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Merveille Mugisha

Examining the Effects of Inheritance Practices on Women's Socio-Economic Rights in Burundi

HRDA, Master's Programme in Human Rights
and Democratisation in Africa

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Biography

Merveille Mugisha is a Burundian jurist with a strong commitment to human rights, particularly women's rights. She has gained valuable experience through her work with local and international NGOs, as well as within the African human rights system. Her work has focused on combating human trafficking, protecting children's rights, and advancing gender justice. Currently, she serves as a Professional Legal Assistant, where she contributes to efforts supporting judicial independence and the protection of human rights defenders.

Abstract

This thesis examines the effects of inheritance practices on women's socioeconomic rights in Burundi, where patriarchal norms continue to govern land succession despite national, regional, and international legal commitments to gender equality. While women constitute the majority of the agricultural workforce, inheritance practices systematically exclude them from property ownership, particularly land, reinforcing economic dependence and deepening poverty among female-headed households. The research employs a desktop-based methodology, drawing on domestic, regional, and international legal instruments, as well as scholarly literature and case studies. It reveals critical gaps in Burundi's legal and institutional frameworks, including the absence of codified inheritance law and limited judicial enforcement of constitutional and international protections. By examining South Africa's legal reforms and progressive jurisprudence in addressing gender-based discrimination in inheritance, the study identifies practical lessons for Burundi. The thesis concludes that legal reform, judicial training, and community-level sensitization are essential to overcoming entrenched discriminatory practices and ensuring women's equal access to inheritance and related socio-economic rights.

To my dear mum and dad,

You have always been a source of joy, motivation, and unconditional love. I am forever grateful for your prayers and unwavering support. I love you.

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1. Introduction

1.1 Background

Historically, Burundi has maintained a patriarchal social structure. Patriarchy refers to the set of social relations between men and women which, although hierarchical, establishes or creates an independence and solidarity between men that enables them to dominate women.¹ Traditionally, the man embodies the authority of the household. He has the responsibility to provide for the household and holds the power to make important decisions in the family. The woman is in charge of domestic activities. She does all the housework and is expected to take care of the children and other family members. Thus, the man is the head of the household, and the woman is subordinate to him.²

During the Burundian monarchy, land was a collective asset that belonged to a lineage, specifically a group of relatives. It was only passed down through the patrilineal line.³ From an early age, a girl was raised to become someone's wife.⁴ She was therefore excluded from inheritance because, in principle, she should go to another family.⁵ However, depending on their marital status, women were given a portion of land. Married women were given

¹ A Sultana 'Patriarchy and Women's Subordination: A Theoretical Analysis' (2011) *The Arts Faculty Journal* 3.

² République du Burundi 'Politique Nationale Genre'(Gender National Policy) (2012) 10.

³ A Nzohabonayo and JDD Ndikumana 'La Succession Foncière de la Femme Burundaise Face à la Coutume' (2020) *European Scientific Journal* 230.

⁴ G Ndayiragije 'Images de la femme au Burundi à travers les contes et les épithalames' Masters thesis, Université d'Oslo, 2011 16.

⁵ A Manirakiza 'Le principe d'égalité et de non-discrimination dans le droit familial burundais : état des lieux, défis de mise en œuvre et perspectives de lege ferenda' PhD thesis, Universiteit Antwerpen 2020 181.

a portion of land to cultivate during their parents' lifetime. This portion of land enabled them to maintain connections with their biological families since their parents could not always bring presents to their in-laws.⁶

In her in-laws' family, the land was the husband's. And when her husband predeceased her, the family property was transferred according to whether the widow had children or not. When the widow had children, she would administer the property from her husband, if she did not add other children from another relationship. Land ownership reverted to the husband's family following the inheritance order set out above if the children left of the decedent were only daughters. The situation of the woman without children was very difficult because her fate depended on the goodwill of her in-laws. They could force her to marry one of her brothers-in-law or force her to leave. For a single woman who failed to find a husband, or if a widow or divorcee returned to her parents, they were granted a portion of land with the brothers' prior consent.⁷ It was a lifetime usufruct that reverted to their families after their death⁸.

Due to colonisation, the law takes precedence over custom in various areas, except in matters of inheritance where there is no law to date.⁹

The State of Burundi has already ratified a wide range of regional and international instruments protecting women's rights. In addition, the different rights proclaimed by human rights instruments have been enshrined in the Constitution.¹⁰ Despite these steps already taken, women are still excluded from inheritance.

⁶ Nzohabonayo and Ndikumana (n 3) 229.

⁷ Manirakiza (n 5) 179.

⁸ S Bukuru 'La problématique de la succession de la fille (femme) au Burundi : Etat de la jurisprudence' Dissertation, Université du Burundi, 2003 quoted in E Nukuri 'La protection constitutionnelle du droit de propriété foncière en droit burundais' PhD thesis, KU Leuven 2019 13.

⁹ Final Constitution of Kingdom of Burundi.

¹⁰ The Constitution of Burundi art 19.

1.2 Problem statement

Despite the national laws of Burundi, coupled with ratified regional and international instruments guaranteeing women's socio-economic rights, and gender equality, women and men are not treated equally concerning inheritance rights.

97.4% of women of working age work in agriculture, a dominant activity in the Burundian economy, contributing over 50% of GDP.¹¹ While Burundian women do most of the farming activities, such as cultivating, sowing, harvesting, transporting, conserving, transforming, and selling of crops, poverty in living conditions increases by 3.7% when a household is headed by a woman.¹² This begs the question of whether traditional inheritance practices affect the advancement of women's socioeconomic rights in Burundi.

1.3 Research questions

To analyse the effects of inheritance practices on socioeconomic rights of women in Burundi, this paper will focus on key research questions as follows:

Main research question

01 —To what extent do inheritance practices affect women's socio-economic rights in Burundi?

Sub-research questions

01 —What are the legal and institutional frameworks that govern women's socio-economic rights in Burundi?

02 — What are the main factors that shape the status of women's socio-economic rights?

03 —What lessons can Burundi learn from South African legal reforms and practices in advancing equality in inheritance rights?

