

## **WOMEN'S LAND ACCESS IN POST-CONFLICT RWANDA: BRIDGING THE GAP BETWEEN CUSTOMARY LAND LAW AND PENDING LAND LEGISLATION**

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## I. Introduction

In recent years, numerous scholars have acknowledged that the experiences of women in post-conflict societies are unlike those of men. This article addresses the situation of women in one post-conflict society—Rwanda. In particular, it addresses Rwandan women's problems in gaining access to land for residential and agricultural purposes following the war of 1990–1994. During the war, hundreds of thousands of women were forced to flee their communities. After the war, many women returned to their own and other communities, without husbands or male relatives, only to discover that the land that they hoped to claim was occupied by other refugees. Without husbands or male relatives to help them regain their land or to acquire new land, Rwandan women had few options but to struggle for land rights on their own.<sup>1</sup> Similar to women in many other post-conflict societies, they were compelled to maneuver within a system of land law that had been greatly altered by war.

Section II of this article covers the effects of Rwanda's civil war on women. Section III discusses Rwanda's legal system, including the history and current state of customary land law and modern land legislation. This section emphasizes women's rights to land under customary land law and the pending land legislation. Section IV argues that a gap exists between the customary and modern legal systems, creating both land access opportunities and constraints for women. Section V presents the results of my field research on women's presumed land rights and their actual land access, both of which currently exist under conditions of legal uncertainty. This section examines, through specific case studies, how women first assess their status within the complex hierarchy of rural land rights, and thereafter, how they work within the constraints and opportunities presented by their immediate circumstances in order to retain or to gain control over land. Section VI discusses the case studies as a group in order to demonstrate the patterns according to which Rwandan women are creatively bridging the gap between a rapidly evolving system of customary land law and a modern system of land law in-the-making. Finally, Section VII offers several conclusions regarding my research findings and suggests that government officials should work to achieve land policy and legislation that specifies and guarantees women's land rights in both theory and practice.

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1. As I explain in Part III.B. on customary land law, *infra*, land inheritance in patrilineal Rwandan society proceeds through men. Women obtain customarily tenured land through their husbands, if married, or through their fathers and brothers, if unmarried.

## II. The Effects of Rwanda's Civil War on Women

The tiny central African country of Rwanda<sup>2</sup> was a centralized kingdom from the fourteenth century until the late 1890s, at which time Germany assumed control of both Rwanda and neighboring Burundi and ruled them as part of German East Africa. Following the German defeat in World War I, the League of Nations mandated control of the two territories to Belgium, which had already colonized neighboring Congo.<sup>3</sup> Rwanda achieved independence in 1962.<sup>4</sup>

Over the years, Rwandans have experienced several outbreaks of violence, beginning with the social revolution in 1959 when a Hutu<sup>5</sup> government came to power and more intensely with the start of civil war in 1990 when the Tutsi-dominated Rwandan Patriotic Front (RPF) invaded Rwanda from Uganda.<sup>6</sup> Many observers have attributed this violence to ethnic tensions and political competitions for power and control of increasingly scarce resources, including land.<sup>7</sup> The ongoing hostilities in Rwanda reached a fevered pitch on April 6, 1994 after the plane of the Hutu president, Juvénal Habyarimana, was shot down outside the country's

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2. Rwanda's population was estimated in 2003 to be at 7,810,056 in an area of 26,338 square kilometers. The World Factbook, at <http://cia.gov/cia/publications/factbook/index.html> (last visited Jan. 11, 2004). Jennie Burnet states that in this predominantly agricultural country (over 91% of the population engages in subsistence agriculture), the population density is over 300 people per square kilometer. Jennie Burnet, Rwanda Initiative for Sustainable Development, The Women and Land Studies, at <http://els41.law.emory.edu/WAL/WAL-studies/rwanda.htm> (on file with the Texas Journal of Women and the Law).

3. The Belgian Congo, which was until recently known as Zaire, is today known as the Democratic Republic of the Congo. The World Factbook, at <http://www.cia.gov/cia/publications/factbook/geos/cg.html> (last visited Mar. 30, 2004).

4. The World Factbook, at <http://cia.gov/cia/publications/factbook/index.html> (last visited Jan. 11, 2004).

5. Until the early 1990s, the Hutus comprised about 84% of the country's population, while Tutsis comprised about 15% of the country's population. A third ethnic group, the Twa, represented about 1% of the country's population. A planned census will establish current population figures. *Id.*

6. Numerous Rwandan refugees told me about their experiences. According to them, in 1959, three years before Rwanda's independence from Belgium, the majority ethnic group, the Hutus, overthrew the ruling Tutsi king. Over the next several years, thousands of Tutsis were killed, and some 150,000 were driven into exile in neighboring countries. Throughout their more than three decades in exile, the refugees experienced various forms of discrimination in their host countries. For example, in Uganda, the refugees occasionally experienced land and property confiscations. By the 1980s, the children of the Ugandan exiles formed a rebel group, the Rwandan Patriotic Front, and invaded Rwanda in 1990. The war between 1990–1994, along with several political and economic upheavals, exacerbated ethnic tensions.

7. See, e.g., PETER UVIN, *AIDING VIOLENCE: THE DEVELOPMENT ENTERPRISE IN RWANDA* (1998).

capital, Kigali, killing everyone on board.<sup>8</sup> Within minutes of the crash, ultranationalists, primarily representing the majority Hutu ethnic group, began implementing a plan to systematically eliminate their enemies, including members of the minority Tutsi ethnic group and moderate Hutus who favored a power-sharing arrangement with the Tutsis. During the war and genocide, which were carried out by armies, militias, and ordinary citizens, members of both ethnic groups killed members of the opposite group and sometimes members of their own group, although the Tutsis sustained the greatest losses. According to most estimates, more than 600,000 Tutsis were killed, amounting to an estimated seventy percent of all Tutsis in the country. In July 1994, the invading RPF forces defeated the Hutu regime and ended the killing, but approximately two million Hutu refugees—many fearing Tutsi retribution—fled to neighboring Burundi, Tanzania, Uganda, Zaire, and elsewhere. Another two million people abandoned their homes and fled to safer areas within the country. By the late 1990s, most of the externally located refugees had returned to Rwanda.<sup>9</sup>

After the RPF declared victory, it installed a new government, which from the start faced the monumental task of rebuilding a war-ravaged country. The conflict had resulted in the deaths of hundreds of thousands of people; the internal and external displacement of about half the country's eight million people; and the widespread destruction of public infrastructure such as legal and medical services, buildings, bridges, and roads. The death or displacement of millions of people, as well as the return to Rwanda of earlier "pre-1994" refugees, had severely disrupted land occupancy patterns and had put added pressure on limited land and housing resources: vast numbers of people were occupying other people's homes or living in temporary shelters. Perhaps more damaging than the physical consequences of the conflict was the severe psychological trauma of ordinary Rwandan citizens who had suffered considerable human and material losses. Of all citizens, women, both Tutsi and Hutu, were particularly hard-hit: many had been attacked—often raped;<sup>10</sup> had lost

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8. Raymond Bonners, *Unsolved Rwanda Mystery: The President's Plane Crash*, N.Y. TIMES, Nov. 12, 1994, at A1-2.

9. There is no consensus among experts regarding the number of people who died during the genocide or who fled into exile. The figures presented here represent approximations that are most frequently cited in the literature. See, e.g., The World Factbook, at <http://cia.gov/cia/publications/factbook/index.html> (last visited Jan. 11, 2004).

10. Catharine Newbury & Hannah Baldwin, *Profile: Rwanda*, in WOMEN AND CIVIL WAR: IMPACT, ORGANIZATIONS, AND ACTION 27, 30 (Krishna Kumar ed., 2001) (writing that at least two hundred thousand Rwandan women were victims of some form of sexual violence during the genocide. Many of these women bore the long-term emotional scars and physical consequences of torture and rape, often having been deliberately attacked by men who suffered from AIDS and other diseases.). While most writers have discussed the attacks of Hutu militiamen and army troops upon Tutsi women, some writers have discussed

husbands, children, parents, or siblings; or had been forced to abandon their land and property, including their homes, crops, livestock, and personal goods. Importantly, many women had lost both land *and* the male relatives through whom they could maintain previous landholdings or acquire new land allotments according to the provisions of customary law. Women were compelled to rebuild their shattered lives with limited resources and on their own.

Although many Rwandan women suffered considerably throughout the war, some women participated directly in the war and genocide or benefited indirectly from the hostilities. Yet this side of women's wartime experience has too often been overlooked by international observers. In much of the postwar literature, observers lump women together with children as "victims" or as "vulnerable groups."<sup>11</sup> They assume that within Rwanda's complex, hierarchical society, both women and children are situated at the bottom of the social hierarchy and therefore uniformly suffered unusual hardships during the war. Rwandan women did sometimes suffer disproportionately; but it is also true, as a few observers have reported, that throughout the war some women were not victims but were victimizers: these women killed or injured other Rwandans and at times incited others to violence (e.g., participation in rape). These women gained several things from their activities: money from victims who tried to pay for their lives; land and property of victims who had been killed, injured, or forced to flee; and recognition and promotions from their peers and superiors.<sup>12</sup>

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the attacks of Tutsi RPF troops upon Hutu women in revenge. *See, e.g.*, THE AFTERMATH OF RAPE: WOMEN'S RIGHTS, WAR CRIMES AND GENOCIDE (Elenor Richter-Lyonette, ed., 1997); Meredith Turshen & Clotilde Twagiramariya, 'Favours' to Give and 'Consenting' Victims: *The Sexual Politics of Survival in Rwanda*, in WHAT WOMEN DO IN WARTIME: GENDER AND CONFLICT IN AFRICA 101, 103 (Meredith Turshen & Clotilde Twagiramariya eds., 1998).

11. *See, e.g.*, GOVERNMENT OF RWANDA & UNICEF, SITUATION OF CHILDREN AND WOMEN IN RWANDA: SURVIVAL, DEVELOPMENT, AND PROTECTION 2 (2000) [hereinafter GOVERNMENT OF RWANDA & UNICEF].

12. From the perspective of women as victims, Human Rights Watch/Africa and Human Rights Watch Women's Rights Project present many personal accounts of rape and sexual violence during the Rwandan genocide in the book, SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDAN GENOCIDE AND ITS AFTERMATH (1996) [hereinafter HUMAN RIGHTS WATCH, SHATTERED LIVES]. A report from the United Nations Economic and Social Council, Commission on Human Rights, also offers several accounts of rape, the situation of women victims of violence, the legal framework for action with regard to rape and sexual violence, and the situation of women in detention centers. *See* Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, U.N. ESCOR, 54th Sess., Agenda Item 9(a), at 1, U.N. Doc. E/CN.4/1998/54 (1998). From the perspective of women as victimizers, several interesting accounts that detail women's complicity in the genocide are to be found in the book, AFRICAN RIGHTS, RWANDA NOT SO INNOCENT: WHEN WOMEN BECOME KILLERS (1995). In this book, the organization African Rights presents numerous case studies of women betraying hunted parties, participating in killing sprees, and organizing mass murders while

Despite the dissimilar experiences of Rwandan women during the war—either as victims or as victimizers—in the postwar period, many women share the common problem of land access.<sup>13</sup> These women are compelled to solve this problem in a variety of creative ways. By virtue of necessity, they become complex problem-solvers in that they must deal with their land access problems according to the contextual constraints and opportunities presented by a hugely transitional customary legal system on the one hand, and a disrupted, minimally functioning formal legal system on the other hand.<sup>14</sup> The point is that many Rwandan women currently find themselves caught within an insecure land tenure situation, being forced to assert land rights within the uncertain gap that exists between an inadequate customary system of land law and a modern system of land law that has not fully taken shape. Many women thus seek to “bridge the gap” between these systems of land law in situations where the law or policy (customary or formal) is unclear or not comprehensive, where the law or policy contains internal inconsistencies, or where formal law or policy contradicts customary practice. As will be argued, when Rwandan women bridge the postwar gap between land tenure systems, they are not simply victims; rather, they assume a variety of roles and take a number of complex approaches.

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in leadership roles. Of note, some women, while acting in their roles as local councilors, *Nyumbakumi* (ten-cell leaders), or *Responsables* (cell leaders), compelled others to kill and to steal property. *Id.* A particularly haunting account by Peter Landesman conveys the story of Pauline Nyiramasuhuko, Rwanda’s minister for women’s affairs in 1994, who incited Hutu men to rape thousands of female Tutsis. Peter Landesman, *The Minister of Rape*, THE NEW YORK TIMES MAGAZINE, September 15, 2002, at 82.

13. For an overview of Rwandan women’s postwar problems with land access, see UN High Comm’n for Refugees, Kigali Office, *Women’s Property Rights and the Land Question in Rwanda*, in WOMEN’S LAND AND PROPERTY RIGHTS IN SITUATIONS OF CONFLICT AND RECONSTRUCTION (Alfred Buregeya et al. eds., 2001), available at <http://www.undp.org/unifem/public/landrights> [hereinafter *Women’s Property Rights and the Land Question*].

14. In a recent article, Laura Nader and Elisabetta Grande comment that customary legal systems are constantly being invented throughout Africa. Such systems have evolved from an historical process of superimposition and mixing of components. In most communities, people are adept at inventing legal “tradition” within the body of customary law when the need arises. Moreover, the authors argue that customary legal systems flourish when a state ceases to invest enough resources to oppose their operation or offer an alternative option. Laura Nader & Elisabetta Grande, *Current Illusions and Delusions About Conflict Management: In Africa and Elsewhere*, 27 LAW & SOC. INQUIRY 573, 578–86 (2002).

### III. Rwanda's Legal System

#### A. Postwar Legal Structure

Rwanda's legal system is the Roman-Germanic system, which in its European origins gave rise to the French system and in turn influenced Belgian law. When Belgium assumed its mandate to control Rwanda after World War I, it also introduced its law in Rwanda through colonialism. During the colonial period in Rwanda (up to 1962), laws which were enacted by the Belgian Parliament and sanctioned by the Belgian king, as well as laws which were enforceable in the Belgian Congo, were automatically applicable in Rwanda. This "introduced" form of law in Rwanda, which derives its main legal source from written law, has evolved as a parallel legal system<sup>15</sup> alongside unwritten Rwandan customary law. After August 14, 1993, with the signing of the Arusha Peace Accords between the Government of the Republic of Rwanda and the RPF, Rwanda's Supreme Law consisted of two components: the new Arusha Peace Accords and the Rwandan Constitution of June 10, 1991.<sup>16</sup>

Rwanda's war and genocide of 1994 decimated its infrastructure, including its legal system. The country's new leaders were faced with the particularly challenging task of rebuilding the legal system in order to address massive war crimes. Tens of thousands of suspected war criminals had been apprehended and were being held for trial in grotesquely overcrowded community jails and urban prisons,<sup>17</sup> even though the judiciary was minimally operational: most courts had been damaged or destroyed during the war and virtually all legal professionals had been killed or were in flight.<sup>18</sup>

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15. See LAUREL ROSE, *THE POLITICS OF HARMONY: LAND DISPUTE STRATEGIES IN SWAZILAND* (1992) (discussing in detail Swaziland's parallel legal structure, which incorporates the dual systems of land law).

16. Peace Agreement Between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, August 4, 1993, art. 3 [hereinafter Arusha Peace Accords]. The Accords were brokered by the U.S. and allowed for the return of Tutsi refugees and a power-sharing agreement to be implemented in stages.

17. See GOVERNMENT OF RWANDA & UNICEF, *supra* note 11, at 8 (estimating the number of genocide suspects to be between 120,000 and 130,000 people).

