



USAID | **RWANDA**
FROM THE AMERICAN PEOPLE

PRELIMINARY WOMEN'S PARTICIPATION AND BENEFICIARY PLAN

PART ONE: RECOMMENDATIONS FROM THE FIELD



JANUARY 2008

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DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ACRONYMS AND ABBREVIATIONS

DFID	UK Department for International Development
MINITERE	Ministry of Lands, Environment, Forestry, Water, and Mines
NLTRP	National Land Tenure and Reform Programme (DFID)
USAID	United States Agency for International Development

I.0 INTRODUCTION

From March to December 2007, the Rwandan Ministry of Lands, Environment, Forestry, Water, and Mines (MINITERE) piloted a land rights formalization process with support from the UK Department for International Development (DFID), as part of the National Land Tenure and Reform Programme (NLTRP).¹ During this time, a United States Agency for International Development (USAID)-funded team of land law and gender specialists provided assistance to MINITERE to promote consideration of gender issues during the pilot and to create recommendations to inform the envisioned national roll-out process. The ultimate goal of these combined efforts is for all Rwandans to enjoy improved tenure security. This Preliminary Women's Participation and Beneficiary Plan contains the recommendations to help women participate in and benefit from the national roll-out of the land formalization process in Rwanda. This preliminary plan and the investigations that contributed to it are a part of the early stages of USAID's gender assistance on property rights and resource governance issues in Rwanda.

A draft of this preliminary plan was presented to MINITERE for its review and input. The ministry's input was used to create this final version of the preliminary plan. The next part of USAID's assistance will be to incorporate gender-specific statistical data from the land formalization pilots and refine this preliminary plan in an iterative process with key MINITERE/DFID implementing staff from the pilot team, to ensure that the plan is workable in practice.

Experience in many countries shows that a land formalization project that does not specifically consider women's circumstances can have the unintended effect of weakening women's rights to land. However, a land formalization project will strengthen women's land rights if it is informed by an awareness of the particular issues facing women in the household, in the community, within the law, and in society.

This preliminary plan presents recommendations based on interviews in the MINITERE/DFID pilot areas and comparative experience, research, and lessons learned from other land formalization projects worldwide. The main purpose of this preliminary plan is prescriptive; the goal is not simply to report on findings but to provide a relevant, workable, contextualized plan to achieve optimal integration of gender considerations in Rwandan land formalization activities.

Section 2 of this document provides an outline of the MINITERE/DFID pilot process and highlights key issues and recommendations regarding women's land rights in Rwanda. Sections 3 and 4 describe the process by which the USAID team assessed the impact of the land formalization process on women's land rights, the main findings from the field work, and practical recommendations to ensure that Rwandan women participate in and benefit from land formalization. For clarity, that section is divided into those recommendations that apply to process and those that apply to policy.

¹ The NLTRP is being managed and implemented in the field by British development consulting firm HTSPE, Ltd.

2.0 SUMMARY OF RECOMMENDATIONS

This section provides an overview of the MINITERE/DFID pilot process and highlights key issues and specific recommendations to ensure that Rwandan women participate in and benefit from the land formalization process in their country. The pilot process is outlined here as described in the MINITERE/DFID February 2007 Draft Operations Manual and as witnessed in the field.

I. PREPARATION AND PLANNING

I.1 National and local public information and instruction via written information and meetings

Recommendations

- i. Identify the means by which women receive information, and take special steps to ensure that women are in fact notified of the public information meetings and demarcation activities
- ii. Conduct separate meetings for women and men
- iii. Focus on communicating specifically with women who are not heads of households

I.2 Initial training and walk-through of procedure for government officials, adjudication committees, and para-surveyors

Recommendations

- i. Use the influence that government officials have to communicate that every adult, regardless of sex, education level, or social status, is entitled to have legitimate interests in land registered
- ii. Ensure training involves sensitization for the particular issues that a woman may face in the process
- iii. Train para-surveyors, adjudication committee members, local authorities, and anyone else who may be confronted with a land-related dispute on how to handle the dispute with gender sensitivity
- iv. Identify community members who resolve intra-household disputes and ensure that they receive special training

I.3 Education and Training

Recommendations

- i. Conduct ongoing analysis of the effectiveness of gender-awareness training

2. DEMARCATION AND ADJUDICATION

2.1 Demarcation of plots on satellite images with para-surveyors and in the presence of neighbors and local authorities

Recommendations

- i. Interview spouses separately
- ii. All adults with an interest in the land should be present during demarcation

2.2 Recording land rights by the adjudication committees, and issuing certificates of occupancy to owners

Recommendations

- i. Ensure that legal wives do not lose rights to land that are held by both spouses
- ii. Allow for more than one type of interest in land to be recorded
- iii. Ensure that married and unmarried daughters and girl orphans do not lose their equal inheritance rights

3. POST-DEMARCATION

3.1 Objections and corrections period

Recommendations

- i. Provide special support for women during the objections and corrections period using trained paralegals
- ii. Encourage the participation of cell authorities in filing disputes
- iii. Provide gender sensitization for every person involved in the process

POLICY RECOMMENDATIONS

The issues and recommendations below require a longer-term effort and the cooperation of other ministries; some may also be beyond the scope of MINITERE's authority. They are included here because many of the issues identified in the field reflect ambiguities in enacted laws and policies.

