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Engaging with Customary Law to Create Scope for Realizing Women's Formally Protected Land Rights in Rwanda

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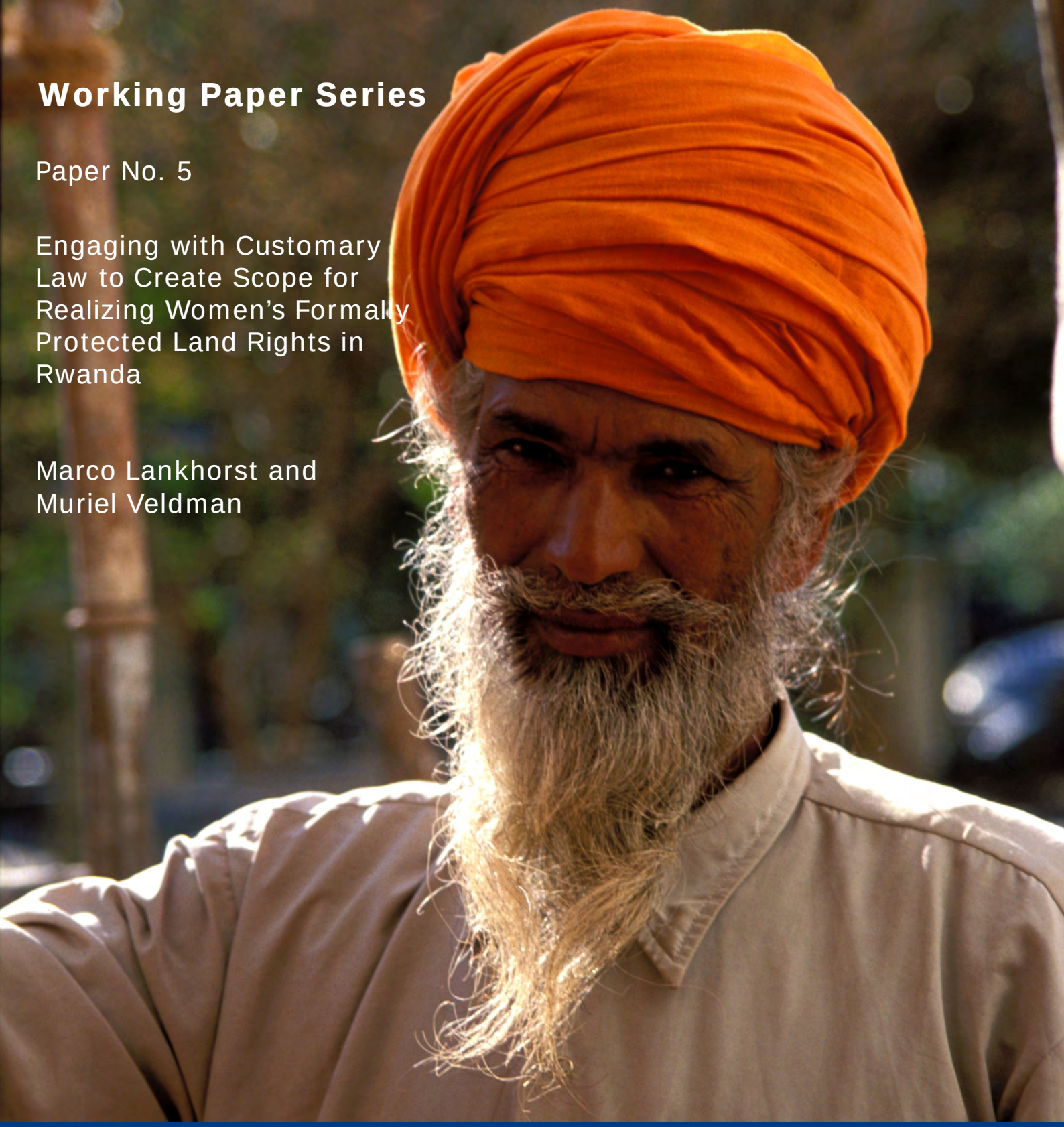

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Engaging with Customary Law to Create Scope for Realizing Women's Formally Protected Land Rights in Rwanda

Marco Lankhorst and Muriel Veldman*

EXECUTIVE SUMMARY

In rural Rwanda, women, particularly widows and divorced or abandoned women, face severe obstacles protecting and upholding their interests in land, resulting in diminishing land tenure security. Women have weak rights under customary law, and while reforms have strengthened their statutory land rights, such entitlements have limited practical value in rural areas where customary law dominates. Research was launched to investigate the types of interventions that might improve the likelihood that women's land interests would be upheld in the context of customary dispute resolution. It was hypothesized that women would receive better outcomes if land-related disputes were resolved consistently at the village level, through mediation by a wider group of stakeholders, including representatives of a women's interest group. The results demonstrate that it may be possible to widen the scope for women's land claims without modifying the substantive aspects of customary law, provided that such outcomes do not sit too uncomfortably with the overarching structure of the customary framework. This chapter discusses the results of this research and draws conclusions that may be useful both for rule of law programming in Rwanda and in similar country contexts.

* The views expressed here, as well as any errors, are the responsibility of the authors alone and not of RCN Justice & Démocratie or its donors. It would not have been possible to realize the study without the help of RCN's research assistant, Obedy Ntayoberwa Mutebutsi, the project assistants, Angela Nirere, Clothilde Mukandutiye and Séraphine Murerwa, and the project officers Silas Habimfura and Madina Ndangiza. Thanks are also extended to Erica Harper and Jennifer Escott who made useful comments on draft versions of this chapter.

Introduction

There are divergent views, both within the donor community and among development scholars, about the role that customary law can play in the legal empowerment of the poor in Africa. Given the importance of land, both in terms of rural development and securing livelihoods, much of this debate focuses on customary land rights.

Contributors to this debate who view the poor as a more or less homogenous group to be empowered, argue that customary land tenure arrangements are known and owned by poorer communities and their members, and may provide a well-adapted and legitimate framework for securely regulating interactions and transactions between them. Customary law should therefore be strengthened, for example, through formal recognition, codification or the titling of customary claims. Proponents of this view include the World Bank's Land Policy Division, Oxfam Great Britain, and the International Institute for Environment and Development.[1]

Many African women's organizations, gender activists and scholars specializing in gender studies oppose this view.[2] They argue that customary law provides limited access to land for women and that its strengthening or formalization might exacerbate such restrictions. Adopting a rights-based approach and on the basis of international and regional human rights instruments — most importantly, the *Convention on the Elimination of All Forms of Discrimination against Women 1979* ('*CEDAW*') and the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003* — they call for legislation that enables women to inherit, purchase and own land in their own name.[3]

A third group, which includes members of the World Bank's Gender and Law Reform in Africa section, occupies the middle-ground between these two positions.[4] It argues that engaging with customary legal systems is inevitable. Statutory reforms have had little impact or have been counterproductive, principally because very few women in rural Africa have access to courts that properly administer these laws. According to this group, customary law must be reformed from the ground up in a process that allows for women's full participation. Reform in this regard should not be understood as codification or formalization of customary law, both of which create a rigidity that tends to undermine the position of women. Rather, members of this group put their faith in the 'assisted evolution' of unwritten customary systems.