¹¹ A Niyonkuru 'Femme-agronomie-développement : le cas du Burundi' (2009) *Tropicultura* 253.

¹² Institut des Statistiques et d'Etudes Economiques du Burundi 'Rapport de l'Enquête Intégrée sur les Conditions de vie des Ménages au Burundi' 2021 4.

1.4 Literature review

1.4.1 Inheritance practices in Burundi

In their study, Nzohabonayo and Ndikumana show that women's inheritance is subject to custom.¹³ For these authors, the effectiveness of inheritance rights presupposes the possible decline of inheritance custom and the evolution of the Burundian mentality (especially the men) to accept its effects. The co-authors conclude on a note of optimism because custom is not static. It reflects a society that is constantly evolving.

Manirakiza shows that the inheritance rules governing the succession of children purely and simply excluded daughters from succession in favour of male successors.¹⁴ Burundian courts have played an important role in changing the rules to take account of the principle of equality between children without any discrimination. The author refers to the inheritance of the deceased's property, that does not come from the family inheritance, where no difference in treatment between children is currently allowed. The children receive equal portions of this property and may exercise all the attributes of the right of ownership over these portions. However, in his view, the progress made in case law remains insufficient insofar as the inheritance rights of Burundian women are still limited compared to those of their brothers.

The author emphasises the different treatment of men and women by Burundian courts in cases where the succession concerns inherited property, mainly land that the deceased received from his family by inheritance or gift. The author therefore concludes by asserting that there is direct discrimination in inheritance cases to the disadvantage of Burundian women, because of the differences in treatment concerning the guarantee of equality and non-discrimination. He asserted that the argument of keeping land within the family was not justified, for the simple reason that men who inherit land can sell it or transfer it to private individuals. Preventing women from inheriting their share of land alone will not stop the inheritance of family land from leaving the family.

¹³ Nzohabonayo and Ndikumana (n 3) 224.

¹⁴ Manirakiza (n 5) 1.

Mwasumbi and others in their research examine the Women's access to land in Burundi.¹⁵ Their paper points out the shortcomings of land administration that affect women's access to land. The question of women's access to inheritance remains unanswered and is at the root of many family conflicts. These authors perceive the predominance of customary law in matters of inheritance and the absence of inheritance laws as social injustices that reinforce women's economic dependence.

Manirakiza also discusses the problem of implementing the principle of equality in Burundian women's inheritance rights.¹⁶ The author points out that equality is far from being effectively implemented as far as women's inheritance rights are concerned, although the country has a constitution that is progressive in terms of equality.

The author also talks about the non-existence of a written law on inheritance, patriarchal and patrilineal structures, and resistance to change as factors perpetuating this inequality. This article shows that Burundian judges can make a significant contribution to addressing these factors and calls on all Burundian judges to ensure consistency with the principles of equality and non-discrimination when called upon to rule on inheritance cases involving men and women. He concluded by pointing out that the principles of equality and non-discrimination are constitutional principles that must be applied throughout the territory of the Republic, and judges are obliged to ensure that the Constitution, the supreme law of the country, is respected.

1.4.2 Inheritance and property rights in South Africa

Banda examines women's rights in the SADC region.¹⁷ She shows the guarantees proclaimed by the various international and regional human rights instruments and embodied in the constitutions to prevent discrimination against women. Then, through case law on inheritance, it assesses the impact of existing laws on the enjoyment of women's rights. While the legal framework protecting women's rights already exists, the effective enjoyment of

¹⁵ A Mwasumbi and others (eds) 'A Comparative Study on Access to Land for Women in Eastern Africa' (2024) *ResearchGate* 10.

¹⁶ A Manirakiza 'La problématique de la mise en œuvre du principe d'égalité en droit burundais de la famille. Cas des droits successoraux de la femme' (2014) *KAS African Law Study Library - Librairie Africaine d'Etudes Juridiques* 705.

¹⁷ F Banda 'Women, Law and Human Rights in Southern Africa' 2006 *Journal of Southern Africa Studies* 13.

women's inheritance rights faces challenges such as the lack of will among states to ensure compliance with these rights in their respective countries, the lack of financial resources, the resistance of patriarchal societies, women's lack of awareness of their rights and, above all, women's limited ability to bring cases before the courts. The author assumes that a holistic approach to gender discrimination would lead to the change needed for human rights to genuinely become women's rights.

Masuku and others show that women's access to land and land ownership are a key resource for food production in rural areas.¹⁸ Land ownership enables women to make a significant contribution to rural economies, through crop and livestock farming, which are their only means of subsistence. Traditionally, customary law has privileged men in terms of land ownership rights. For these authors, limiting women's access to land ownership implies marginalising or even excluding them from decision-making processes relating to production resources, thereby creating inequalities. The authors argue that gender-sensitive policies could address the challenge of inequality between men and women to remedy the inequitable distribution of land.

The literature indicates an exclusion of Burundian women from inheritance which violates the constitutional principles of equality and non-discrimination. This dissertation draws on the above-mentioned literature. It also provides relevant insights into legislative reforms and good practices put in place by South Africa to promote equality in property and inheritance rights. The burden of this study is therefore to examine the effects of inheritance exclusion on women's inheritance rights in Burundi.

1.5 Methodology

The study employs desktop-based research to gain a comprehensive understanding of the subject matter. It employs primary sources which include the domestic (Burundi and South Africa), regional, and international instruments that relate to the subject

¹⁸ MM Masuku and others 'Gendered effects of land access and ownership on food security in rural settings in South Africa' 2023 *Frontiers in Sustainable Food Systems* 1.

matter to examine the effects of inheritance practices on women's socioeconomic rights. It also uses secondary such as journal articles, books and reports that deal with inheritance rights, gender equality, and women's socioeconomic rights.

1.6 Structure

This dissertation is divided into five chapters. Chapter one contains the background, the problem statement, the literature review, and the methodology. Chapter two examines the international, regional, sub-regional, and domestic legal and institutional frameworks protecting women's socioeconomic rights in Burundi. This chapter also assesses their implementation and effectiveness in Burundi. Chapter three analyses the factors that shape the status of women's socioeconomic rights in Burundi. Chapter four identifies best practices in advancing equality in property and inheritance rights in South Africa and draws lessons therefrom. Chapter five is made up of the conclusion and recommendations.