18. *Id.* The number of genocide suspects was estimated at between 120,000 and 130,000 people. *Id.* An anonymous government report, "Justice System," stated that of an estimated corps of 1,100 magistrates in Rwanda before the war, less than 200 had reported for duty by early 1995, thus amounting to a shortfall of more than 80% of legal professionals. Justice System (1995) (unpublished report, on file with the Texas Journal of Women and the Law). In this same report, the authors stated that of the prewar civil police force numbering 500, less than 50 had reported for duty by early 1995, representing only 10% of the entire police force. A United Nations report found that by May 1996, only a small minority of the 258 acting judges and prosecutors in Rwanda had legal background. Moreover, the Ministry of Justice lacked resources to refurbish courtrooms, provide material

In view of the country's considerable need for legal reconstruction after the war, the United States Agency for International Development (USAID) put together a five-person "Rule of Law" investigative team, of which I was a member. Our team was assigned the task of determining the current status of Rwanda's legal system and exploring possibilities for gradual legal reconstruction. My specific task was to examine local-level customary legal institutions, the *gacaca*,<sup>19</sup> and to propose ways in which USAID might assist in rebuilding or even reconceptualizing such institutions.<sup>20</sup>

It was clear from the start of our investigations that postwar Rwanda presented a fascinating case study of legal evolution. Unlike many other African countries where customary legal systems have been gradually evolving over decades, the parallel legal system of Rwanda had been rendered barely functional, if not obsolete, by several years of civil war in the early 1990s. Rwanda's postwar leaders needed to rebuild the legal system from the ground up, and they needed to do so as quickly as possible in order to meet pressing postwar legal tasks. During the early days of legal reconstruction, the formal legal system was not equipped to meet the new legal needs related to genocide, while the informal (i.e., not codified) customary legal system was no longer fully relevant to meet the new and varied types of civil matters within resettled communities. As the process of legal reconstruction progressed after 1994, with courts being rebuilt, new legal professionals being trained, and new laws being passed, the country's legal consumers (i.e., users of the law) were regularly compelled to reinterpret legal rules at the local level, recreate customary legal forums (the *gacaca*), and seek new solutions to new types of legal problems.

Regarding the formal court system, officials have been busy rebuilding and restaffing the courts. With the approval of Rwanda's new Constitution on June 4, 2003, the jurisdiction of "Ordinary Courts" was specified in Articles 144-151.<sup>21</sup> The restructured court system, which at this writing is not yet fully operational, will consist of the following courts from the highest level to the lowest level: the Supreme Court; the High

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assistance to investigators, collect a library to replace the law books destroyed during the genocide, and train personnel. See Coomaraswamy, *supra* note 12.

19. *Gacaca* are customary legal forums in Rwanda in which community members meet to discuss local matters, including land and other disputes. The term "*gacaca*" refers in the local Kinyarwanda language to community members sitting together on the grass. On the subject of the "*gacaca*," see, for example, Charles Ntampaka, *Elements de Droit Coutumier Rwandais*, Université Nationale du Rwanda Faculté de Droit (n.d.); Filip Reyntjens, *Le gacaca ou la justice du gazon au Rwanda*, 40 POLITIQUE AFRICAINE 31 (1990).

20. At the time of my research in 1995, I believed that most Rwandan officials and expatriate advisers were more concerned with reconstituting the formal legal structure; however, the Rwandan government ultimately invested as much, if not more, energy and resources in reinventing a new system of *gacaca*.

21. RWANDA CONST. art. 144-151.

Court of the Republic; the Provincial Courts and the Court of the City of Kigali; and the District, Municipality, and Town Courts. The Appeals Court will no longer exist, and the Supreme Court, which currently has five divisions, will have only the Cassation Court, which is the court of last resort for cases in the current Courts of First Instance. Within the country's twelve provinces, the new Provincial Courts will replace the current Courts of First Instance; and within the 106 districts (formerly referred to as communes), the new District Courts will replace the current Canton Courts. At present, the Canton Courts have jurisdiction for minor criminal cases and small-sum civil suits, and the Courts of First Instance have general jurisdiction for all civil and criminal matters.<sup>22</sup>

Though courts at various levels can process land disputes, I focused on dispute cases involving women that entered the formal court system in the Canton Courts and the Courts of First Instance. Some of the cases involved land held by private tenure in Kigali town, but most of the cases involved land held by customary tenure outside Kigali town. In Kigali, land allocation is controlled by the City Council, and most people who desire land in Kigali apply for a plot of land from the Council and pay rent. The minority of landholders with sufficient resources apply and pay for a land title. Outside Kigali, land allocation is regulated by the Ministry of Lands, Human Resettlement, and Environmental Protection (MINITERE); and the Ministry delegates everyday control of land within communities to the local authorities. The vast majority of Rwandans live in rural areas outside Kigali, and most of them obtain their plot(s) of land through inheritance or a land grant, loan, or sale<sup>23</sup> from a community resident. In the newly-formed resettlement villages, the *imidugudu*, the local authorities are charged with allocating new land plots, whereas in some established villages that were resettled by returning refugees, the local authorities bear special responsibility for organizing land-sharing arrangements.

Most of the land disputes I examined in this study had already been processed through the local administrative hierarchy, from the lowest level to the highest level, before I discovered them en route to or in court. This hierarchy consists of the following levels from the lowest level to the highest level: the extended family, the cell (or the ten-cell), and the sector. There are no courts at these levels, but rather the traditional *gacaca*. The majority of land disputes in Rwanda are either resolved at the lowest administrative levels or are not processed beyond these levels.

After the war, throughout Rwanda, reorganizing communities were meeting in reconstituted customary forums, i.e., *gacaca*, at various levels of the administrative hierarchy and were hearing typical kinds of disputes

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22. RWANDA CONST. art. 88 (1991).

23. The sale of customary land is prohibited, but such sales are nonetheless becoming increasingly common.

(e.g., marital). At the same time, they were devising new rules about new types of problems, particularly related to land tenure: for example, they were discussing who among various “old caseload” and “new caseload” returnees<sup>24</sup> could settle on which land area; what kind of settlement permits could be issued to returnees; and how much money, if any, the returnees had to pay to cover the costs of land administration. In some communities, the authorities issued settlement permits, whereas in other communities, they did not issue such permits. In essence, the law was being interpreted and legal institutions were being reinvented in various ways from community to community on a day-to-day basis. The nature and extent of the variations seemed to depend upon the perceived needs and inventiveness of each community’s leaders and citizens.

In 2001, the Government of Rwanda passed the “*Gacaca Law*,”<sup>25</sup> which provided for the establishment of a system of *gacaca* courts to try genocide-related cases.<sup>26</sup> Currently, both the traditional and the modern *gacaca* courts exist side by side; the former have the mandate to process minor local-level disputes that are not connected to the genocide (e.g., ordinary land disputes, such as those involving boundaries), while the latter have the mandate to process serious criminal cases, mostly genocide-related cases (i.e., “acts of genocide,” including land and property confiscations).<sup>27</sup>

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24. “Old caseload returnees” is the special term commonly used to refer to refugees who left Rwanda more than ten years before the start of the 1994 war and genocide, mostly between 1959 and 1962, whereas “new caseload returnees” refers to refugees who left their homes for other parts of Rwanda or for neighboring countries during 1994. These terms came into widespread use after the 1994 war, although their origin is unknown.

25. ORGANIC LAW No. 40/2000 (Rwanda).

26. Peter Uvin, *The Introduction of a Modernized Gacaca for Judging Suspects of Participation in the Genocide and the Massacres of 1994 in Rwanda 3* (paper prepared for the Belgian Secretary of State for Development Cooperation) [hereinafter Uvin, *Modernized Gacaca*], (on file with the Texas Journal of Women and the Law), available at <http://fletcher.tufts.edu/humansecurity/pdf/boutmans.pdf>. In my 1995 report to USAID and in later publications, I speculated that the *gacaca* courts—at least in their traditional form—were better suited for the processing of minor civil disputes, such as land and property, than for serious criminal cases. See Laurel Rose, *Justice at the Local-Level: Findings and Recommendations for Future Actions* (1995) (report prepared for USAID; on file with the Texas Journal of Women and the Law); Laurel Rose, *Are Alternative Dispute Resolution (ADR) Programs Suitable for Africa?*, AFRICA NOTES, 1996, at 5–7. In subsequent years, some observers agreed with my general position, adding their own concerns about human rights and fair trials. But other observers took a different point of view, arguing that a modern system of *gacaca* courts might not constitute the ideal forum for dealing with serious genocide and war-related cases, but in the absence of an even minimally functioning legal system, they were the best option conceivable. See, e.g., Klaas de Jonge, *Interim Report on Research on Gacaca Jurisdictions and its Preparations*, July-December 2001 PENAL REFORM INT’L REP. 9, available at <http://www.penalreform.org/download/Gacaca/Jul-Dec2001.pdf>; Uvin, *Modernized Gacaca*, *supra*, at 5–7, 14.

27. When I returned to Rwanda in 2002 and 2003, I made numerous inquiries about the

### B. Customary Land Law

In precolonial times (before the 1920s), the Tutsi central court ruled the central and southern regions of Rwanda, while the northern region remained outside the central court's influence. In the northern region, land was traditionally held by corporate lineages in a system of clientship known as *ubukonde*. Under this customary system of land tenure, the first occupier of a land area, the lineage head, *umukonde*, allocated land to his parents, lineage members, and some clients from outside the lineage. A client from outside the lineage was expected to pay a small tribute to the lineage head in the form of beer or occasional labor to show appreciation for the land grant. In contrast, the central and southern regions in Rwanda that came under Tutsi rule were controlled by a different customary land tenure system, *isambu*, in which land belonged not to a lineage head, but to the divine Tutsi king, *mwami*, and was distributed by his chiefs, *abatware b'umukenke*, to clients.<sup>28</sup> The main difference between the two systems is that under the latter, *isambu*, land rights could be alienated from lineage heads and labor extractions were regularized.

During the 1920s, Belgium administratively unified the various regions of Rwanda under its indirect colonial rule. The effect of Belgium's unification efforts was to bring the "outside" northern regions under the central court's rule. At this time, the labor extractions under the *isambu* system were intensified in order to meet the needs of the colonial administration. This and subsequent transformations in customary land tenure made the labor prestations increasingly more onerous and stirred resentment among the clients, mostly Hutu.<sup>29</sup>

After Rwanda's independence from Belgium in 1962, customary land law was increasingly influenced by formal legal enactments at the national level. The Constitution of December 20, 1978 (Article 93) and of June 10, 1991 limited the scope of customary law, in general, by stipulating that a customary law shall only be in force as long as it has not been replaced by a formal law and does not contradict any part of the Constitution.<sup>30</sup>

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nature of the cases coming before the traditional *gacaca* courts and about those scheduled to come before the modern *gacaca* courts. The traditional *gacaca* courts were indeed hearing land cases, but I was not able to discover whether the modern *gacaca* courts had heard or were scheduled to hear land matters related to genocide.

28. JOHAN POTTIER, RE-IMAGINING RWANDA: CONFLICT, SURVIVAL AND DISINFORMATION IN THE LATE TWENTIETH CENTURY 183 (2002).

29. For a recent discussion and analysis of Rwanda's land history, see *id.* at 182–84. In addition, Catherine Newbury refers to the second system of land tenure as *igikingi*. CATHERINE NEWBURY, THE COHESION OF OPPRESSION: CLIENTSHIP AND ETHNICITY IN RWANDA 1860–1960, at 79 (1988); see also Burnet, *supra* note 2. Burnet writes that *igikingi* is a tract of land given by the chief for grazing cattle, and *isambu* is a portion of land received by inheritance, concession, donation, purchase, or entering into clientship.

30. RWANDA CONST. art. 93 (1978); RWANDA CONST. art. 98 (1991).

According to Rwanda's Civil Code and the Constitution of June 4, 2003, a judge may base his or her decision on customary law in the absence of formal law.<sup>31</sup> In practice, as this research project confirmed, uncertainties about customary law as well as contradictions between formal and customary law frequently arise: judges do not always know localized customary law, and local authorities are not always willing to implement within their communities judges' decisions that are based on a formal law that theoretically should replace a customary law.

Despite the overall changes to customary law in Rwanda, in the area of land law, customary law rather than formal law has prevailed. Most land continues to be acquired through localized customary rules of occupation. At the same time, the State "owns" all land and can displace the occupant at any time in return for just compensation. The rights of a land occupant are limited to his/her use of the land and the wealth it produces. Importantly, in 1959, just before Rwanda's independence, the allocative powers of customary authorities were reversed, such that by a government decree of July 11, 1960, individual property rights under customary tenure were recognized based on ownership rights rather than user rights.<sup>32</sup>

The shift from customary land use rights to customary land ownership rights precipitated land fragmentation.<sup>33</sup> This fragmentation happened because males were increasingly inheriting land as a right, not because they needed land for sustenance. Land, which was held by the lineage, was distributed to each male descendent of the lineage for constructing a house and for cultivating. Forests and grazing land remained a common holding of the lineage, and the lineage head managed these resources. The egalitarian ethic that developed—i.e., the idea that all sons have a right to land—led to the incessant subdivisions of land to satisfy the claims of sons. With each passing generation, a family's landholding was increasingly fragmented, as illustrated in a study which reported that by 1986 smallholder families were working an average of 1.2 hectare of land each, and consequently, each of a family's four sons (an average-size family in Rwanda) could be expected to inherit only 0.3 hectare. In essence, the sons' expected inheritance would be inadequate because a household of four persons reportedly needs anywhere from one to two hectare to meet basic subsistence needs.<sup>34</sup> Another study reported that in 1960 the average

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31. C. CIVIL NO. 42/1988 art. 3 (Rwanda); RWANDA CONST. art. 21 (2003).

32. See CATHERINE ANDRÉ, RWANDAN LAND: ACCESS, POLICY, AND LAND REFORM 6-7 (1998), at International Documentation Network of the Great Lakes Region, <http://129.194.252.80/catfiles/1450.pdf> (on file with the Texas Journal of Women and the Law).

33. See Land Tenure and Property Rights 6-7 (unpublished paper, on file with the Texas Journal of Women and the Law). This unpublished paper was circulating in Rwanda in 1995 among government and expatriate advisers.

34. Hartmut Diessenbacher, *Explaining the Genocide in Rwanda*, 52 LAW & STATE 80

size of a family farm holding was two hectares; in 2001 almost sixty percent of households had less than 0.5 hectare.<sup>35</sup>

Although Rwandan women are disadvantaged in many areas of customary law,<sup>36</sup> the most significant area of discrimination lies in the area of land access and control. One may argue that the provisions of Rwandan customary land law are contrary to the provisions of the Rwandan Constitution of June 4, 2003 as well as to the International Covenant on Economic, Social and Cultural Rights, which was ratified by Rwanda in 1975.<sup>37</sup> Both of these instruments recognize the equality of rights between men and women.<sup>38</sup>

Before the Rwandan Civil War of the early 1990s, women in most communities did not own or inherit land, and they exercised limited rights to control and dispose of property. According to prewar Rwandan customary legal practice, a woman usually did not inherit land from her father. A married woman received land from her husband to provide for the needs of her husband, their children, and herself. When a woman's husband died, she was supposed to be allowed to retain usufructuary rights to her husband's land and to remain in the matrimonial home, holding both in trust for her male children according to the customary rules of patrilineal inheritance from father to son. If the marital union had produced no

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(1995). In addition, the Government of Rwanda's Land Policy states in Article 3.2 that 0.75 hectare is the minimum plot size that can satisfy a family's nutritional requirements, and the Land Policy cites the United Nations Food and Agriculture Organization as setting a threshold of 0.9 hectare as the minimum economically feasible plot size for a family. REPUBLIC OF RWANDA, MINISTRY OF LANDS, HUMAN RESETTLEMENT AND ENVIRONMENTAL PROTECTION, NATIONAL LAND POLICY DRAFT (July, 2001).