4. LEGAL FOUNDATION

4.1 Custom

4.2 Constitution and the Organic Land Law

Recommendations

- i. Discuss and resolve whether the law should provide for co-ownership of land that is used and/or occupied by cohabitating, non-legally married couples

4.3 Law on Matrimonial Regimes, Liberalities, and Successions

Recommendations

- i. Amend the Succession Law to clarify the nature of a surviving spouse's right to the entire property upon a spouse's death when under a community of property regime

- ii. If, as applied, the Succession Law grants the surviving spouse a long-term use right and not an ownership right, register the long-term use right

4.4 Co-ownership Law

Recommendations

- i. Modernize and amend the civil code provisions that govern co-ownership of property:
 - a. Remove the exclusion of inherited or marital property (Article 35)
 - b. Remove the time restriction of five years (Article 33)
- ii. Register non-legally married couples as co-owners per the amended co-ownership provisions

3.0 BACKGROUND

3.1 THE PILOT PROCESS

The MINITERE/DFID National Land Tenure Reform Program aims to clarify and confirm rights and obligations of existing owners and occupants of land. The NLTRP also seeks to convert those rights into a legally recognized form that will allow people to buy and sell their land and use their titles for mortgages and other credit purposes. One of the project’s important objectives is to pilot a land formalization process that promotes fairness and transparency with simple tasks and procedures that may be replicated systematically throughout Rwanda.

The MINITERE/DFID pilot formalization project began in March 2007 and concluded in December 2007. The pilot processes were implemented in four pilot areas, in the districts of Karongi, Musanze, Kirehe, and Gasabo. The sites were selected based on different land use, socio-economic, and market characteristics.² Specific steps in the pilot land formalization process are presented in Box 1 and described in more detail below. Given the absence of a detailed legal framework, MINITERE currently issues receipts of occupancy instead of proof of ownership to owners of the demarcated plots. The owners will hold the receipts, which are detailed in a local registry, until a legal framework is in place, at which point they can be transferred into claims receipts and registered and titled, as specified in the law.

Box 1: Basic Steps of the Pilot Land Regularization Process

1. National and local public information and instruction, via written information and meetings
2. Initial training and walk-through of procedures for government officials, adjudication committees, and para-surveyors
3. Demarcation of plots on satellite image with para-surveyors and in the presence of neighbors and local authorities
4. Recording of land rights by the adjudication committees, and issuing of certificates of occupancy to owners
5. Objections and corrections period and registration of the number and type of disputes for future resolution

Source: *Operations Manual for the Regularization of Land Tenure in Rwanda*

3.2 WOMEN’S LAND RIGHTS IN RWANDA

Among the Rwandan poor, women rank highest in tenure insecurity and increasing land scarcity. Women in Rwanda rarely own land in their own right, despite their heavy involvement in and dependence on agriculture

² Specifically, Karongi represents one of the worst-affected areas during the genocide, with many orphan landowners and de facto women heads of household due to the large numbers of men in prison. Musanze is characterized by land relations that have been negatively affected by the prolonged impact of pre-genocide civil war and post-genocide military instability, the continuing presence of “genocide ideology” (ethnic hatred), and a growing informal land market due to population pressures and land scarcity. Gasabo is an urban and peri-urban area with many landless people, small landholdings, high frequency of expropriation, and a thriving informal land market, including many rental houses. Kirehe is characterized by low population density, high concentrations of refugees, and extensive land sharing arrangements. See MINITERE, Phase I of Land Reform Process in Rwanda: Results of Preparatory Field Consultations in Four Trial Districts (March–October 2006), February 2007, Rwanda.

as a source of livelihood. And yet, women constitute 54 percent of the population and head 20 to 30 percent of all households.^{3,4}

Despite the non-discriminatory provisions in Rwanda's constitution, the Organic Land Law, and laws governing succession, most women fare poorly in the area of land rights. This is partly attributable to the persistence of patrilineal customary inheritance practices that only allow a woman access to and/or use of land based on a relationship with men in her marital and/or birth families. In contrast to the customary practices, formal laws permit women to inherit land, but many of the provisions that grant those rights are vague, ambiguous, and contradictory. There is also little knowledge of the laws among the general population, and where there is knowledge, women are not likely to pursue their rights for fear of reprisal within the household. In addition, Rwandan women's limited access and rights to land can be explained by the high prevalence of informal or "non-legal" marriages, i.e., relationships that are not recognized by the laws that grant women land rights. Thus, formal law does not apply these relationships, with the result that relationships governed by customary practices deny women ownership or inheritance. Women are especially vulnerable when these relationships fail or when the household otherwise breaks down due to abandonment, separation, out-migration, or the effects of disease such as HIV/AIDS. Finally, Rwandan women rarely utilize available dispute resolution and law enforcement mechanisms.

