

FOCUS ON LAND IN AFRICA BRIEF

AUGUST 2012

Rwanda



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Lesson 1: Women's Land Rights in Customary Dispute Resolution in Rwanda: Lessons from a Pilot Intervention by RCN Justice & Démocratie

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INTRODUCTION

This brief discusses a pilot intervention in Rwanda led by the Belgian NGO, RCN Justice & Démocratie, with support from the International Development Law Organization (IDLO) and the Belgian Government. A more detailed and complete discussion of the pilot is given in Lankhorst and Veldman (2011a). The pilot aimed to transform the customary resolution of disputes involving women's land claims concerning inheritance or marital relations. The intervention examined whether and to what extent it was possible to increase the scope for acceptance of such claims under customary law, notably, by promoting a more inclusive approach to dispute resolution based on mediation and negotiation techniques.

Views diverge about the role of customary land rights in legal empowerment of women in Africa. Many women's organizations, gender activists and scholars argue that customary law provides limited access to land for women (Whitehead and Tsikata 2003; Tripp 2004). Based on international and regional human rights instruments, they call for legislation that replaces customary law and enables women to inherit, purchase and own land in their own name. Others argue that engaging with customary legal systems is inevitable. Statutory reforms have had little impact, they hold, principally because very few women in rural Africa have access to courts that properly administer these laws. Moreover, some customary systems have features that protect women's claims on land to some degree, which could be strengthened and built upon. According to this group, customary law must be reformed from the ground up in a process of "assisted evolution" (e.g. Gopal 1999).

Rwanda is an interesting country to consider for those engaged in this debate. It has gone against the wider African current by adopting legislation that reduces the scope for application of customary law in the area of land tenure. It has adopted a uniform and government-administered tenure regime and a new law on matrimonial regimes and inheritance, both of which incorporate progressive ideals of gender equality. Still, this has not led to significant changes on the ground and customary law continues to have a strong influence on the way in which women's claims to land are dealt with. This suggests that the option of transforming customary law from the ground up demands serious attention from those committed to strengthening women's land rights. Inheritance and marriage are important institutions to consider, because in Rwanda, as in much of Africa, women primarily depend on these institutions for access to land. This is especially so in rural areas, where land markets remain under-developed and inaccessible to the bulk of the population (Lankhorst and Veldman 2011). Arguably, therefore, changes within these institutions offer the most potential to provide secure access to land to considerable numbers of Rwandan (and African) women.



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BACKGROUND: WOMEN'S LAND RIGHTS IN RWANDA

Rwanda faces serious challenges in the field of land management. The population density is high and steadily increasing (NISR 2009). Despite positive developments in terms of GDP growth and poverty reduction, the majority of the population remains poor (NISR 2012a; NISR 2012b). More than 80% of the population works in agriculture and or livestock farming; the vast majority is made up of subsistence farmers (NISR 2008) who depend on land for survival. Due to population growth and inheritance practices that require family land to be divided amongst all (male) members of each new generation, land holdings tend to be very small (Ibid). Much agricultural land is situated on hillsides and soil erosion is a significant concern (Ibid). This combination of factors results in strong and mounting pressures on land, as well as high levels of land disputes (Veldman and Lankhorst 2011a). These problems are compounded by the consequences of the 1994 genocide. Over the past 18 years, large numbers of refugees and prisoners returned to their country and villages and, as a consequence, overlapping land claims continue to be common (Musahara and Huggins 2005; Lankhorst and Veldman 2009; Veldman and Lankhorst 2011a; Leegwater 2011).