35. Christopher Huggins, *Preventing Conflict through Improved Policies on Land Tenure, Natural Resource Rights, and Migration in the Great Lakes Region*, 2(1) ECO-CONFLICTS (African Centre for Technology Studies), January 2004.

36. WOMEN'S COMM'N FOR REFUGEE WOMEN & CHILDREN, RWANDA'S WOMEN AND CHILDREN: THE LONG ROAD TO RECONCILIATION 7 (1997), available at <http://www.womenscommission.org/reports/rw/rwanda.html> [hereinafter RWANDA'S WOMEN AND CHILDREN: THE LONG ROAD TO RECONCILIATION]. (last visited Feb. 24, 2004) (on file with the Texas Journal of Women and the Law) Customary law holds that women are not the primary decision-makers in households. Therefore, married women are generally expected to seek permission from their husbands on many matters, such as the right to conduct business or to travel. On the other side of Rwanda's parallel legal system is modern law, which also grants lesser legal significance to women than to men. Therefore, according to national citizenship law, women cannot pass on their ethnicity or nationality to their children; instead, the children of a marital union inherit the ethnicity and the nationality of their father. The Women's Commission for Refugee Women and Children also discusses some of the other postwar legal problems of women in RWANDA'S WOMEN AND CHILDREN: THE LONG ROAD TO RECONCILIATION, *supra*.

37. RWANDA CONST. art. 11; International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force on Jan. 3, 1976).

38. See *Women's Property Rights and the Land Question in Rwanda*, *supra* note 13, at 41.

children, a widow could stay on her husband's land if she was on good terms with his relatives. Sometimes a widow married the brother of her deceased husband (the practice of levirate marriage) and thus remained in her marital community. Because women could not ordinarily inherit land from their parents or husbands, they could not apply for agricultural credit or loans. Customary practice sometimes enabled daughters to receive land as a gift from their father or when they had no brothers, although they still did not have an automatic right of inheritance.<sup>39</sup> In general, under the provisions of customary law, each woman's land rights were always contingent upon the goodwill of her in-laws or consanguineal family members (mostly fathers or brothers).

Of further note, according to prewar Rwandan formal legislation,<sup>40</sup> a man could marry only one wife, although in practice many men married one "legal" wife and took on numerous other so-called "illegal" wives. A legal marriage, which requires proof of celibacy, marital status (i.e., single, widowed, or divorced), and a birth certificate, is contracted according to a civil procedure at a district office. A couple must marry first at a district office before they can marry in a church. Many couples do not contract a civil marriage at the district office because they are put off by the bureaucratic hassle and expense. A so-called "illegal" or "non-legal" marriage is any one of several types of unions between a couple (e.g., informal cohabitation and cohabitation following traditional marriage) that is not registered at a district office. Although a couple may perform the rites for the three forms of marriages—traditional, civil, and church—only the civil marriage is a legal marriage. The informal practice of polygyny, in which men take on two or more "illegal" wives (occasionally in addition to a "legal" wife), had a profoundly negative effect before the war, and continues to have a negative effect to this day on the inheritance rights, including to land, of the "illegal" wives and their children, both sons and daughters. The "illegal" wives have no recognized right to their "husband's" land or property, while their children only have a right to their father's land or property if he formally recognized them at the district office and added their names to his identity card.

After Rwanda's war, the ongoing debate about customary land law reform, including issues related to women, intensified. Because hundreds of thousands of people had died during the war and millions more had

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39. Jennie Burnet explains that under the traditional practices, a woman in need of land could receive it as *urwibutso*, a gift from her elderly father; as *intekeshwa*, a gift from her parents following her wedding ceremony; or as *inkuri*, a gift from her father's family when she presented them with a newborn baby (in Ruhengeri Province). These customs were practiced less in the years immediately before the war and are now rarely practiced because land is scarce and a woman's brothers tend to make sure that their sister does not receive land, or when she does, they pressure her to relinquish it. Burnet, *supra* note 2.

40. ORGANIC LAW NO. 21/130 (Rwanda).

abandoned their land, villages in the postwar period came to be populated by old caseload returnees (pre-1990s), new caseload returnees (1990s), and new caseload refugees from other parts of Rwanda (1990s). Many of these returnees and refugees were unmarried women with dependents to care for. Also of importance, during the war, many local leaders had orchestrated genocidal activities, had fled their communities, or had been killed. After the war, many surviving local leaders returned to their communities, even though some were tainted by genocide (sometimes judged guilty by association or by ethnicity). In the months after the war, both prewar leaders and many new leaders assumed positions of authority in the reconstituted communities. With many men in exile, dead, or discredited, an unprecedented number of women assumed positions of authority.

In the postwar reconstruction period, communities were in turmoil as a consequence of the cataclysmic population shifts. Most communities were characterized by a discontinuity in land tenure: many former residents did not know if they could maintain their land rights in their original villages or if they could legitimately claim land rights in new villages. The unwritten rules of customary land law, which had evolved over many decades to regulate land relations in stable villages where people were bonded by long-term ties of kinship and cooperative friendship, were not always adequate to accommodate the complex land needs within the reassembled or newly created postwar villages. Under these conditions, customary law in general, but more especially customary land law, was routinely called upon to address new and difficult challenges—there were new “law jobs”<sup>41</sup> to undertake, new heterogeneous communities composed of strangers to serve, and new authorities to interpret and apply in new ways the rules and practices of customary land law. The postwar transition in Rwanda had created an open space in which, by urgent necessity, these rules and practices had to be radically reinvented. Importantly, this space provided women, who had endured some disadvantages under prewar customary land law, with many new opportunities, but also with some constraints, for addressing their limitations within Rwanda’s land control hierarchy and for reinventing customary land law on a case-by-case basis.<sup>42</sup>

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41. EDWARD E. HOEBEL, *THE LAW OF PRIMITIVE MAN: A STUDY IN COMPARATIVE LEGAL DYNAMICS* (1954).

42. In Rwanda, before the war of 1994, women sometimes maneuvered within the customary legal system in order to control land and property. See, e.g., Villia Jefremovas, *Loose Women, Virtuous Wives, and Timid Virgins: Gender and the Control of Resources in Rwanda*, 25 *CANADIAN J. AFR. STUD.* 378, 381–91 (1991). Jefremovas, in her discussion of brickmakers in Rwanda, provides an example of how three elite women, while engaging in their enterprises, exploited poorer men and women. They had found an opportunity associated with Rwanda’s socioeconomic hierarchy. Jefremovas explains that women could not gain formal access to land, although some very highly placed women could act as patrons by using land and cattle entrusted to them by husbands or lovers.

C. *Past and Pending Land Legislation and Policy*

Throughout the postcolonial period up until the civil war and genocide of 1994, several researchers had focused on the specialized topic of Rwandan land tenure, frequently observing that an ever higher population growth rate and density was leading to land and resource scarcities in many communities.<sup>43</sup> A number of these researchers cited Rwanda as a prime example, in the comparative world context, of a country with environmental security problems.<sup>44</sup> In a paper about the “Malthusian trap” in Rwanda, Catherine André and Jean-Philippe Platteau looked at land relations in a densely populated community in northwest Rwanda, arguing that acute competition for land had resulted in rapid changes in customary land tenure arrangements, including unequal land distribution, land dispossession, land subdivisions and overcultivation, pervasiveness of land disputes, and rising tensions in social relations.<sup>45</sup>

In light of various research findings and in response to the expanding demand for land reform, government planners intensified their efforts to find solutions to the country’s land tenure problems through policy and legislation. Immediately before and after Rwanda’s independence from

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43. Rwanda’s population exploded in the twentieth century, rising from about 1 million people in 1900, to 2.3 million people in 1955, to 7.1 million people in 1991, to a projected 8.3 million people in 2000. Based on projections made in 1997, approximately 44.9% of the population in 2002 were expected to be young people below the age of 15. *Id.* at 14. The population growth rate stood at about 3.1% in 1997, and the population density of the country was 303 people per square kilometer in 2000. GOVERNMENT OF RWANDA & UNICEF, *supra* note 11, at 10; *see also* Robert E. Ford, *Marginal Coping in Extreme Land Pressures: Ruhengeri, Rwanda, in* POPULATION GROWTH AND AGRICULTURAL CHANGE IN AFRICA, 145, 155–60 (B. L. Turner et al. eds., 1993); PANCRACE TWAGIRAMUTARA, *ETUDE DU REGIME FONCIER AU RWANDA: PRESSION DÉMOGRAPHIQUE, INTENSIFICATION AGRICOLE, SYSTÈMES DES DROITS FONCIERS ET PRODUCTIVITÉ AGRICOLE* (World Bank) (1988). *See also* Jacques J. Maquet & Saverio Naigiziki, *Les Droits Fonciers dans le Ruanda Ancien*, REVUE CONGOLAISE 330 (1957) on land issues in the late colonial period.

44. *See, e.g.*, Valerie Percival & Thomas Homer-Dixon, *Environmental Scarcity and Violent Conflict: The Case of Rwanda*, in OCCASIONAL PAPER, PROJECT ON ENVIRONMENT, POPULATION AND SECURITY (Washington, D.C.: American Association for the Advancement of Science and the University of Toronto 1995); *and cf.* Valerie Percival, *Correlation or Causation? Environmental Scarcity and Violent Conflict: The Case Studies of South Africa and Rwanda* 89–118 (1995) (unpublished M.A. thesis, Norman Paterson School of International Affairs, Carleton University) (on file with NPSIA/Carleton University). The literature within the emerging field of “environmental security” is diverse, melding discussions on democracy and development aid, among other topics, with discussions on the environment. *See, e.g.*, VALERIE A. BROWN ET AL., *RISKS AND OPPORTUNITIES: MANAGING ENVIRONMENTAL CONFLICT AND CHANGE* (1995); Robert E. Ford, *The Rwanda Tragedy: A Personal Reflection*, HUNGER NOTES, Summer 1996, at 12; Thomas F. Homer-Dixon, *Environmental Scarcities and Violent Conflict: Evidence from Cases*, INT’L SECURITY, Summer 1994, at 5.

45. Catherine André & Jean-Philippe Platteau, *Land Relations Under Unbearable Stress: Rwanda Caught in the Malthusian Trap*, 34 J. ECON. BEHAV. & ORG. 1 (1998).

Belgium in 1962, one attempted solution, the development of farming communities known as *paysannat*, was initiated in some regions of the country in order to relieve the congestion in overpopulated areas and to increase agricultural production. Under the *paysannat* system, the government distributed plots of land to nuclear families, which received a certificate “guaranteeing” their rights to use the land as long as they met certain requirements that varied from region to region.<sup>46</sup> In the *paysannat*, houses were built in rows along a road and were surrounded by the families’ fields and the communal fields where cash crops were cultivated by the entire settlement. Despite the planners’ high expectations, the *paysannat* policy ended up being little more than a stopgap measure since the new farming areas gradually became overpopulated and therefore did not realize an agricultural surplus.

Over the years, the problem of land scarcity continued to worsen. Meanwhile, ethnic tensions exploded on several occasions between 1959 and 1973, resulting in the flight of several outward waves of Rwandans—mostly Tutsi—to Uganda, Tanzania, Kenya, and other countries. By the late 1980s, the RPF, which was based in Uganda, began to push for a solution to the refugees’ problems, primarily their insecure political status in their host countries. Importantly, the RPF began to push for the refugees’ repatriation to Rwanda. On August 14, 1993, the Arusha Peace Accords, which consisted of five protocols, were signed in Arusha, Tanzania.<sup>47</sup> In the Protocol on Repatriation of Refugees and the Reinstallation of Displaced People, Article 4, the Accords recognized that the right to property is fundamental and should be protected, but they also stipulated that refugees who had been absent from the country for more than ten years should not reclaim their properties already occupied by other people.<sup>48</sup>

The Arusha Peace Accords satisfied neither the extremist Hutu nationalists nor the Tutsis in exile, resulting in the proverbial “last straw” that led to the war and genocide of 1994. As explained earlier, during the next two years, hundreds of thousands of people fled their homes to destinations outside Rwanda. During the same time period, hundreds of thousands of refugees returned to Rwanda. Many refugees returned alone or in small groups, but most refugees poured into the country within two huge, inward waves: the first wave, in July 1994 following the installation of the RPF, consisted of those Tutsi refugees who had fled the country in

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46. See Burnet, *supra* note 2.

47. Arusha Peace Accords, *supra* note 16 (Protocol on the Repatriation of Rwandese Refugees and the Resettlement of Displaced Persons).

48. *Id.* In practice, as I discovered during the course of field research, the “ten year principle” of the Arusha Peace Accords frequently conflicted with the “fundamental right to property principle” when an old caseload and a new caseload refugee returned to Rwanda and claimed the same land.

the 1950s and early 1960s; and the second wave, in 1996, consisted of those Hutus who had fled the country in 1994. The land tenure situation became chaotic, and a national land policy and legislation were needed more urgently than ever before to address the daunting land allocation and resettlement problems faced by communities.

In the years immediately following the conclusion of the war in 1994, the new government debated how best to settle the returning refugees. By 1997, the government began to implement the controversial *imidugudu* land policy, which similar to the earlier *paysannat* system, aimed to move and regroup the country's entire rural population, including returning refugees, from the traditionally dispersed hillside settlements to concentrated villages. This new policy, which had many positive objectives (e.g., security, development of infrastructure, and increased land productivity through land consolidation), also brought accusations of negative effects (e.g., injustices in land sharing/distribution and compulsory resettlement). Importantly, the government recognized, at least to some degree, that women's postwar land needs should be accommodated within policy. For the most part, the *imidugudu* policy provided housing to female-headed households without discrimination.<sup>49</sup> In some *imidugudu*, female-headed households far outnumbered male-headed households,<sup>50</sup> and some female-headed households were given preferential treatment with housing assistance through *imidugudu* resettlement.<sup>51</sup> Unfortunately, to the detriment of some women, the *imidugudu* policy gave local authorities considerable discretionary powers to grant or deny land rights to prospective or current residents.<sup>52</sup>

In 1996, the Ministry of Gender, Family and Social Affairs in Rwanda introduced a draft bill on inheritance and marriage settlements, the main

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49. See Government of Rwanda, Ministry for Lands Human Resettlement and Environmental Protection, Brookings Initiative in Rwanda: Land and Human Settlement 75 (2001) [hereinafter Brookings Initiative in Rwanda] (citing "no discrimination against women" as one of the objectives of the new land policy).

50. Stephen Jackson, Relief, Improvement, Power: Motives and Motifs of Rwanda's Villagisation Policy, available at <http://www.ucc.ie/ucc/depts/sociology/rip/essays/rwanda.htm> (last visited on Feb. 19, 2004) (on file with the Texas Journal of Women and the Law).

51. See, e.g., Brookings Initiative in Rwanda, *supra* note 49 at 85 (describing special efforts being made to assist widows and women's groups with housing and economic empowerment); Burnet, *supra* note 2. For additional discussions of the *imidugudu* program, see generally, DOROTHEA HILHORST & MATHIJS VAN LEEUWEN, IMIDUGUDU, VILLAGISATION IN RWANDA; A CASE OF EMERGENCY DEVELOPMENT? (Wageningen Disaster Studies, Disaster Sites Series No. 2, 1999) (analyzing the achievements of the *imidugudu* program and its shortcomings); HUMAN RIGHTS WATCH, UPROOTING THE RURAL POOR IN RWANDA (2001), (describing many of the injustices of the *imidugudu* program); available at <http://www.hrw.org/reports/2001/rwanda/index.htm> (last visited Mar. 8, 2004); Jackson *supra* note 50.