3.3 FIELD APPROACH AND METHODOLOGY

In May 2007 the USAID-funded land law and gender specialists (including a Rwandan lawyer and gender specialist) finalized a strategy for assisting MINITERE to ensure that Rwandan women understand, participate in, and benefit from the land formalization process that is to be implemented throughout the country. At the suggestion of the Minister of State, the local gender specialist held separate pre-pilot "mobilization" meetings first with women and then with local officials. These pre-pilot meetings were intended to explain the significance of the land formalization pilots and alert women to the importance of the process and their participation. These meetings were conducted in Musanze and Kirehe and post-pilot focus group interviews were held with women, implementers, and local authorities at the Karongi, Musanze, and Gasabo pilot sites. In addition, the team visited three of the four pilot sites to observe the demarcation and adjudication process.

The team developed a questionnaire to guide the interviews based on the pilot formalization process noted above. Upon completion of land formalization in a pilot site by the MINITERE/DFID team, the Rwandan gender specialist would contact the site's cell and sector representatives to identify potential attendees, ensuring that the interviewees included legally-married women; informally-married women; widows; women who were separated, divorced, or single; orphans; and elderly women; as well as the National Women's Council representatives at the cell and sector levels. The interviewees were gathered in small groups of eight to thirteen. Where necessary, break-out sessions were held for women with different marital status (e.g., only widows or only single mothers).

³ Musahara, Herman. Improving Tenure Security for the Rural Poor: Rwanda Country Case Study, Legal Empowerment of the Poor Working Paper #7, United Nations Food and Agriculture Organization, 2007, available at [http://ftp.fao.org/SD/SDA/SDAR/sard/Rwanda%20case%20\(final%20publica\).pdf](http://ftp.fao.org/SD/SDA/SDAR/sard/Rwanda%20case%20(final%20publica).pdf).

⁴ Pottier, Johan. Land Reform for Peace? Rwanda's 2005 Land Law in Context, *Journal of Agrarian Change*, 2006, Vol. 6, No. 4, pp. 509–37.

4.0 RECOMMENDATIONS

This section contains specific recommendations for actions that will ensure that Rwandan women participate in and benefit from the land formalization process in their country. The pilot process is outlined here, as described in the MINITERE/DFID Operations Manual (also see Box 1), and as witnessed in the field.⁵ For clarity, distinct steps in the process are grouped in stages as preparation and planning, demarcation and adjudication, and post-demarcation. Recommendations are made at the conclusion of each sub-section.

4.1 PREPARATION AND PLANNING

4.1.1 National and local public information and instruction via written information and meetings

According to the NLTRP Operations Manual, the pilot process begins with a national and local information campaign.⁶ Notice of the pilot in an area is published on the radio and in the national press with sufficient time for those who live outside the pilot area to travel to the area to participate, if needed. The notice specifies the land areas that will undergo demarcation, provides a summary of the procedure, and estimates the amount of time necessary for the demarcation and adjudication process.

The cell Executive Secretary is responsible for ensuring that the people within the pilot area are aware of the pilot and for organizing the public information meetings. Not less than five working days before demarcation begins, a notice is published and posted in a prominent place in the cell and in areas to be adjudicated. The notice specifies the location and limits of the adjudication area, requires all persons who claim any interest in the land to attend a meeting of the adjudication committee, and requires that any person who claims to occupy land within the adjudication area mark or indicate the boundaries of the land before the specified date. Announcements are also typically made at the churches in the pilot area.

Evidence from the field suggests that women and men receive information differently in Rwanda, and that women tend to gather and share information in different places than their male counterparts. It is not culturally acceptable for Rwandan women to interact in public life, especially in rural areas, and women are therefore less likely to ask questions in the presence of their husbands and other men. Those women who do speak publicly are perceived as undisciplined and are often cut short, thus discouraging others from speaking.

Recommendations

- i. Identify the means by which women receive information and take special steps to ensure that women are in fact notified of the public information meetings and demarcation activities*

⁵ Republic of Rwanda, Office of the Registrar of Land Titles, *Operations Manual for the Regularization of Land Tenure in Rwanda, DRAFT*, February 2007.

⁶ Id.

Special steps should be taken to ensure that women receive appropriate notice of the information meetings process and have the ability to learn about and understand their rights and any threat to those rights. To account for local variations, program designers should identify the best media, location, and time for communicating with women, ensuring that public information displays are accessible by everyone including those who may not be able to leave their homes because of cost, lack of transportation, or household responsibilities.

ii. Conduct separate meetings for women and men

Separate meetings for women and men can significantly impact on the participation of women and men in the formalization process. In those pilot areas where pre-pilot meetings were held, the overall participation by both men and women was high. Women were better informed of the details of the pilot, more aware of their rights, and had a better understanding of the significance of the pilot than in pilot areas where no pre-pilot meetings were held. In Karongi, only one woman was observed asking a question during a public information meeting, and she was discouraged publicly from pursuing the response in any detail. In contrast, many women asked questions during the pre-pilot meeting in Musanze, and they were then confident enough to ask questions in the public meeting.

