



# THE IMPACT OF GENDERED LEGAL RIGHTS TO LAND ON THE PREVALENCE AND NATURE OF INTRA- AND INTER-HOUSEHOLD DISPUTES

**POLICY RESEARCH BRIEF NO. 5**

**LAND PROJECT**

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## 1.0 BACKGROUND

Before 1999, land rights in Rwanda were governed by three regimes: customary (traditional) law, colonial laws still in effect, and laws enacted after independence. In each of these, men were privileged in ownership and control of land whereas women were excluded or had fewer rights.

The 1999 Succession Law restructured and harmonized land ownership in Rwanda, superseding all prior legislation. A significant portion of these changes related to gender equality. Equal rights to *umunani* (umunani or ascending partition is an act accomplished by parents while they are still alive, by which they share their patrimony between their children or their descendants who acquire, each for the portion devolved to him or her, full ownership. This partition shall be regarded as the accomplishment of parents' duties to educate their children and to provide them with a personal patrimony.) and land succession were granted to both sexes, and legally married spouses (including widowed and divorced spouses) were provided with joint property rights and gender-neutral protections. Gender equality is also reflected in the Constitution of 2003 and Law N° 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda repealed by Organic Law N° 03/2013/OL of 16/06/2013 and replaced by Law N° 43/2013 of 16/06/2013 governing land in Rwanda which focuses on standardizing land registration within a revised ownership framework.

Sixteen years have passed since the adoption of the 1999 Succession Law and its recognition of and protections for gendered land rights. Questions are now being raised regarding the actual impact of this legislation: What is the level of awareness of the 1999 Succession Law's gendered provisions? How much has women's land ownership actually increased? What measures are women taking to assert their rights? How successful are they? How are disputes resolved? What is the level of gender-based violence related to land disputes? Do disputes within families result in more gender-based violence than those between families? Overall, have land disputes increased or decreased?

An evaluation of the progress made in women's access to and enjoyment of their land rights was needed to answer these questions. To this end, the USAID LAND Project contracted the Institute of Legal Practice (ILPD) in Nyanza to conduct a study measuring “***The Impact of Gendered Legal Rights to Land on the Prevalence and Nature of Intra- and Inter-Household Disputes***”.

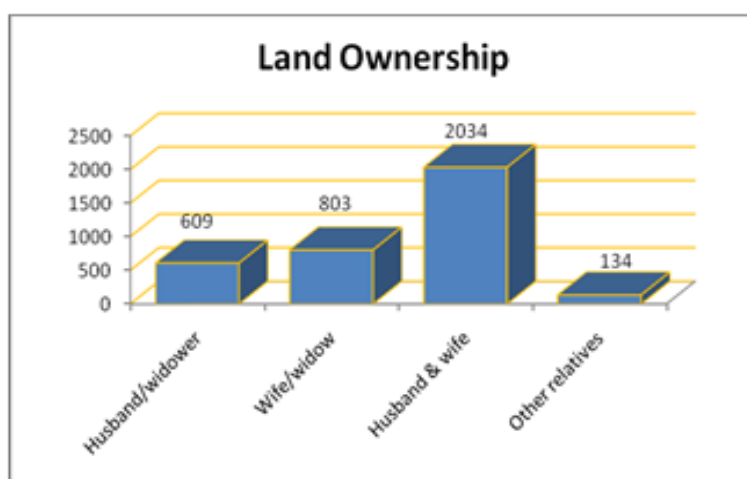
The ILPD research team collected data in every region of the country, using a large-scale randomized household survey, focus group discussions, key informant interviews, and data collected directly from Primary and Intermediate Court records.

## 2.0 RESEARCH FINDINGS

## 2.1 Land Ownership

According to Rwandan custom, land ownership is the prerogative of men, and land rights are inherited from father to son. Girls were therefore excluded from the succession of family land. This system prevented a woman from land ownership, even as a widow where she was entitled only to the right of usufruct over family land while waiting for her sons to come of age<sup>1</sup>. These patriarchal land ownership patterns have been altered since the adoption of the 1999 Succession Law. The household survey reveals that husbands or widowers own 17% of household parcels, while legally and informally married wives or widows own 22%. Joint ownership of land (husbands and wives together) accounts for 57% of household parcels. A few other household members (4%), such as single sons and daughters, also own land. These high percentages of women, either individually or jointly, are primarily the outcome of gendered legislation and gender-inclusive land registration policies. This research shows that today a considerable proportion of daughters and wives enjoy rights to land acquired through *umunani*, succession, and marriage.