52. I observed and focused on these discretionary powers during my research.

innovations of which were to allow a daughter to inherit land from her parents and to allow a wife to manage conjugal property and inherit her deceased husband's property.<sup>53</sup> A commission from the Ministry initiating the project, and another from the Ministry of Justice, produced a single draft document.<sup>54</sup> This bill, which became the Rwandan Civil Law on Property, (referred to herein as the "Matrimonial Regimes, Liberties and Succession Law of March 2000") covered the three types of matrimonial regimes (community of property, limited community of acquests, and separation of property), donations, and successions.<sup>55</sup> It extended women's property inheritance rights to property within the matrimonial regime of community property (Article 70) and within the family of birth (Articles 43 and 50).<sup>56</sup> These articles are often interpreted to mean that a widow can take over her husband's land rights, an unmarried woman who is the sole surviving descendent of the patrilineal group can inherit the land rights of the group, and a married woman who has neither brother nor sister can inherit the land rights of her parents. The Matrimonial Regimes, Liberties and Succession Law of March 2000 also contained several provisions which extended considerable discretionary powers to the Council of Succession (family council) to deny, limit, and rescind the inheritance rights of a surviving spouse to his or her deceased spouse's property (in practice, usually a widow's rights to her husband's property): for example, Article 53, part 4, provides that a legal heir can be excluded if he or she failed to care for the deceased during his or her last days of illness;<sup>57</sup> Article 70, part 6, provides that a surviving spouse who fails to care for the deceased's children will forfeit three quarters of his or her succession;<sup>58</sup> and Article 76 provides that a Council of Succession can petition for the forfeiture of the surviving spouse's right to alienate or otherwise transact the patrimony, if such actions are determined to be damaging to the household.<sup>59</sup> In effect, each Council of Succession is granted considerable powers to determine the adequacy of an heir's care for the deceased before his or her death, the adequacy of an heir's care for the deceased's children, and the appropriateness of an heir's property transactions.

Some legal scholars comment that the guidelines presented in this

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53. Women's Property Rights and the Land Question, *supra* note 13, at 42.

54. *Id.* in which the Matrimonial Regimes, Liberties and Succession Law of March 2000 is discussed. See also the *Journal Officiel de la République Rwandaise*, 15 November 1999.

55. C. CIV. No. 22/99 of 12/11/1999 (the Matrimonial Regimes, Liberties and Succession Law of March 2000) (Rwanda). According to my observations, this law is also commonly referred to as the "1999 Inheritance Law" or the "1999 Property Law."

56. Article 43 stated, "All children, without distinction between girls and boys . . . have a right to the partition made by their ascendants." *Id.*

57. *Id.* art. 53.

58. *Id.* art. 70.

59. *Id.* art. 76.

legislation must be interpreted in local settings, thus leading to the possibility that women's access to land will be circumvented in situations where individual women are considered not to qualify.<sup>60</sup> Some legal scholars<sup>61</sup> also question whether the provisions of the Matrimonial Regimes, Liberties and Succession Law of March 2000 adequately cover women's rights to land or whether their rights need to be further specified in the Draft Land Law currently under consideration.<sup>62</sup> In fact, the Matrimonial Regimes, Liberties and Succession Law of March 2000 specifically mentions land in only two articles: Article 90, which specifies that land within an estate is subject to land regulations,<sup>63</sup> and Article 91, which specifies that land within an estate that is less than one hectare must not be subdivided among the heirs but must be sold or exploited collectively by all heirs.<sup>64</sup>

The Draft Land Law, as of late 2003, incorporated numerous provisions—most of which have implications for women's land interests. In a summary and commentary on the draft policy for national land reform, Lisa Jones, a Protection Officer for the United Nations High Commission for Refugees (UNHCR), outlined what Rwanda's new land policy aims to accomplish: the unification of the two systems of land law under one governing system of written land law; the "proper" management and development of land for the benefit of the whole country; the

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60. Some widows—including those who were not married with bridewealth—may be deemed non-legal widows. Commenting on the bridewealth issue, Catharine Newbury and Hannah Baldwin explain that many Rwandan widows, upon returning from refugee camps in the Congo (Zaire) in 1996, were denied access to their husband's land. Newbury & Baldwin, *supra* note 10, at 34–35. In some cases, the problem was that the couple had only formed an unofficial common law union: this had occurred when an impoverished young man, who was unable to pay the bridewealth and other costs associated with the formal "legal" registration of a marriage, had never registered his union at the district office. *See also* Catherine André, *Accès et occupation des terres dans le nord-ouest du Rwanda en 1993*, in *DEMOCRATIE, ENJEUX FONCIERS ET PRATIQUES LOCALES EN AFRIQUE; CONFLITS, GOUVERNANCE ET TURBULENCES EN AFRIQUE DE L'OUEST ET CENTRALE* 202, 203–04 (Paul Mathieu et al. eds., 1996); Catherine André, *L'Accès des Femmes à la Terre au Rwanda*, 12 *INTERCOOPERANTS AGRIDOC, DOSSIER: FONCIER RURAL: ENJEUX ET PERSPECTIVES* 23 (1998).

61. I believe that these scholars represent at least two different positions: on the one side, it is argued that the Matrimonial Regimes, Liberties and Succession Law of March 2000 adequately covers women's land rights under property considerations, and on the other side, it is argued that women's land rights should be fully specified within the Draft Land Law. *See* Heather B. Hamilton, *Rwanda's Women: The Key to Reconstruction*, J. HUMANITARIAN ASSISTANCE (2000), at <http://www.jha.ac/greatlakes/b001.htm>.

62. The Draft Land Law is a draft form of the proposed land law which at the time of the research (2002–2003) was circulating among members of the Transitional National Assembly and other interested parties (unpublished, on file with the Texas Journal of Women and the Law). The bill was being debated in both official and unofficial circles and revised periodically.

63. C. CIV. No. 22/99 art. 90.

64. *Id.* art. 91.

reorganization and redistribution of land for optimal production; the prohibition of ineffective traditional land use practices; the protection of the environment; a greater degree of transparency and security in landholding; the description and recording of all landholdings in the country (land registration and titling); and some solutions to the problems of the landless.<sup>65</sup> Various observers have criticized the Draft Land Law for promoting land expropriation, land consolidation, and compulsory human resettlement toward the end of public interest, without sufficiently guaranteeing private property rights. They also comment that no mention is made of due process and compensation.<sup>66</sup> Regarding women's land interests, the Draft Land Law maintains gender-neutrality in all its provisions, but it refers directly to women only in Article 4, which states that "[b]oth sexes have equal rights on land ownership," and in Article 8, which specifies that "[a]t each level, the land commission shall include both men and women."<sup>67</sup> Unfortunately, the law does not specify how women's land interests can and should be guaranteed in practice.

At present, Rwandan law continues to recognize two types of land access rights: private individual ownership, regulated by statutory law, and customary access, regulated by indigenous law. Most Rwandans hold land according to localized customary access. Although the Rwandan government passed land legislation in 1960 and 1961 after Rwanda's independence from Belgium, with the aim of moving the customary land access system toward the statutory system (mostly through the registration of customary land rights by the state), this merging has not yet occurred. In addition, the Rwandan government passed the Statutory Order No. 09/76 of March 1976, which is the land law currently in effect, with the aim of avoiding the development of a land market by specifying that the Rwandan state is the sole owner of all land.<sup>68</sup> The effect of this law is that all land access is usufructuary and granted on behalf of the state. The 1976 law prohibited the sale and mortgaging of land, but in practice, land sales and rentals became increasingly common. As will be discussed in the following sections, the inconsistencies between law and practice have given rise to legal uncertainty, while poorly managed and illegal land transfers have resulted in tenure insecurity.

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65. See Lisa Jones, *Summary of and Comments on Draft Policy for National Land Reform* (2001); REPUBLIC OF RWANDA, MINISTRY OF LANDS, HUMAN RESETTLEMENT AND ENVIRONMENTAL PROTECTION, NATIONAL LAND POLICY DRAFT (July 2001).

66. This statement is based on personal communications with several expatriate land tenure experts who have requested confidentiality.

67. Draft Land Law, *supra* note 62.

68. C. Civ. No. 09/76 (Rwanda).

#### IV. The Gap between Rwandan Customary Land Law and Land Legislation: Constraints and Opportunities for Women

In many African countries, customary land tenure systems are evolving gradually because the customary rules of land access and land use are flexible. Community members regularly interpret and adjust rules on a case-by-case basis with the goal of improving their individual land access and clarifying their land use rights. Sometimes customary rules are influenced by ongoing historical events in the larger context, such as when a colonial or national system of land law is imposed as a parallel system. In this situation, customary rules are juxtaposed with other competing rules, and community members may discover opportunities for selecting among rules, i.e., “rule shopping,” or for selecting among forums, i.e., “forum shopping.”<sup>69</sup>

Sometimes customary rules are influenced by catastrophic events, such as during natural disasters (e.g., unnaturally high death rates caused by AIDS)<sup>70</sup> or social/political disruptions (e.g., population movements caused by war). In these situations, customary rules are rendered less meaningful, and community members may be presented with opportunities for creatively interpreting rules. Nonetheless, while some members may discover new opportunities for land access and land use, others may encounter constraints.

Rwanda presents a fascinating case study in which customary rules of land tenure were first influenced by colonial impositions and later by catastrophic events associated with the war and the spread of AIDS. In postwar Rwanda, many people—particularly women—were compelled to maneuver within a shattered customary land tenure system: the war had altered the system beyond the normal evolutionary process, such that customary rules no longer had the collective will of communities behind

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69. A woman disputant engages in “forum shopping” when she selects the legal forum among several possibilities that seems most likely to process her case in her favor. Keebet von Benda-Beckmann, *Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra*, 19 J. LEGAL PLURALISM & UNOFFICIAL L. 117, 117 (1981). As might be expected, case studies indicate that disputants usually prefer to choose their forums and not be forced to respond to their opponents’ choices. See, e.g., *id.* at 127–35 (analyzing a case study in which disputants vigorously engaged in forum shopping); E. A. B. van Rouveroy van Nieuwaal, IN SEARCH OF JUSTICE: DIFFERENT LEVELS OF DISPUTE SETTLEMENT AMONG THE ANUFOM IN NORTH TOGO (Afrika-Studiecentrum 1981).

70. See Chris Roys, *Widows’ and Orphans’ Property Disputes: The Impact of AIDS in Rakai District, Uganda*, 5 DEV. IN PRAC. 346 (1995). Roys discusses how the HIV/AIDS crisis in Uganda during the early 1990s, especially in the Rakai District, resulted in the premature deaths of many adults and produced unusual numbers of orphans and widows. According to his assessment, these orphans and widows were unsure about their land and property rights, with the consequence that they became embroiled in many disputes about such rights. In one case, he discusses in detail how a widow successfully reinterpreted customary law at the Magistrates Court in order to maintain property rights.

them. Essentially, the members of reconstituted communities—returning old caseload refugees or relocated new caseload refugees—often did not know the localized rules, or they rejected the rules as irrelevant and unworkable. In some such communities, women whose land rights were limited under customary law before the war and whose land rights had not yet been specified by and secured within modern land legislation after the war, found themselves precariously situated between two systems of land tenure—one changing and the other in-the-making. Women “bridged the gap” between the systems in situations where the law or policy (customary or formal) was unclear or not comprehensive (e.g., the Matrimonial Regimes, Liberties and Succession Law of March 2000); where the law or policy contained internal inconsistencies (e.g., the Arusha Peace Accords of 1993); or where formal law and policy contradicted customary practice (e.g., the *imidugudu* resettlement policy of 1997).

Women's status is changing in postwar Rwandan communities, both within the law and in practice. Most women—many of whom assumed control of households and communities after the war<sup>71</sup>—have been compelled to assert greater land rights than are specified either within customary or modern law: it has been critical that they do so in order to ensure their personal, familial, communal, and national well-being.<sup>72</sup> In essence, women, by urgent necessity, have become *creative interpreters* of

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71. See e.g., Kimberlee Acquaro & Peter Landesman, *Out of Madness, A Matriarchy*, MOTHER JONES, Jan. & Feb. 2003, at 58; CLAIRE CHAVAROCHE, TERRE DES VEUVES: JOURNAL DU RWANDA (2001) (describing the lives of some Rwandan women who found themselves without husbands or parents after the war); Judy El-Bushra & Cécile Mukarubuga, *Women, War and Transition*, 3 GENDER & DEV. 16 (Oct. 1995), at <http://www.tandf.co.uk/journals/titles/13552074.asp>; Laurel Rose, *African Women in Post-Conflict Societies: Rethinking Legal Research and Program Implementation Methodologies*, 23 POL. & LEGAL ANTHROPOLOGY REV. 107, 109–10 (2000) [hereinafter Rose, *African Women in Post-Conflict Societies*]; Hendrik Spierenburg, *Search of Peace: Some Social, Political and Economic Effects of a Refugee Situation* (1996) (unpublished M.D.E. thesis, Dalhousie University); Julia Spry-Leverton, *Rwanda's Women Rebuild the Country*, Unpublished paper prepared for UNICEF (n.d.); Twagiramariya & Turshen, *supra* note 10, at 101–17.

72. See Rose, *African Women in Post-Conflict Societies*, *supra* note 71, at 109–13. After the war, the ratio of men to women in Rwanda had decreased, due to the fact that many men had been killed, had fled to neighboring countries, or had been imprisoned. Hamilton, *supra* note 61. In some areas of Rwanda, between one-third and one-half of the women had become widows. Rose, *African Women in Post-Conflict Societies*, *supra* note 71, at 109. Today, about 34% of Rwandan households are women-headed, an increase of 50% since 1991; of the female household heads, more than 60% are widows. As concerns household and farm production, women are primarily responsible for household work, child rearing, water and fuel wood collection, and farming. Despite the fact that women produce 70% of the country's agricultural output, many women do not have adequate access to land. Hamilton, *supra* note 61. Of further note, after the war, a number of women assumed positions of leadership in local communities and, to a lesser extent, at the national level. For additional statistical data on the population of women in Rwanda today, refer to Hamilton.

unclear or changing norms, laws, and practices, thus filling in the gaps within and between land tenure systems, and seeking to overcome constraints and to pursue opportunities.

An example can help illustrate a postwar opportunity for land access. In his book, Johan Pottier describes a situation between a brother and a sister whom he has known since the mid-1980s.<sup>73</sup> In this case, the woman, whose Tutsi husband had passed away in the genocide, returned to her father's land after the war. Her brother "moved up a bit" on the land, in order to accommodate her and her son when they returned.<sup>74</sup> Unlike many other war widows, she was fortunate to have positive sibling relations that enabled her to settle on her family's land.

Another example illustrates a postwar constraint to land access. In a 1996 publication, Human Rights Watch describes the situation of a Hutu widow who had been married to a Tutsi man before the war.<sup>75</sup> After the war, she returned to her family home because the Interahamwe militia had killed her husband. She had been spared during the war because she was a Hutu. Some months later, when she tried to return to her husband's—and her—prewar home, her Tutsi in-laws drove her away. They accused her of collaborating with the enemy and (by her account) even went to the extent of falsely accusing her three brothers of being Interahamwe militia, with the result that they were imprisoned. When this woman complained to a provincial official, she was told that her in-laws had no right to deny her access to her deceased husband's land. Thereafter, she returned to his land, but only for a short time, before abandoning her claim due to the antagonism of her in-laws. For reasons of postwar ethnic discrimination, this widow experienced a constraint to her customary right to occupy and use her deceased husband's land.

As these two cases demonstrate, women's situations of land access are complex. Women are not inevitably victims, as a group, of a customary legal system that denies or limits their rights of land access and inheritance; nor are they inevitably victims, as individuals, of land-grabbers who take advantage of their changing legal status. In reality, as the case studies in the following section will demonstrate further, many women are creative interpreters of law who assertively maneuver within the gap between land tenure systems in order to overcome constraints and to produce opportunities for achieving desired land rights.