Separate meetings for men may also be useful in promoting women's rights. In Musanze, some women noted that it was just as important to inform men of women's land rights as it was to inform women of their land rights. As a number of cases in Gasabo indicated, there is a chance that a man, believing his wife was ignorant of her land rights, could take advantage of her lack of knowledge and find ways to exclude her from the process.

iii. Focus on communicating specifically with women who are not heads of households

Women in male-headed households are more likely to have their land rights negatively affected by a land formalization project than are women from female-headed households. Even given the high percentage of women-headed households in Rwanda, most women are of the class (women in male-headed households) most likely to be disadvantaged.

Widows reported a positive experience with the pilot, and they were more likely to attend public meetings. Widows in Karongi and Gasabo reported that they felt better off than women with partners when it came to land rights. They also stated that they experienced no problems attaining land rights but rather wanted assistance with land improvements.

Women in male-headed household, however, reported fearing that attempts to assert their rights against husbands or family members could lead to repercussions in the home. Efforts should be made to ensure that outreach and information-sharing activities are delivered in a way that reaches all women, regardless of their marital status, and that women within male-headed households are afforded safe opportunities to be heard.

4.1.2 Initial training and walk-through of procedure for government officials, adjudication committees, and para-surveyors

As per the Operations Manual, before demarcation and adjudication commence, local authorities are to be trained on the NLTRP procedure. After the training, demarcation and adjudication is demonstrated publicly, followed by a cell public meeting to explain procedures, answer questions, confirm the date for demarcation and adjudication, and announce the chosen plan for working throughout the cell. According to the manual, all cell and *umudugudu* leaders are requested to urge people in the pilot areas to resolve their disputes and clearly mark their boundaries before demarcation and adjudication begin.

In Karongi, a public meeting was held and the pilot process was outlined verbally. In Musanze and the pilot areas that followed, the public meeting format was altered to include a role-play that included some gender-related information.

Recommendations

- i. Use the influence that government officials have to communicate that every adult, regardless of sex, education level, or social status, is entitled to have legitimate interests in land registered*

Field findings suggest that Rwandans, especially those in rural areas, are likely to be strongly influenced by statements made by government officials who can play a key role in shaping public perception. Some women in Karongi reported that they did not know whether the pilot would be good or bad for them but they felt obligated to participate because it was a government program. For this reason, project representatives have an opportunity to use this influence to dissuade behavior that may result in illegitimate claims to land, thus weakening women's rights.

- ii. Ensure training involves sensitization for the particular issues that a woman may face in the process*

All people—implementers and beneficiaries alike—should be familiar with the local customs, laws, and practices affecting the rights of both men and women. Since law and customary practices often conflict, it is imperative that implementers receive ongoing and particularized training to identify the red flags that indicate that a woman's rights could be at stake. For instance, field research during the pilot showed that even though orphans' rights to land were registered, orphaned girls tended to possess smaller parcels than their orphaned brothers. Given that all children legally inherit in equal portions, implementers could be trained to probe more deeply when male adult children claim larger parcels of family land than their sister, recognizing that girls and women may not assert their rights against a family member.

- iii. Train para-surveyors, adjudication committee members, local authorities, and anyone else who may be confronted with a land-related dispute on how to handle the dispute with gender sensitivity*

The Operations Manual and field findings suggest that there are various points in the process where implementers may be confronted by disputes, which are not just handled by the adjudication committee. As implementers may be confronted with a dispute at any point in the process, they should be trained on basic principles of gender-sensitive dispute resolution. Key points to be addressed include the fact that women are less likely than men to speak in public and may need to be spoken with separately; customary practices often deny women land; and a woman will be unlikely to speak up against her husband if it could mean repercussions in the home.

- iv. Identify community members who resolve intra-household disputes and ensure they receive special training*

Both the DFID pre-land formalization field report and post-formalization field research completed as part of this plan found that the majority of disputes over land are intra-household.⁷ Unlike other types of disagreement, intra-household disputes in Rwanda are rarely handled publicly; someone in the family or within the community is designated to resolve them. For each community undergoing the formalization process, it is important to identify those individuals and/or institutions (e.g., elderly family members) within the community that resolve intra-household disputes and ensure that they are aware of the implications of land formalization and the basic law governing land rights for men and women.

⁷ MINTERE, Phase I of Land Reform Process in Rwanda: Results of Preparatory Field Consultations in Four Trial Districts (March–October 2006), February 2007, Rwanda

4.1.3 Education and Training

Field research showed that special education and training on gender awareness is needed to ensure the full participation of women. Many training recommendations have been included in the various sections above, however, there are some additional overarching training suggestions that may also be useful.

Recommendations

i. Conduct ongoing analysis of the effectiveness of gender-awareness training

The design and implementation of a land formalization project should include gender considerations at every stage including training, education, and communication. Moreover, throughout the life of the project it is critical to evaluate whether training is having the desired effect and if mid-project adjustments should be made. For instance, education provided to beneficiaries in the first pilot area in Karongi did not include a pre-pilot meeting specifically for women, and the women interviewed showed a severe lack of understanding of the pilot's potential impacts. Before the second pilot area in Musanze, separate meetings were held for women, and the women interviewees demonstrated a greater understanding and support for the process. Ongoing monitoring and evaluation of the effects of the education and training campaign can capture similar mid-project improvements that may be needed.