To understand the various arguments raised in this debate, it is useful to briefly elaborate on the development of customary law and its effect on women's land rights. In African systems of customary law, women generally claim access to land on the basis of their relationships with men. They can claim access to their husband's land and, often, they will have one or more forms of residual claims to their natal family's land. This creates multiple, overlapping claims on the same land. As far as the pre-colonial period is concerned, these claims should not be understood to have been structured or well-defined rights. The extent to which claims could be realized and the relationship between

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[1] It should be noted, however, that there are significant differences within this group; in this regard, see A Whitehead and D Tsikata, 'Policy Discourses on Women's Land Rights in sub-Saharan Africa: The Implications of the Re-turn to the Customary' (2003) 3(1) *Journal of Agrarian Change* 67, 94. Members of the World Bank's Land Policy Division tend to see customary law as evolving towards individualized tenure and, thus, as an instrument that will facilitate the opening up of land markets. Oxfam Great Britain and the International Institute for Environment and Development, on the other hand, see reliance on customary land management as a way to empower local communities (i.e. to increase their control over land access) and to make them less dependent on and exposed to the state).

[2] For a discussion on this point, see ibid; and A M Tripp, 'Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda' (2004) 7(4) *African Studies Quarterly* 1.

[3] See for instance, art 16(h) of the *CEDAW*, and art 6(j) of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.*

[4] In this regard, see G Gopal, *Gender-Related Legal Reform and Access to Economic Resources in Eastern Africa*, World Bank Discussion Paper (1999).

claims to the same land depended on a process of negotiation within families and communities in which needs and circumstances played an important role. Codifications and other law reforms during and after colonialism — often inspired by concepts in Western law — combined with population pressure and changing economic circumstances, modified the nature of these claims and the extent to which women could rely on them to gain access to land. While some studies maintain that women were positively affected by these changes,[5] the weight of the evidence suggests that such processes adversely affected their ability to exercise derived and residual land claims.[6] This creates important challenges for women where land ownership, transfer and management are principally regulated by customary law, and statutory laws protecting their land interests remain largely out of reach.

This chapter examines a pilot intervention led by the Belgian NGO RCN Justice & Démocratie in Rwanda, which was focused on the customary resolution of disputes involving women's land claims concerning inheritance or marital relations.[7] The results provide insight into key issues of relevance to the debate outlined above; namely, the entry points and feasibility of reforming customary law from the ground up. The intervention examined whether and to what extent it was possible to increase the scope for acceptance of women's land claims under customary law by: i) promoting more inclusive dispute resolution, including participation by women's interest groups; ii) promoting the resolution of disputes involving women's land claims at fora where women are most likely to be able to capitalize on the flexibility inherent in customary decision-making to draw on moral obligations that support their interests in land; and iii) familiarizing members of institutions involved in dispute resolution with mediation and negotiation techniques.

The chapter is organized as follows: section one provides an overview of land tenure arrangements and land dispute resolution in Rwanda; sections two and three discuss the intervention and associated research findings; and finally, section four provides a discussion of these results and the possible implications for land tenure and law reform policies both in Rwanda and similar developing country contexts.

1. Rwanda: Land, land tenure and land dispute resolution

1.1 Land pressure

Rwanda is a small, land-locked country in sub-Saharan Africa approximately the size of Belgium.[8] It has a population density[9] of 384 inhabitants per km^2 and a high population growth rate.[10] In its 2009 Human Development Report, the United Nations Development Programme ranked Rwanda 167th (out of a total of 182 countries) in terms of its human development, in league with countries such as Eritrea and Liberia.[11] Despite impressive and sustained growth, the majority of the Rwandan population lives below the poverty

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[5] See J Pottier, 'Customary Land Tenure in Sub-Saharan Africa Today: Meanings and Contexts' in C Huggins and J Clover (eds), *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa* (2005) 55, 67.
[6] Whitehead and Tsikata, above n 1, 78.
[7] The reason for focusing on inheritance and marriage practices is that these institutions arguably offer the most potential to provide secure access to land to considerable numbers of African women. The alternative, which is that women gain access to land through purchase, is much less realistic in contexts where land prices are increasing and most women control few liquid resources.
[8] The surface area is 26.338 km^2 (Bart, *Montagnes d'Afrique, Terres paysannes, Le cas du Rwanda* (1993) 1).
[9] The National Institute for Statistics of Rwanda (NISR) estimates that in 2009 there were 10,117,029 inhabitants (NISR, *Fast Facts* (2011) NISR <http://www.statistics.gov.rw> at 5 April 2011).
[10] It is estimated that in 2020 there will be close to 14 million Rwandans (NISR, *National Population Projection 2007-2022* (2009), NISR <http://www.countrystat.org/country/rwa/documents/docs/population_projection2022.pdf> at 30 March 2011).
[11] United Nations Development Programme, *Human Development Report 2009, Overcoming barriers: Human mobility and development* (2010). The Human Development Indicator, on which this ranking is based, reflects levels of income, life expectancy, health and education.

line. The 2009 per capita gross domestic product was US$520,[12] which means that the average Rwandan survives on less than US$2 per day. According to the National Institute of Statistics, 84 percent of the population (52 percent of whom are women) work in agriculture or livestock farming;[13] the vast majority of these are subsistence farmers.[14]

Land holdings in Rwanda tend to be small. This is the result of a decades-long and continuing process of fragmentation, strongly driven by population growth.[15] The average land holding per household measured 0.76 ha in 2008.[16] About 26 percent of family land holdings are smaller than 0.20 ha, and an additional 30 percent are smaller than 0.50 ha.[17] Much of the land is situated on hillsides, and soil erosion presents a serious concern for livelihoods.[18] Most land holdings are acquired by traditional means, that is, through inheritance (46 percent) or donation (11 percent).[19] The acquisition of land by purchase is less common (25 percent), but recent research conducted by the Ministry of Environment and Lands shows that the land market is rapidly developing, particularly in urban and peri-urban areas.[20] The average price per hectare in rural areas is about RWF1.2 million (roughly US$1,950),[21] which equals about four to five times the average annual income of ordinary Rwandans. Given these pressures, it is not surprising that Rwanda experiences elevated levels of land disputes,[22] most of which (79 percent) concern intra-family claims to land based on succession or spousal rights.[23]

1.2 Overview of customary inheritance practices

It is important to highlight that under customary law, inheritance is conceptualized differently than in Western jurisprudence. This issue is intertwined with the institution of marriage, more so than with the death of the rights-holder. Under customary law, sons are entitled to inherit part of their father's land when they reach the age of marriage. This land given to sons is referred to as *umunani,* and its purpose is to enable him to start his adult life by building a house and cultivating food for his family. Where there are no sons or where all sons have died, *umunani* will be given to the grandsons. In addition to *umunani*, a man may also receive land from members his family or, occasionally, from the family of his wife, either when he marries or when a son is born. Such gifts are referred to as *intekeshwa* (or *inteke*).[24]