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73. POTTIER, *supra* note 28, at 186.

74. *Id.*

75. HUMAN RIGHTS WATCH, SHATTERED LIVES, *supra* note 12, at 86–87.

## V. Research Findings about Rwandan Women's Land Rights

### A. *Research Approach*

The primary goal of this focused research project (as part of my larger land conflict research project) was to examine Rwanda's land law in action for women; that is, how women make land claims—sometimes beyond the precedent established by customary law or the legitimacy conferred by land legislation. My research activities were driven by this question: How do women maneuver within the amorphous boundaries of the evolving parallel legal systems in order to maintain prewar land rights or to secure new postwar land rights?

The research methodology<sup>76</sup> consisted of several strategies: 1) collecting written material that deals with land-related topics, including scholarly articles, research reports, legislation, and court decisions; 2) attending customary legal proceedings and urban courts to hear land cases; 3) interviewing national figures, including government officials and expatriate advisers, about national land issues; 4) interviewing local figures in select communities, including leaders and ordinary citizens, about local land issues and dispute cases; 5) interviewing land disputants who were receiving assistance from non-governmental organizations (NGOs) with their cases; and 6) interviewing prisoners who were experiencing land problems while incarcerated. In the interviews within local communities, the informants were asked to discuss the land tenure rules and practices within the community, and when relevant, the nature and disposition of each known land dispute case, including the parties involved, the issues under debate, and the outcome reached. When possible, government officials or NGO representatives who worked in the communities were asked to elaborate upon the local land tenure situation and individual land dispute cases.

The observed court cases revealed both sides of a land case, which the disputants presented formally to the judges, and also the judges' questioning and fact-finding efforts. The recorded court cases revealed the judges' evaluation of facts and their explanation of the sentences that they imposed. The interviews with disputants usually revealed only one side of a land access story, but each individual interview was useful in revealing a disputant's interpretation of facts and dispute processing strategies over an extended period of time. When possible, all disputants involved in a single case were interviewed separately to get different interpretations.

The data set consisted of about 150 land access or land use dispute

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76. I discuss the application of research methodologies in postconflict societies, particularly Rwanda, in Rose, *African Women in Post-Conflict Societies*, *supra* note 71, at 107–26.

cases involving women or orphaned girls from all provinces, though mostly from Kigali urban, Kigali rural, Butare, Kibungo, Gitarama, and Gisenyi provinces.<sup>77</sup> The information for about fifty cases is very detailed. Most of the cases are ongoing, in that either one or both disputants did not accept the decisions of customary forums or courts and thereafter appealed the cases or refused to implement the decisions.

### *B. Land Access and Dispute Case Studies*

The cases discussed in this section demonstrate that Rwandan women, as a group, are experiencing ongoing uncertainties regarding land access and land use. However, each individual woman responds to the uncertainties in a different way, depending on personal factors (personality, marital situation, educational background, and economic circumstances) and contextual factors (case facts, the relative statuses of the involved parties, the availability and suitability of dispute processing options, and the political priorities of the national and local leaders).

#### 1. Categories of Disputants

Female land disputants are categorized herein either as adults or orphaned girls who head households.<sup>78</sup> Their opponents are classified either as relatives or nonrelatives.

For adult women disputants, the most common opponents among consanguineal relatives (related by “blood,” i.e., shared descent) were brothers who took over family land and denied their younger sisters a share. Other consanguineal relatives with whom women disputed about land were fathers’ brothers, mothers’ brothers, brothers’ sons (especially when brothers were deceased), cousins (mostly fathers’ brothers’ sons), sisters, half-siblings, and even sons. If all of a woman’s consanguineal male relatives had died during the war, she usually encountered little resistance from the local authorities who allowed her to claim her family land, even when she was married and using land in her husband’s village. If a woman’s male relatives had survived the war, often returning to the villages after extended periods in exile, she encountered resistance from these relatives, although the authorities sometimes insisted, with reference to the Matrimonial Regimes, Liberties and Succession Law of 2000,<sup>79</sup> that

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77. The communities discussed in the interviews and case studies are not identified by name in order to protect the informants’ confidentiality and privacy.

78. In Rwanda, children who have lost one parent are referred to as “orphans.” In general, girls and boys are usually not considered to be adults until they have married—often only when they are in their late twenties or early thirties. In the postwar period, many unmarried, orphaned girls and boys within a wide age range head households.

79. C. Civ. No. 22/99 (Rwanda).

they share family land with her.

Among affinal relatives (related by marriage), adult women's most common opponents were co-wives,<sup>80</sup> stepparents, and in-laws (sisters-in-law, brothers-in-law, mothers-in-law, and fathers-in-law). Some women disputed with their husbands about land—at times when a husband was in prison or when a husband divorced his wife and thereafter remarried and tried to dispose of his first wife's family land or the land that they had purchased together during the marriage and held as community property.<sup>81</sup>

For adult women disputants, the most common opponents among nonrelatives were neighbors (both males and females), returning refugees, and local authorities.

For orphaned girls, the most common opponents among consanguineal relatives were brothers, fathers' brothers, fathers' sisters, mothers' sisters, and mothers' brothers. Orphaned girls occasionally disputed about land with nonrelatives—primarily the same opponents as encountered by adult women.

## 2. Types of Disputes

Women who disputed with consanguineal relatives usually tried to re-assert threatened rights to family land or to assert new rights to family land—the latter mostly by challenging land inheritance provisions following the death of the family head (mostly a father, father's brother, or brother). Women who disputed with affinal relatives sometimes did so following separation or divorce from their husbands, but more often after the death of their husbands, at which time they were denied the right to use their husbands' family land.

Women who disputed with nonrelatives usually tried to defend their existing land rights against threats by others. Disputes with neighbors

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80. Since, according to Rwandan law, a man can marry only one wife, only one of the "co-wives" can be legally married to a man. *See infra* Part III.

81. Most couples enter into a community property marriage, but a couple can also arrange for a separation of property marriage or a limited community property marriage by making a contract at a notary. The couple usually presents the contract at a district office when they marry, but they can also present a contract at a later date. One informant, a former member of the Kigali Town Council, explained that women and men take into account various personal circumstances when deciding whether to enter a separation of property or a community property marriage. He argued that women do not want a separation of property marriage if their husband is wealthy, but they do want a separation of property marriage to a second husband—particularly in the postwar period—when they have inherited land from deceased consanguineal relatives or their first husband. This informant also explained that many Rwandan men are reluctant to write wills. He argued that this situation often leads to land disputes between the men's surviving wives and the men's relatives after their deaths—primarily if the couple had married according to separation of property.

tended to involve boundary encroachments or disagreements about land transactions, disputes with returning refugees involved land sharing arrangements or land confiscations, and disputes with local authorities involved land allocations or land expropriations.

### 3. Methods of Dispute Settlement

Women had a variety of dispute processing methods at their disposal. According to the protocol of customary law, individuals with complaints about family land were expected to take their complaints to the family council which exercised administrative control over the disputed land area, whereas individuals who were disputing about land rights with other community members were expected to take their complaints to the local authorities at the lowest council level that exercised administrative control over the disputed land area—usually a *responsable* of the cell-level *gacaca* or a *conseiller* of the sector-level *gacaca*. When disputants received an unfavorable settlement at these lower levels or when the authorities failed to resolve the case, either disputant could take her or his complaints to the lowest level courts, the Canton Courts at the district level, or the Courts of First Instance at the province level.<sup>82</sup> Sometimes women with sufficient financial resources (for transportation, court fees, and lawyers) tried to take their land cases directly to the courts, thus bypassing the family councils and local authorities who were sometimes predisposed to the women's male relatives. This strategy was often not successful, though, because court officials expected the local authorities to be fully informed about and involved in all land cases. Of special interest, many women in the case sample were taking (or attempting to take) their complaints about land inheritance directly to the Courts of First Instance, arguing their land rights based on the Matrimonial Regimes, Liberties and Succession Law of March 2000.<sup>83</sup>

Some women resorted to alternative dispute processing strategies, thus approaching NGOs for financial assistance or direct intervention. Other women approached civil or religious groups that offered mediation services, such as the local Peace and Justice Commissions of the Roman Catholic Church. Those few women who owned land in the city of Kigali (as individuals or together with other parties) directed their land disputes to the town council. Finally, a number of women who felt that they could not find any satisfactory method of dispute processing avoided opponents or

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82. Under the Rwandan Constitution of June 4, 2003, the current judicial system has been restructured. See RWANDA CONST. art. 143 (providing for the enactment of new laws for the establishment of a judicial system); see also text and accompanying footnotes *infra* Part III.A.

83. C. CIV. No. 22/99 art. 73 (Rwanda).

authorities who wanted to pursue the matter further.

#### 4. Legal Reasoning Underlying Dispute Settlement

The local authorities and judges who handled land disputes involving women relied upon a number of legal criteria to reach their decisions about land rights. First, in cases involving married women who claimed rights to the family land of their deceased husbands, they inquired into the legality of a woman's marriage, thereby asking about the availability of a marriage certificate and witnesses who could attest to the exchange of bridewealth. Second, in cases involving either married or unmarried women who claimed rights to the land of their birth family, they asked to see the marriage certificate of a woman's mother and father, her own birth document that provided evidence regarding paternity and maternity, and the identity card of her father that indicated whether he acknowledged his paternity. These documents were considered critical in determining a woman's right to her father's or mother's land. The local authorities and judges inevitably asked many probing questions about the marital status of a woman land claimant, her birth order among siblings, her current residence, her activities over time on the desired land, and other parties who claimed or might claim the land in the future. In essence, the local authorities and judges tried to establish the validity of a woman's land claim, emphasizing the importance of a legal marriage in a claim to affinal family land, the importance of legitimacy and sometimes high birth order in a claim to consanguineal family land, and the length of residence on or the extent of development to the land in a claim to either affinal or consanguineal family land.

#### 5. Constraints and Opportunities in Dispute Management

The Rwandan women in the case sample confronted both constraints and opportunities to land access, although, in general, women's constraints are more widely recognized and reported in the literature. In this section, women's constraints and opportunities for land access are outlined and explained according to the following criteria: a) the personal situation of a disputant; b) the family context of a dispute (kin/marriage-relational aspects); and c) the community context of a dispute (social-relational aspects). The constraints and opportunities experienced by women were of a social, economic, political, and legal nature.

##### *a. Personal Constraints and Opportunities*

Women's personal situations constrained their land access when they

were infertile, poor, uneducated, lacking in social connections, physically disabled due to injury or sickness, or mentally incapacitated due to war and other traumas. Infertile women were usually denied the right to claim their husband's family land after their divorce or his death. Poor women were unable to pay for the legal services and documentation that would substantiate their land claim or to travel to the administrative offices or courts where they could pursue their claim. Uneducated women were unable or unwilling to navigate their way through the complex system of administrative offices and courts. In one case involving the land of a family of orphans (new caseload refugees) in Kibungo Province, the twenty year old female household head, "Annonciata,"<sup>84</sup> won the case at the sector and district levels; however, when her older male opponent (an old caseload refugee) appealed the case to a Court of First Instance, she was unable to pursue the case further because she lacked the money for a lawyer and for transport to the distant court. In addition, as an uneducated, inexperienced girl, she was intimidated by the complex legal process and by the financial resources and social connections of her opponent. In other cases involving older women, the women commonly reported that they had been unable to pursue their land claims due to physical injury or psychological trauma sustained during the war.

By contrast, women found that their personal situations produced opportunities for land access when they were wealthy, well-educated, well-connected, and physically and psychologically stable. Wealthy women were able to hire lawyers, assemble the necessary documentation to prove their land claims, and travel to courts. According to many informants, wealthy women were sometimes even able to bribe officials to alter legal documents or to decide in their favor. In one case, a woman complainant, "Beatrice,"<sup>85</sup> protested to a social service agency that a wealthy co-wife had bribed officials to alter Beatrice's birth and marriage certificates such that Beatrice appeared to be the daughter rather than the co-wife of their deceased husband. This maneuver (if indeed it had actually occurred) invalidated Beatrice's claim to her deceased son's land since she had been transformed on paper from his mother into his half sister. Well-educated women (including self-educated women) knew how to maneuver effectively within the legal system. In one case, a young woman, "Beverly,"<sup>86</sup> who had been raised and educated as a refugee in Burundi, familiarized herself with the land inheritance laws and practices of both Burundi and Rwanda in order to argue before officials that her deceased

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84. The examples and illustrations given in this section are based upon cases I encountered during my field research in Rwanda. The personal names used are fictional in order to protect the identity of the disputants.

85. *Id.*

86. *Id.*

Rwandan father's land and houses in Burundi should be handled according to Rwandan succession law and in Rwandan courts. Well-connected women were skilled at cultivating relationships with people who could help them to acquire desired land or to defend effectively existing land rights. Several women in Kigali reportedly received favorable land allotments from the town council due to the personal interventions of "friendly" officials.

*b. Family Constraints and Opportunities*

Women experienced either constraints or opportunities to land access within the family context (the kin/marriage-relational aspects), depending upon whether their consanguineal relatives or affinal relatives were willing to give them land. In all cases, the most important factor determining women's right to land was their marital status. Unmarried women were expected to get land from their blood kin (primarily parents or brothers); married women were expected to get land from their husbands; widows were expected to get land from their in-laws; and divorced women were sometimes allowed by their in-laws to continue using their husband's land (mostly if the women were supporting children) or they were told to get land from their own families or new husbands. However, these are ideal formulations, and in reality, land administrators (i.e., family heads) used a number of factors to determine women's rights to land, or more accurately, their rights to land relative to others. In disputes involving family land (birth or marital), women's existing or desired land rights were generally considered to be strong if they were supporting minor children, if they had been residing on or using the land continuously, if they had provided care or resources for the original land owner (and therefore deserved the land as an inheritance), and if they could produce witnesses who could verify when and under what circumstances they had received the land or had been promised land. Inevitably, women who were well-regarded within their family and community were more likely to be offered support if they attempted to claim land or if their existing land rights were threatened by others. Women's land rights were considered to be weak if their adult male relatives, occasionally even sons, wanted the same land.

Many Rwandan women experienced constraints to land access or had only precarious land rights because they were not legally married to their "husbands."<sup>87</sup> In many cases in which women had married "illegally," the women were ordered off the land by their in-laws or by the "legal" co-wife (in polygynous unions) when their "husband" died. In other cases, children of women who had married "illegally" were ordered off their family land

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87. See *infra* Part III.B.

after their mother or father died. (Overall, the land cases that involved polygynous unions tended to be characterized by extremely complex distributions of land rights among the “wives.”) In virtually all of the land dispute cases involving married women that came before the *gacaca* and the courts, the local authorities and judges inquired into the legality of each marriage based on the existence of a marriage document and/or the testimony of witnesses who could verify that bridewealth had been exchanged.

In a number of cases, blood relatives or in-laws went against the spirit of customary law such that the blood relatives of unmarried women denied them land, and the in-laws of legally married women denied them land after the death of their husbands. The blood relatives of women were more likely to grant them land if the relatives had a good relationship with the women and if the relatives had land to spare. The in-laws of women were more likely to grant them land if the women had produced children and if the women had not remarried. Still, many blood relatives and in-laws denied women land for no other reason than the fact that they wanted the land for their own benefit. In some cases, brothers, half-brothers, male cousins, and in-laws of all categories denied women access to land and a house even though they controlled sizeable land areas and numerous houses that they were renting or selling to others. In other cases, they rescinded women’s long-standing land rights when they suddenly needed money. In one case, a teenage Tutsi girl orphan, “Constance,”<sup>88</sup> who had survived the wartime murder of her parents and the postwar deaths from AIDS of her two older sisters, was forced to defend her family’s land rights when her father’s younger brother decided to sell the land. He tried to claim the land because he wanted cash, and he had nothing else of value to sell—a situation experienced by many other Rwandans. (In a reverse situation, a destitute widow, “Delphine,”<sup>89</sup> tried to sell her land in order to get money, but her adult sons prevented the sale.)