4.2 DEMARCATION AND ADJUDICATION

4.2.1 Demarcation of plots on satellite images with para-surveyors and in the presence of neighbors and local authorities

The Operations Manual defines demarcation and adjudication generally as the process of identifying individual owners of land parcels in the presence of neighbors and community and convened by a para-surveyor and an adjudication committee comprised of the cell land committee, the *umudugudu* head, and four *umudugudu* members.

Demarcation requires an owner to be present on his or her land to indicate the parcel's boundaries to the para-surveyor, who then marks them on a map. The adjudication committee and neighbors witness the process. More specifically, the steps of demarcation are as follows:

- The landowner and para-surveyor walk the boundaries of the parcel;
- The para-surveyor identifies existing rights-of-way;
- The para-surveyors interview claimants and spouses with regard to access to ownership of the parcel;
- Neighbors on all sides are called to verify that there is no dispute over boundaries;
- The para-surveyor marks the boundaries and rights-of-way on the map and creates a parcel number; and
- When demarcation is complete, details of the owners/occupants are provided to the adjudication committee.

Recommendations

i. Interview spouses separately

As mentioned, cultural practices frown upon a woman in Rwanda speaking publicly, especially against her husband. To ensure the validity of the access and ownership data collected by the para-surveyor, spouses should be interviewed separately out of each other's hearing.

ii. All adults with an interest in the land should be present during demarcation

Recognizing that for reasons of efficiency, timing, and cost, this recommendation may not be feasible, it should still be stated that all persons with an interest in the land, including women, should be present during the demarcation and adjudication. It was unclear from the field work what steps were taken to accommodate the rights of absentee owners, and there was some evidence that this issue was dealt with in an ad hoc manner. A cell coordinator from one pilot area reported a number of cases where husbands of women who were not present at the demarcation and adjudication of their land listed themselves as the sole owners, there was no disagreement from neighbors, and the adjudication committee was not apprised of the situation. In one case, the cell coordinator was alerted to the practice only by chance because she was a family friend, and the issue was resolved. This possible wide-spread practice could be avoided by requiring physical presence of all adults with an interest during demarcation.

4.2.2 Recording land rights by the adjudication committees, and issuing certificates of occupancy to owners

According to the Operations Manual the owner presents him/herself to the adjudication committee at this point in the process to provide identification and any evidence of an interest (written or otherwise). The adjudication committee records these details in the presence of witnesses (presuming joint ownership of land between husbands and wives). At this time, the committee also accepts any counterclaims and notes these as objections. The committee examines written evidence of official documents related to the land where they exist and/or verifies the validity of the claim or counterclaim through witnesses/neighbors, records the interest, and compiles a "provisional adjudication record" to include all claims, whether disputed or not. The adjudication committee interviews owners to verify that there are no other interests in the land (e.g., orphans) other than those declared. Anyone with an interest in the land is encouraged to make themselves known to the adjudication committee for the purpose of verifying legitimate landowners. The adjudication record also lists people other than the owners (either as beneficiaries or those with an interest in the land), the land's uses, how the land was acquired, and the type of proof of ownership that was provided, if any.

When the adjudication record has been completed, the adjudication committee, claimants, and at least two adult residents present at the time of the inspection certify the correctness of the boundaries, record the information, and sign a form. Claimants of adjacent land must be present and agree to the correctness of the boundaries.

Recommendations

i. Ensure that legal wives do not lose rights to land that are held by both spouses

Field interviews in the pilot areas revealed a practice in which a legally-married man caused land owned with a wife under community property regimes to be registered in the names of an informal wife with himself listed as a beneficiary. Such a result is inconsistent with the law and permanently divests the legal wife of her land right. During training of para-surveyors and adjudication committees and during public information meetings, implementers should highlight this possibility and emphasize that such a result is contrary to Rwandan law

ii. Allow for more than one type of interest in land to be recorded

There are many situations where a woman may hold a non-ownership interest in a parcel either under customary practices or certain provisions of the Succession Law. A wife may have use rights to land surrounding her family home, but the house itself may be owned by her husband's family. A man who fathers children with a woman to whom he is not married may give her use of a parcel of land to help her care for their offspring. A widow may manage land that she holds in a kind of trust for her minor children.

While none of these situations rise to the level of full ownership, all reflect a recognized right to use land that is often critical to the survival of the family. If ownership of these parcels is recorded to one person but a use right is not also recorded, a woman and her family could be in a situation of insecure tenure and could lose the land and her source of livelihood altogether. A solution to this situation is to record the use right on the adjudication record and develop a commensurate legal provision that defines the rights and obligations of the holder of the use right.

iii. Ensure that married and unmarried daughters and girl orphans do not lose their equal inheritance rights

Field interviews in all pilot areas suggest that the statutory right of girls to inherit equally from their parents is being acknowledged. In some cases, however, the land registered to girl orphans was not in a share equal to that of their male siblings. Such a result is inconsistent with the law and permanently divests the girl orphan of her right to inherit land equally. A girl orphan in Musanze reported that she was given an unequal parcel of land but that she did not contest the result as she feared reprisals from her older brothers. The rights of daughters and girl orphans should be given special attention during training of para-surveyors and adjudication committees, as well as during public information meetings.

