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for Economic, Social and Cultural Rights

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PARALLEL REPORT TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

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Introduction

This report addresses the current situation for women's land rights in Rwanda. Women's land rights in Rwanda have been included as a specific issue in the CEDAW Committee's List of issues and questions in relation to the combined seventh to ninth periodic reports of Rwanda (UN Doc. CEDAW/C/RWA/Q/7-9, at para 20). In the recent (2016) Concluding Observations of the Human Rights Committee on Rwanda, the Committee noted that it is "concerned about information received that women's legal rights to land and inheritance are undermined by the continuation of discriminatory traditional practices in rural areas and about reports on the high proportion of unregistered marriages (art. 3)" (UN Doc. CCPR/C/RWA/CO/4, at para 11). It went on to recommend that The State party "Step up its efforts to combat stereotypes on the role of women in the family and in society, including by increasing awareness - raising measures in rural areas," and "take appropriate measures to ensure that marriages are registered" UN Doc. CCPR/C/RWA/CO/4, at para 12 (b) and (c)).

Rwanda is known as one of the most progressive states in Africa in terms of gender equality and women's rights. After the 1994 genocide against the Tutsi, the government of the Rwanda Patriotic Front (RPF) prudently decided to make this a priority during the rebuilding process by establishing laws that protect the rights of women and emphasize the importance of gender equality in social and economic development. Rwanda was the among the first countries to enact a law that provides for equal inheritance rights for both the girl and boy child, law N° 22/99 of 12/11/1999, that institute matrimonial regimes, liberalities and successions. Of a particular interest in this law, are the equal inheritance rights of women and girls to those of men and boy child. However, some authors argue that "*Some men believe that the law is unjust, and will allow women to benefit from land from two sources: their parents and their husbands*" (Musahara, 2006). Some studies also claim that this provision has been a source of land disputes, especially intra-family¹ disputes, mainly due to land scarcity but also due to the increases in land values that occurred in Rwanda after land registration (RISD, 2014).

Land is the priority concern of Rwandans, in terms of post-genocide reconciliation² (RISD 1999). During genocide, land was used to as a tool by politicians to pit groups against each other (Africa Rights, 1994). Many architects of the genocide against the Tutsi promised land to those who killed as an incentive to murder their fellow Rwandans. Hence in post-genocide Rwanda, land reform is a priority. The government of Rwanda has created a program for registering land in the names of rightful owners, while addressing the issue of disputes. Before the government of Rwanda began rolling out land reform in 2005, women's property rights and land ownership was not recognized, nor guaranteed by the State, this was mainly through their male husband or brother (RISD & Jennie Burnet, 2003). Yet, in post-genocide, women have been forced to assume new roles as the house heads, as either widows or orphans as genocide mainly targeted men more than women. In post-genocide Rwanda, women are empowered to claim land rights on their own behalf and that of their children or siblings as the family heads for the survivors. The post-genocide government has upheld land reform as a priority policy

¹ Land related disputes that occur between family members or relatives.

² The study shows that land is so important to Rwandan, more so in the post genocide period, as land was used by politicians to mobilize one community against another, and land should be used to reconcile these communities. There are many widows of genocide that now have to play the role of being household heads that was traditionally reserved for men, including the management and making decisions on land, yet culture is very resistant against this, as it is outside the cultural norms. This is also confirmed in the [book 'Rwanda: Death, Despair and Defiance' by the Africa Rights, 1994, stating that land was politicized which made a big contribution to driving the [don't call genocide a success] genocide, as people were promised to own the land of the dead.

towards the peace building and reconciliation of the country and as the main drive for the poverty reduction. The primary court records of land related disputes, counted for more than 80% in relation to other disputes. In post-genocide, with anticipated multiple claims of land rights over same plots of land, the government anticipated even the disputes to increase given the 1959 (old) returnees, and the 1994 (new) returnee. Most of these returnee, majority are women and children.

Official statistics show that women account for 53% of the current population in Rwanda (10,762,085), and that more than a quarter (27.7%) of all Rwandan households are headed by women (GoR 2012). There are also more women (81.9%) than men (61.3%) who are agricultural and fishery workers. These figures underscore the crucial role women play in economic development considering the fact that agriculture is the primary industry in Rwanda.