The war and its aftereffects significantly constrained women’s efforts to claim family land. Women who returned from exile, either within or outside Rwanda, often discovered that their family or marital land had been claimed or occupied by others. When they had been absent for an extended period of time and another family member had used their land for some time, they had little chance of reclaiming it. When another family member had built houses or made other significant investments on the land, they had even less chance of reclaiming it, unless they could offer the compensation demanded. When another family member had sold the land and a nonfamily member had bought and invested on it, they had the least chance of reclaiming it. Interestingly, many women who had virtually no

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88. *See supra* note 84.

89. *Id.*

chance of reclaiming their family land continued to fight for it—arguably as much for justice as necessity.

Of special note, some women who purchased land or houses in rural areas experienced constraints in that they were forced to defend their land/house rights against the counterclaims of family members. Their efforts to prove that they had acquired the land or house through purchase rather than inheritance were often impeded by the fact that their earlier customary land transactions had been informal and sometimes undocumented. In the absence of documents, which either had never been drawn up or had been destroyed or lost during the war, women could only hope to verify the nature of previous land transactions through witnesses—if they were not missing or deceased.

Just as many women discovered that the war and its after-effects had constrained their efforts to claim birth family or marital family land, other fortunate women discovered that the chaotic land occupancy patterns following the war had opened up new opportunities. Often these opportunities arose because family members had died, were in exile, or were in prison, and therefore could not make use of or reclaim their land. In some cases, women sold or rented out, without authorization, the land of their husbands or brothers who were in prison. Although many imprisoned men did indeed formally authorize their wives or sisters to look after their land, many wives and sisters acted against the wishes or interests of the prisoners, mostly by selling the land. These women's actions resulted in numerous prisoners' complaints to local authorities and courts. In another interesting type of case involving a postwar opportunity due to the death of the original landowner, a woman, "Eliza,"<sup>90</sup> rented out the land of her deceased ex-"husband." The local authorities were willing to let her rent out the land of her ex-"husband," even though she had never been legally married to him and was living with another man elsewhere, because no male members of her ex-"husband's" family had returned to claim the land. Eventually, her teenaged son, the legitimate land claimant, returned from exile in Congo (Zaire) and successfully challenged her for control of the land. The local authorities then negotiated an agreement between the renters who retained use of the land for agricultural purposes and the son who was allowed to build a house on a small portion of the land.

For the most part, women believed they had strong rights to land within their birth family's area when they had developed a plot by constructing buildings or undertaking agricultural activities, when their economic needs were greater than other relatives who desired land, or when they had no other land holdings. To some degree these arguments applied to widows who wanted to acquire or maintain existing land rights

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90. *Id.*

in their in-laws' area, although widows' rights were even stronger if they had been legally married in a community property marriage. The majority of women—regardless of whether they desired land from their marital or birth family—argued, first and foremost, before the local authorities and court judges that they needed land for the benefit of their own or other children under their care. In the case discussed above, a woman, “Eliza,”<sup>91</sup> who had been separated from her “husband” before the war, assumed control of and rented out his family land after he died; she based her claim to the land on her need to support financially their disabled adult daughter. In several cases in Kigali, women who acquired land from the town council did so because they needed houses for the orphaned children of their extended families.

Though women tended to frame their arguments for land in terms of the needs of children or other family members, primarily their mothers, in reality, some women actually exploited relatives who were positioned lower than them in the family hierarchy, primarily orphans under their guardianship, in order to control land. In the case sample, a number of orphans (both male and female) complained that their aunts (both paternal and maternal) and other female relatives (particularly stepmothers) had taken over their land, without offering them any assistance. In some cases, these orphans, after losing their land rights, were forced to live on the street or in children's centers. In one case, the Hutu stepmother of orphans took over the land of her murdered Tutsi co-wife (the orphans' mother), while in another case, the paternal aunt of orphans took over the land of her imprisoned brother (the orphans' father). In most such cases, the women used the houses and agricultural products from the confiscated land primarily for the benefit of their own children. Though these women acted improperly as guardians, one could argue that they were motivated by need and poverty. In one particularly unfortunate case, three aunts of a family of several children (who had been orphaned before the war when their parents died of AIDS) ignored the children until after the war when the aunts discovered that they could take advantage of a sponsored foster program. Subsequently, the aunts received donor money earmarked for the care of the orphans, even though they ignored the children and sold their land. The social worker who related this case argued that the aunts were motivated by greed and opportunism.

### *c. Community Constraints and Opportunities*

Women who experienced constraints to land access within the community context (the social-relational aspects) were opposed by

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91. *Id.*

nonrelatives, mostly 1) neighbors, 2) returning refugees, and 3) local authorities. As mentioned above, women who disputed with nonrelatives were most often forced into action to defend their existing land rights. Some women who were interviewed complained that unrelated men tried to usurp their land rights, particularly if they were unmarried, simply because the men believed that women could not adequately defend their rights on their own.

First, women who experienced constraints in land disputes with neighbors tended to confront them about boundary encroachments or land transactions (e.g., sales, loans, rental agreements). Regarding boundary encroachments, a number of women who settled in the newly established resettlement communities, the *imidugudu*,<sup>92</sup> complained that the boundaries between agricultural plots had not been firmly established at the time of settlement, and therefore, early settlers were sometimes troubled by boundary disputes after the local authorities eventually finalized local land policy and fixed the boundaries. In one case, a woman, "Florida,"<sup>93</sup> who was one of the first settlers in an *umudugudu*, discovered that another woman who settled after her claimed part of her land. Although she protested the boundary changes, the local authorities nonetheless confiscated part of the land that she had cultivated and did not compensate her for the standing crops.

Regarding land transactions, a considerable number of women were compelled to defend their land rights against nonrelatives who claimed that the women's land had been sold to them, usually during the prewar period. In one case, a widow, "Georgine,"<sup>94</sup> denied that her husband had sold a land plot to another widow's husband before the war. Georgine argued that the transaction had been merely a temporary loan; her opponent argued that it had been a permanent sale. Because no documents or witnesses, including the women's husbands, were available to indicate whether the earlier land transaction had been a land sale or a land loan, the local authorities decided in favor of Georgine rather than the other woman. She, unlike many other women, had experienced a favorable outcome. Many women commented in interviews that this type of land dispute was caused by husbands having transacted the land without informing their wives. In still other cases involving land transactions, women lost control of land because nonrelatives alienated their land without their knowledge or permission. Indeed, although women's relatives were far more likely to transact the women's land, in some cases nonrelatives usurped women's land rights through force or deception. In one such case, a woman,

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92. See *infra* Part III.C.

93. See *supra* note 84.

94. *Id.*

“Helena,”<sup>95</sup> who was in prison on genocide charges, lost her land when her elderly mother, acting with power-of-attorney, unwittingly sold it to an unrelated male neighbor who deceived her about Helena’s wishes. The neighbor then persuaded Helena’s mother to invest the money from the sale in a fraudulent “business venture”—i.e., his own pocket. Helena had little basis to bring a legal suit against the neighbor because the land sale was documented and the investment was not.

One special type of land case between neighbors, which brought into play constraints peculiar to the war and postwar periods, arose when widows tried to reclaim land that they and their husbands had sold during the war under duress. Informants in Gisenyi Province reported a number of such cases. In one case, a woman, “Isabel,”<sup>96</sup> and her husband sold their land to a neighboring family at a very low price during the 1994 war in order to save the lives of their various family members; the land buyers promised to protect them from killers. Isabel and her husband even agreed to sign a sale agreement that indicated a much higher purchase price than the buyers actually paid. During the rebel incursions from Congo (Zaire) in 1997, both Isabel’s husband and the male head of the other family died. Soon thereafter, Isabel tried to reacquire the land from the widow of the man who had bought the land, fighting the case at various administrative levels and in the courts. Eventually she won the right to reclaim her land, but the court instructed her to pay a very high price to the other widow—the false price indicated in the sale agreement plus the value accrued in the decade since the sale. To date, Isabel has not been able to repurchase her prewar land.

Second, women who experienced constraints in land disputes with returning refugees tended to confront them about land sharing arrangements or land confiscations. Sometimes new caseload refugee women returned from exile to discover that old caseload refugees were living in their houses and/or cultivating their land. Some of the old caseload refugees had claimed this same land area before their flight. Other old caseload refugees had never claimed the land area; they only made a claim to the land after the war because they had no other options or because they thought that they were in a good position to take over the land. Although old caseload refugees are not permitted to reclaim their land after an absence of ten years according to the Arusha Peace Accords,<sup>97</sup> in fact, some old caseload refugees did so successfully. In a number of cases, old caseload refugees were able to reclaim their land when they were closely associated with the local leaders, when they were wealthy and powerful (e.g., in the military), or when the new caseload refugees did not

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95. *Id.*

96. *Id.*

97. *See infra* Part III.B.

return from exile to claim their land. In one case in Kibungo Province, a family of new caseload returning orphans, headed by a girl "Annonciata,"<sup>98</sup> was unable to reclaim their family land when a wealthy and well-connected old caseload refugee used his economic and social resources to win local support. In other cases, when possible, the local authorities tried to resolve land disputes between old caseload and new caseload refugees by ordering land sharing arrangements. Unfortunately, these arrangements sometimes led to new disputes involving new issues, particularly as concerned the quantity and quality of the land allocated to one land sharing partner as opposed to the other.

Third, women who experienced constraints in land disputes with local authorities tended to confront them about land allocations or land expropriations. Some women argued that male local authorities frequently decided land disputes in favor of the men with whom they interacted socially in beer drinking and other gatherings. The interesting thing about this type of dispute between women and the local authorities is that the local authorities sometimes occupied a dual role of dispute manager and disputant. Some local authorities in this situation deferred to higher authorities, but others did not, thus bringing into play a seeming conflict of interest. In one case involving a land allocation, an unmarried woman in her thirties, "Angelina,"<sup>99</sup> tried to acquire an agricultural plot in the *umudugudu* where she was living with her mother. She insisted that she needed the land to feed her several children. Unfortunately for her, the authorities chose not to view her as an independent adult and said that she would have to be content with sharing her mother's land allocation. Angelina believed that the authorities unfairly favored other land applicants. In another case, a woman, "Adele,"<sup>100</sup> wanted to be granted her deceased brother's land since she was the sole survivor of genocide in her extended family; however, the local authorities refused to do so, arguing that they wanted to allocate the land to other people. Women occasionally disputed with local authorities about land expropriations or land mismanagement. In a land expropriation case, a girl orphan, "Ancilla,"<sup>101</sup> challenged the local authorities who intended to expropriate her family land in order to establish a new *umudugudu*. With the assistance of social workers from a local NGO, she was able to get the Ministry of Local Government (MINALOC) to intervene and prevent the land expropriation. In a land mismanagement case, a brave pre-teen girl orphan, "Agnes,"<sup>102</sup> whose father had died during the 1994 war and whose mother had died of

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98. See *supra* note 84 and discussion at Part V.B.5.a.

99. See *supra* note 84.

100. *Id.*

101. *Id.*

102. *Id.*

AIDS in 1999, confronted a local authority who was collecting rent for her family's houses on her behalf but was improperly pocketing most of the money. Ultimately, the local authority was removed from office and a social worker helped Agnes, who acted as the household head, to obtain from the new local authority the documents that verified her family's ownership of the houses.

Women who experienced opportunities for land access within the community context were usually able to find some way to assert an advantage over nonrelatives, mostly 1) neighbors or 2) returning refugees. Although some women were engaged in disputes with local authorities, most were at a disadvantage in such disputes and avoided them. Occasionally, as discussed above, women were able to acquire or to maintain land rights due to the personal support of specific local authorities.

First, women who experienced opportunities in land disputes with neighbors tended to seek advantages in boundary problems or land transactions. In many of the dispute cases involving women as opponents, one woman experienced a constraint while the other experienced an opportunity. An example of this is the case discussed above, which involved a prewar land transaction in which a widow, "Georgine,"<sup>103</sup> was initially not able to use her land because another woman insisted that Georgine's husband had sold her husband the land before the war. Georgine eventually used the absence of documents regarding the land transaction as an opportunity. In another case involving a prewar land transaction, a widow, "Prisca,"<sup>104</sup> made claims to a plot of land belonging to a neighboring family of orphans, arguing that their parents had sold the land to her husband and thus the right to sell stones on the land. Again, Prisca found an opportunity in the absence of documents regarding the land transaction and also in the absence of any of the original transacting partners. Her opportunity was expressed in exploiting a vulnerable population group—orphans.

One special type of land case between neighbors, which brought into play opportunities peculiar to the postwar period, involved women accusing their neighbors of genocide and subsequently taking over their land after they were imprisoned. Some of these imprisoned neighbors had no relatives who could defend their land rights. In one case, a woman, "Justine,"<sup>105</sup> accused her male neighbor of killing her children. After he was imprisoned, she took over his land and rented out the seven houses on it. In a similar type of case, a woman, "Katherine,"<sup>106</sup> accused her male

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103. *See supra* note 84 and discussion at Part V.C.

104. *See supra* note 84.

105. *Id.*

106. *Id.*

neighbor of genocide; and after he was imprisoned, she turned his land over to old caseload refugees.

Second, women who experienced opportunities in land disputes with returning refugees found ways to defend a threatened landholding or to acquire a new landholding. Women in this situation most often fought for favorable land sharing arrangements or against unfavorable land sharing arrangements and land confiscations. In one interesting case, a fifteen-year-old girl, "Virginie,"<sup>107</sup> who was heading a family of several orphans, needed to find new land for her sibling group since she was afraid to return to her former area where she had witnessed the murder of many family members during the genocide. Unfortunately, she was overwhelmed by the complex land application process in Kigali. At a public meeting featuring Rwanda's president, she directly asked the President if he would help her get land. He agreed. An official showed her the plot but the land documents were not drawn up. Soon after, she discovered that a returning refugee was building on the land that had been designated for her use. She then waited outside the President's office until he appeared. She explained her problem to him, and he agreed to help her acquire another plot. After the plot was found, the land documents were drawn up, and she even received building materials and assistance from an NGO.

The next section conceptualizes women's efforts to bridge the legal gap as products of both their oppression and their emerging power in the changing social, political, and legal environment of postwar Rwanda. Women's land cases, when viewed collectively, reveal the overall changes occurring in Rwandan society, the inadequacy of the legal system to deal with these changes, and the ways in which women are taking advantage of the legal uncertainties created by the changes.

## VI. Discussion: Rwandan Women Bridging the Legal Gap

The Rwandan Civil War and genocide of 1994 greatly affected the country's population, including, most acutely, its women. In the months just after the war, women realized that their position in society had changed. In many communities throughout Rwanda, women greatly outnumbered men and, by necessity, they had to assume positions of power as household heads and community leaders. Whether pursuing a strategy of survival and adaptation or one of opportunism and exploitation, they took up the struggle to advance their position in the newly emerging postwar social and gender hierarchies. They had assumed new domestic and political responsibilities, and they expected that their social and legal rights would soon be improved through new policy initiatives and

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107. *Id.*

legislation, particularly concerning land and property law. In effect, Rwandan women had begun to perceive their positions differently, and they therefore demanded that a more balanced model of relative power and hierarchy be conceptualized in theory and further instrumentalized in policy and legislation.

In both scholarly accounts and private discussions of Rwandan land tenure, women are commonly portrayed as an exploited class that suffers under discriminatory laws and practices.<sup>108</sup> Together with children, women are characterized as a “victimized” or “vulnerable” population group positioned at the lower end of the land control hierarchy, dependent upon land access through social relationships, and lacking in adequate land rights. In reality, as the cases discussed in the previous section demonstrate, women exert more land control than might be expected from ideal formulations of customary law, and women do not assert land claims in the same way as do children. A number of women in the case studies made land claims as assertively as men—even if indirectly. A number of women also usurped the land rights of children, especially those under their guardianship.

