-torn countries.<sup>27</sup>

The Rwandan Women Parliamentarians were further bolstered by international instruments to which Rwanda was bound, including the Universal Declaration of Human Rights, as well as the constitutional principle of equality guaranteed under Article 16 of the country's Constitutions of 1962, 1978 and 1991. Women were also emboldened by their precarious situation at the end of the genocide[ – having witnessed and endured unspeakable cruelty, having lost livelihoods and property, and having seen their traditional social protection networks destroyed – and united by their shared desire to promote peace. Athanasie Gahondogo, Executive Secretary of the Forum for Rwandan Women Parliamentarians, said, "Had it not been for the genocide, Rwandan women would never have dared ask for succession rights."<sup>28</sup>

Also key to the success of Rwandan women in lobbying for the passage of the legislation was the persuasive political advocacy employed by the parliamentarians to engage men in the debate. Patricie Hajabakig, an MP in 1999 during the debate on inheritance, explains:

We had a long, long sensitization campaign ... this was a very big debate. We were asking [male parliamentarians], 'Ok, fine, you think only men can inherit, not girls. But as a man, you have a mother who might lose the property from your father because [your uncles] will take everything away from your mother. Would you like that?' Then we said, 'you are a man ... you have children, you have a daughter who owns property with her husband. Would you like to see that daughter of yours, [if] her husband dies, everything is taken away.' When [the issues] remain just in the abstract ... women and men become two distinct people, but the moment you personalize it, they do understand.<sup>29</sup>

By 1999, the lobbying efforts of Rwandan women effectively resulted in the passage of the *Law on Matrimonial Regimes, Liberalities, and Successions*,<sup>30</sup> which legally guaranteed, for the first time, women's right to inherit land, giving equal rights to legitimate children, male or female, to inherit from their father, and allowing legally married women to inherit from their husbands.

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<sup>27</sup> A Buregeya et al (eds), *Women's Land and Property Rights in Situations of Conflict and Reconstruction* (2001).

<sup>28</sup> UNDP, *Rwanda's Parliament Now Leads World in Gender Parity* (2004) UNDP Newsroom <<http://content.undp.org/go/newsroom/choices-rwandas-parliament-now-leads-world-in-gender-parity-2004-12.en?categoryID=349431&lang=en>> at 8 December 2009.

<sup>29</sup> Cited in Powley, above n 26, 12.

<sup>30</sup> Law No.22/99 of 15/11/1999 to supplement Book I of the Civil Code and to institute Part V regarding matrimonial regimes, liberalities and successions.

In 2001, UNDP, together with the Inter-Parliamentary Union (IPU), sponsored a seminar to consider practical ways of ensuring that the new Rwandan Constitution would be gender-sensitive. This brought together members of the Transitional National Assembly, senior government ministers, members of the Legal and Constitutional Committee, and Rwandan women's organizations, as well as women MPs from other countries and other partners of the Forum of Rwandan Women Parliamentarians. The seminar resulted in a set of preliminary recommendations<sup>31</sup> and triggered a consultation process among various groups of women in Rwanda, from government and parliament to civil society.

Over a two-year period, these consultations produced a series of concrete recommendations aimed at entering principles of equality between men and women in the Constitution. The process ultimately produced what is now considered to be one of the most gender-sensitive constitutions in the world. Rwanda's new Constitution, formally adopted in 2003, reserves at least 30 percent of posts in all decision-making organs for women.<sup>32</sup> UNDP's next step was to organize a workshop with its partner, IPU, to provide leadership training for women candidates running in the electoral campaign.