1.7 Limitation of the study

The timeframe for this mini dissertation does not allow fieldwork, limiting the study to existing data (Government reports, NGO studies), which may not capture the full range of women's experiences. Furthermore, data on inheritance practices, particularly court cases are difficult to obtain due to the lack of an online database of judgments in Burundi. The supreme court and the ordinary high court, which previously published their judgments, no longer do so for undisclosed reasons.

To address these limitations, the study will draw on the findings of scholars who have conducted field research, as well as reports and studies by reputable NGOs and United Nations agencies.

Burundi is a francophone country where domestic laws (except the Constitution), government reports, and many publications by different authors do not have an official English version. Although the author can translate, references in English are not available.

2. International, regional, sub-regional and domestic frameworks on women's socio-economic rights

2.1 Introduction

Throughout history, the protection of economic, social, and cultural rights has not always been consistent. The International Labour Organisation (ILO) adopted conventions in the early 20th century to enhance global labour standards, but it wasn't until after World War II that socio-economic rights were integrated into international human rights instruments.¹⁹

This chapter examines the global, regional, and national framework that safeguards women's socio-economic rights in Burundi. The research analyses the various international, regional and sub-regional instruments that Burundi is party to. It also assesses the country's national laws and policies. For international human rights instruments, this research focuses on the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), and the ICESCR, given that the provisions of these instruments protect socio-economic rights in general and women's socio-economic rights in particular.

2.1.1 International legal framework

The Universal Declaration of Human Rights asserts and safeguards human rights including social and economic rights, such as the right to a standard of living adequate for the health and well-being of oneself and one's family, including food, clothing,

¹⁹ D Ahmed and E Bulmer 'Social and Economic Rights' (2017) *International Institute for Democracy and Electoral Assistance second edition* 8.

housing, education, and other entitlements.²⁰ It specifies that these rights must be protected without distinction of any kind, such as race, colour, sex, language, religion, political opinion, national or social origin, property, birth, or other status.²¹

The State of Burundi became a member of the United Nations on 18 September 1962.²² It subsequently adhered to the Universal Declaration adopted and proclaimed by the UN National Assembly in its Resolution 217 A (III) of 10 December 1948.

To reaffirm its commitment to upholding and promoting human rights, the State of Burundi has enshrined the Universal Declaration in the Constitution.²³

The State of Burundi ratified the CEDAW and made it an integral part of the Constitution.²⁴ In ratifying the CEDAW, the State of Burundi committed to condemning discrimination against women in all its forms.²⁵ To this end, the State has undertaken to respect various obligations set out in Article 2 (a),(b),(c),(d),(e), and (f). Furthermore, the State of Burundi is bound to enact appropriate legislation in the political, social, economic, and cultural domains to ensure the full development and advancement of women. This is aimed at guaranteeing women the exercise and enjoyment of human rights and fundamental freedoms on an equal basis with men.²⁶ Additionally, within the context of this Convention, Burundi must also address the specific challenges faced by rural women and recognise their significant roles in the economic well-being of their families, particularly through their contributions to non-monetized sectors of the economy.²⁷

²⁰ UDHR arts 25 (1) and 26.

²¹ UDHR art 2(1).

²² UN Member States <www.un.org/en/about-us/member-states> accessed 16 August 2024.

²³ The Constitution of Burundi art 19.

²⁴ *ibid.*

²⁵ CEDAW art 2.

²⁶ CEDAW art 3.

²⁷ CEDAW art14.

The State of Burundi ratified the ICESCR on 14 March 1990.²⁸ This Covenant holds constitutional rank.²⁹ It calls upon States Parties to guarantee the exercise of the rights protected by the Covenant without discrimination of any kind.³⁰ Additionally, the State of Burundi should ensure that men and women have equal right to enjoy all economic, social, and cultural rights specified in the ICESCR.³¹

Like other UN member states, the State of Burundi signed up to the Sustainable Development Goals (SDGs), also known as the Global Goals, in 2015. 17 SDGs have been adopted to end poverty, hunger, AIDS, and discrimination against women and girls within 15 years.³²

To promote women's socioeconomic rights, the State of Burundi is called upon to take appropriate measures to implement goal 1(target 4), goal 2 (target 2.3), goal 5 (targets 5.1, 5.5, 5.a, 5.c), goal 8 (target 8.5), goal 9 (target 9.3) and goal 10 (target 10.1,10.2. and 10.3).³³

Burundi has also signed the Beijing Declaration and Platform for Action, a global policy framework for women's empowerment, adopted following the Fourth World Conference on Women in September 1995 in China.³⁴ To achieve the goal of establishing gender equality and human rights for women and girls everywhere, the Beijing Declaration and Platform for Action focuses on 12 areas, including poverty, education and training, health, armed conflict, the economy, power and decision-making, institutional mechanisms, human rights, the media, the environment, and the girl child.³⁵

The Beijing Platform of Action identifies many critical areas among them: the persistent and increasing burden of poverty of women; violence against women; inequality in economic structures and policies, in all forms of productive activities, and in access to resources; inequality between men and women in the sharing of power and decision-making at all levels; and lack of respect

²⁸ Republic of Burundi 'Codes et Lois du Burundi' (2006)153.

²⁹ The Constitution of Burundi art 19.

³⁰ ICESCR art 2(2).

³¹ ICESCR art 3.

³² SDG <<https://sdgs.un.org/goals>> accessed 16 August 2024.

³³ *ibid.*

³⁴ Beijing Declaration and Platform for Action 'The Fourth World Conference on Women' (1995).