Just as women’s land rights are not the same as those of children, their methods of land control are similarly not the same as those of men. Before the war, men’s methods of land control were direct and political—based upon inheritance rights and associations with men in power, while women’s methods of land control were indirect and social—based mostly upon associations with relatives. Women exercised land rights essentially by virtue of their alliances with men (e.g., husbands and brothers) as well as their assistance from women with whom they shared blood ties and cooperative social relationships (e.g., in-laws and neighbors).

After the war, women felt compelled by necessity to assert new land rights and more direct methods of land control than stipulated by the unwritten rules of customary law. Many women took advantage of the postwar conditions of uncertainty in order to access land. The prewar gap between customs and laws and between rules and practices had been widened by the war. Some women returned to their birth homes and gained access to land, while other women took over their deceased husband’s or ex-husband’s land. In these cases, the women exercised land rights that were contingent upon land availability and the goodwill of their families or in-laws. In still other cases, women directly approached the local authorities for land rights instead of waiting for land allotments from their relatives or in-laws, thus settling in areas where they had no bonds of kinship. In these latter cases, the women exercised land rights because no

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108. Other researchers in Rwanda often ask me to explain how the laws “discriminate” against women, but they almost never ask me to explain how the laws protect women or how women work around unfavorable laws.

one, including the local authorities, obstructed their efforts. One might argue that some women acted boldly—manipulating or contradicting custom—because the women knew that the local authorities were sympathetic to war survivors' need for land and because the women knew that few or none of their husbands' male relatives were alive or present to assert their prerogatives over land. From the perspective of the local authorities, one might argue that they were permissive of women's land access efforts because they recognized that the women were in need of land and because they knew that the women's relatives or in-laws were dead and therefore could not oppose their efforts to access land.

Clearly, women's methods of land control changed after the war—the rules of customary law were either less relevant or were not workable in their new situations. Women learned to improvise on a case-by-case basis. As shown in the cases discussed above, women sometimes reinvented the rules of customary land law (e.g., they demanded their deceased husband's land even when they had not been legally married, had borne no children, or had remarried), and they sometimes applied new rules or standards in anticipation of forthcoming land legislation (e.g., they documented their land claim in anticipation of a future land registration program). Those women who deviated from customary land law and practice did so for a number of reasons: their belief that the local authorities were unable or unwilling to adhere to the rules of customary land law; their belief that the implementation of a new land policy (e.g., as concerns the resettlement areas, the *imidugudu*) contradicted some customary practices (e.g., spatial arrangements and land use patterns); and their belief that land legislation would soon be enacted and would supersede the provisions of customary land law (i.e., would entitle them to more significant land rights than in the past).

In addition to revealing specific changes in women's land access situation, the land cases reveal more general changes that Rwandan society has undergone in the postwar period. Within families, economic self-interest is leading to a rise in individualism and the associated breakdown of family ties. Close blood kin are fighting fiercely for the rights to scarce family land and housing resources, often using deceptive and even violent tactics that permanently rupture family relationships. A number of women informants indicated that they had been badly beaten by other family members over land claims. Within communities, neighbors are fighting with one another over new land allocations, boundaries of existing allocations, resource distribution (e.g., water and wood), and land use (e.g., for agriculture versus cattle-keeping). In one *umudugudu*, which was founded in 1997 in Gitarama Province, a woman told me that relations are tense among the new settlers and accusations of witchcraft are on the rise, due to jealousy about land and resource distribution among other things.

The land cases further reveal that Rwanda's legal system is currently not equipped to deal adequately with the volume and complexity of land cases. Huge numbers of cases are dragged out endlessly as many disputants try to assemble the necessary documents from various locations to prove their cases, as some disputants continuously avoid *gacaca* or court appearances, and as *gacaca* or court officers delay hearings or decision making until they have reviewed the complex and often scant evidence (e.g., marriage certificates, land use maps, and land transaction documents) or until they have traveled to the location of the land dispute. Unfortunately, when viewed collectively, the cases indicate that the more a case is prolonged, the less likely it is that a disputant will achieve a satisfactory outcome: evidence is lost, witnesses die, and new local authorities and judges who do not know the case history are appointed. Ultimately, many cases are never satisfactorily concluded because, even when the local authorities and judges have rendered a decision, the losing disputants appeal the cases repeatedly or otherwise ignore the decisions rendered. In addition, the local authorities in the traditional *gacaca* are often reluctant to enforce a decision that they have reached, apparently preferring not to "rock the boat" within families and communities by forcing the parties to take action. At the same time, the judges in the courts are often unable to enforce a decision because they do not have the will or the resources to follow up on cases. Importantly, many disputants indicated in interviews that they believe the local authorities and judges are susceptible to bribes. Disputants therefore tend to attribute unfavorable decisions that they received in their land disputes to bribery. Nonetheless, despite the inadequacies of the local *gacaca* and the courts in managing land disputes, many Rwandans, mostly women, are resorting to such institutions.

Finally, the land cases reveal the nature of women's beliefs and how women are dealing in practice with the widening gap between customary law and emerging land policy and legislation. Indeed, this research project was not concerned with establishing whether women's beliefs about the status of customary law and pending land legislation were well-founded, but rather with discovering how Rwandan women's beliefs influenced their actions. In bridging the legal gap, some women are creatively or more intensively applying long standing tactics to meet their land access needs, while other women are devising new dispute processing tactics. Regarding creative or more intensive application of longstanding tactics, some women are increasingly resorting to national officials, bureaucrats, or legal professionals to acquire or defend land rights, as in the case of "Virginie," who approached the President for help.<sup>109</sup> Some women are increasingly

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109. *See supra* note 84.

relying upon written documents to substantiate their land claims (even though documents are susceptible to alteration, loss, and theft), as in the case of “Beatrice.”<sup>110</sup> And some women are relying upon modern legal devices, such as the power of attorney, to deal with special postwar land problems, as in the case of “Helena.”<sup>111</sup> Regarding an example of a new dispute processing tactic, some women are transforming the standard “forum shopping” into more creative “forum shifting” and “disputant shifting,”<sup>112</sup> which are sometimes possible in the chaotic legal environment of postwar Rwanda. In a case that brought these new tactics into play, two sisters, “Agathe” and “Veronique,”<sup>113</sup> who wanted to claim their mother’s land from their half brother engaged in “forum shifting” and “disputant shifting.” Agathe brought a case against the half brother in one court, and after she lost the case, Veronique brought a separate case against him in another court. When the judge in Veronique’s case discovered that she was bringing before him essentially the same case that Agathe had brought before a judge in another court, he dismissed the case and admonished her that the case could only be heard on an appeal or reopened in the original court if new evidence surfaced.

Women who “bridge the gap” in Rwanda are taking advantage of legal change or uncertainty to create land access opportunities. In the family context, one example of “bridging the gap” when a law is unclear or not sufficiently comprehensive is that women are resorting increasingly to the practice of “double dipping”—in the terms of one Rwandan informant. Basically, women are considered to “double dip” when they seek or maintain access to land in both their affinal and consanguineal family areas. The women justify this practice based on the Matrimonial Regimes, Liberties and Succession Law of March 2000,<sup>114</sup> which they believe grants them rights of land access or inheritance in both their marital and birth areas. In the case sample, many unmarried and married women, upon hearing about the passage of this law, decided to take their brothers or other consanguineal relatives to court and demand a portion of the family land that was scheduled to be divided among various heirs—or in some cases, that had been divided among heirs decades before. In one case, a widow whose land allotment in her deceased husband’s area was small went to her deceased brother’s son to demand agricultural land in her birth area. Although her brother’s son was willing to give her a distantly located field, she demanded a field that was located closer to the family houses. In

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110. *Id.*

111. *Id.*

112. The terms “forum shifting” and “disputant shifting” are my own terms. By contrast, for a discussion of “forum shopping” see Keebet von Benda-Beckmann *supra* note 69.

113. *See supra* note 84.

114. C. Civ. No. 22/99 (Rwanda).

another case, a widow who had plenty of land in her husband's area went to her father's area to demand from her stepmother's sons the land of her mother who had died in 1976. She wanted the land for her children's inheritance. In another case, a woman who was the sole survivor of genocide within a large sibling group went to her brother's son's wife to demand her brother's land. She had land in her husband's area, but she believed that she was entitled to her birth family land as a survivor. In addition to these cases involving women and their consanguineal relatives, some divorced or widowed women who were living with their birth families decided to take their affinal relatives to court to demand their ex-husband's land—mostly for the benefit of their children.

In the community context, as one example of “bridging the gap” when a law contains internal inconsistencies, women are interpreting “land sharing,” which is a national postwar policy, to fit their personal land access requirements. As discussed in Section III.C., the 1993 Arusha Peace Accords state that all Rwandan citizens have a right to land; but they also state, somewhat inconsistently, that people who left the country more than ten years ago (mostly old caseload refugees) should not attempt to reclaim their previous landholding. Basically, the Arusha Peace Accords aimed not only to guarantee that all Rwandans, including refugees, had land rights, but also to reassure resident Rwandans that their land rights would not be threatened by returning refugees. After the war, the Rwandan Government encouraged a “land sharing” policy in order to accommodate all returning refugees. The legal inconsistency lies in the fact that the ten-year clause of the Accords is violated when people are compelled to share their land; yet, if people are not compelled to share their land, then not everyone can enjoy the right to land guaranteed in the Accords. In some cases in this study, women extended the concept of “land sharing” to a variety of situations, thus arguing, for example, that “land sharing” should be practiced between a husband and wife after divorce. In other cases, women extended the concept of “land sharing” to a variety of groups, including nonrefugees. In one case that worked against two women's interests, the judges at a Court of First Instance decided that two sisters had to “share” their land with a man, based on the “land sharing” concept implied in the Arusha Peace Accords—even though the man was neither a relative nor a refugee.

## VII. Conclusions

Many conflict specialists have observed that conflict can provide opportunities for a reexamination of the status quo in a society and, ultimately, provide opportunities for change and growth. Rwanda, in particular, presents a post-conflict situation that poses challenges but also offers hope for rebuilding a better society from the devastation of war and

genocide. In terms of women's land rights, the Rwandan war may prove to be an important impetus for the reexamination and gradual rectification of past inequities.<sup>115</sup> Against this historical backdrop, the country's lawmakers should carefully consider and incorporate the rights of women to own and access land within the pending land legislation. By doing so, they will contribute to a more balanced and inclusive land tenure system that corrects, not exacerbates, some of the sociopolitical inequities and divisions that originally contributed to the war and genocide.

At present, Rwandan women's land rights are in a state of transition. In the absence of clearly defined land rights, which are translated into policy and further enacted into legislation, many women are creatively maneuvering to maintain existing land rights or to acquire new land rights. In essence, they are "bridging the gap" between customary land law and modern land law in a situation in which the former has become inadequate and the latter has not yet been enacted. Some women are behaving in an immediate survival mode, while other women are behaving with an eye to the future; the latter women hope to secure land rights that will eventually be protected by law.

Rwandan women must secure their land rights on an individual case-by-case basis within communities and at the discretion of local authorities. Although many women desire the flexibility inherent in localized customary law, they also need the certainty and predictability of a modern, national system of land legislation. In essence, they need national land legislation that specifies and guarantees their land rights as a class of citizens and as individuals with different interests. Otherwise, some women will be compelled to invest much time and energy in making the system work for them, and other women will not be able to make the system work for them at all. And, virtually all women will continue to experience the gaping difference between presumed or desired land entitlements and on-the-ground practical realities.

Before national land legislation is enacted in Rwanda, lawmakers need to consider carefully women's land interests, asking such questions as: 1) What has been the impact upon women's land access rights of postwar legal developments, including the reconstitution of the formal legal system and the traditional *gacaca*?; 2) How have women's land access rights been affected by postwar legislation, particularly the Matrimonial Regimes, Liberties and Succession Law of March 2000?; and 3) How should women's land access rights be promoted through the existing land policy

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115. See El-Bushra & Mukarubuga, *supra* note 71, for a discussion about how women in some postwar societies, particularly Rwanda, are coping with their losses and demanding greater rights. The authors comment that only time will tell whether the changes that women are bringing about are merely temporary survival strategies or permanent developments.

and further guaranteed within the pending land legislation? To answer these questions, policymakers and lawmakers need to evaluate existing policy and legislation, determining those aspects that require further clarification or elaboration within the pending land legislation.

As stated in Section II, many Rwandan women “bridged the gap” within and between systems of land law in situations where the law or policy (customary or formal) were unclear or not comprehensive (e.g., the Matrimonial Regimes, Liberties and Succession Law of March 2000); where the law or policy contained internal inconsistencies (e.g., the Arusha Peace Accords of 1993); or where formal law and policy contradicted customary practice (e.g., the *imidugudu* resettlement policy of 1997). As will be argued below, the Matrimonial Regimes, Liberties and Succession Law of 2000 and the Draft Land Law (2003 version) leave several gaps regarding women’s land rights. Moreover, the Draft Land Law does not specify how women’s land interests are to be guaranteed in practice.

*A. The Matrimonial Regimes, Liberties, and Succession Law of March 2000*

The Matrimonial Regimes, Liberties and Succession Law of March 2000<sup>116</sup> was designed to provide a gender-neutral legal framework that defined matrimonial regimes and further specified property donations and successions within those regimes. Indeed, the law took a huge step forward in granting female children and adult women inheritance rights on an equal basis with men. Despite this step forward, this law is not completely adequate: it is not comprehensive, it contains unclear provisions, and it contains provisions that could potentially be applied in a discriminatory manner.

The law is not comprehensive in at least three ways. First, the law covers successions for legal marriages, but it does not cover successions for the huge number of so-called “illegal” (i.e., non-legal) marriages. A substantial number of land disputants interviewed for this project were trying to claim land that was not part of an inheritance based upon a legal marriage. Interestingly, these disputants were well aware of their disadvantaged position, and some seemed to lie or fabricate evidence about the legality of the marriage in question—either their own marriage or that of their mother or grandmother—in order to strengthen their land claims. Second, the law guarantees the inheritance rights of legitimate children in Article 50, but it does not guarantee the inheritance rights of the many children born in nonlegal marriages.<sup>117</sup> Third, the law covers property rights, but it does not adequately cover land rights as a subset of property

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118. C. Civ. No. 22/99 (Rwanda).

117. *Id.* art. 50.

rights, with the exception of Article 9, which specifies that donations and successions are subject to land regulations and which prohibits the partition of land plots less than one hectare in size.<sup>118</sup>

The law contains at least three unclear provisions. First, the law is unclear regarding inheritance rights to purchased land as opposed to family land. In several of the land dispute cases collected in this project, the disputants argued that the rights to purchased land should be treated separately from those to customary or family land. They also argued that purchased land should be exempted from customary or “family” rules of inheritance. Second, the law is unclear regarding women’s land or property rights under the matrimonial regime of separation of property. Article 68 provides that succession of each of the spouses under this regime is possible after the deaths of the heirs in the order provided within Article 66.<sup>119</sup> A few disputes discovered in this project indicated that widows who had been married under a separation of property regime believed that they had property or land entitlements that were not being honored. Third, the law is unclear regarding the operation of the family Council of Succession. Although the law specifies the membership and leadership of the Council of Succession in Articles 81 and 82 and provides that delegates from the families of both the deceased and the surviving spouse be included, informants indicated in interviews that the deceased’s (usually a man’s family) tends to exercise considerable control over the estate.<sup>120</sup> Importantly, the law does not specify the criteria to be used by each Council in reaching decisions regarding the division of property or land.