In 2004, Rwanda became the world leader in gender parity in parliament, surpassing Sweden as the country with the highest proportion of women legislators.<sup>33</sup> One of the first actions of the newly elected Women Parliamentarians was to advocate successfully for gender equality in the new Land Law adopted in 2005, which formalizes land rights through official titling.<sup>34</sup> Article 4 of the Land Law states: "Any discrimination either based on sex or origin in matters relating to ownership or possession of rights over the land is prohibited. The wife and husband have equal rights over land."<sup>35</sup>

At an international conference in February 2007, Ellen Johnson Sirleaf of Liberia, the first-ever African woman elected President, praised the Forum of Rwandan Women Parliamentarians for providing a forum for the exchange of ideas and opinions, research and the development of strategies aimed at prioritizing gender integration in all national policies, calling it a model and an example for Africa.<sup>36</sup> Under the resulting Kigali Declaration on Gender, Nation Building and the Role of Parliament,<sup>37</sup> delegates called on parliaments around the world to review and repeal existing discriminatory laws and, where laws do not exist, to pass laws for the protection of women's rights, particularly regarding inheritance, succession and gender-based violence.<sup>38</sup>

Rwanda provides examples of gender-sensitive policy making and innovative electoral mechanisms that could be models for other parts of the world.<sup>39</sup> Nevertheless, significant challenges remain in ensuring statutory rights to inheritance for all Rwandan women and girls. In particular, women in customary marriages or unions, which represent the majority of Rwandan unions, are not protected under the present *Law on Matrimonial Regimes, Liberalities, and Successions*, which requires that marriages be registered with the local authority to be legally recognized, a process incurring a significant expense. Moreover, illegitimate children do not inherit under the statute. A further challenge is

<sup>31</sup> IPU, UNDP and the Government of Rwanda, *The Process of Engendering a New Constitution for Rwanda* (2001).

<sup>32</sup> The Constitution of the Republic of Rwanda of 2003, Art. 82

<sup>33</sup> IPU, *Women In National Parliaments* (October 2009) <<http://www.ipu.org/wmn-e/world.htm>> at 9 December 2009.

<sup>34</sup> A Ansoms and N Holvoet, 'Women and Land Arrangements in Rwanda: A Gender Based Analysis of Access to Natural Resources in a Context of Extreme Resource Scarcity and Societal Disruption' in B Englert and E Daley (eds), *Women's Rights to Land Privatization in Eastern Africa* (2008).

<sup>35</sup> Law No. 08/2005, Official Gazette of the Republic of Rwanda.

<sup>36</sup> UNDP, Women Parliamentarians International Conference hosted by the Government of Rwanda, *Gender, Nation Building and the Role of Parliaments* (2007).

<sup>37</sup> Kigali Declaration on Gender, Nation Building and the Role of Parliament, made on 23 February 2007, available at <[http://www.undp.org/rw/Women\\_Conf\\_Declaration\\_23\\_02\\_2007.html](http://www.undp.org/rw/Women_Conf_Declaration_23_02_2007.html)> at 9 December 2009.

<sup>38</sup> Ibid.

<sup>39</sup> E Powley, 'Rwanda: Women Hold Up Half the Parliament' in *Women in Parliament: Beyond Numbers* (2004) 154-163.

that, although Rwanda's Constitution and the new *Law on the Prevention, Protection and Punishment of Any Gender-Based Violence* (2006) prohibit polygamy, the practice continues in some regions, and "second wives" and their children are unable to inherit property. Finally, the non-retroactivity of the *Law on Matrimonial Regimes, Liberalities and Successions*, while conforming to international legal standards, means that the law does not apply to widows and young girls left orphaned by the genocide, posing a special challenge calling for innovative solutions.

### *2.1.3 How to implement and enforce the new legislation?*

A challenge more daunting than legislative reform, however, is the implementation and enforcement of the law to ensure that women can in reality claim the rights they have on paper in a resource-strapped country with a historical context that has put great pressure on the justice system. According to UNDP Human Development Indicators, Rwanda has the highest population density in sub-Saharan Africa, almost 9 million people live in an area of 26,338 square kilometers. Further, it has a large rural, semi-literate population; only two-thirds of rural men and women are considered literate. Moreover, half of the population (5.4 million people) live below the poverty line. Christine Umuntoni of UNDP Rwanda observes, "The greatest challenge now is to educate communities and women themselves about their rights to inheritance and how to claim them, and to further invest in legal aid services to help women claim their rights." A 2005 study by Association 'HAGURUKA found that by 2005, knowledge of the existence of the law was relatively high, at three-quarters of respondents, evenly distributed between men and women;<sup>40</sup> their primary means of learning about the law was by radio. Understanding the basic content of the law was lower, however: only 70 percent understood that a widow has the right to inheritance as an independent proprietor, not merely as a guardian of the property on behalf of her children, and with an independent right to hold the property free from the interference of her in-laws.