As part of their commitment to gender equality and women's empowerment, the RPF government made the implementation of land reform a priority. In 2004, a National Land Policy was put in place with the aim of guaranteeing a safe and stable form of land tenure, while marking the end of customary rights in Rwandan land policies. This was followed by the enactment of the Organic Land Law N° 08/2005 of 14/07/2005, determining the use and management of land in Rwanda, later reviewed to the current law N°43/2013 OF 16/06/2013. Article 4 of this law provides that all forms of discrimination, such as that based on sex or origin shall be prohibited in relation to access to land and the enjoyment of real rights in land. These legal frameworks are implemented through the Land Tenure Regularization Program (LTRP), understood as one of the most ambitious land reforms in Africa aimed at registering every piece of land through individual titles. The LTRP was initiated as a five-year program starting in 2009 with the aim of issuing a registered title to every landholder in Rwanda through a one-off, low-cost community-based process of land tenure regularization. This was intended to contribute to poverty reduction, increased investment, optimization of land use, gender equality in access to land, and social harmony throughout Rwanda. The LTRP is not just concerned with the titling process, but is explicit in its intention to also transform women's access to land. Women now have the right to own land individually or, in case of an official marriage, as equal shareholders with their husbands. Under LRTRP 10.3 million parcels of land were demarcated between 2009 and 2013, with 81% of land registered owned jointly by men and women; 11% owned by women only; 6% by men and 2% by non-individualized institutions. (LTRP Review, 2014). The current written legal framework in Rwanda only recognizes women's access to land through their spouses if they are married within the formal legal frameworks. Unlike the customary framework, these laws do not recognize property rights of women in unofficial or polygamous partnerships with men (RISD 2013).

The Government of Rwanda has demonstrated strategies and commitment to guarantee women's access to land through gender-sensitive land laws and policies. **However, the implementation of these legal frameworks still faces challenges. One indicator is the fact that, with the implementation of the LTRP, there has been an increase of intra-household disputes over land, mainly relating to inheritance, and these disputes have a disproportionate impact on women. As women claim their rights, as provided for by the LTRP, male family members (fathers, husbands and brothers) are still resistant to these changes, such as women inheriting land and being registered on the land title document as equal owners of property with men.** As Mugurura, a young man in Gasabo, said about his sisters: 'these new policies are distorting our culture, how can my sisters be granted to take away our land, which will end up in another family's hands... meaning the sisters will get married to another clan, and claim their land rights through another clan'. This expression confirms RISD findings in the study on Culture, Practice, and Law: Women's Access to Land in Rwanda which confirmed that, "a Rwandan woman's rights is always traced from a man: father, brother, husband and even in-laws in case of the death of the

husband” (RISD & Jennie Burnet, 2003; Kairaba and Simmons, 2010). Such challenges have in turn a negative impact on the economic empowerment of women. It becomes clear that legal reforms do not completely erase old forms of discrimination against women. Instead, LRTP created circumstances in which new forms of inequality are emerging and some old discriminatory practices are persisting, which again influence rural women’s productive lives. However, this is not unique for Rwanda, as demonstrated in IFPRI and other research, despite progressive laws in many African countries, gender disparities commonly persist in women’s access and ownership of land (IFPRI, 2014). Hence, these persisting gender land rights challenges are the main focus of discussions in this study as a contribution to the current debate on women’s land rights. In Rwanda land is a main source of livelihoods for the majority of the population. Therefore, improving tenure security especially those of vulnerable people is a critical step to reducing poverty.

Women’s land rights in Rwanda: *Historical background to land tenure in Rwanda*

During both the pre-colonial and colonial period, women had no land rights in Rwanda, including having no control or ownership over land (Burnet and RISD 2003). Even in cases of legally married couples, a wife was not entitled to inherit land after the death of her husband. Instead, a brother of the deceased husband was to become the owner of the land, or marry the widow and manage the land. In some cases, the widow was allowed to manage the land herself until a son became mature enough to manage it. These patriarchal practices denied women rights, which in turn hindered their social and economic development (Kairaba and Simmons, 2010).

The post-1994 period saw a lot of changes in the socio-structural body of the Rwandan society as a result of the genocide and related events – many men were killed or injured during the genocide and many others were imprisoned – that gave rise to new roles in the family and in society for women. Women were obliged to take up many responsibilities including those that were traditionally carried by men. As a consequence, they became increasingly active in all aspects of Rwandan life and culture. In regard to land, the post-conflict and post-genocide context has seen several cultural and legal assumptions previously controlling women’s access to land coming into conflict with the realities people found themselves in (Burnet and RISD 2003).

The post-1994 Government of Rwanda prudently decided to make land and women’s rights a priority. The constitution of 2003 states that Rwanda is “*committed to ensuring equal rights between Rwandans and between women and men without prejudice to the principles of gender equality and complementarily in national development*”. The constitution further rejects “*any forms of discrimination, such as that based on sex or origin, in relation to access to land and the enjoyment of real rights shall be prohibited*”. In addition, it stipulates that “*parties to a marriage have equal rights and duties upon and during the subsistence of a marriage and at the time of divorce*”. In this context, the adoption of the 1999 inheritance law was a first act that aimed, among others, at eliminating traditional bias against female land ownership rights. It was followed by the 2004 land policy and its codification in the 2005 Organic Land Law (OLL) as well as the establishment of national and local institutional structures for overall land management and administration in the country. The Organic Land Law art. 4 reaffirms the principle of equality set forth in the constitution and applies this principle to land rights: “*Any person or association with legal personality has the right over the land and to freely exploit it as provided for by this organic law Any discrimination either based on sex or origin in matters relating to ownership or possession of rights over the land is prohibited.*” According to this principle, women, married or not,

should not be excluded from the process of land access, land acquisition and land control, and female descendants should not be excluded from the process of family land inheritance.