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[12] NISR, *GDP annual estimates 2009 based on 2006 benchmark* (2010), Ministry of Finance and Economic Planning (Minecofin) <http://www.minecofin.gov.rw/webfm_send/1698> at 15 November 2010.
[13] NISR, *National Agricultural Survey 2008* (2008) 26, NISR website <http://statistics.gov.rw/images/PDF/agricole2008.pdf> at 30 March 2011.
[14] Ibid 5.
[15] See for example J Pottier, 'Land reform for peace? Rwanda's 2005 Land Law in context' (2006) 6(4) *Journal of Agrarian Change* 509; and H Musahara and C Huggins, 'Land reform, land scarcity and post-conflict reconstruction: A case study of Rwanda' in C Huggins and J Clover (eds), *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa* (2005) 314.
[16] NISR, above n 13, 35.
[17] Ibid 36.
[18] See Government of the Republic of Rwanda (GoR), *National Land Policy* (2004) 16, Ministry of Environment and Lands (MINELA) <http://www.minela.gov.rw/IMG/pdf/National_Land_Policy.pdf> at 30 March 2011; and NISR, above n 13, 39.
[19] See NISR, above n 13, 37.
[20] See GoR, *Results and Analysis of Field Regularisation Field Trials in Four Districts* (2008) (on file with the authors).
[21] Ibid.
[22] In this regard, it should be noted that in certain rural areas, land cases make up nearly 70 percent of the civil law case load and that the civil law case load makes up about 55 percent of the total case load of Primary Courts. This information is based on data collected by RCN Justice & Démocratie in 2007 and 2008 within the context of a project entitled, *Suivi sur la Capacité de Traitement des Tribunaux de Base et des Tribunaux de Grande Instance*. See also C André and J-P Platteau, 'Land relations under unbearable stress: Rwanda caught in the Malthusian trap' (1997) 34(1) *Journal of Economic Behaviour and Organization* 29.
[23] See M Veldman and M Lankhorst, *Legal Empowerment and Customary Law in Rwanda: Report of a Pilot Project Concerning Community Level Dispute Resolution and Women's Land Rights* (forthcoming), RCN Justice & Démocratie Research Report, 27.
[24] Literally translated, *intekeshwa* roughly means 'that which is given to cook with'. In other words, it is a gift that should help to establish a household. The content of this gift, who provides it, and who can receive it, varies between villages and families.

Despite some regional variations, customary law clearly provides limited scope for women to acquire the type of rights to land commonly associated with ownership either through inheritance or gifting. Land is strongly connected to the paternal family line and is therefore passed on from fathers to sons. Girls living with their parents can be given a specific share of their father's land to exploit, but generally this is seen as a use right that expires when she marries or when the land is needed for another purpose. The principal means for women to access land under customary law is through marriage. Even in such cases, however, the husband is generally recognized as owning and exercising authority over such land, which was given to him in the form of *umunani*, even if he is expected to consult his wife on matters regarding its management.[25]

Women can receive land as a gift, for example, upon marriage, but its size and the nature of the claims acquired are generally very different from *umunani*. In terms of size, much will depend on the family's wealth and the woman's relationship with her family members, but it is rare that land gifted to a woman would be comparable in size to her husband's *umunani*. Moreover, the claims over such land are not enforceable, but principally rights of use. Where the land is gifted by her family, control over the land (selling, gifting, renting, building) will generally be exercised by her father or one of her brothers; if the land comes from elsewhere, such control will be exercised by her husband. Frequently, the rights acquired over gifted land are more symbolic in nature. Such land will be used and controlled by a brother, who then assumes a moral obligation to pay visits to his sister on important occasions and to support her in times of financial or material need. In principle, a woman's children are not entitled to inherit her claims over gifted parcels of land.

The division of matrimonial property following the death of a husband depends on whether the couple has male offspring, the widow's age and her relationship with her in-laws. If she has adult sons, the property will pass to them and a share may be reserved for her to live on and cultivate crops. Where the sons are minors, the widow can generally retain use rights over her husband's land and will continue to stay in the matrimonial home, holding both in trust for her sons.[26] If there are no children,[27] a widow will generally be permitted stay on her husband's land provided that she is on good terms with her late husband's relatives. If she is considered young enough, she may be required to marry one of his brothers to reinforce familial ties.[28] In other cases, widows will be forced to leave their husband's land and return to their biological families. This may not be easy, however, because she will need to lay claim on resources that have been reserved for her brothers and their families. In the past, brothers commonly assumed responsibility for one or more of their sisters following the death of their parents and in cases where they had been repudiated. As will be explained in more detail below, while such customary practices have become less common, the Government of Rwanda has introduced legal provisions aimed at better protecting women's land interests.

1.3 Statutory inheritance law

The inheritance law reforms initiated in 1996 were driven by a number of developments related to the violence against the Tutsi that marks Rwanda's recent history.[29] The

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[25] In this regard, see P Uwineza and E Pearson, *Sustaining Women's Gains in Rwanda: The Influence of Indigenous Culture and Post-Genocide Politics*, The Institute for Inclusive Security (2009) 8, Hunt Alternatives Fund <http://www.huntalternatives.org/pages/8249_sustaining_women_s_gains_in_rwanda_the_influence_of_indigenous_culture_and_post_genocide_politics.cfm> at 30 March 2011.

[26] Ibid.

[27] See Uwineza and Pearson, above n 25, 11.

[28] Ibid 10.

[29] The following discussion of the developments after the genocide mainly draws on L Rose, 'Women's land access in post-conflict Rwanda: Bridging the gap between customary law and pending land legislation' (2004) 13 *Texas Journal of Women and the Law* 197; and Uwineza and Pearson, above n 25.

eruptions of violence of 1959 and 1973 primarily targeted men. The death or flight into exile of husbands and fathers forced many Tutsi women into roles as family breadwinners and farmers. An entire generation — the one that later assumed power in post-conflict Rwanda — thus grew accustomed to female-headed households. With the 1994 genocide, the number of such households further increased. This time, Hutu women were also strongly affected, because many men were incarcerated, died or did not return from exile.

The customary system, which provides women with access rights to land mainly through their affiliations with men, did not meet the needs of this new generation of Rwandan women who were effectively running households on their own. Moreover, formal laws dating from before the genocide did not recognize their claims to the land they depended on for livelihoods, which made them vulnerable to attempts by more distant male relatives to obtain additional lands.[30] This was viewed as a potential threat to political stability and economic development.