Moreover, a review of cases found that judges often make decisions without reference to the law, or misapply it.<sup>41</sup> In some instances, the law is interpreted to state that widows cannot inherit ancestral land from their husbands. In others, judges have paradoxically concluded that since the law automatically gives women the right to inherit, the courts no longer have competency to decide inheritance cases, when it is their duty to apply the law in deciding cases. UNDP's project to build judicial capacity in Rwanda seeks to address such challenges by ensuring functioning laws for the protection of child rights, family and succession laws, as well as laws against discrimination against women.

### *2.1.4 How to work with informal justice systems and support legal aid services?*

UNDP's access to justice strategy in Rwanda also concentrates on the informal justice sector; only one-fifth of all disputes are settled by formally appointed judges, with the majority settled by local customary authorities (41 percent), followed by the family (25 percent).<sup>42</sup> This finding reinforces the need for attention to the informal sector in awareness-raising and training. The main providers of legal aid services in the country are NGOs, members of the Bar Association, and university law clinics.<sup>43</sup> Legal aid initiatives include training community paralegals, village chiefs, and members of Land Boards and Tribunals on enforcing women's inheritance, property and legal rights, as well as training women on how to navigate legal processes. Initiatives include "widows' days" in court where legal aid providers are on call to offer targeted legal assistance, will-writing seminars, and assistance in obtaining, understanding, and protecting important legal documents, such as land titles and deeds. The University of Butare's

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<sup>40</sup> HAGURUKA, above n 24.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> G R Sendugwa and A Havugiyaremye, *Building the Foundation for Access to Justice in Rwanda: A Report of the Legal Aid Baseline and Needs Analysis Study* (2007) On file with the authors.

Legal Aid Clinic trains law students to interact with clients and give legal advice under the supervision of lecturers and staff, referring appropriate cases to the formal court system. Nevertheless, many local leaders and indigent persons have limited knowledge of the availability of legal aid services, and moreover, legal aid services are not accessible to many would-be beneficiaries due to, *inter alia*, the lack of providers in rural districts and the high costs of transport to reach the courts and the offices of legal aid providers.<sup>44</sup>

### 2.1.5 Achieving the MDGs in Rwanda

The main impact of the legislation on women's inheritance and property rights will only be seen over time. To evaluate this process, indicators on the implementation of their rights (relating to land ownership and housing title, disaggregated according to gender or jointly held) will need to be monitored. While there remains an enormous gap between legislation and its enforcement in Rwanda, with effective enforcement, the success of women parliamentarians in advocating for women's right to inherit has the potential to make a direct impact on food production and security, and the livelihoods of families and children left behind after the civil war and the 1994 genocide.<sup>45</sup> Encouraging signs for the country, attributable to a vast array of development efforts, include the significant progress Rwanda has made toward the achievement of the MDGs. In his address to the Rwandan Parliament on 29 January 2008, the United Nations Secretary-General commended Rwanda for its achievements towards the MDGs, particularly stressing *Goal 3: Promoting gender equality and empowering women*. In education, Rwanda has already achieved gender parity in primary school enrolment. In health, there has been a 30-percent drop in the maternal mortality rate between 2000 and 2005.<sup>46</sup> Further, the ratio of female-to-male earned income is estimated at 0.75 in Rwanda, rivaling that found in Norway.<sup>47</sup> In relation to *MDG 6: Combat AIDS, malaria and other diseases*, HIV/AIDS prevalence dropped from 13.9 percent in 2000 to 3.5% in 2006.<sup>48</sup> On the other hand, Rwanda's progress toward *MDG 1: Eradicate extreme poverty and hunger* is less certain. Despite high economic growth in the country, poverty rates have not fallen proportionately. However, the percentage of the Rwandan population that is undernourished fell from 41.3 percent in 2000 to 36 percent in 2006.<sup>49</sup> Rwandan women are the pillar of the economy as principal actors in the agricultural sector, and are becoming increasingly active in employment in other sectors. Further action to eliminate discrimination against women, especially in the strategic area of implementing rights to inheritance and property rights for all Rwandan women, will continue to have an important impact on eradicating hunger and improving the social and economic life of the country.