The law contains at least four provisions that could potentially be applied in a discriminatory manner. In fact, although all provisions in the law are stated in gender-neutral terms, the law arguably contains several hidden biases that tend to work to the disadvantage of women. First, the provisions regarding surviving spouses mostly apply to women because women are usually the “surviving spouses” who are residing on their husband’s family land. Even in those few cases identified in this project in which the surviving spouse was a married man, the man was most likely living on his own family land, and therefore, the family Council of Succession seemed less likely, as compared to a succession case involving a widow, to determine that he had not fulfilled his spousal obligations.

Second, the law could be applied to the disadvantage of women in that it extends considerable discretionary power to the family Council of Succession. Article 75 grants the Council of Succession discretionary power to permit the surviving spouse to retain control of the patrimony

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118. *Id.* art. 9.

119. *Id.* art. 66, 68.

120. *Id.* art. 81,82.

upon remarriage, in the interest of children.<sup>121</sup> Still, a Council of Succession that is not predisposed to a particular heir (generally a widow) could, in theory, rely upon the unclear standards of the law to restrict that heir's rights. As discussed in Section III.C; Article 53, part 4, Article 70, part 6, and Article 76 grant a Council of Succession considerable power to determine the adequacy of an heir's care for the deceased before his or her death, the adequacy of an heir's care for the deceased's children, and the appropriateness of an heir's property transactions.<sup>122</sup> This research project uncovered some evidence that family Councils of Succession are not making property divisions equitably, thus they are using their discretionary powers to limit some parties' (generally widows) inheritance rights.

Third, the law could be applied to the disadvantage of women in that it prohibits the partition of a land plot that is less than one hectare. Article 91 specifies that land within an estate that is less than one hectare must not be subdivided among the heirs and instead must be sold or exploited collectively by all heirs.<sup>123</sup> Since many Rwandan landholders have less than one hectare, the law in effect restricts—even jeopardizes—the inheritance rights of a significant number of potential heirs. The preliminary findings from this research project indicate that male children are most often chosen as family heads, and in their roles as family heads, they determine whether the land will be sold, and if not, how it will be exploited collectively. Moreover, the findings indicate that male family heads frequently reach decisions without consulting the female heirs or without taking into account their preferences. Finally, the findings indicate that many male family heads deny their female relatives—both married and unmarried—any land rights. Essentially, the law's prohibition against land fragmentation may be good land policy, but in practice, it is often applied to the detriment of women's land inheritance interests.

Fourth, as an example of a reverse form of discrimination, the law could be applied to the disadvantage of men in the practical application of Articles 43 and 50, which provide that both women and men can inherit land on an equal basis within their consanguineal families, and in Article 70, which provides that a surviving spouse can inherit the deceased's property if the couple had married within the matrimonial regime of community property.<sup>124</sup> The problem is that these Articles will more likely be applied collectively to the advantage of women and to the relative disadvantage of men through the practice of "double dipping." As explained earlier, a person who "double dips" attempts to claim both consanguineal and affinal family land. In patrilineal and patrilocal

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121. *Id.* art. 75.

122. C. Civ. No. 22/99 art. 53, 70, 76 (Rwanda). *See also infra* Part III.C.

123. C. Civ. No. 22/99 art. 91 (Rwanda).

124. *Id.* art. 43, 50, 70.

Rwandan society, women are more likely than men to “double dip” in making land inheritance claims because they are more likely to have close ties to both their consanguineal and affinal family areas. This research project indicated that some women are indeed trying to “double dip,” thus potentially expanding their land access opportunities. What is less clear is whether women are successful in their efforts. More information is needed regarding how local authorities and judges interpret and respond to a woman’s attempt to “double dip” (i.e., whether they grant land to a woman on the basis of absolute inheritance rights or demonstrated need). In addition, more information is needed regarding men’s efforts to “double dip.” This research project uncovered several cases in which men lay claim to land in their deceased wife’s area, though the basis of their claims was not always clear (i.e., whether the couple had been using the land before the wife’s death or whether the land was not claimed by other heirs). Also unclear is whether these men made their claims on the basis of the provisions in the Matrimonial Regimes, Liberties and Succession Law of 2000.

Future research efforts need to determine whether women’s inheritance rights have been improved through the implementation of the law. Of concern in this connection are several questions regarding the interpretation and practical application of women’s land rights: 1) Should a woman be permitted to claim a particular plot of land or to make a retroactive claim to land that was partitioned among heirs many years previously? 2) Should a woman be permitted to claim a share of both her consanguineal and affinal family land? 3) Should a woman’s land claim be weighed and decided against the availability of land as well as the needs of her consanguineal and affinal relatives, including future land claimants? 4) Should some categories of women, such as genocide survivors, be given special consideration regarding their land claims? In addition, future research efforts need to determine whether the law actually creates a space that women can exploit to their advantage, or if in practice, families and local authorities investigate and balance out various contextual factors, thereby granting women no land rights or only insignificant land rights in one area when they have access to land elsewhere. Of concern in this connection are questions regarding how local authorities and judges are deciding land disputes brought by women, including whether they are basing their decisions on the principles embodied in the new law, and if so, how they are interpreting and putting these principles into practice. This research project found evidence that local authorities and judges often reach decisions that are favorable to women’s property or land interests, but that they are frequently unable or unwilling to enforce their decisions. Finally, future research efforts need to investigate the degree to which

citizens, particularly women, are aware of the law and its provisions.<sup>125</sup> While conducting interviews for this project, I discovered that ordinary citizens interpret the law differently; and while collecting dispute cases, I heard women disputants directly refer to the law in arguing for different types of inheritance claims. In sum, future research efforts need to examine the impact that this law has had on the legal reasoning in dispute cases, on the popular understanding regarding personal land rights, and on the ongoing processes of social and legal change.

*B. The Draft Land Law (2003 version)*

The Draft Land Law (2003 version)<sup>126</sup> is designed to provide the framework for the reform of land ownership regulations and land management practices. As discussed above, the law specifically mentions women only in Articles 4 and 8.<sup>127</sup> If women's interests in land access and ownership are to be guaranteed in practice, the land law and associated land policy should specify more precisely how these interests will be guaranteed.

One way that the law can better guarantee women's land interests is by more clearly defining or specifying the terms used. For example, the law needs to specify who are the "stakeholders," "lawful owners," and "rights-holders" who are mentioned in the various articles.<sup>128</sup> One wonders if land will be registered mostly under male household heads, as has occurred in land programs in other parts of Africa, and if that fact will lead to Rwandan men rather than women becoming the newly designated "stakeholders," "lawful owners," and "rights-holders" of land. All Rwandans with land interests, including women, must be understood as "stakeholders" and ensured a right of participation, not only in determining their land access within their families but in administering land programs within their communities. In addition, the law needs to specify the nature of the "full rights" that it guarantees to these "stakeholders" and "owners." One wonders whether "full rights" means full, private ownership or

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125. Many Rwandan women have become aware of the Matrimonial Regimes, Liberties and Succession Law of 2000 through educational radio broadcasts, newspaper articles, or word-of-mouth. Although women do not always know the provisions of the law, they nonetheless try to make the law work for them. Of interest, all Rwandan women do not interpret the law in the same way. Some believe that the law permits women to claim their birth family land but not their husband's family land, whereas others believe that the law permits women to claim both their family land and their husband's family land. Many of the women interviewed for this project indicated that they had heard about the law and were making their land claim based on the provisions of the law; some of these women tried to claim land retroactively.

126. Draft Land Law, *supra* note 62.

127. *Id.* art. 4, 8.

128. *Id.*

something else. Finally, the law needs to specify how these “stakeholders,” in the process of exercising their “full rights,” can meet the high standards set by the law to farm “productively,” “efficiently,” and “profitably.”<sup>129</sup> It is important that these standards be applied equitably across population groups.

A second way that the law can better guarantee women’s land interests is by explaining more fully the categories of land tenure, including customary land, leasehold land, and private tenure land, and further by specifying the significance of these categories for women. One issue concerns whether some customary provisions will be retained. A second issue concerns the nature of the possible alternatives to customary law. For example, if leasehold tenure through the Rwandan State should be introduced in order to impose conditions that enforce land use policies, land administrators would be given considerable discretionary powers. These administrators would likely have the power to link leasehold renewal to “productive” land use. In such a situation, vulnerable populations, consisting largely of women, might find that they are either unable to meet reasonable conditions for “productive” land use (e.g., due to poverty), or that they are unable or unwilling to hold to unreasonable conditions for “productive” land use (e.g., payment of bribes or participation in patronage networks).

A third way that the law can better guarantee women’s land interests is by specifying the methods that citizens must use for proving their land rights (i.e., registering their “land ownership”) when new land programs are introduced. The current draft version of the law stipulates in Article 38 that proof of identity must be offered in a land registration program.<sup>130</sup> But the law says nothing about providing evidence that proves the land right. In fact, evidence should be provided to substantiate all claimed land rights, and this evidence, in keeping with Rwandan custom, should include the oral testimony of both the land applicant and his or her neighbors. The inclusion of such testimony would allow for proof of land use by parties who may not be able to read or write or who may not possess written records documenting their land rights. Regarding written records, it can be argued that women are less likely than men to possess these records since such records were ordinarily retained by men in the prewar period.

A fourth way that the law can better guarantee women’s land interests is by accounting for the impact that some land policies will have on women. As one example of a policy that will have an impact on women, Article 41, which aims to prevent land fragmentation by specifying the minimum size of a parcel that can be divided, may limit women’s rights to inherit land in practice because sons generally will inherit land if

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129. *Id.*

130. *Id.* art. 38.

inheritance is limited to one person.<sup>131</sup> The practice of joint control of a land area may be a good way to avoid fragmentation; however, guarantees need to be in place to ensure that all heirs, including women, receive some benefit (i.e., use of a land plot or a portion of the proceeds from the sale of part or all of the land area).<sup>132</sup>

As a second example of a policy that will have an impact on women, Article 21, which provides for compulsory consolidation of fragmented holdings, may be applied to the disadvantage of many rural women who have small, fragmented holdings that are threatened by consolidation efforts and who also lack the financial resources and legal know-how to challenge these efforts through administrative and legal channels.<sup>133</sup>

As a third example of a policy that will have an impact on women, Articles 83-94, which provide for the confiscation of unexploited land, may create greater risks for some population groups, including women, orphans, the elderly, and disabled people, who cannot meet the conditions for "productive" exploitation of land. Even though the law provides that confiscated land may be returned to an owner if certain conditions are met within a set time period, the reality exists that some population groups will not be able to meet these conditions either on the short-term or the long-term.<sup>134</sup>

As a fourth example of a policy that will have an impact on women, Article 23, which provides for compensation in situations of land confiscation and consolidation, may be applied unfairly in cases involving women.<sup>135</sup> The problem is that compensation will presumably be the responsibility of the new land owner. Under the existing circumstances in Rwanda, in which a land market is still emerging and in which land values are not well established, some groups, including disadvantaged women, may not be able to argue effectively for fair land compensation.

As a fifth example of a policy that will have an impact on women, Articles 41-46, which deal with land transfers including inheritance, may give rise to problems for women. Family heads could interpret Article 41,

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131. *Id.* art. 41.

132. This project produced evidence that a son, and not necessarily the oldest son, commonly inherited an undivided land plot. Even when the family council specified that one heir, as family head, must distribute land rights among all the heirs, including women, this heir often granted his siblings inferior land rights (small, poor quality land plots that were distantly located from the residential location) or no land rights at all. In order to avoid this possibility, the pending land law might provide that land areas that cannot be subdivided should be sold by all the heirs at public auction or to one of the heirs who pays cash to the other heirs. Still, a problem with this idea as revealed by many cases collected in this project, is that many family heads are currently selling all or part of the collective landholdings and not distributing the proceeds.

133. Draft Land Law art. 21, *supra* note 62.

134. *Id.* art. 83-94.

135. *Id.* art. 23.

which stipulates limits on land subdivisions, to the detriment of women unless an appeals mechanism is in place.<sup>136</sup> Article 82, which states that family members who obtained absentee relatives' land may "own it for good," may pose problems for women who intend to reclaim land rights that they lost during the war and genocide when their husbands or fathers died or left the country.<sup>137</sup> In contrast, Article 43, which requires the consent of family members to land transactions, holds promise for protecting women's land interests.<sup>138</sup>

As a sixth example of a policy that will have an impact on women, the law in general seems to envision a sporadic, rather than a systematic, planned, and participatory land titling program. One might argue that a sporadic land titling program would be detrimental to disadvantaged women who do not receive regular information about land transactions and who are therefore unable to declare their interest in obtaining a land title.

A fifth way that the law can better guarantee women's land interests is through balanced and participatory land administration. Groups that are normally underrepresented, such as women, should be guaranteed a place on administrative bodies, such as the land commissions that are mentioned in the current draft version of the law. At this time, the law states in Article 8 that both men and women should be represented on the land commissions, but it does not specify the ratio of men to women or who these women might be.<sup>139</sup> Women farmers from the community as well as professional women with technical skills should be represented on land commissions in order to lend legitimacy, advocacy, and accountability to their operations. The law should also specify the nature of these representatives' participation. Moreover, women should be enabled to participate in all community decision making processes concerned with land, such as decision-making regarding land consolidation, registration, or titling. Finally, women who are likely to experience land disputes from the actions initiated under the provisions of the land law (e.g., land expropriations due to owners' noncompliance with mandated use requirements) should be guaranteed equal access to and decision-making powers within land dispute resolution processes.

This article has presented several case studies that illustrate some realities of women's land access problems, both their constraints and opportunities, but many questions about women's land access rights remain. These questions cannot be adequately answered without additional investments being made in countrywide investigations of Rwanda's law and policy in action. These research investigations are essential if

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136. *Id.* art. 41–46.

137. *Id.* art. 82.

138. *Id.* art. 43.

139. Draft Land Law art. 8, *supra* note 62.

lawmakers are to craft an informed and comprehensive law that is in tune with real people's real land needs. In an effort to reveal women's on-the-ground rights, researchers need to examine the decisions reached by judges and local authorities in women's land cases in courts and *gacaca* in all provinces. In an effort to determine the types of impediments faced by women in land access, researchers need to conduct qualitative interviews (e.g., with individuals at home and with focus groups in public places) in all provinces. Finally, in an effort to reveal the number of women who are protesting their land access rights before various political and legal agencies, including government offices, NGOs,<sup>140</sup> traditional *gacaca*, and courts, researchers need to conduct quantitative, statistical surveys (e.g., questionnaire surveys). In sum, researchers should take a complex, balanced approach to women's land access, addressing women with different land access problems and using different types of research approaches that reach out to women in different life circumstances.<sup>141</sup>

At present, most Rwandan women experience legal uncertainties due to the gap that exists between customary land law and the pending land law. If Rwanda's lawmakers make an effort to understand women's land interests and further to specify and to guarantee more clearly their rights within the pending land legislation, women will likely experience fewer legal uncertainties and be less compelled to devise solutions to their land access problems on a painstaking case-by-case basis.

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140. Several NGOs, such as Haguruka, are actively promoting and defending the rights of women, notably by disseminating posters and legal education booklets and by training women regarding their rights to property and inheritance.

141. At this writing, several land research projects have recently been conducted or are currently under way in Rwanda. The findings from these projects should be widely disseminated within the research community and shared with lawmakers before the pending land legislation is enacted. In this project, I interviewed many Rwandan women, both individually and in groups. I did not conduct a questionnaire survey. Based on the large numbers of women I encountered at various courts and at NGO offices—most of whom were processing land disputes—I believe that many women have land disputes and that women make up the majority of land disputants. The questionnaire surveys that are currently under way should provide some statistical indication regarding the numbers of women who are experiencing land disputes, the types of land disputes that they are experiencing, and their methods for processing these land disputes.