³⁵ *ibid.*

and promotion of the human rights of women.³⁶ Governments are therefore called upon to take strategic actions depending on the area since sustainable development is possible only through improving the economic, social, political, legal, and cultural status of women.³⁷

2.1.2 Regional legal framework

Socio-economic rights are similarly guaranteed by the African Charter on Human and People's Rights (ACHPR).³⁸ Burundi became a member of the AU on 25 May 1963.³⁹ It ratified the ACHPR on 27 July 1991,⁴⁰ and integrated it into its Constitution.⁴¹

The ACHPR promotes equality and non-discrimination.⁴² It further emphasises that 'All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another'.⁴³

The principle of equality is also enshrined in the Constitutive Act of the African Union (AU).⁴⁴ To reaffirm its commitment to promote gender equality, the State of Burundi has signed the Solemn Declaration on Gender Equality in Africa which calls upon the member States to 'actively promote the implementation of legislation to guarantee women's land, property, and inheritance rights including their rights to housing'.⁴⁵

Moreover, the AU Agenda (Agenda 2063) a collective vision and a roadmap for the next 50 years, aspires to an Africa with a universal culture of gender equality and respect for human rights.⁴⁶ It commits to achieving full gender parity in public and private institutions, and the removal of all forms of gender discrimination in the social, cultural, economic, and political spheres.⁴⁷

³⁶ A Manirakiza 'La problématique de la mise en œuvre du principe d'égalité en droit burundais de la famille. Cas des droits successoraux de la femme' (2014) *KAS African Law Study Library – Librairie Africaine d'Etudes Juridiques* 705 para 41.

³⁷ *ibid* para 56.

³⁸ African Charter on Human and People's Rights <https://au.int/sites/default/files/treaties/36390-treaty-0011 - african_charter_on_human_and_peoples_rights_e.pdf#page=2.00> accessed 21 August 2024.

³⁹ AU Member States <https://au.int/en/member_states/countryprofiles2> accessed 22 August 2024.

⁴⁰ Republic of Burundi 'Codes et Lois du Burundi' (2006)173.

⁴¹ The Constitution of Burundi art 19.

⁴² ACHPR art 2.

⁴³ ACHPR art 19.

⁴⁴ Constitutive Act of the AU art 4(a).

⁴⁵ AU, Solemn Declaration on Gender Equality in Africa para 7.

⁴⁶ Agenda 2063 para k 17.

⁴⁷ *ibid* para 28

It is to be noted that Burundi has signed the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol) but has not yet ratified it.⁴⁸

In this regard, under the Vienna Convention on the law of treaties, the State of Burundi should refrain from acts that would defeat the object and the purpose of the Maputo protocol.⁴⁹ Specifically, the State of Burundi should refrain from any action that would violate women’s guarantee of equal opportunities in work, career advancement, and other economic opportunities.⁵⁰ In addition, the State must also ensure that it does not infringe on women’s access to and control over productive resources, such as land, and guarantee their right to property,⁵¹ and their right to inherit in the same way as their brothers from their parents’ properties in equitable shares.⁵²

2.1.3 Sub-regional legal framework

Burundi has signed on to four sub-regional economic integration organisations.⁵³ All of them acknowledge the significant contributions of women to development, support gender equality and protect the socio-economic rights of women.

The East African Community (EAC) (EAC Treaty) which Burundi joined on 1 July 2007,⁵⁴ emphasises the role of women in the socio-economic development of Partner States.⁵⁵ It also integrates gender issues into all EAC interventions.⁵⁶ Partner states are therefore committed to adhering to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as recognition, promotion, and protection of human and people’s rights.⁵⁷ Furthermore, the EAC Gender Policy provides guidelines for mainstreaming gender in EAC policies and programmes.⁵⁸

⁴⁸ Centre for Human Rights ‘Country status’ <www.maputoprotocol.up.ac.za/countries/countries-table> accessed 22 August 2024.

⁴⁹ Vienna Convention art 18 (a).

⁵⁰ Maputo Protocol art 13.

⁵¹ Maputo Protocol art 19 (c).

⁵² Maputo Protocol art 21 (2).

⁵³ 2024 Investment Climate Statements: Burundi <www.state.gov/reports/2024-investment-climate-statements/burundi/> accessed 21 August 2024.

⁵⁴ EAC Partner States <www.eac.int/eac-partner-states> accessed 21 August 2024.

⁵⁵ EAC Treaty arts 121 and 122.

⁵⁶ EAC Treaty art 5(3).

⁵⁷ EAC Treaty art 6(d).

⁵⁸ EAC Gender Policy.

Burundi is also a member of the Economic Community of Central African States (ECCAS) whose treaty recognises, promotes, and protects human rights under the provisions of the ACHPR.⁵⁹ To reaffirm its commitment to promote equality,⁶⁰ the Community has adopted a Declaration on the equality of men and women,⁶¹ providing a framework for coordinated efforts to promote gender equality at national and sub-regional.

Burundi is a member of the Common Market for Eastern and Southern Africa (COMESA) whose treaty recognises, promotes, and protects human and people's rights in accordance with the provisions of ACHPR.⁶² Besides, COMESA acknowledges the role of women in development and business and mandates Member States to take legislative and other measures to achieve the full participation of women.⁶³

Burundi is a member of the International Conference on the Great Lakes Region (ICGLR) whose Pact calls upon member states to condemn and eliminate all forms of discrimination and discriminatory practices.⁶⁴ Moreover, member states recognise and promote women's empowerment, right to development and peace in society. To this end, member states undertake to establish appropriate mechanisms to eliminate discriminatory practices against women in accordance with appropriate national, regional and international standards in force.⁶⁵

Finally, the State of Burundi recognises the Dar Es Salaam Declaration that pledged to empower women and girls by removing barriers that prevent women and girls from accessing education, healthcare and economic opportunities.⁶⁶

⁵⁹ Revised ECCAS Treaty art 3 (e).

⁶⁰ ECCAS Treaty arts 78 and 79.

⁶¹ ECCAS 'Déclaration sur l'Égalité Entre les Hommes et les Femmes' 2004.

⁶² COMESA Treaty art 6 (e).

⁶³ COMESA Treaty arts 154&155.

⁶⁴ ICGLR Pact art 8 b).

⁶⁵ ICGLR Protocol on Democracy and Good Governance art 44.

⁶⁶ Dar Es Salaam Declaration para 17 (C).