The Rwandan government has adopted a set of laws and policies to deal with these land-related problems, which forms

an integral part of the broader poverty reduction strategy. The thinking that underpins these laws and policies (and, notably, the National Land Policy of 2004) can be summarized as follows. The long-term goal is to professionalize and intensify agricultural production. To achieve this, a functioning land market must be created that allows more productive farmers to expand and benefit from economies of scale. This, in turn, requires a uniform legal tenure regime, improved tenure security, and access to credit. The Organic Land Law of 2005, the Land Tenure Regularization Programme, the Land Consolidation Policy, and, finally, the Crop Intensification Programme are designed to bring this process about (Musahara and Huggins 2005; Veldman and Lankhorst 2011b). The Law on Matrimonial Regimes and Inheritance must also be mentioned, since it aims to provide access to secure tenure to women, thus enabling them to actively take part in and benefit from agricultural development.

In rural Rwanda, land ownership was traditionally regulated by customary law, which conceptualizes inheritance differently than in Western jurisprudence (the following discussion of inheritance practices is based on Veldman and Lankhorst 2011a, and Uwineza and Pearson 2009). Sons typically inherit part of their father's land (called *umunani*) when they marry. Any remaining land (called *ingarigari*) is divided between the sons when a father dies. By contrast, women access land through their husbands, without obtaining control rights (selling,



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gifting, renting, building). When they marry they may receive land as a gift, but again the claims thus acquired are mostly rights of use, whilst control continues to be exercised by men. Frequently, also, gifts of land made to women are more symbolic in nature. That is, both control and use rights will be exercised by a man (usually a brother), who incurs an obligation to give her part of the harvest from this plot. This can be a yearly obligation, or one that is conditional on an event, such as the birth of a boy or sickness.

Women cannot inherit their husband's or their father's land, but, provided that she is on good terms with her late husband's relatives, a widow may continue to exercise her use rights until she dies or her sons reach the age of marriage. If a widow is not on good terms with her in-laws, or when a woman divorces or is abandoned, she will be forced to return to her biological family. Although in principle male members of her family will be expected to care for her, in practice it may be difficult for her to lay claim on resources that have been reserved for her brothers and their families. Over the past decades, the scope for making such claims has gradually narrowed in rural areas (as regards the latter point, see André and Platteau, 1997, and Lankhorst and Veldman 2011).

After the genocide, customary law came to be seen as a problem (Rose 2004; Uwizeza and Pearson 2009). Rwanda was left with a high share (34%) of women-headed households (Ibid). These women did not have secure tenure and were

vulnerable to opportunistic claims of male family members. Policymakers soon realized that this constituted a threat to the nation's development potential. The Law on Matrimonial Regimes and Inheritance of 1999 introduced three major changes: it granted daughters the right to inherit land from their parents, gave wives equal rights to matrimonial property, and allowed widows to inherit their deceased husbands' property (Lankhorst and Veldman 2011).

Yet it should be realized that the law does not offer protection to the many women who marry only under customary or religious rites and are, thus, not in a legally-recognized civil marriage. And although it gives daughters an equal right to the land left when their parents die, it only provides that they may not be discriminated against when the parents gift land to their children during their lifetime. In many cases, such gifts – which are almost exclusively made to sons in accordance with the above-mentioned tradition of *umunani* – involve the bulk of a family's land, leaving little to be inherited later. Although there is no case law that specifically addresses this issue, lawyers frequently interpret the term 'discrimination' used in the law to mean that if a girl has acquired access (not control) to sufficient land through her marriage (i.e. her husband's *umunani*), this justifies her receiving only a token gift from her parents (Lankhorst and Veldman 2011). It should also be noted that the law grants family councils considerable discretionary powers to deny, limit, and rescind the inheritance rights of a surviving spouse (Rose 2004).

PROBLEM ANALYSIS, INTERVENTION, AND RESULTS

More important than the limited scope of application of this law is the fact that it has thus far not led to significant changes on the ground. Application of this progressive new law in rural areas is hindered by a combination of factors (Lankhorst and Veldman 2011). Men continue to control land allocation, the law goes against their immediate interests, and customary law, which serves their interests better, retains much of its authority. There is also a lack of awareness and understanding of the new law, both amongst men and women. Finally, access to state courts is very limited; only one in roughly 40 disputes started at the village level will enter the formal court system (Veldman and Lankhorst, 2011a) and 48% of the cases that do enter the formal court system are summarily dismissed (Ibid).