## 2.2 Ethiopia

### 2.1.1 Background

Ethiopia is a Federal Republic with a population of over 78 million people. A recent review of the legal system conducted by UNDP demonstrates a radical shift in the Ethiopian law initiated by the 1994 Constitution. The Constitution includes several provisions that promote the interests of women. Specifically, Article 34 provides for "equality between men and women while entering into, during marriage and at the time of divorce" and Article 35(7) provides for the right of "women to acquire, administer,

<sup>44</sup> Ibid.

<sup>45</sup> Powley, above n 26.

<sup>46</sup> UNDP Rwanda, 'UN Secretary General commends Rwanda for achievements towards MDGs' (press release, 2007) <<http://www.undp.org.rw/MDGs6.html>> at 9 December 2009.

<sup>47</sup> UNDP, *Human Development Report 2006: Beyond scarcity: Power, Poverty and the global water crisis* (2006).

<sup>48</sup> National Institute of Statistics of Rwanda, *Millennium Development Goals: Country Report 2007* (2007) xii.

<sup>49</sup> Ibid.

*control, use and transfer property. Women shall also enjoy equal treatment in the inheritance of property.*<sup>50</sup>

Ethiopia is also party to many international conventions, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of all Forms of Discrimination against Women, all of which promote the equality of women. Finally, the Family Code of Ethiopia, which was recently revised, now includes terms that provide women individual rights on the same terms as men, such as equal marital and divorce rights. The law also sets out age, consent and registration requirements.<sup>51</sup>

An example of the positively changing nature of the Ethiopian law with regard to improved legal regimes for women is drawn from the country's Amhara region, which requires photographs of both the husband and wife on the land title.<sup>52</sup> This provision restricts one spouse from selling the property without the knowledge of the other. These photos also help reduce confusion that may occur upon the death of one of the spouses. In comparison, in some neighbouring countries, the husband is the sole property owner and inheritance is based on a patrilineal system; the land passes to the descendants of the husband regardless of whether his wife survives him.

### *2.2.2 The impact of the AIDS epidemic*

Although Ethiopia is moderately advanced from a formal legal perspective, the issue of women's inheritance and property rights is still complex and problematic. This situation is accentuated in the context of HIV/AIDS. Since the start of the epidemic, AIDS has caused almost 28 million deaths. Globally, there are approximately 33 million people living with HIV, almost half of whom are women.<sup>53</sup> Of the 33 million, 22 million are in sub-Saharan Africa. According to the UNAIDS Report of 2007, in sub-Saharan Africa, in 2007, almost 60 percent of adults living with HIV were women. High numbers like this can be attributed to women's unequal legal, economic and social status. In Ethiopia, the prevalence rate is 2%.<sup>54</sup>

The link between HIV and women's inheritance and property rights is growing stronger. A ten-country study on women's inheritance rights in sub-Saharan Africa suggests that unequal inheritance and property rights increase women's vulnerability to HIV, since many women remain in abusive marriages with little power to negotiate safe sex. Because they are often forced to remarry or co-habit with a brother-in-law or other close male relative after the death of the husband, they can face even greater risk of receiving or transmitting infection.<sup>55</sup> Furthermore, under some circumstances women are blamed

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<sup>50</sup> Constitution of the Federal Democratic Republic of Ethiopia of 1994.

<sup>51</sup> Consideration of reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW/C/ETH/4-5. The new Family Code ensures: women's equal rights with regard to marriage (consent, age, registration), effects of violations of essential conditions of marriage, effects of marriage, dissolution of marriage, liquidation of pecuniary relations between spouses, irregular union (living together unmarried), settlement of disputes arising out of marriage and irregular union, adoption, obligation to supply maintenance, minors and authority of parents. This achievement empowers women to exercise their equal rights with men and enables them to claim equal participation in making decisions and maintaining their personhood.