2.1.4 National legal framework

Burundi is a monist country in the sense that multilateral treaties enter into force after being duly ratified and in accordance with the conditions for their entry into force.⁶⁷ After ratifying and acceding to various international, regional, and sub-regional instruments protecting women's socio-economic rights, Burundi took steps to implement these instruments. This section will analyse the national laws and policies in force.

This Constitution of Burundi gives constitutional force to the international texts concerning human rights that are regularly ratified.⁶⁸ It promotes and protects the principles of equality and non-discrimination.⁶⁹ It also mandates Burundi to guarantee to all Burundians, the option to live in Burundi sheltered from fear, discrimination, disease, and hunger.⁷⁰

It should be emphasised that the Constitution is the supreme law that must be respected by the legislative, executive and judicial bodies. Thus, any law that does not conform to the Constitution is struck and nullified.⁷¹

Burundi signed the Arusha Accords (Tanzania) on 28 August 2000 to put an end to the 12-year civil war.⁷² This is an instrument of the utmost importance in the promotion of women's socio-economic rights, to the extent that the Burundian Constitution reflects the principles set out in this agreement.⁷³

The Personal and Family Code recognises the same rights, obligations, and powers of spouses.⁷⁴ However, it contains a provision establishing the husband as the head of the marital household,⁷⁵ and does not regulate the ownership of spouses' property.⁷⁶

Since 2016, Burundi has passed a law on the prevention, protection of victims and repression of GBV, which identifies economic violence as one of the forms of GBV commonly observed in Burundi.⁷⁷ The law also reflects the government's commitment to

⁶⁷ The Constitution of Burundi art 279.

⁶⁸ The Constitution of Burundi art 19.

⁶⁹ The Constitution of Burundi arts 13d and 22.

⁷⁰ Constitution of Burundi art 17.

⁷¹ Constitution of Burundi art 48.

⁷² Arusha Peace and Reconciliation Agreement for Burundi (2000).

⁷³ Preamble of the Constitution of Burundi.

⁷⁴ Personal and Family code arts 121 to 138.

⁷⁵ Personal and Family code art 122.

⁷⁶ G Gatunange 'Le régime matrimonial de droit commun en droit burundais' (2015) *Revue Burundaise de Droit et Société* 36.

⁷⁷ Loi portant prévention, protection des victimes et repressions des violences basées sur le genre (GBV) Act 13 of 2016 art 2(s).

eradicating all cultural practices and stereotypes based on the idea of women's inferiority through awareness-raising campaigns.⁷⁸ The law emphasises the equal rights of spouses over household assets and criminalises economic violence as well as preventing the surviving spouse from benefiting from household assets.⁷⁹

In 2012, Burundi revised its national gender policy to address gender disparities. The policy acknowledges the challenges women face in accessing opportunities and participating equally in the country's development. It sets out the objectives, guidelines, and strategies to overcome these disparities and promote sustainable development in Burundi.⁸⁰

Burundi has a Vision 2025, an instrument for strategic and policy planning for sustainable development.⁸¹ Vision Burundi 2025 intends to set up a proactive policy for the promotion of women through the improvement of their access to education by eliminating the disparities, especially at the secondary and higher levels. It is also aimed at ensuring a significant increase in the participation of women in the economic development of the country.⁸²

To implement Vision 2025, the Government of Burundi has introduced a second Strategic Framework for Growth and the Fight against Poverty (Cadre Stratégique de Croissance et de Lutte contre la Pauvreté- CSLP II), which notes that women are disproportionately affected by poverty due to limited access to credit, land, and formal employment.⁸³ To this end, the government intends to strengthen the institutional framework for the implementation of existing laws promoting equality and also to create favourable conditions for women's economic development.⁸⁴

To respond to the persistent challenges in the economic and social areas, the State of Burundi has put in place a National Development Plan for Burundi 2018-2027. It is a guideline instrument that the different sectors will have to draw on to contribute to the country's development.⁸⁵ The State's strategic objectives in-

⁷⁸ Loi portant prévention, protection des victimes et repressions des violences basées sur le genre (GBV) Act 13 of 2016 art 5.

⁷⁹ *ibid* arts 7, 50 & 59.

⁸⁰ Republic of Burundi 'Gender National Policy' (2012) 2.

⁸¹ Republic of Burundi 'Burundi Vision 2025'.

⁸² *ibid*.

⁸³ Republic of Burundi 'Cadre Stratégique de Croissance et de Lutte contre la Pauvreté' (2012) XVI.

⁸⁴ *ibid* 65.

⁸⁵ Republic of Burundi 'National Development Plan Burundi' (2018).

clude consolidating the rule of law and human rights, which will be achieved through the promotion of human rights, the promotion of justice accessible to all, and the eradication of inequality in all its forms.⁸⁶

2.1.5 Implementation of the protection and promotion of women's socioeconomic rights in Burundi

To ensure the enforcement of the laws safeguarding the protection and the promotion of women's socio-economic rights in Burundi, the State established a Ministry of Human Rights, Social Affairs, and Gender as well as gender units in all Burundian government ministries. The Ministry's responsibilities include promoting gender equality and contributing to the drafting, implementation, and enforcement of laws, covenants, conventions, and platforms for action to protect human rights in general, and women's rights in particular.⁸⁷

In response to the specific situation of women in Burundi, the Ministry has a General Direction for the Promotion of Women and Gender Equality, comprising the Department for the Promotion and Empowerment of Women, the Department for Gender Equality, and the Department for the Prevention of Sexual and Gender-Based Violence and Holistic Care for Victims.⁸⁸ This General Direction is specifically tasked with monitoring and reporting on the implementation of CEDAW and the Beijing Platform for Action; mobilising resources for the implementation of the National Gender Policy and its various operational tools and spreading laws related to the promotion of women and gender equality.⁸⁹

To fulfil women's rights and empowerment, Burundi has a National Programme for Strengthening the Economic Capacities of Women (2019-2027) that implements the National Gender Policy and promotes women's economic participation in

⁸⁶ Republic of Burundi 'National Development Plan Burundi' (2018) 95.