4.3 POST-DEMARCATION

4.3.1 Objections and corrections period

During demarcation and adjudication, occupants/owners of land witness the recording of all personal and parcel details by the adjudication committee, and a receipt is provided following field inspection. At the end of the process, a meeting is to address important information about the land formalization process and reiterate the related rights and obligations. This meeting also covers how to file an objection or correction to the adjudication record.

Persons with objections to claims may file counterclaims, even if they were not present at the demarcation, during the objections and corrections period. Adjudication records are kept in the cell office for at least one month, during which the adjudication committee is present. Anyone can visit the office to view records, file a correction or an objection, or notify the adjudication committee of a transfer or division of land that occurred post-demarcation.

An objection is filed when there is disagreement with what was recorded by the adjudication committee or para-surveyors. To file an objection, the objector must first verify in the records that there is a basis for the objection. The objector must explain the nature of the objection to the committee and complete an objection form (with assistance, if needed). The committee records the information in an objections register and provides the objector with a receipt. The case is then forwarded to the *abunzi* for resolution.

A correction can also be made to spelling errors, missing numbers, and other minor administrative items on the record.

Recommendations

i. Provide special support for women during the objections and corrections period using trained paralegals

Providing legal advice in the place where objections and corrections are to be filed can help to resolve the disputes that were not filed at the time of the demarcation. Evidence from the field suggests that disputes over land were not always brought to the attention of the adjudication committee at demarcation, and that some women were fearful of pursuing a dispute against their husbands for fear of abuse or abandonment. Interviewees in Musanze reported that some women could not file disputes because they were illiterate. Other women interviewed felt that they could not trust the local authorities to resolve disputes fairly, because the authorities were friendly with their husbands.

In order to address these issues, the program should include adequate outreach and public information about the service. Possible ways to support women during this phase include: providing administrative assistance and legal advice by training locals as volunteer paralegals and collaborating with a nongovernmental organization that provides legal services; announcing information about the available assistance at the objections and corrections meeting and making include home visits to disseminate information; and station paralegals in the locations where disputes are filed.

ii. Encourage the participation of cell authorities in filing disputes

Field findings showed that where cell authorities became involved in specific cases, women were more likely to file disputes. In Gasabo, for instance, a woman was at risk of losing her land to her deceased husband's family when they registered land that she was occupying in their own names only. A cell authority assisted the woman in filing the dispute and the issue was eventually resolved. Members of the National Women's Council could be specifically trained on assisting women during the objections and corrections stage of this process.

iii. Provide gender sensitization for every person involved in the process

Evidence shows that disputes are resolved at different times throughout this process, and not necessarily by those who receive training. The Operations Manual provides that claimants are encouraged to resolve disputes before the time of demarcation. Field research indicates that often the para-surveyors or the adjudication committees were involved in resolving disputes on the ground at the moment of recording the claim. Since it is not customary for rural women in Rwanda to speak in public, any publicly-resolved dispute involving a woman is: (1) unlikely to arise and be asserted by her, and (2) in the event that the dispute does arise, is unlikely to be resolved in the woman's favor because she will be less likely to speak up for herself. To prevent this, all adjudication committee members, para-surveyors, local authorities, and anyone who may be responsible for revealing or be faced with disputes ought to be trained on gender-sensitive dispute identification and resolution techniques and the laws and practices that affect the rights of men and women.

4.4 POLICY RECOMMENDATIONS

The issues and recommendations below necessarily require a longer-term effort and the cooperation of other ministries. Some of these recommendations may appear to be beyond the scope of the NLTRP, but they are included here because many of the issues that were identified in the field as putting women's land rights in jeopardy reflect ambiguities in enacted laws and policies.

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Although recognizing that formal law alone is not sufficient to ensure equitable property rights for men and women, ensuring gender equity in the law is often a first step. To understand women's property rights, implementers should consider customary practices for the transfer and use of property, the land law, and other laws that govern personal relationships (i.e., inheritance and property law).

4.4.1 Custom

By custom, Rwandan women do not have an automatic right to own or access land. A woman's access to land in Rwanda largely depends on her relations to men: fathers, husbands, sons, or her husband's family. Generally, a married woman receives land from her husband to provide for the needs of her husband, herself, and their children. When the husband dies, the widow is permitted use rights to her husband's land and a right to remain in the marital home, holding both in trust, as is consistent with patrilineal inheritance practices. If a couple did not produce children, then the widow may stay on the land if she is on good terms with his relatives. Custom permits land to be given to a daughter as a gift from her father or if she has no brothers.⁸

4.4.2 Constitution and the Organic Land Law

Both the Constitution of Rwanda and the Organic Land Law prohibit discrimination based on sex. The Constitution of Rwanda only recognizes monogamous civil marriages between a man and a woman. It also provides that both the man and the woman have equal rights and duties during their marriage and at the time of their divorce.⁹ The Constitution also grants every person a right to private property.¹⁰ The Organic Land Law expressly prohibits any discrimination based on sex or origin in matters relating to ownership or possession of rights over the land. Wives and husbands have equal rights to land.¹¹ The law equally protects rights to land acquired by custom and rights acquired by law.¹² Final transfer of land such as sale, donation, and exchange requires prior consent of all other members of the family who are joint owners of such rights.¹³ Here, members of the family are defined to include spouses who are legally married, among others.¹⁴