<sup>52</sup> A Teklu, *Land Registration and Women's Land Rights in Amhara Region, Ethiopia*, IIED Securing Land Rights in Africa Research Report No. 4 (2005). The report was an output of a programme of work funded by DfID. Land Use Rights Proclamation 21 states that men and women have equal right to use of land. There is a general awareness of women's rights to use land by the LUAC and the provision in the land policy for joint titling seems to benefit women. The additional strategy developed by the LUAD to secure women's rights, requiring photographs and signatures of both husband and wife on the land rights certificate, would be commendable.

<sup>53</sup> UNAIDS, *Report on the Global HIV/AIDS Epidemic* (2008) 32-33.

<sup>54</sup> *Ibid.*

<sup>55</sup> Research organizations such as the International Center for Research on Women (ICRW) and the Centre on Housing Rights and Evictions (COHRE) have conducted numerous studies to identify and strengthen this link.

for the deaths of their husbands and then forced from their households. They are therefore left destitute and much worse, left to live with HIV. If they remain in the household, they may be treated as servants or may be married off to the father, uncle, brother or another close male relative – this is a practice known as “wife inheritance”. Some villages also practice widow-cleansing, which is performed after a woman’s husband dies, often from AIDS. In an effort to cleanse the widow, she is forced to have sex with a close male relative or community elder, rarely with protection, which can perpetuate the epidemic.

### *2.2.3 Joint Initiative on HIV/AIDS and Women’s Inheritance and Property Rights*

To address the issue of HIV and women’s inheritance and property rights in Ethiopia and the broader goals of MDGs 3 and 6, UNDP and UNIFEM launched a Joint Initiative on HIV/AIDS and Women’s Inheritance and Property Rights in 2005 to focus on these specific issues.<sup>56</sup> The aim was to build the capacity of the formal and informal justice systems, generate individual and collective action and empower women in gaining equal treatment in owning and inheriting property. Leadership Workshops were held in 2005 and 2006 to address HIV and women’s inheritance and property rights, with participants from various sectors, including the Ethiopian Government and civil society.<sup>57</sup> Participating institutions included members of the federal and regional governments and justice bureaus, law enforcement agencies, National and Regional AIDS Councils, associations of people living with HIV, the media and civil society groups.

In tandem with the launch of the women’s inheritance and property rights initiative, UNDP commissioned a comprehensive analysis of the legal framework in Ethiopia, which included a review of the statutory, civil and customary laws related to women’s inheritance and property rights and the AIDS epidemic. This study provided a solid foundation for the initiative and underlined the strength of Ethiopian law.

As a result of the Leadership workshops together with the legal study, it was found that in reality, the protective laws meant to ensure equality are not being implemented or enforced, which is creating a major challenge. This is due to a number of factors, including strong biases against women, lack of awareness of the law, and ineffectiveness of the court system. More specific challenges include: a lengthy and costly legal process, which most Ethiopians cannot afford; the unavailability of free legal services leaving community members with little access to legal services; cultural barriers such as wife inheritance and widow-cleansing, which prevent women from exercising their rights; the fear of being shunned and stigmatized by both family and society; and conflicting laws, which cause confusion or discrimination against women.

The conflict between religious law and constitutional law originates from a clause in the Constitution that recognizes the adjudication of personal and family matters under religious or customary law, if both parties agree. Article 34(5) of the Constitution states (on Marital, Personal and Family Rights): “*This Constitution shall not preclude the*

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See, for example, R Strickland, above n 20; B Scholz and M Gomez, *Bringing equality home: promoting and protecting the inheritance rights of women a survey of law and practice in sub-Saharan Africa* (2004).

<sup>56</sup> This initiative incorporated UNDP’s transformative Leadership Development Programme (LDP) and Community Capacity Enhancement (CCE) methodologies with UNIFEM expertise to generate effective responses to the epidemic. LDP is a unique methodology that helps build partnerships, overcome institutional inertia, generate innovations, and produce breakthrough results essential for halting the epidemic; the CCE is a methodology that addresses underlying socio-cultural causes and adds people’s voices to policy on a grassroots level. CCE programme focuses on the underlying causes of HIV and relies heavily on interactive dialogue on the epidemic’s deeper causes and, through a facilitated process, community decision-making and action.