Disputes Management Mechanism

The post 1994 genocide government is known for successful homegrown national initiatives. The alternative mediation mechanisms are among the best for peace building and equality. The 'Abunzi Committee'³ (Mediation Committee) approach has contributed to driving the country recovery towards the sustainable peace and reconciliation. The Abunzi Committee is guided by the ⁴Organic Law N°02/2015/OL of 16/07/2015 on the organization, jurisdiction, competence and functioning of the mediation committee. *Abunzi* Committee members work voluntarily and most of them with minimal formal education, but they perform effectively in terms of managing and reducing disputes among community members, in particular those related to land, by use of their wisdom and local knowledge. They understand their community's problems and use truth and fairness to manage them (Minister of Justice, 2013). At least thirty percent (30%) of members of the Mediation Committee must be females.

Land Tenure Regularization Program (LTRP)

LTRP has been cited several times as one of the most successful land tenure reform programs in Africa (Ali et al. 2011). The main objective of LTRP was to issue registered land titles to all individual landowners in Rwanda in order to ensure tenure security. The other objectives of the LTRP are threefold: to decrease gender inequality with regards to access and rights to land; to optimize land use and economic growth through property ownership and security; and to provide clear institutional legal frameworks for land ownership (Kairaba and Simmons 2010). The LTRP documented many successes, including the documentation of 11,327,414 parcels of land by the middle of 2015, protection of the land rights of vulnerable groups including legally married women, increased confidence in land investment among others (Santos et. al 2012). In addition, LTRP addressed the question of "*who owns what*" in Rwanda and this has significantly reduced the frequency of boundary based land disputes (*Sagashya* 2014). Moreover, LTRP showed that, LTRP has significantly increased the number of women accessing land titles alone or jointly with their husband (DFID 2014a+b).

Challenges of LTRP

Although the program documented tremendous success, LTRP still has crucial gaps in regard to securing women's land rights. **There is a strong legal gap when it comes to rights of not legally married women and women in polygamous marriages. There is no law that protects the land and property rights of women living in these circumstances.** Santos et al. (2014) argue that women, especially widows, women in polygamous marriages, and women in non-registered marriages, and children (especially orphans) haven't been considered enough in the land regularization framework.

Conclusions and Recommendations

Rwandan land rights legal provisions through LTRP are gendered and are in line with international frameworks like the UN's Sustainable Development Goals (SDGs), in particular goal five, which sets out to end all forms of discrimination; and goal 16, which recognizes access to justice for all and ensures

³ Abunzi comes from the Kinyarwanda word 'Kunga', meaning to heal a human joint that has been broken.

⁴ Abunzi (Mediation) Committee was first introduced under the organic law no.17/2004 of 20/06/2004, reviewed under law no. 31/2006 of 14/08/2006 replacing the one of 2004, then modified under law no. 02/2010/OL of 09/06/2010, and then modified under the current Organic Law no. 02/2015/OL. of 16/07/2015. This law is also currently under review in the Parliament. All these continuous modifications are a demonstration of the appreciation of the role of the Mediation Committee in meeting the needs of citizens.

responsive, inclusive, participatory and representative decision-making at all levels. The LTRP's design is also aligned with the Framework and Guidelines on Land Policy in Africa, agreed by the Heads of African States in 2009. This identifies the problem of patriarchy and emphasizes the importance of protecting women's land rights. Rwanda is the only country in the region that offers equal rights of land property between women and men at 50% each, and in some instances at 100% for single, widows or divorced women, when women in other countries are asking for the right of 30%.

However, implementation and full achievement of women's rights in Rwanda is still challenged by existing patriarchy, cultural practices combined with low level of knowledge of women in terms of their land rights. These challenges remain global challenges for African women, as described in (UNHR & UNWomen, 2013) that, there are still two main barriers to women's land rights: (i) women's knowledge base, and (ii) prevailing societal norms and hierarchies which the UNHR & UNWomen (2013) described as "discriminatory cultural attitudes and practices that built on highly patriarchal structures".