Cohabiting couples who are not legally married was found to be common in the pilot areas. Cohabitation may occur because a man has more than one "wife" but has only legally married one woman, the couple may have had a religious or customary marriage but not performed a legal marriage, or the husband may have left one wife to live with another without filing for legal separation or divorce (which is not a commonly accepted practice). Also, a man may have children with a woman who is not his wife to whom he provides care but

⁸ See Burnet, Jennie E. and RISD. *Culture, Practice, and Law: Women's Access to Land in Rwanda*, pp. 187–190. See also Brown, Jennifer and Justine Uvuza. *Women's Land Rights in Rwanda: How can they be protected and strengthened as the Land Law is implemented?* Seattle: RDI, 2006.

⁹ Constitution of the Republic of Rwanda, 2003, Article 26.

¹⁰ *Id.*, at Article 29

¹¹ Organic Law determining the use and management of land in Rwanda, No. 08/2005 of 14/07/2005, 2005, Article 4.

¹² *Id.*, at Article 7.

¹³ *Id.*, at Article 35.

¹⁴ *Id.*, at Article 36.

with whom he does not live. Couples who are not legally married often share property and have children together. In field interviews, women invariably raised questions and concerns about the property rights of cohabitating couples and children born outside of a legal marriage.

The prevalence of a relationship that is illegal but within which property rights are shared creates unique issues for the land formalization process. First, the pilot worked on the presumption of joint ownership of property between a legal husband and wife and required that any property shared by a cohabitating couple could not be registered in both of their names, even if they both own the land, as this is inconsistent with the law. Second, the practical problem of whether and how to register property of an extra-legal couple must be solved with ultimate legal implications (i.e., a title to land) that have no legal solution.

Field findings suggest that the land rights of cohabitating couples were recorded inconsistently. In some cases, the non-legal wife was recorded as the sole owner of the parcel and the non-legal husband as a person with an “interest” in the land. In others, the couples were listed as joint owners (husband and wife), even though their marriage was not legal. And finally, there were cases where non-legal wives were using a parcel for their own subsistence and were not registered at all (most likely if they did not have children). These inconsistencies raised a few issues. It is not clear what legal right arises from being listed as a person with an “interest” in the property. If the male is a rightful part owner in the land with his cohabitating wife, then he loses full ownership rights. If the male is not a rightful part owner in the land, then he gains an undefined interest in the land that he could use against his non-legal wife. On the other hand, a parcel registered to a couple who is not legally married is inconsistent with the law.

Recommendations

- i. Discuss and resolve whether the law should provide for co-ownership of land that is used and/or occupied by cohabitating, non-legally married couples*

When it comes to land rights, experience in other countries shows that whenever specific relationships between men and women are prohibited (e.g., non-legal marriages), the women in those relationships are typically worse off than when the relationship is not prohibited.¹⁵ Considering that both the Constitution and the Organic Land Law prohibit discrimination based on sex, there are at least legal grounds to discuss the discriminatory effect of the constitution’s limited definition of marriage. Similarly, the Organic Land Law’s definition of “family” to mean only legally married couples may also be discriminatory in practice.

4.4.3 Law on Matrimonial Regimes, Liberalities, and Successions

The Rwandan Law on Matrimonial Regimes, Liberalities, and Successions (the “Succession Law”) is significant to the formalization of land rights because it governs the distribution of marital property to a surviving spouse and heirs.

Where a spouse dies intestate (i.e., without a will), as is overwhelmingly the case in Rwanda, the surviving spouse’s classification depends on the property regime selected at the time of marriage and whether the couple still has children to raise.¹⁶ The three marital property regimes are 1) community of property, 2) limited community of acquests, and 3) separation of property, with community of property being the default.¹⁷ The rights of the surviving spouse per each regime are outlined in the table below.

¹⁵ See UNHABITAT, *Shared Tenure Options for Women, A Global Overview*, July 2005.

¹⁶ See Law to supplement Book One of the Civil Code and to institute Part 5 regarding matrimonial regimes, liberalities and successions, Law No. 22/99 of 12/11/1999, 1999, Articles 66–71.

¹⁷ *Id.*, at Article 2.