To remedy this, the *Matrimonial Regimes, Liberties and Succession Law 1999* ('*Inheritance Law*') was introduced in 1999.[31] Its aim was not only to formalize the way in which inheritance was regulated and bring it within the scope of the state justice system, but also to break with important aspects of customary law. First, it granted daughters the right to inherit land from their parents.[32] Like their brothers, therefore, women are entitled to a share of family land when they get married or when their parents die. Second, it gave wives rights to matrimonial property:[33] land, houses and movable goods are owned jointly by husband and wife. Third, it allowed widows to inherit their deceased husbands' property.[34]

The formal scope of this law, however, is not as wide as it might seem. When the *Inheritance Law* refers wives and widows, it means those who are formally married, thus excluding many people living in rural areas who marry under customary or religious unions. Moreover, in certain parts of the country, it is not uncommon for a man to be legally married to one wife and, at the same time, to be married customarily to another or others. In practice, therefore, the *Inheritance Law* leaves large numbers of women unprotected. In addition, although it provides that daughters have an equal right to the land left when their parents die, it only provides that they may not be discriminated against when the parents gift land to their children during their lifetime (the *umunani*).[35] In many cases, such gifts involve the bulk of a family's land, leaving little to be inherited. Lawyers frequently interpret the term 'discrimination' used in the law to mean that if a girl has acquired access to sufficient land through her marriage, this justifies her receiving a smaller *umunani* than her brothers.

The *Law on Prevention and Punishment of Gender-Based Violence 2009*[36] ('*Gender-Based Violence Law*') appears to partially fill the gaps left open by the *Inheritance Law*. This new law requires any couple who live together as husband and wife to conclude a civil marriage.[37] In the event that either of the partners (usually the husband) has been living together as a family with an additional person (for example, a second wife), the law also requires him to share with this person the property that they jointly held. For the moment, however, this law remains untested and it is unclear what 'jointly held property'

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[30] This view obviously ignores the possibility that customary law might evolve in response to the changes in demographic and socio-economic conditions. For a discussion of such effects on customary law, see Rose, above n 29.
[31] Law no. 22/99 of 12 November 1999.
[32] See art 70 of the *Inheritance Law*.
[33] See arts 2 and 3 of the *Inheritance Law*.
[34] See art 70 of the *Inheritance Law*.
[35] See arts 42 and 43 of the *Inheritance Law*.
[36] Law no. 59/08 of 10 September 2008 (*Gender-Based Violence Law*).
[37] See art 39 of the *Gender-Based Violence Law*.

will be interpreted to mean; moreover, it is questionable the extent to which women will realistically be able to use this law to force their partner to formally register their marriage.

1.4 Land dispute resolution

Despite the changes introduced through the *Inheritance Law* in 1999 and the *Gender-Based Violence Law* in 2009, customary law continues to have a strong impact on how property transfers between family members are regulated. As elsewhere in Africa, the bulk of land disputes are handled at the local level, with only a fraction entering the formal court system.[38]

The *inama y'umuryango* (hereafter *inama*) is often the first institution that disputants call on to resolve a land dispute. The term can be translated as 'a family meeting'.[39] The *inama* is not a tightly regulated institution of customary law. The way and frequency in which a family organizes meetings and the reasons for which a meeting may be called can be very different from the traditions of another family. In general, meetings will be led by the head of the family (*umukuru w'umuryango*). In some families, elders and younger members of the family considered trustworthy, wise and eloquent will be heavily involved in the debates, whereas in other families, the *umukuru* will act alone. Likewise, in some families, women will take an active part in the debates, whereas in others, the discussion will be very much male-dominated. Finally, there is strong variation in the methods that families adopt to resolve disputes, which range from mediation to strict adjudication. Although some village heads may offer to be present during this *inama,* as an advisor of the family and to assist in managing the discussions, most do not, and such meetings are generally considered an internal family affair.

An *inama* will not always succeed in putting an end to a dispute, and for some disputes, such as those between members of different families, an *inama* is not considered a suitable forum. Where this is the case, disputes are almost always brought before the *umudugudu* council (the village administration),[40] despite there being no law that provides for or regulates interventions by these local authorities.[41] This situation must be understood in light of the fact that after independence, when customary land management structures were largely dismantled, local authorities acquired extensive and virtually exclusive power in matters of land allocation.[42]

At the levels of the *inama* and the *umudugudu*, certain individuals play important roles in dispute resolution. They are traditionally referred to as *inyangamugayo,* which means man (or woman) of integrity.[43] *Inyangamugayo* may get involved in dispute resolution for different purposes and at different times. They sometimes work together with heads of *umudugudu* in dispute resolution sessions as part of a regular form of cooperation. More commonly, they are involved in the resolution of a dispute after a family meeting but before the head *umudugudu* deals with it. Their participation may be of their own initiative, or because they are requested to by the disputants, the family or neighbors.

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[38] In this regard, see Veldman and Lankhorst, above n 23, 42, where it is shown that, in Rwanda, only one in roughly 40 disputes started at the village level will enter the formal court system and that 48 percent of the cases that do enter the formal court system are summarily dismissed.

[39] In this context, the word 'family' must be understood to mean the extended family.

[40] The *umudugudu* is the smallest administrative unit. It generally comprises between 300 and 1,000 inhabitants.

[41] In this regard, see M Lankhorst and M Veldman, *La Proximité de la Justice au Rwanda: Rapport socio-juridique sur les modes de gestion de conflits fonciers*, RCN Justice & Démocratie Research Report (2009) 51.

[42] In this regard, see J Pottier, 'Land reform for peace? Rwanda's 2005 Land Law in context' (2006) 6(4) *Journal of Agrarian Change* 509, 515.

[43] The use of this term may lead to confusion for certain readers. This is because Rwandan legislators, in an attempt to enhance the legitimacy of the community-level courts created to process genocide cases, chose to refer to *gacaca* judges as *inyangamugayo*. In this chapter, the term *inyangamugayo* refers to community members who contribute to ordinary *umudugudu*-level dispute resolution in an informal and unregulated manner.

Finally, at the local level, there are the *abunzi* committees, which were expressly created by a law adopted in 2006[44] to deal with all disputes before they could be submitted to a Primary Court.[45] The *abunzi* are primarily required to mediate between disputants and to assist them reach some kind of settlement. It is only if the parties cannot be reconciled that the *abunzi* are required to apply the law and adopt an adversarial decision. This decision is binding on the parties unless one of them submits the case to a Primary Court for review. A committee is composed 12 elected community members. Each of the two sides in a dispute will choose one *umunzi* (*abunzi* is plural and *umwunzi* singular) and together, these *abunzi* choose a third member of the panel. The panel of three leads the debate, but in principle other members of the committee may join in to ask questions or give advice, as can members of the public. In practice, the scope for such interventions varies a great deal; some *abunzi* leave more room for discussion, while others exclude it altogether. The *Abunzi* Law does not allow the committee to charge fees to litigants either for the hearing or for issuing a written decision.