As a result, instances or cases where a daughter claims *umunani* from her father during his lifetime or part of the *ingarigari* after he dies, or in which a widow or divorced woman claims matrimonial property for herself, remain rare and highly contested (Lankhorst and Veldman 2011). This does not mean that disputes involving women's land rights are uncommon; on the contrary (Veldman and Lankhorst 2011a). But these cases mostly concern women's more traditional claims to land (that is, based on access and use, rather than control). As was suggested above, mounting land pressure and poverty have made such claims more vulnerable.

RCN Justice & Démocratie's pilot project focused on two key challenges for Rwandan women seeking to protect their land interests in cases brought before village heads or mediation committees (the following discussion of these institutions is based on Veldman and Lankhorst 2011a). In Rwanda, disputes that cannot be resolved in a family meeting or in a meeting between families are almost always brought before the village head. Since this practice is not formally regulated, there is enormous variation in the approach that individual village heads adopt to dispute resolution across Rwanda. Mediation (or, *abunzi*) committees tend to be located somewhat farther away from the village, in the nearest administrative centre. This institution was created by law in 2006 to deal with all disputes before they could be submitted to a Primary Court. The committee, which is composed of 12 elected community members (a minimum of four women), is primarily required to mediate between disputants and to assist them reach some kind of settlement.

The first of the two challenges tackled by the pilot project is the fact that disputes involving the inheritance of land are often not dealt with at the village level. Village heads generally consider such cases to

be too complicated and refer them to the mediation committee. The second challenge is the fact that, despite their name and their ignorance of applicable substantive and procedural laws and principles, such committees tend to act as judges, rather than as mediators. The intervention team hypothesized that women's interests are more likely to be better served by mediation approaches, which aim to restore peace between disputants and where there is more room to consider issues such as the disputants' needs and the moral obligations that may exist between them. Likewise, it was hypothesized that women are likely to receive better outcomes if disputes are resolved at the village level where the presence of those community members that may give support to women's customary or moral claims is more easily secured. And, finally, it was hypothesized that outcomes might improve even further if, at this level, the dispute resolution 'circle' were expanded beyond the village heads to include traditional mediators (called *inyangamugayo*), who are more skilled in the art of mediation than most village heads, and local representatives of the National Women's Council (NWC), who are more likely to have a better insight into and lobby for women's needs.

To test these hypotheses, RCN launched a series of interventions targeting dispute resolution actors in six villages, as well as the members of four *abunzi* committees. The interventions included (i) interactive training sessions on women's statutory land rights; (ii) interactive training sessions on mediation and negotiation techniques; and (iii) a workshop aimed at promoting collaboration and coordination between the various actors at village level. A research framework was designed to gauge the impact of these interventions over a period of ten months, principally through qualitative data collection techniques including observation of dispute resolution sessions, interviews and focus group discussions with disputants and beneficiaries. The observed results are discussed below.

First, following the intervention, all land-related inheritance disputes that arose were dealt with at the village level. And far fewer cases were transferred from village level to the *abunzi* committees, which provides a reasonable indicator that mediation at the lower level produced an outcome that was acceptable to both parties. Second, the *inyangamugayo* and NWC representatives in all villages acquired an established role in dispute resolution together with the village heads. Third,



following the intervention, the team observed four positive changes in how both village-level actors and abunzi committees approached dispute resolution: (i) they took more time to understand the arguments presented by and the circumstances and interests of both disputants, and to reflect this understanding in their attempts to forge a solution; (ii) disputants and members of the public were more often encouraged to propose solutions to the dispute; (iii) possible solutions were presented at a later stage in the discussion and not, as often observed in the control zone, at the start of the discussion; and (iv) more effort was made to explain the reasoning behind the solutions found, particularly to disputants who were asked to make concessions.