	DEFINITION	EFFECT OF DEATH OF ONE SPOUSE			
		Surviving spouse's general right	Surviving spouse's right with children still in her care	Surviving spouse's right without children in her care	Surviving spouse's right if she remarries and has children in her care
Community of property regime	All property held jointly between husband and wife (default)	Lifelong use right of 100% of marital property; ownership right of 50%; 50% devolves to heirs, subject to existence of children (see right)	Use of 100% for life unless she fails to raise children, in which case she loses the right to 75% of the property ^a	50% to surviving spouse, 50% to heirs ^b	Surviving spouse retains ownership of 25% of marital property, and administers 75% on behalf of the children who are still in her care ^c
Separate property regime	All property held separately	No right, unless all others in the order of succession are deceased ^d			
Limited community of acquests regime	Some property designated as community property, remainder designated as separate property	Property held in community of property treated as such; property held as separate property treated as separate property ^e			

Note: The law refers to both males and females but the female pronoun was chosen for clarity.

a Law to supplement Book One of the Civil Code and to institute Part 5 regarding matrimonial regimes, liberalities, and successions, Law No. 22/99 of 12/11/1999, 1999, Article 70-1.

b *Id.*, at Article 70-4.

c *Id.*, at Article 70-8.

d Order of succession is: children of the deceased; parents of the deceased; full siblings of the deceased; half siblings of the deceased; and paternal and maternal uncles and aunts of the deceased. See *id.* Articles 66, 68.

e Law to Supplement Book One of the Civil Code and to institute Part 5 regarding matrimonial regimes, liberalities, and successions, Law No. 22/99 of 12/11/1999, 1999, at Article 71.

Under any marital property regime, the surviving spouse still has a right to continue to use the marital home, unless she causes damage to the property (including financial damage).^{18, 19, 20}

Succession is the process by which the rights and obligations of property ownership are transferred to the heirs of the deceased.²¹ All legitimate children with recognized paternity, whether male or female, inherit their parent's property equally without discrimination.²² Similarly, all children have a right to a partition of property

¹⁸ See Law to supplement Book One of the Civil Code and to institute Part 5 regarding matrimonial regimes, liberalities and successions, Law No. 22/99 of 12/11/1999, 1999, Articles Article 74, 75.

¹⁹ *Id.*, at Article 75.

²⁰ *Id.*, at Article 76.

²¹ *Id.*, at Article 49.

²² *Id.*, at Article 50.

made by their still-living parents, known as an “ascending partition.”²³ Ascending partition takes place when parents who are still alive transfer full ownership rights of their property between children or other descendants.²⁴

Recommendations

i. Amend the Succession Law to clarify the nature of a surviving spouse’s right to the entire property upon a spouse’s death when under a community of property regime

Under the community of property regime, a couple jointly owns all property. Upon death of a spouse, the widow or widower owns only half of the property, and administers the whole of it in trust for the deceased spouse’s heirs. This interest appears to be a form of use right rather than of ownership right. The lack of clarity in the law was reflected in the field as widows were unsure whether their rights included selling or leasing their land and whether they retained the land upon remarriage. In light of this confusion, the law should be amended to clarify the extent of that right, i.e., is it transferable, is it alienable, or can it be used as collateral by the widow.

ii. If, as applied, the Succession Law grants the surviving spouse a long-term use right and not an ownership right, register the long-term use right

The Succession Law’s lack of clarity on the exact nature and extent of a widow’s right to joint marital property highlights a potential issue for the NLTRP process, i.e., what right is being registered to a surviving spouse for property acquired via succession from the deceased? Is the surviving spouse listed as the owner of the entire marital property or just half thereof? If the entire property is held in his or her name, how to protect the rights of the heirs?

4.4.4 Co-ownership Law

Rwanda’s laws of co-ownership generally permit more than one person (who do not need to be related) to own property jointly, or in common. These laws are often a significant source of a land rights for women in informal relationships. In Rwanda, co-ownership of property is not governed by other laws that regulate use, and management of common property (that is, the matrimonial regimes, liberalities, and successions) is governed by the 1948 Law on Property and Land.²⁵ Under this law, co-owners may only use the common property for an agreed purpose and any fruits of the property are to be shared by co-owners.²⁶ No one owner may change the purpose of the property without the consent of others, and any of the co-owners may ask for a division of the property.²⁷ Co-ownership is restricted to a period of not more than five years.²⁸ Co-ownership provisions cannot apply to inherited property or marital property.²⁹

²³ See Law to supplement Book One of the Civil Code and to institute Part 5 regarding matrimonial regimes, liberalities and successions, Law No. 22/99 of 12/11/1999, 1999, Articles Article 43.

²⁴ Id., at Article 42.

²⁵ Civil Code II Regarding Property and Land, Law of 28/3/ 1948, Articles 31–35.

²⁶ Id., at Article 31 bis.

²⁷ Id., at Article 32.

²⁸ Id., at Article 33.

²⁹ Id., at Article 35.

Recommendations

- i. Modernize and amend the civil code provisions governing co-ownership of property*
 - a. Remove the exclusion of inherited or marital property (Article 35)*
 - b. Remove the time restriction of five years (Article 33)*

Identify the current use and interpretation of the Law on Property and Land. The law is old and presumably not used very often, thus it may be ready for modernization. Amending the laws governing co-ownership of property between parties who are not related by legal marriage would permit two individuals (i.e., a non-legally married couple) to own property as co-owners. The property should be divisible and transferable but only with the written consent of all parties.

- ii. Register non-legally married couples as co-owners per the amended co-ownership provisions*

As a corollary, the land formalization process should continue with the necessary presumption of joint ownership but broaden that presumption from husband and wife to cohabiting man and woman, unless proven otherwise. The legal basis for such a presumption would continue to be the Succession Law, and the legal basis for the presumption for non-legally married cohabiting couples would be the amended co-ownership provisions.

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