⁸⁷ Loi sur les missions, organisation et fonctionnement du Ministère de la Solidarité Nationale, des Affaires Sociales et du Genre Act 100/084 of 2020 arts 13 and 14.

⁸⁸ The Constitution of Burundi art 12.

⁸⁹ The Constitution of Burundi arts 30 and 31.

development⁹⁰. This programme has a fund and helps women members of active associations with income-generating activities. These associations can become cooperatives if they meet the required conditions.⁹¹

2.1.6 Effectiveness of the legal framework protecting women's socio-economic rights in Burundi.

Whilst the State has made significant progress in proclaiming the socio-economic rights of women in Burundi, through the ratification and operationalisation of international instruments, challenges persist. This sub-section will highlight some of them.

Although Burundi has legal and institutional frameworks in place to promote women's rights, matrimonial regimes, and liberalities that would give women access to land are lacking.⁹² Moreover, Burundian culture still burdens Burundian women and girls, and a lot of men still operate under a patriarchal culture that undermines women's rights⁹³ (this matter will be developed further in Chapter 3).

In addition, the promotion of gender equality and the application of gender-related laws are hampered by a lack of financial resources to implement the action plans of the policies.⁹⁴ The National Gender Policy is a relevant example. It was revised in 2012 to achieve its various objectives by 2025. The National Gender Policy indicates that the National Gender Council, the Steering Committee (a body responsible for monitoring the implementation of the NGP), and the Technical Implementation Committee are planned for implementation of that policy.⁹⁵ To date, these bodies have not

⁹⁰ UN General Assembly 'Women in development, Report of the Secretary-General' 2024 para 18

⁹¹ 50 million African Women speak 'Women's Economic Empowerment Program' <www.womenconnect.org/web/burundi/empowerment/-/asset_publisher/O7GbV-VJk4RxE/content/autonomisation-de-la-femme-et-programme-national-de-renforcement-des-capacites-economiques-de-la-femme-2019-2027-bujumbura-burundi-juillet-2019-> accessed 23 August 2024.

⁹² Republic of Burundi '6th National Report on the implementation of the Beijing Declaration and Platform for Action' (2024) 12.

⁹³ *ibid* 42.

⁹⁴ *ibid*.

⁹⁵ Republic of Burundi 'Politique Nationale Genre' (Gender National Policy) (2012) 34 and 35.

yet been set up.⁹⁶ and achieving the results of the National Gender Policy 2012-2025 depends on the effectiveness of the institutional framework put in place, which requires the commitment of all the actors involved in its implementation.⁹⁷

Concerning the institutional framework, although the Ministry responsible for gender does exist, it is not very effective, given the several portfolios it must manage.⁹⁸ The first Ministry for Gender was set up in 1982 to implement the recommendations of the 1975 Mexico World Conference. In 1991, it became the Ministry for Social Action and the Advancement of Women. Since then, its structure has lost its specificity because it has been burdened with two portfolios.⁹⁹ Today, this Ministry has new responsibilities such as national solidarity, social affairs, human rights, and gender.¹⁰⁰

The effectiveness of the Ministry's interventions is challenged by the complexity and broad scope of the sectors under the same umbrella; insufficient resources to be effective and meet the expectations of the population in general and women in particular; inadequacy between ambitions and human resources dedicated to achieving these ambitions; the lack of key strategic structures in the gender mechanism.¹⁰¹ The gender units, except those at the Ministry of the Interior and Public Security and the Ministry of National Defence and Ex-combatants Affairs, are powerless and ineffective.¹⁰²

While the laws and policies promoting women's socio-economic rights in Burundi are not effectively implemented, it is worth highlighting the fact that gender budgeting is barely integrated into planning.¹⁰³ The gender ministry ranks 9th out of 15 ministries in the Burundian government, with a budget of less than 1% of the annual state budget.¹⁰⁴ In other words, an al-

⁹⁶ Republic of Burundi 'Country Gender Equality profile' (2023) 23.

⁹⁷ Republic of Burundi 'Politique Nationale Genre' (Gender National Policy) (2012) 31.

⁹⁸ Republic of Burundi 'Country Gender Equality profile' (2023) 23.

⁹⁹ *ibid* 22.

¹⁰⁰ Loi sur les missions, organisation et fonctionnement du Ministère de la Solidarité Nationale, des Affaires Sociales et du Genre, Act 100/084 of 2020.

¹⁰¹ Republic of Burundi 'Country Gender Equality profile' (2023) 9.

¹⁰² *ibid* 23.

¹⁰³ Republic of Burundi '6th National Report on the implementation of the Beijing Declaration and Platform for Action' (2024) 12.

¹⁰⁴ Loi budgetaire du Burundi 2023/2024 Act 16 of 2023 para 88.

location of BIF 86,386,000,000 (BIF 21,167,311,360 billion from national resources and BIF 65,218,680,000 billion from external resources) out of a total of BIF 3,923,195,545,193. The Ministry could not effectively carry out its missions with such a budget.

2.1.7 Chapter conclusion

From an analysis of international, regional, and sub-regional human rights instruments, as well as national laws and policies, the country has the relevant legislation in place to protect and promote the socio-economic rights of women in Burundi. However, there is a gap in national legislation as there are no specific laws on succession and matrimonial property. This study reveals that the commitment of the State of Burundi to the promotion of gender is more theoretical than practical, given the budget allocated to this sector.

3. Effects of inheritance practice on women's socioeconomic rights in Burundi

3.1 Introduction

This chapter illustrates the historical background and evolution of traditional practices governing inheritance in Burundi from the pre-colonial period to date. It also examines how these practices affect women's socio-economic rights, specifically the right to have access to land, the right to food, and women's empowerment. Finally, this research assesses inheritance practices from a human rights perspective.

3.2 Overview of inheritance practice

3.2.1 Historical background

Burundi is a country governed by a patriarchal and patrilineal social system.¹⁰⁵ Girls and boys were not considered to be equal in inheritance matters. Traditionally, the family went beyond the nuclear family (spouses and children) and was made up of the descendants of a common ancestor, known as a lineage.¹⁰⁶ Due to the patrilineal principle, only the son was involved in continuing his father's lineage.¹⁰⁷ Land was a collective asset that belonged to a lineage, specifically a group of relatives and it was only passed down through the patrilineal line.¹⁰⁸

¹⁰⁵ Republic of Burundi 'Gender National Policy' (2012) 10.