Figure 1



The strong trend towards husband-wife co-ownership is a significant indicator of the magnitude of the changes introduced by the 1999 Succession Law and Law N° 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda repealed by Organic Law N° 03/2013/OL of 16/06/2013 and replaced by Law N° 43/2013 of 16/06/2013 governing land in Rwanda. Nevertheless, co-ownership on paper might not reflect equal control over land and the benefits derived from land.

### 2.1 Awareness of Gendered Land Rights

Thirty-five percent of survey respondents were unfamiliar with the 1999 Succession Law, with a slighter higher percentage of women who are unaware, indicating that there is a need for a public awareness program, with particular efforts directed to heightening awareness among young women and men who tend to be less aware than their older counterparts.

<sup>1</sup> Republic of Rwanda, National Land Policy, 2004, p.5

Figure 2

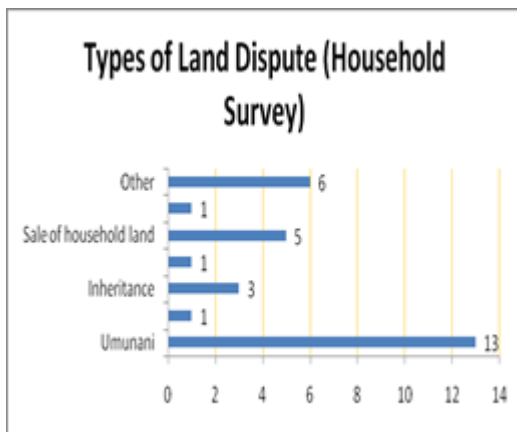
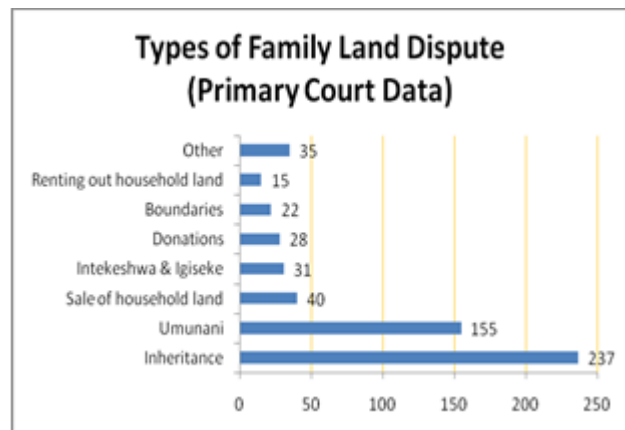


Figure 3



## 2.2 Common Land Dispute Types

Disagreements over *umunani* and succession are the most common sources of land disputes, distantly followed by boundary disputes.

The relative numbers of *umunani* and succession-related land disputes, particularly those that involve women, indicate a continued discordance between male-dominated land ownership traditions and Rwanda's current laws and policies.

## 2.3 Equal size of *Umunani* Portions to both sexes

Roughly one third of respondents indicated their belief that, within a family, daughters should receive a smaller portion of *umunani* than sons. The Succession Law only defines *umunani* as the distribution of patrimony, including land, by parents while they are still alive to their children without distinction between sons and daughters. The law does not explicitly state that sons and daughters receive equal shares of *umunani* and more particularly equal shares of *umunani* land, only that sons and daughters have equal rights to *umunani*. The preference among 31% of respondents for larger shares for sons indicates that traditional beliefs (particularly relating to patriarchal society) that enshrine the privilege of men in matters related to ownership of land continue to have a strong influence on current norms. There is a need to understand why these norms persist and to tackle the root causes that give rise to these beliefs.