2. Problem analysis

2.1 Women's land rights

The adoption of formal laws guaranteeing women's access to marital and natal family land has not led to significant changes on the ground. While there is a basic awareness among most men and women that the law has changed in favor of the latter, in practice, customary law continues to have a strong influence on how marriage and inheritance are regulated in rural areas.[46]

Land, the primary asset of any rural family, is still seen to belong to the patrilineal family. When a woman marries, she is considered to become part of her husband's family. As a consequence, allowing women to claim their land entitlements in compliance with the law means that one family's land is transferred to another family.[47] Second, if daughters are allocated an inheritance share, brothers, particularly younger brothers who have not yet married, see the share of the land that they will come to inherit shrink, which may negatively affect their marriage prospects.[48] There are also social implications for women that result from the operation of the new laws. A woman who contributes considerable assets to a marriage is likely to be seen as behaving independently and being less respectful towards her husband, since if she were to divorce, she would not be dependent on the support of her male relatives. It is also clear that women risk being ostracized by both men and women community members if they try to enforce their legally guaranteed inheritance rights.[49]

The adverse consequences of the failure of formal law to penetrate marriage and inheritance practices in rural areas are exacerbated by the narrowing of the scope for acceptance of women's land claims under customary law. This is the result of several

[44] Law No. 2/2010 of 9 June 2010. Note that during most of this project, a prior version of the *Abunzi* Law was in force (Organic Law No. 31/2006 of 14/08/2006 on Organisation, Jurisdiction, Competence and Functioning of the Mediation Committee).
[45] Around this time, reforms were undertaken that reduced the number of Primary Courts from 120 to 60 and also substantially reduced the number of magistrates. Policymakers had a dual objective when they instituted the *abunzi* committee. They aimed to guarantee better access to justice, particularly for poorer members of the population for whom it is more difficult to bring a case before a formal court, and also to reduce the number of cases received by formal courts and thus help eliminate case backlogs.
[46] For a detailed discussion, see Lankhorst and Veldman, above n 41.
[47] See also André and Platteau, above n 22, 32.
[48] See Section 1 on land fragmentation and average plot sizes falling below the minimum economically viable level.
[49] See Lankhorst and Veldman, above n 41; Haguruka, *Etude sur l'application et l'impact de la loi no 22/99 relative aux régimes matrimoniaux, libéralités et successions sur les droits de la femme au Rwanda* (2009); Rose, above n 29; and J Burnet, 'Culture, Practice and Law: Women's Access to Land in Rwanda' in L Wanyeki (ed), *Women and Land in Africa: Culture, Religion, and Realizing Women's Rights* (2003) 176.

processes.[50] The first relates to an expansion of the land market. Customary obligations, including those that aim to prevent destitution among female family members, attach to land handed down within the paternal family through inheritance. These obligations are often considered not to apply if land is acquired through purchase. André and Platteau give the example of a man who refused to give a parcel of land to his sister who returned to her village after having separated from her husband on the basis that he had built up his property by purchasing land on the open market.[51]

The second process relates to the reduced flexibility in which customary rules are enforced. In Rwanda, it is custom for a husband's family to pay 'bride price', or *inkwano*.[52] In poorer communities, it has become common to form unions outside of customary law, because the groom's family is generally too poor to pay *inkwano*. In the past, such unions were not necessarily viewed as illegitimate and, as a result, the rights of access to land enjoyed by the persons concerned were generally maintained. Today, unions formed outside the *inkwano* system are frequently considered to be illegitimate, which can have serious consequences for women who separate from their husbands. A woman's natal relatives will generally be disinclined to take her back if the union did not bring material advantages to the family and did not serve to strengthen inter-family alliances in the traditional way.[53]

Women in polygamous unions are particularly vulnerable.[54] Traditionally, only wealthier men could afford to marry a second or a third wife.[55] Modern polygamous practices, however, occur mainly in the context of poverty.[56] Polygamy often reflects a man's attempt to acquire land by expanding the amount of labor he controls. In such situations, bride price is not always paid, which makes it less likely that the natal or conjugal family will offer support in the event of divorce or widowhood.

It can be easily appreciated how these types of situations can give rise to land disputes. Such cases may be initiated by women who see their access to land reduced or completely cut off following divorce or bereavement. Alternatively, cases may be started by family members eager to expand their land holdings by repossessing land in which a woman holds an interest but does not have a customary right to. How these cases are resolved and the extent to which women's interests in land are upheld depends on the dispute resolution approach adopted, as examined below.

2.2 Dispute resolution involving women's land interests

A key challenge for bereaved or divorced women seeking to protect their land interests is that disputes involving the succession of land rights are often not dealt with at the village level. Heads of *umudugudu* generally refer such disputes to higher-ranking local authorities or directly to *abunzi* committees, because they consider them too complex. If heads of *umudugudu* do attempt to resolve such disputes, they generally apply adjudicative methods that tend to disadvantage women complainants, as discussed below.

Once referred to *abunzi* committees, it is more likely that a case will be adjudicated rather than mediated. Although the law requires *abunzi* committees to mediate between disputants (only when a mediated settlement cannot be reached are they authorized to apply the law and adopt a binding decision), in practice, many *abunzi* do not see a clear

[50] See André and Platteau, above n 22, 31. See also Uwineza and Pearson, above n 25; and Rose, above n 29.
[51] André and Platteau, above n 22, 37-8. They also note that even where lineage land is concerned, brothers increasingly refuse to assist divorced, repudiated, or widowed sisters.
[52] In the form of cattle, other property or money.
[53] André and Platteau, above n 22, 40.
[54] Although polygamy is prohibited, it remains pervasive in parts of Rwanda, particularly in the Northern Province.
[55] Uwineza and Pearson, above n 25, 10.
[56] Ibid.

distinction between these two modes of resolving disputes and most understand their role to be similar to that of a judge, even if they consistently refer to this work as *kunga* (mediation).[57] Out of a total of 105 disputants interviewed as part of this research, 43 indicated that the *abunzi* did not make any attempt to mediate a decision between the parties and instead simply applied a ruling. In the 62 cases where respondents considered that some attempt had been made to settle the dispute, such attempts generally did not amount to mediation. Most commonly, *abunzi* underlined the importance of living together peacefully and then asked the parties to try to reach a settlement independently. If the parties could not find a solution, the *abunzi* would apply a judgment. It is important to note that the *abunzi* and village-level actors almost invariably consider discovering the 'truth' and thus determining which of the two disputants is 'right' to be an indispensible component of mediation. Many have difficulty imagining that a dispute could be brought to an end without one disputant admitting 'fault' and asking for forgiveness (traditionally by offering beer to their opponent).

Box 1. Why do the abunzi often adjudicate rather than mediate?