The Rwanda Land Tenure Regularization program (LTRP) brought many opportunities and benefits to Rwandan women. Among the outstanding benefits of the LTRP are that, 87.5% of the participants emphasized the strengthening of tenure security which guarantees equal ownership of land between women and men. In addition to that, is the fact that after land reform, both boy and girl children have equal inheritance rights..." until 1999, Rwanda woman had no right to land ownership, whether from her parents or from her husband; with LTRP, a Rwandan woman's land rights are the most secure" Rwanda Minister of Gender (2016). However, the number of women accessing the bank credits is still very low, because women are not ready to take loan risks on their land, understood as family land due to limited decision making powers emanating from the patriarchal system and traditional practices still prevalent. Hence, there is a need to challenge and change these systems and practices that deny equitable enjoyment of rights. There also be alternative strategies that advance access to finance for women. This will reduce reliance on restrictive use of family land whose associated risks women are not ready to take.

There is a gap in Rwandan legal frameworks in relation to the protection of property rights of women in informal/consensual marriages. Even if the law on prevention of Gender Based Violence (GBV) provides for some protection of women in such marriages, it contradicts the land law because when it comes to matters of ownership, the land law provides only for women in formal marriages. **There is a need to harmonize the two laws in order to reduce family disputes and the increasing divorce/separation rates, understood as part of land related dispute linked to the LTRP, although no clear study has been done specifically on this coloration.**

Although there is a general agreement with the Rwandan law that discourages polygamy, there should be a strong advocacy to lobby for policy change towards women who are discriminated against in relation to land and property rights. If a woman lives with a man and they have children together, the law should protect a woman in recognizing such relationship as equivalent to a legitimate Union, in the interest of protecting the rights of both the woman and children and enhance land and property ownership. Otherwise, men will continue violating the rights of women, if there will be no policy change, for more responsiveness to the rights of women. In fact, with this gap, a man can keep many informal women as long as they are all not legally recognized through civil marriage as the only recognized formal marriage currently, which would encourage informal polygamy, while women continue to experience gender based violence in terms of property rights. The law creates a perverse incentive for men to avoid formal marriage. There are cases even when a woman will have acquired the property, but because of the cultural stereotype that 'a man is the owner of home property as the head of the home'; women will

end up losing their own property in informal marriages. As a key lesson from this Rwanda study, a major area for policy change advocacy in the protection of women should be on 'equal property rights for a man and woman in informal marriages'. If a woman lives with a man for a certain period, in particular with kids, the woman should be recognized as a 'wife' and have equal rights to their property as is provided for in the formal marriage. This may reduce the prevalence of polygamy while increasing the equal rights of women to that of men. Current situation allows men to have many 'un-official' wives (polygamy), enjoy his property and that of his wives, while women's property rights remain under threat.

While, a lot has been achieved around the gender equality and women development indicators for which data is available, however rural women in Rwanda still disproportionately experience poverty and exclusion more than rural men and urban women. They still face discrimination in appropriate use of land and natural resources due to limited decision making powers due to the patriarchal system that perpetuate male dominance and women subordination in the Rwandan society despite available legal frameworks. Women carry most of the unpaid work burden owing to stereotyped gender roles, inequality within the household and the lack of gender responsive public services, including access to water, energy, child care only to mention a few. Women are more engaged in informal labor activities and even when formally employed, they are more often engaged in work that is insecure, hazardous, poorly paid and not covered by social protection. Women have been disadvantaged by the previous systems in accessing education hence at a higher risk of being trafficked and forced into labour, as well as into child and/or forced marriage and other harmful practices (see UN Doc. CEDAW/C/GC/31-CRC/C/GC/18). They are more likely to become ill, suffer from malnutrition or die from preventable causes, and are particularly deprived with respect to access to health care. There is need for the Government to support women with facilities like, Early childhood development centers, water harvest facilities, biogas which facilitates women to reduce their time spent on unpaid work to enable them engage in productive work hence to reduction of poverty and economic dependency.

Finally, the Rwanda Government efforts of ending polygamous marriages towards ending gender based violence and promotion of Rwanda home grown initiatives like the **Abunzi** Committee (Mediation), towards managing family relate disputes that tend to increase during the LTRP, is highly commended, and could be a lesson to other countries.

Based on this analysis, we respectfully encourage the CEDAW Committee to make the following recommendations to the Government of Rwanda:

1. Intensify efforts to raise awareness about women's land rights under national law, as well as the benefits of ensuring equal land rights for women, particularly among rural women and men, traditional leaders and local authorities.
2. Take immediate steps to address and remedy negative customs and traditional practices, especially in rural areas, which affect full enjoyment of women's land and property rights
3. Address and fill existing legal gaps so as to provide equal protection of property rights of women in informal/consensual and polygamous marriages, including by harmonizing the law on Gender-Based Violence with the National Land Law.

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