<sup>57</sup> A leadership workshop is one of the primary Leadership Development Programme tools. This was organized by UNDP and UNIFEM, in collaboration with Ethiopia’s Ministry of Women’s Affairs and Ministry of Capacity Building’s Justice Sector Reform Programme. The first Leadership Workshop was held on 28 November – 2 December 2005 in Adama, Ethiopia and was followed by a second Leadership Workshop on 23–27 January 2006.

*adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute.*" The issue has arisen due to provisions in the Sharia Law that contradict the terms set forth in the Constitution, leaving women with less than equal rights to inheritance and property. With the dual legal structure in place, women are sometimes coerced into consenting to Sharia rule by pressure from family or society. Although these challenges undoubtedly exist, the first step has been taken by having the legislative framework in place.

#### *2.2.4 How to address the challenge of implementation and enforcement?*

The joint initiative spawned positive activities within a matter of months. After participating in the Leadership Workshop, participants took initiative and ownership in addressing women's inheritance and property rights. Specific efforts include: the training of legal experts (judges, prosecutors and law enforcement officers) on the provisions available to women to inherit and own property, and measures they can adapt to uphold these laws; the use of public campaigns and radio programmes to improve awareness and knowledge, specifically through interviews of women affected by this issues supplemented with basic legal information on women's inheritance and property rights; and translation and dissemination of legal provisions into the local language. In addition, an e-group was established, comprising participants from several government ministries, civil society organizations, the media and community groups, in order to communicate with each other and share best practices.

An additional achievement was a Joint Statement drafted by Workshop participants declaring their commitment to continue working on these issues. More specifically, following the leadership workshop, participants drafted and signed the Adama Declaration of Commitment on HIV/AIDS and Women's Inheritance and Property Rights. The Declaration identified the lack of women's rights to inheritance and property as a key factor in the epidemic and highlighted the stakeholders' responsibility in addressing its spread.

#### *2.2.5 Achieving the MDGs in Ethiopia*

Ethiopia is progressing towards achieving the MDGs. In the *Synthesis Report on Ethiopia's Progress Towards Achieving the MDGs: Successes, Challenges and Prospects* (2008) developed by the Ministry of Finance and Economic Development,<sup>58</sup> Ethiopia is categorized as a country that has shown rapid progress in areas of poverty reduction, education, health care, gender equality, the environment, and food security. But in order to accelerate progress towards MDGs 3 and 6, which are of the utmost concern, issues relating to women's inheritance and property rights must be addressed. Initiatives such as the one described above must be replicated and scaled-up to achieve greater results.

### **Recommendations and conclusions**

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As the previous cases demonstrate, the law constitutes a powerful tool to improve the situation of women and to accelerate progress toward the achievement of the MDGs. While legal reform is rarely sufficient in and of itself to bring about change, it can open the door to greater opportunities for women to individually and collectively assert their rights. Several steps must be taken in order for national justice systems to effectively guarantee the internationally recognized rights of women, in line with a state's commitments under international agreements; these steps are diverse and challenging. While there is no global blueprint for effectively guaranteeing women's inheritance and

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<sup>58</sup> Ministry of Finance and Economic Development, *Ethiopia: Progress Towards Achieving the Millennium Development Goals: Successes, Challenges and Prospects* (2008) available at <<http://www.dagethiopia.org/Public/Publications/progress-towards-the-mdgs-ethiopia.pdf>> at 9 December 2009.



property rights, some of the key legal and social reforms that may be initiated in a context-specific manner are outlined below.

### **Legislative reform**

Legislative frameworks must be put in place in order to incorporate international obligations into domestic law. Processes that provoke legislative reform normally involve the Executive as the agency that initiates the change by drafting the bill, tabling it before the Parliament for deliberation. It is particularly important that the Constitution of a given country includes provisions defining the principles of gender equality, non-discrimination and the empowerment of women. In addition, constitutional provisions and international commitments must be translated into ordinary legislation regarding specific priorities such as laws on property rights, inheritance and family law.