This issue was not studied in detail as part of the pilot project, but it seems that three factors may play a role. First, the institution of the *gacaca* courts several years before the adoption of the *Abunzi* Law should be mentioned. The primary task of *gacaca* courts was to adjudicate certain types of genocide crimes akin to a formal criminal court. Since *gacaca* trials were organized weekly at the level of almost every cell (group of villages) in Rwanda, as are the *abunzi* committees, and for several years were attended by large portions of the population, their mode of operation may have had a broad impact on notions of justice and dispute resolution. Second, the *Abunzi* Law fails to define what mediation is and how it differs from adjudication. Third, there are strong indications that the perception of the role of the *abunzi* committees *vis-à-vis* the parties is influenced by the fact that they were created by law, are vested with formal decision-making powers and are expected to apply state law (if mediation fails). It is telling, for example, that in many cases, *abunzi* refer to their institution as the *urukiko y'abunzi* ("the *abunzi* court" in Kinyarwanda).[58]

The problems for women seeking to protect their land interests are two-fold. First, it is disadvantageous to them that most land-related disputes are not resolved at the village level because the further away from the village dispute resolution takes place, the more difficult it becomes for them to secure equitable outcomes. This is because outside of the village structure, the scope for successful mediation diminishes and so does the likelihood that issues of moral responsibility can be used as leverage to secure woman's land rights. Second, whether a dispute is resolved by a head of *umudugudu* or an *abunzi* committee, observations indicate that women have less probability of upholding their land interests when an adjudicatory approach is adopted. Such proceedings are backwards-looking and focus on rights and facts, which, in the context of gender-discriminatory customary laws, does not favor women.

Arguably, women's interests are more likely to be better served by mediation approaches, which aim to restore peace between disputants and where there is more room to consider issues such as the disputants' needs and the moral obligations that may

[57] For the purposes of this chapter, mediation and adjudication are distinguished in three ways. First, the *objective* of mediation is to restore some form of peace between the parties, whereas the principal aim of adjudication is to determine the need for correction. Second, the *perspective* adopted in mediation is forward-looking (concerning what can or must be done to ensure peaceful coexistence), whereas adversarial proceedings are backward-looking (concerning what acts have been committed and how must they be appraised and responded to). Third, the *role* of the mediator is that of a facilitator and the disputants themselves are the main agents in the process leading to an accord (or its failure). A judge presiding over an adversarial proceeding, on the other hand, determines an outcome for the parties.

[58] Observations revealed that when the *abunzi* enter the room at the beginning of a session, many committees require the public to stand up as a sign of respect; in their decisions they will frequently 'order' disputants to do something or stop doing something; finally, during the pilot project, two cases were observed where a committee imposed a fine on one of the disputants for disrespecting 'the court', even though the *Abunzi* law does not provide for this.

exist between them. Phrased another way, mediation offers a better forum for disputants with weak legal claims but strong needs backed up by moral claims such as a family obligation to protect weaker members from destitution. Likewise, women are likely to receive better outcomes if disputes are resolved at the village level where there is greater scope for them to use the negotiability and flexibility inherent in customary decision-making to promote outcomes in their favor. This scope might increase even further if, at this level, the dispute resolution 'circle' were expanded beyond the heads of *umudugudu* to include *inyangamugayo*, who are skilled in mediation,[59] and local representatives of the National Women's Council (NWC), who are more likely to have a better insight into and lobby for women's needs.

2.3 Hypothesizing on improved outcomes in cases involving women's land claims

Given the above observations, a hypothesis was developed that outcomes in cases involving women's land interests would improve if they were consistently resolved at the village level through mediation involving the head of *umudugudu, inyangamugayo* and representatives of the NWC. To test this hypothesis, an intervention was launched targeting both village-level dispute resolution actors and *abunzi* committees.

At the village level, six villages were selected in the Rulindo district in northwest Rwanda, where the dominance of customary law is particularly strong. The group of participants included 20 women (six members of the *umudugudu* council, eight *inyangamugayo*, five representatives of the NWC, and an official of a higher ranking local authority) and 12 men (six *inyangamugayo*, five heads of *umudugudu* and an official of a higher-ranking local authority). Multi-stakeholder focus group discussions were held that addressed three topics: first, how to better coordinate their efforts to resolve disputes; second, how to ensure that all relevant interests and views were taken into account in dispute resolution with a view to ensuring that the outcome of the process was considered fair by both disputants; and third, the implementation of basic mediation techniques in dispute resolution. Following this, a workshop was organized. Participants were divided into six groups and asked to describe a land dispute they had recently dealt with, and explain how they had resolved it. These cases were used to exchange views on principles regarding land rights and women's inheritance rights embodied in statutory law. In the months following the workshop, 12 coaching field visits were delivered (two per village).

The intervention at the *abunzi* level targeted all 55 *abunzi* members (25 of whom were women) in four selected *abunzi* committees in the district of Rulindo. Two participative training sessions were delivered followed by two follow-up coaching visits to each committee. The training focused on approaches to dispute resolution and women's statutorily protected land rights. Sketches based on typical cases observed during earlier monitoring visits to the target committees were used to stimulate discussion on the nature of dispute resolution and basic procedural principles, such as the right of disputants to be treated equally in terms of presenting arguments and evidence, and the importance of informing disputants of the procedure that would be followed. *Abunzi* were also asked to reenact a land dispute involving an inheritance matter that they had dealt with as a committee. This provided a concrete basis for a dialogue on women's land rights as enshrined in statute.

A research framework was designed to gauge the impact of these interventions, principally through qualitative data collection techniques including observation of dispute resolution sessions, interviews and focus group discussions with disputants and beneficiaries. A control area was selected nearby, making it possible to compare and contrast developments in the intervention zone with developments in a similar but

[59] In all communities where the authors worked, the mode of operation of *inyangmugato*, while it differed from person to person, was generally more conciliatory and facilitative, presumably, because they are not vested with any form of formal authority, as compared to *abunzi*.

intervention-free environment. Data for both the village level study[60] and the abunzi study[61] were collected over a ten-month period (October 2009 – August 2010). The remainder of this chapter draws on this data to discuss whether and to what extent the intervention provoked a change in the way the *umudugudu* level actors and *abunzi* committees handled women's land claims, and whether such changed behavior translated into more equitable outcomes for women with respect to their land interests.

3. Results of the intervention

Prior to the intervention it was observed that land-related inheritance disputes were not usually dealt with at village level but referred to a higher authority. Where dispute resolution was attempted, heads of *umudugudu* usually acted alone and generally adopted an adjudicative approach. It was hypothesized that women's land interests were more likely to be upheld if disputes were resolved consistently at the village level, through joint mediation by heads of *umudugudu, inyangamugayo* and representatives from the NWC.

3.1 Encouraging the consistent resolution of land-related inheritance disputes at the village level

Most significantly, following the intervention, all 21 land-related inheritance disputes that arose were dealt with at the village level by the heads of *umudugudu* in collaboration with the *inyangamugayo* and NWC representatives.