¹⁰⁶ A Manirakiza 'Le principe d'égalité et de non-discrimination dans le droit familial burundais : état des lieux, défis de mise en œuvre et perspectives de lege ferenda' PhD thesis, Universiteit Antwerpen 2020 180.

¹⁰⁷ *ibid.*

¹⁰⁸ A Nzohabonayo and JDD Ndikumana 'La Succession Foncière de la Femme Burundaise Face à la Coutume' (2020) *European Scientific Journal* 230.

From an early age, girls were expected to become someone's wife and would have to go to another family.¹⁰⁹ Once married, they were considered to defer to their in-laws regarding the inheritance of land.¹¹⁰ The traditional Burundian inheritance model dictated a hierarchy of five orders for succession.¹¹¹ Girls and women occupied the 5th position in the order of inheritance. They could inherit in the absence of the deceased's male descendants (first order), ascendants, such as the deceased's father and mother (second order), the deceased's brothers and their ascendants (third order), the deceased's paternal uncles and their male descendants (fourth order).¹¹² Daughters were simply excluded from the succession in favour of the other male successors, as it was rare for daughters to inherit.¹¹³ This exclusion from succession applied to both intestate and estate succession.¹¹⁴

Admittedly, women or girls could enjoy some limited rights insofar as they were not equivalent to those granted to men.¹¹⁵ An unmarried girl was entitled to a portion of land (*icibare* in the local language). Married women were entitled to a portion of the land representing the gifts they received from their parents.¹¹⁶

Even if women were considered to belong to their in-laws' families as far as inheritance of land is concerned, they did not inherit in the husband's family.¹¹⁷ Once divorced, the woman was obliged to leave her marital home and the land before returning to her father's family; she was only entitled to take her personal belongings.¹¹⁸ She could also take unwanted children, such as daughters as they were not much wanted for the simple reason

¹⁰⁹ Manirakiza (n 106) 181.

¹¹⁰ A P Niyonkuru 'Gender and access to justice in Burundi: conflicting norms, gaps in the law and the role of judges' (2021) *The Journal of Legal Pluralism and Unofficial Law* 576.

¹¹¹ J Bukera, 'La dévolution successorale en droit burundais' (1971) *Revue Administrative et Juridique du Burundi* 90 quoted in Manirakiza (n 106) 179.

¹¹² Manirakiza (n 106) 179.

¹¹³ R Bourgeois 'Banyarwanda et Barundi' (1954) quoted Manirakiza (n 106) 179.

¹¹⁴ C Mabushi *La succession testamentaire en droit coutumier burundais* quoted in E Nukuri 'La protection constitutionnelle du droit de propriété foncière en droit burundais' PhD thesis, KU Leuven 2019 13.

¹¹⁵ A Manirakiza 'La problématique de la mise en œuvre du principe d'égalité en droit burundais de la famille. Cas des droits successoraux de la femme' (2014) *KAS African Law Study Library – Librairie Africaine d'Etudes Juridiques* 712.

¹¹⁶ S Bukuru 'La problématique de la succession de la fille (femme) au Burundi. Etat de la jurisprudence'. Dissertation, Université du Burundi 2003 quoted in A Manirakiza (n 115) 712.

¹¹⁷ A Niyonkuru 'Femme-agronomie-développement : le cas du Burundi' (2009) *Tropicaltura* 253.

¹¹⁸ *ibid.*

that they did not perpetuate their father's line.¹¹⁹ And when her husband predeceased her, the family property was transferred according to whether the widow had children or not. Where the widow had children, she would administer the property of her husband, under strict conditions of not engaging in another relationship and not having other children afterwards. The land property reverted to the husband's family following the inheritance order set out above if the children the decedent left were only daughters. The situation of the woman without children was very difficult because her fate depended on the goodwill of her in-laws; they could force her to marry one of her brothers-in-law or force her to leave. For a single woman who 'failed to find a husband', or if a widow or divorcee returned to her parents, they were granted a portion of land with the brothers' prior consent.¹²⁰

3.2.2 The evolution of traditional inheritance practice

Women's inheritance rights have evolved through jurisprudence in the course of time.¹²¹ In 1945, the Tribunal de la Chef-ferrie in *Barusasiyeko* delivered a judgment in favour of women.¹²²

This tribunal declared that

Boys inherit from their father to the exclusion of daughters. The father may, however, in a public ceremony, reward his daughter for a meritorious act, making her his 'son' and heir to his property on his death.¹²³

This decision challenged the principle whereby only male heirs were eligible for intestate succession. Consequently, a daughter could inherit if her father appointed her as a legatee.¹²⁴ Despite recognising women's rights for the first time, this decision entrenched the superiority of males in the sense that a daughter should be declared a 'son' for inheritance purposes.

¹¹⁹ A Niyonkuru 'Femme-agronomie-développement : le cas du Burundi' (2009) *Tropicultura* 253..

¹²⁰ Nzohabonayo & Ndikumana (n 108).

¹²¹ Manirakiza (n 106) 182.

¹²² *ibid.*

¹²³ Manirakiza (n 106) 183.

¹²⁴ E Lamy 'Observation sous Tribunal du Mwami du Burundi, 9 février 1960' (1961) *Revue Juridique de droit écrit et coutumier du Rwanda et du Burundi* 104 quoted in Manirakiza (n 106) 183.