## 2.4 Failure of Women to Claim their Land Rights

Ignorance of their legal rights and the desire to avoid disputes with her own family are the most common reasons given by survey respondents why some women do not claim their succession or *umunani* rights (see figures 5 and 6). Even when women are aware of their rights, they do not always insist on claiming them because they wish to avoid family disputes and family rejection

Figure 4

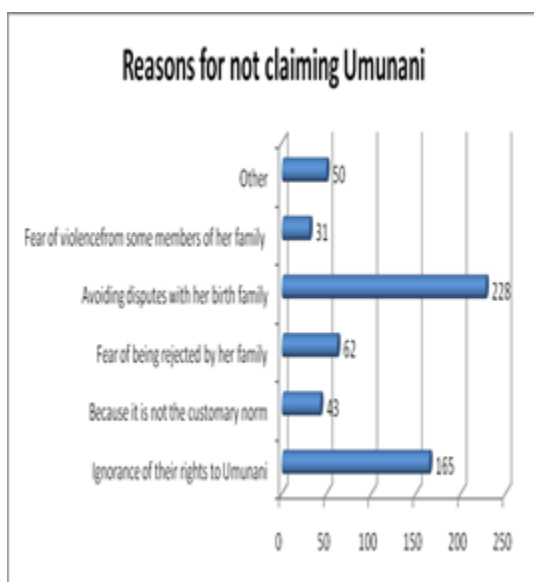
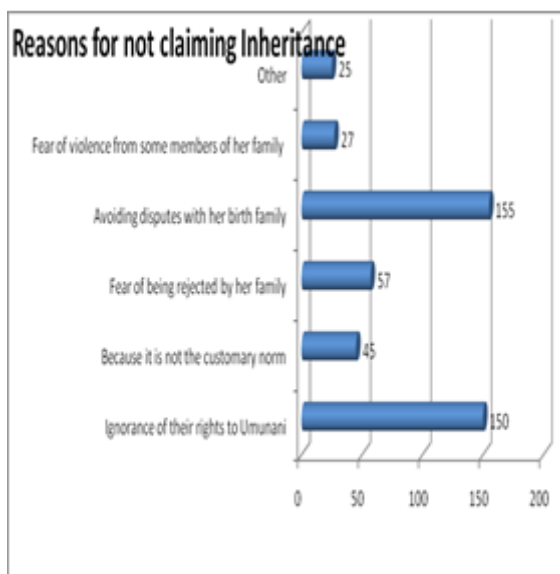


Figure 5



## 2.5 Rights of Informally Married Women

Women in informal marriages are perceived as having fewer rights over their husbands' land and property because the marriage is not recorded by the state. More than 50% of all categories of respondents indicated that informally married women do not have rights to the land of their husbands (Unmarried respondents: 73%, legally married: 70%, informally married: 55%, Widow/widower: 67%, Rural: 67%, Semi-urban: 69% and Urban: 75%).

|                |                    | Do you think a wife in an informal marriage has rights to the land her husband brings to the marriage? |                 | Total |
|----------------|--------------------|--|-----------------|-------|
|                |                    | Yes  | No              |       |
| Marital status | Single             | 22<br>(27.5%)  | 58<br>(72.5%)   | 80    |
|                | Legally married    | 321<br>(30.1%)   | 746<br>(69.9%)  | 1067  |
|                | Informally married | 179<br>(46.4%)   | 207<br>(54.6%)  | 386   |
|                | Widow/Widower      | 114<br>(32.9%)   | 233<br>(67.1%)  | 347   |
|                | Divorced           | 3<br>(33.3%)   | 6<br>(66.6%)    | 9     |
|                | Separated          | 27<br>(37.0%)  | 46<br>(63.0%)   | 73    |
| Total          |                    | 666<br>(33.9%)   | 1296<br>(66.1%) | 1962  |

Resolving this may require different types of actions. The population can be sensitized as to the benefits of legal marriage in order to encourage informally married men and women to legalize their marriages. Some type of regularization of informal marriage can also be



explored, such as civil unions. Another potential solution is to confer legal joint ownership rights to the assets of informally married couples.

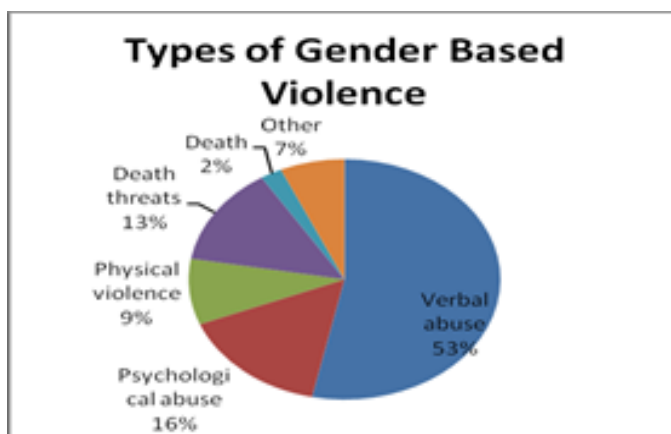
## 2.6 Widow's Land Rights

Similarly, the land and property rights of formally married widows are mostly understood and recognized by the community. However, the land and property rights of widows who were informally married are negatively affected by patriarchal traditions, sometimes severely. The challenge of addressing traditional practices regarding the land rights of informally married widows is significant, but could be addressed by closing the gap between the rights of women in formal and informal marriages.