3.2 Expanding the dispute resolution 'circle'

In terms of expanding the dispute resolution 'circle', the *inyangamugayo* in all the targeted localities acquired an established role in dispute resolution together with the head of *umudugudu*. On average, three *inyangamugayo* would be present at mediation sessions. It is also noteworthy that through the intervention, the various *inyangamugayo* within the target area came to know or become more familiar with each other and continued to regularly meet to exchange experiences. A practice also emerged whereby *inyangamugayo* started attending *abunzi* sessions in cases that they themselves had not been able to resolve.[62]

Similarly, in cases involving women's inheritance rights, one or two NWC representatives were generally found to participate. The change in the approach adopted by the NWC

[60] For the village-level study, preparatory field visits, including a focus group meeting in each area, started in December 2009, and the workshop was held in March 2010. Monitoring of dispute resolution sessions was an ongoing activity that started in January 2010. Towards the end of the project, in-depth interviews were held with disputants, and focus group meetings were organized in the targeted *imidugudu*. The following data was gathered: i) observation of the handling of 23 disputes; ii) 17 semi-structured interviews with disputants; iii) 65 open-interviews with actors involved in dispute resolution at this level; iv) 48 written and oral decisions or solutions issued by these institutions (21 of which were related to land or succession); and v) four focus group meetings with actors at this level (two at the beginning and two at the end of the project).

[61] The *abunzi* study started in October 2009 with preparatory visits. The participative training was held in February 2010. Monitoring the *abunzi* committees both in the intervention and control areas was an ongoing activity that started in November 2009. Towards the end of the project, more in-depth interviews were held with disputants, and focus group meetings with the nine targeted *abunzi* committees were organized. The following data was gathered: i) observation of the handling of 64 disputes by the targeted *abunzi* committees; ii) 120 interviews with disputants involved in a case handled by the targeted *abunzi* committees (105 in a structured interview and 15 in a semi-structured interview); iii) 403 *abunzi* decisions collected and analyzed (249 at the cell level and 154 in court registries); iv) 170 primary court judgments assessing the legality of *abunzi* decisions collected and analyzed; v) seven focus group meetings with members of the targeted *abunzi* committees (three at the beginning and four at the end of the project); vi) nine semi-structured interviews conducted with the secretaries of the targeted committees; and vii) interviews with three primary court judges (at the beginning, half-way and at the end of the project).

[62] A number of *inyangamugayo* interviewed indicated that, after the training, they felt more comfortable in contributing to discussions at this level, whereas before, they were intimidated by the authorities and unsure of themselves. They stated that the workshop helped them feel more confident and to realize the importance of their contribution to dispute resolution.

representatives is particularly noteworthy. Prior to the intervention, in the few cases in which they participated, the approach adopted was far from rights-based. Generally, they advised women how to behave as 'good wives', on how to avoid clashes with their husbands, and on how to restore ties once a clash had occurred (usually by showing modesty, acceptance and forgiveness). Women's rights to matrimonial property or to participate in decision-making on important family affairs were seldom included in their advice. Following the intervention, NWC representatives actively took part in dispute resolution along with heads of *umudugudu* and *inyangamugayo,* and frequently took the lead in demanding attention to the interests of the women involved in the dispute.

3.3 Encouraging the use of mediation techniques in the resolution of disputes

Following the intervention, four positive changes were observed in how dispute resolution was approached by both village-level actors and *abunzi* committees.[63] First, such actors took more time to understand the arguments presented by — and the circumstances and interests of — both disputants, and to reflect this understanding in their attempts to forge a solution. Second, disputants and members of the public were more often encouraged to propose solutions to the dispute. Third, possible solutions were presented at a later stage in the discussion and not, as often observed in the control zone, at the start of the discussion. Finally, more effort was made to explain the reasoning behind the solutions found, particularly to disputants who were asked to make concessions.

With respect to whether these changes in practice were observed more strongly at the village or the *abunzi* level, it can be noted that while the intervention promoted positive changes in the approach adopted by *abunzi* committees, in a significant share of the cases observed committees continued to behave as panels of judges presiding over adversarial proceedings. This occurred much less frequently at the *umudugudu* level, presumably due to the involvement of the *inyangamugayo*, whose approach is generally more conciliatory and facilitative. The *inyangamugayo*, in particular, became more pro-active in their mediation approach. They would speak to disputants prior to and after the mediation session in order to try to overcome the obstacles that kept them from reaching a solution. Further, before a mediation session, they would often urge neighbors and other affected community members to take part in the meeting.

3.4 Did a successful intervention translate into improved outcomes for women?

It is clear that each of the intended objectives of the intervention were realized with a reasonable level of success: land-related inheritance disputes were resolved through mediation jointly by heads of *umudugudu, inyangamugayo* and NWC representatives, and by using improved mediation techniques. The critical question, however, is whether such changes translated into improved outcomes for women in terms of greater protection of their land interests?

To answer this question, it is first necessary to recall the protections afforded to women under statutory law. The *Inheritance Law* explicitly grants women the right to inherit property held by their natal family and also to make a claim to such property before the death of the rights holder. It does not, however, go so far as to guarantee women the right to receive an equal share (in terms of value, size and quality) to that of male siblings. It is also important to recall that it is common, under customary law, to grant women residual claims to land or to make symbolic gifts of land to women upon marriage. Women's statutorily protected land rights, therefore, were generally not considered to be completely at odds with customary law.

With these caveats, it can be concluded that the intervention did not result in a significant change in customary dispute resolution practices, at least with respect to incorporating entirely new ideas. Cases in which women asked for *umunani* (equal to that of their brothers when they married) were very few (eight out of 256 cases at the *abunzi* level) and, with the exception of two ambiguous examples, all were unsuccessful. It should be highlighted, however, that *umunani* are traditionally gifts of land to men upon marriage specifically to establish a household. Since, in practice, women about to wed benefit from their future husband's *umunani* and *intekeshwa,* equalizing such endowments would amount to 'double gifting' and, in a situation of land scarcity, this is generally seen as undesirable.

Yet, on a small and modest scale, improvements in outcomes were observed following the intervention. First, particularly at village level, the number of unresolved disputes fell markedly. During the final month of the program, for example, only 13 unresolved cases were reported, which represents about half of the pre-intervention caseload. More importantly, none of these cases involved an inheritance issue, whereas normally there would be at least five or six of such cases per month.[64]

Moreover, targeted actors were more inclined to accept claims of women that were conceivable under customary law, although certainly not guaranteed. Three cases were observed where a woman — either divorced or widowed — was permitted to access her portion of the *ingarigari* (residual land remaining after the death of a rights holder) before the death of her parents. Traditionally, *ingarigari* is divided among male offspring; however, under certain circumstances, widowed or divorced daughters may be allowed to make use of part of it. Allowing daughters to claim undivided family land during the life of the rights holder represents a meaningful and positive change in the concept of *ingarigari*. There were also five cases observed where women were permitted to make real, rather than symbolic, use of *igiseke*. Again, granting women real access to family land on the basis of a claim, such as *igiseke*, which was traditionally primarily symbolic in nature, constitutes an expansion in their ability to claim land and a marked departure from common practice (only two similar cases were observed: one in a community prior to the intervention, and one in the control zone). Finally, it is noteworthy that these outcomes were realized in cases where the *abunzi* and village-level actors engaged in mediation, rather than adjudication.