The critical question, however, is whether these process-related improvements translated into better outcomes for women in terms of greater protection of their land interests. In this regard it was found that the intervention did not result in the incorporation of truly novel ideas (based on the new Inheritance Law) in dispute resolution. Cases in which women asked for *umunani* (equal to that of their brothers when they marry) were very few (eight out of 256 cases at the abunzi level) and, with the exception of two ambiguous examples, all were unsuccessful. But some more modest improvements in outcomes were observed following the intervention. Notably, it was observed that targeted actors were more inclined to accept claims of women that were conceivable under customary law, although this was certainly not guaranteed.

There were three cases where a divorced or widowed woman was permitted to access her future portion of the *ingarigari* (residual land remaining after the death of a rights holder) before the death of her parents. Each involved a widower-father who had started a new family and had entrusted the *ingarigari* of the lands he held with his first wife to a son. There were also five cases observed where a divorced or abandoned woman was permitted to make real, rather than symbolic, use of land gifted at the time of her marriage. Both types of cases constitute a meaningful expansion in women's ability to claim land. Only two similar cases were observed in the intervention zone prior to the intervention and in the control zone. Finally, it is noteworthy that these outcomes were realized in cases where the abunzi and village-level actors engaged in mediation, rather than adjudication.

LESSONS LEARNED

The issues dealt with in this brief relate to viability of strategies aimed at reforming customary justice processes. In Rwanda, formal justice is out of reach for many and the customary rules that prevent women from protecting their interests are deeply anchored in community life. It was therefore reasoned that, in the short term and with limited means available, the most effective way to deliver more equitable outcomes to women was to work with customary law, rather than go against it. The results of the intervention yielded three lessons that may be useful for rule of law programming in Rwanda and in similar country contexts.

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

The second lesson relates to changing the substantive rules. The intervention sought to spread information about women's statutory land rights (and to align customary decision making). We saw, however, that the truly novel aspects of the new law were not put into practice. In part, this was because the pilot was not entirely successful in showing the differences between statutory and customary law to the target population. In this regard, it is important to recall that customary law does enable women to make certain claims to land (claims of access and certain more symbolic claims). Though considerable time and effort were invested in small-scale,

participative trainings using real-life cases as examples, the intervention team did not manage to make the precise implications of the new law in terms of control rights clear to the beneficiaries. During the observation phase (post-intervention) it often turned out that they considered women's formal rights not to be very much at odds with customary law. Moreover, internal evaluations of the pilot project suggested that these perceptions of formal law were strengthened by the fact that project team members often had to rely on terms and concepts of customary origin when explaining formal law in their native tongue.

These experiences suggest that programmes aiming at raising awareness of new gender laws need careful preparation and implementation. In particular, such programmes must be based on a well-developed understanding of customary law and of the discrete areas of customary law where advances can be made. In addition, given the complexity of the legal and social issues at stake, the usefulness of relying on paralegals and mass-meetings, as often happens, can be called into question. The results of this pilot suggest that such interventions should rather be modeled on intensive teaching methods.

And thirdly, the results of the pilot project suggest that positive outcomes can be reached by constructively engaging with — rather than challenging — men and appealing to their sense of responsibility for the well-being of female family or community members. This applies both to men in their role as disputant and to men involved in dispute resolution (as village heads, *inyangamugayo*, or mediators). It should be well understood that the new statutory law directly challenges men's interest in land (the primary productive asset in rural Rwanda). Yet, due to the state's weak regulatory influence on village life, the extent to which such changes will be absorbed into customary practice depends on cooperation by these same men, who have a strong influence on land distribution and land dispute resolution. Under such conditions and with limited means available, actions designed to transform customary practices should, as much as possible, seek to enlist male power holders' support.

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