However, as illustrated in the case studies, legal reform in this area is far from straightforward. A complex legal universe governs the position of poor women in developing countries. This universe comprises a pluralistic legal landscape with various systems of informal, customary and faith-based normative framework and law, particularly in the area of family and inheritance law, derived from diverse traditions and religions. There may be several substantively different systems operating simultaneously within the borders of the same country and jurisdiction. Of particular interest with regard to property rights and family and inheritance law is whether the customary, faith-based or informal normative framework that regulates interfamily relations is based on a matrilineal or patrilineal system. This will determine the lineage to follow with regard to succession and will define women's position, rights and entitlements. Another challenge in this field is to ensure that women who are not formally married (based on a state definition of marriage) will also benefit from the opportunities granted to them by new legislation. The traditions of polygamy and bride-price further complicate the legal landscape with regard to inheritance and property rights. Ideally, legislation on inheritance should "provide for legal recognition of both spouses' rights to adequate land and housing", create "minimum disturbance for the family situation once the spouse has passed away", "treat female and male children equally" and "apply equally to all marriages, whether entered into under customary/religious rites or civil/common law."<sup>59</sup>

### **Advocacy and enforcement**

It is important to recognize that the adoption of legislative changes does not ensure the implementation of the law on paper, which may be particularly challenging when it requires the adoption of new social norms relating to gender equality. To facilitate the process of social change, legislation should stipulate that "all officials and authorities engaged in the inheritance process receive gender-sensitive and human rights training" and set forth a "plan for public awareness and education programs."<sup>60</sup> The process by which legislation is designed is also essential to its effective implementation, and broad consultation with all stakeholders, men and women, should be a priority. As the Rwanda example demonstrates, consultation that also targets men can enhance understanding of the new legislation and the advantages that it brings to both men and women. In addition, raising awareness of the judicial actors and involving the justice system early in the process increase the potential for active enforcement of the new legislation and decrease the likelihood of judicial misapplication or apathy.

Once legislation is in place, the judiciary and other actors must be trained to enforce and apply the new laws. Judges and other justice actors may find satisfaction in being

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<sup>59</sup> These recommendations for model legislation on inheritance can be found in COHRE, *Fact Sheet Two: Women's Inheritance Rights*, available at <[www.cohre.org/get\\_attachment.php?attachment\\_id=1924](http://www.cohre.org/get_attachment.php?attachment_id=1924)> at 8 December 2009.

<sup>60</sup> *Ibid.*

enabled through legislative change to apply the international commitments of their states and governments accordingly. Familiarizing them with these commitments may encourage them to welcome new legislation that integrates them into domestic laws. It is equally essential to engage the informal system, be it customary or religious, which can be done through awareness raising campaigns, workshops and training. As a general rule, working with community leaders to reinterpret customary law and adapt customary laws in ways that favour women's rights – and respect national legislation and international principles – has greater legitimacy than attempts to impose reform from above.

The media is another important partner for the enforcement of gender-sensitive legislation. Legislative processes related to family matters and gender equality tend to gain significant public attention. The interest of the media and civil society, particularly women's organizations and faith-based associations, is raised because these are issues that concern everyone's private lives, and intense public debate often follows. It is important that these debates are well prepared and conducted not only in the urban areas, but also in the rural areas, in order to ensure that women do not remain ignorant of the potential for improvement of their legal and economic situation intrinsic to such reform. The United Nations and the international community can assist in supporting programmes that promote public debate regarding such changes and ensure solid outreach.

Finally, to ensure that new legislation has an actual impact on women's lives, it is essential to make justice services financially accessible by poor women. This can be accomplished by, for example, waivers of court and other fees, and the establishment of legal clinics to provide representation and ensure appropriate, equitable and consistent application of laws – especially where secular and religious law is used interchangeably – to make women aware of their rights and to facilitate their ability to advocate for, access and claim their inheritance rights. Such clinics, which may be staffed by university students, can also help to settle disputes outside of court and refer appropriate cases to the formal court system.

Finally, and fundamentally, as we have demonstrated in the case studies, the various important roles of civil society must be acknowledged. They can and do play important organizing, educational, advocacy and legal services roles. For example, the NGO umbrella organization Profemme has helped put ordinary women in touch with legislators and grassroots organizations such as GROOTS Kenya are working to help community-level women recognize and realize their rights. These and similar women's organizations that can help women make land claims should be further supported, including with funds to sustain and expand their operations.