## 2.7 Gender-Based Violence (GBV)

A significant proportion of land disputes recorded by the survey resulted in some kind of gender-based violence. Of the 174 disputes involving women, one-quarter of respondents indicated that their dispute resulted in some form of gender-based violence. The most common form of GBV was verbal abuse (53%). There were four cases of physical violence, and six cases of death threats. One instance of GBV in the Eastern Province reportedly resulted in the death of the victim.

Figure 6



The incidence of GBV associated with land disputes requires the concerted efforts of civil society, government, religious groups and concerned citizens.

## 2.8 Channels of dispute resolution

Different authorities resolve gendered land disputes. Local Authorities received 33.8% of such disputes (22 cases); the courts received 27.7% (18 cases); family mediation councils received 23.1% (15 cases); and the *Abunzi* community-based resolution mechanism received 15.4% (10 cases). Of land disputes involving a women claimant, two-thirds were resolved in favor of a woman, either wife, widow or daughter. Continuous capacity building for these authorities is necessary for the fair treatment of gendered disputes.

## 2.9 Intra-Household Disputes

Disputes that result in GBV are almost twice as likely if the dispute occurs within a household (between family members) than between households. This indicates an urgent need for sensitization of Local Authorities, Abunzi Committees and lower court functionaries to prioritize these disputes so as avoid or diminish the chances of escalation to serious violence.

### 3.0 RECOMMENDATIONS

These recommendations are based on the research findings. They are designed to enhance the ability of women and girls to claim their land rights, particularly *umunani* and succession rights, to address the challenges faced by widows and women in informal marriages, to improve women's access to fair dispute resolution mechanisms, and to sensitize Local Authorities and Abunzi Committees of the correlation between intra-household land disputes and GBV.

1. A nation-wide campaign of education and awareness-building is needed to address overall insufficient knowledge regarding gendered land rights, and particularly the information, awareness, and confidence gap between men and women.
2. The same information campaign must address the persistence of traditional beliefs among men and women that men and boys have stronger claims to land (*umunani* and succession) than women and girls.
3. The social consequences associated with a woman's claim to *umunani* or her succession of land rights must be the subject of sensitization of the general population on the rights of women to claim their legal rights without facing social or cultural problems. Existing institutions—National Women Council, Gender Monitoring Office and Civil Society Organizations--should take the lead in this campaign.
4. The rights and legal circumstances of informally married women must be addressed. This may require legal reforms that enable couples in informal marriages to have the same property rights as those in legal marriages, or where possible, it might focus more on regularizing informal marriages.
5. Similarly, the right of a widow to the land of her deceased husband (whether she was married legally or informally) must be clarified and harmonized to reduce social consequences that can sometimes attend widowhood.
6. Local authorities, Abunzi Committees and the lower tiers of the court system should be sensitized to the urgent need to bring quick resolution to intra-household land disputes, as there is a potential for these to generate violence against women claimants.

## **ABOUT ILPD:**

*The Government of Rwanda established the **Institute of Legal Practice and Development** in 2004. ILPD was assigned the task of providing relevant training to meet the demand for an expanding legal workforce with cutting-edge skills, practical capabilities, a broad understanding of judicial process, and deep appreciation for the role of the legal profession in building Rwanda's future.*

*The Institute is located in Nyanza District, Southern Province. It runs two major postgraduate Diplomas: Legal practice (DLP) for judges, prosecutors and lawyers, and Legislative Drafting (DLD) for government lawyers and others responsible for drafting. ILPD also runs a wide range of continuing legal education (CLE) courses to update and develop the skills of legal professionals.*

*ILPD is now attracting attention from across the African continent with its innovative approaches to training and reputation for effective, high quality courses. International attendance is increasing.*

*ILPD's objective is to be an "Ihuri", a meeting place for legal professionals from Rwanda, the region, and Africa, as well as the rest of the world. ILPD is active in organizations that link the East African judicial training institutes. It is also a member of the International Organization for Judicial Training (IOJT), a global body linking judicial training institutes around the world.*