Box 2. Case study: the handling of a woman's land claim in the intervention area (February 2010)

The father of Drocella and Alexandre recently married for a third time after their stepmother passed away. Drocella, who was married, agreed that she would take care of the children from her father's second marriage. Drocella had very little land, so she asked her father and brother to give her an additional parcel, which they refused. The head of *umudugudu*, who heard the dispute shortly before RCN's intervention, very quickly took the side of Drocella's brother. Her brother claimed that all of the land that he used was given to him by his father as *umunani*, which their father confirmed. They explained to Drocella that she could only request part of the *ingarigari* once their father passed away. Following the workshop, two *inyangamugayo* who were aware of the case decided to visit Alexandre. They asked another man who recently gave his sister a share of *ingarigari* to join them. Together they persuaded Alexandre to agree to hold a new meeting. At this meeting, the head of *umudugudu* and four *inyangamugayo* were present. They all agreed that Drocella, since she was married, should not ask for *umunani*. The head of the *umudugudu* and the *inyangamugayo* argued, however, that she should be able to use at least the small plot that she was promised when she married (*igiseke*), as well as a share of the *ingarigari*. Why should Drocella have to wait for the death of her father, an *inyangamugayo* asked? He split his land in two: one set of plots for the children of his first and second wife, and another set of plots for his new family. The *inyangamugayo* insisted that if Alexandre already used his part of the family land, so should

[64] Interview with Executive Secretary of the cell (the administrative unit encompassing the targeted villages). Note that prior to the intervention records were not consistently kept at this level. It was not possible, therefore, to verify the information provided by the Executive Secretary.

Drocella, particularly since she was taking care of their half-siblings. Alexandre accepted that she could start using the *igiseke* and a share of the *ingarigari* after he harvested the crops that he had already planted.

4. Conclusions and lessons learned

The questions posed at the beginning of this chapter relate to the viability of strategies aimed at reforming customary justice processes. These strategies are arguably the most feasible entry points in contexts such as Rwanda where the protections offered by the formal justice system are out of reach for many, and the customary rules that prevent women from protecting their interests are bound up in complex social and economic systems that regulate community life.

The intervention led by RCN discussed in this chapter did not try to wrestle with or modify the customary rules in question. It was accepted that, although such rules were the root problem, there were strong social and economic factors that made it unlikely that they could be significantly modified through a short-term pilot intervention. It was reasoned that the most effective way to deliver more equitable outcomes to women was to exploit the flexibility inherent in customary dispute resolution and draw on moral obligations within the existing structure of culture and custom. The results of the intervention yielded two principal lessons that may be useful both for rule of law programming in Rwanda and in similar country contexts.

A first lesson is that in any strategy aimed at expanding women's rights under customary law, the modality of dispute resolution can be equally as important as the substantive rules in play. In Rwanda, local institutions, particularly *abunzi* committees, tend to adopt an adversarial approach to dispute resolution, which is mainly backwards-looking and focused on the application of existing or accepted rights. This works to the disadvantage of groups with weak customary rights, notably widows and divorced or abandoned women who usually lack the resources to seek legal advice or refer their case to a state court. In such contexts, women's interests may be better protected through more inclusive forms of dispute resolution that — by adopting a broader perspective and setting a wider objective — provide more scope for complainants to capitalize on moral obligations and bring the respective needs of the disputants to bare in the dispute resolution process. The results of the intervention support that, with appropriate training and advocacy, community-based dispute resolution actors can be encouraged to make greater use of such techniques, which can translate into better outcomes for women.

Some scholars caution a reliance on customary dispute resolution mechanisms in this manner. Wojkowska and Cunningham, for example, point out that the emphasis on maintaining social harmony and negotiation at the center of Indonesian customary law, *adat*, can deprive women of fundamental rights.[65] This is not contested; the flexibility inherent in many systems of customary law can be exploited to protect or strengthen male interests in situations of economic and social change. Still, the results of the pilot project discussed in this chapter suggest that policymakers and development programmers can also make positive use of this flexibility by stimulating reliance on forms of dispute resolution that place greater weight on the needs and circumstances of more vulnerable disputants.

The second lesson is that modifying customary practices requires that policymakers and development programmers look beyond strategies that seek to align customary practice

[65] See, E Wojkowska and J Cunningham, 'Justice Reform's New Frontier: Engaging With Customary Systems to Legally Empower the Poor' in S Golub (ed), *Legal Empowerment: Practitioners' Perspectives* (2009) 93. Note also that the purpose of the intervention carried out by RCN was to introduce dispute resolution techniques that placed greater weight on *individual* needs and the circumstances of more vulnerable disputants.

with statutory law to better understand why rights-abrogating customary practices exist and what other purposes they might serve. The RCN-led intervention did appear to create more space for an acceptance of women's claims to land, provided that they did not sit too uncomfortably with the overarching structure and prescriptions of customary law. It did not, however, open the door for daughters to claim land from their father on an equal footing with their brothers, as provided under statutory law. It should be highlighted that in the locations targeted, customary law strongly influences perceptions about justice and fairness, particularly with respect to family relations and rights to land. Moreover, the limitations preventing women from realizing land claims are anchored in a larger framework of social beliefs (on the role of women and daughters and their place within their own and their husband's families), practices (such as the uniting of two families through marriage) and reciprocal rights and obligations (including the payment of bride price and dowry), from which they cannot be easily severed.

It is therefore too simplistic to frame the issue as one of informing the population of the changes to women's statutory rights and requiring them to modify customary practices accordingly. Such changes constitute a clear challenge to the interests of men, and at the same time, due to the state's weak regulatory influence on village life, the extent to which such changes will be absorbed into customary practice depends on cooperation by these same men, who have a strong influence on land distribution and land dispute resolution.

A better strategy, it is argued, is to encourage a transformation of customary practices in ways that simultaneously meet the interests of male power holders. The results of the pilot project suggest that by involving — rather than challenging — men and appealing to their sense of responsibility for the well-being of female family or community members, positive outcomes can be reached. An alternative and potentially powerful way to create such consensus is to promote reflection and debate within communities on prevailing practices surrounding marriage and inheritance, frictions between such practices and statutory law, and what possible solutions exist to align the two. The results of such dialogue processes should be fed into policy debates at the national level on the implementation of new statutory laws.

In conclusion, in contexts such as Rwanda, policymakers and development programmers face significant challenges in their efforts to legally empower marginalized groups. Women, particularly widows and divorced or abandoned women, have weak rights under customary law, and while statutory reforms offer greater protections over women's land interests, their rights have limited practical value in rural areas where customary law dominates. It is unlikely that these obstacles can be modified in the near future; innovative and pragmatic approaches must be found, therefore, to work around them. Admittedly, appealing to power-holders' sense of good conscience is not the ideal approach for vesting women with enhanced land tenure security. However, in situations where the most accessible justice system contains structural impediments of such a nature that making them the subject of reform is highly unlikely to yield success and might even be detrimental to the interests of the intended beneficiaries, development actors must duly consider the reforms that are most likely to secure beneficial outcomes for women, in a timely manner, irrespective of the path taken.