After recognition of the inheritance rights of daughters in the event of a will, the principle according to which daughters could only inherit in the absence of any male heir in the paternal line was challenged by the Tribunal of the *Mwami* (the *Mwami* being the King in the national language). It was around the 1960s that the Court of the Mwami decided that even in the absence of a will, daughters could henceforth inherit if they were not in a competitive situation with their brothers.¹²⁵ In one case, Ruterakagayo was the only daughter of Bugirigiri. When her father died, Ndikumwami, the daughter's paternal uncle and brother of the deceased, based his decision on the customary rules, which stipulated that in the absence of male descendants and privileged ascendants, the estate of the deceased would devolve to the privileged relatives (brothers),¹²⁶ and grabbed all the cows belonging to his brother Bugirigiri. Ruterakagayo (the daughter) decided to take her case to the Court of the Mwami, asking that her father's cows be returned to her instead of being the property of her uncle. In its decision, the Court of the Mwami categorically rejected the customary rule and clearly stated the new rule as follows: 'Whereas the custom to be applied is that a child, even a girl, in the absence of boys, must enjoy his father's property if the latter has not decided otherwise'.¹²⁷

This decision introduced a new inheritance rule. 'In Burundi, in case of intestate succession, daughters in the absence of sons are entitled to inherit their father's property'.¹²⁸ This was an innovation by the Court of the Mwami. From then on, daughters could inherit their fathers' property in the absence of sons. Before this decision, unless they were the beneficiaries of a testamentary gift, daughters had no claim to the estate if there were male successors, even if they were not descendants of the deceased.¹²⁹

The courts and tribunals of Burundi then extended the inheritance rights of daughters by recognising their right to inherit even in the presence of their brothers.

¹²⁵ Manirakiza (n 106) 184.

¹²⁶ C Mabushi 'La succession testamentaire en droit coutumier burundais' (1972) *Revue Juridique de droit écrit et coutumier du Rwanda et du Burundi* 149 quoted in Manirakiza (n 106) 184.

¹²⁷ Tribunal du Mwami du Burundi, *Revue Juridique de droit écrit et coutumier du Rwanda et du Burundi* quoted in Manirakiza (n 106) 184.

¹²⁸ Lamy (n 124) 184.

¹²⁹ Manirakiza (n 106) 184.

In 1964, the Burundi Court of Cassation (now the Supreme Court) recognised for the first time that Burundian daughters could inherit even in the presence of their brothers.¹³⁰ The case concerned an unmarried daughter. The brother had taken over part of the land that their father had granted to his daughter during his lifetime. He argued that his sister, being a woman, had no inheritance rights to assert when she was in the presence of a brother. The daughter appealed to the High Court of Muramvya, which declared the claim unjustified. Unsatisfied, the daughter appealed to the court of cassation. The court of cassation ruled that the appeal was well-founded. ‘The fact that she is a woman does not change her status as heir, and for the rest, Burundian custom recognises that daughters who have not been able to get married, have the right to part of their father’s inheritance for their maintenance in the same way as male descendants’.¹³¹

Consequently, it is accepted that ‘under Burundian customary law, unmarried or divorced daughters are entitled, in the same way as male heirs, to a share of the paternal inheritance’.¹³² This right is recognised not only if their parents have provided for it in a will, but also in the event of intestate succession.¹³³

This judgment was innovative in so far as it granted unmarried daughters and divorced women the right to inherit from their fathers in the same way as their brothers. In truth, these women have never enjoyed equal treatment with their brothers. Although they can now inherit their parents’ property, in most cases they do not have the right to transfer it, either free of charge or for financial gain, unlike their brothers.

In accordance with customary rules, they only have usufruct rights, which expire once they die or give up living near their paternal family.¹³⁴

¹³⁰ Manirakiza (n 106) 185.

¹³¹ Cour de cassation du Burundi (1964) *Revue Juridique de droit écrit et coutumier du Rwanda et du Burundi* 22 quoted in Manirakiza (n 106) 185.

¹³² *ibid.*

¹³³ Manirakiza (n 106) 186.

¹³⁴ Bukera ‘Dévolution successorale’ (1980) *Revue Juridique du Burundi* 94&95 quoted in Manirakiza (n 106) 186.

3.2.3 Women's inheritance rights: an ever-present challenge

Although the courts played an active role, the evolution of customary rules remains incomplete.¹³⁵ Even today, depending on the nature of the assets to be inherited, women are treated quite differently from their brothers.

According to Bukera:

The estate of the deceased may consist of lineage property and property of the deceased's own. Lineage property consists of all the property that the deceased received from his paternal family by gift or inheritance. These assets are known as family assets and must remain in the paternal family. Personal property consists of all property acquired by the deceased by any means other than family inheritance. These are possessions that he bought, or even received from people outside the family. They are due to his efforts and work.¹³⁶

Based on this distinction between lineage property and personal property, the courts and tribunals often argue that daughters may not inherit equal portions to their brothers if the inheritance relates to the land of lineage origin. Conversely, personal property can be shared between all the children without distinction.¹³⁷

In the case RC 753/2009 between nine married women and their seven brothers, the Tribunal of First Instance of Kirundo decided that

The land property belonging to the lineage shall be divided into eight equal parts: seven parts for the seven sons and one part common to the nine married women, over which they shall exercise only a right of usufruct, but that all the land property purchased by Rwa (their father) during his lifetime shall be divided equally between all his children: his sons and daughters.¹³⁸

The Tribunal of First Instance of Gitega went down the same road in a case between two married women and their brother. The women were seeking equal division of their father's estate. The tribunal, after distinguishing between lineage land and personal

¹³⁵ Manirakiza (n 106) 185.

¹³⁶ Bukera 'Dévolution successorale' (1980) *Revue Juridique du Burundi* 94&95 quoted in Manirakiza (n 106) 186.

¹³⁷ Manirakiza (n 106) 187.

¹³⁸ RC 753/2009 quoted in Manirakiza (n 106) 187.

land (land purchased by the father), decided that ‘the land purchased during the lifetime of the deceased will be divided into three equal shares; on the lineage land, the women will have a right of usufruct’.¹³⁹

When the estate devolves, property that does not come from the lineage property is divided equally without distinction and the heirs exercise the rights of usus, fructus, and abus over them.¹⁴⁰ Gatunange shows that personal property ‘is recently acquired and does not come from the family inheritance’.¹⁴¹ In most cases, such property consists of acquests such as houses, plots of land, cars, bank accounts, and company shares.¹⁴²

In urban areas, the situation has changed considerably. Conflicts over inheritance occur but judges uphold the principle of equality regardless of the heirs’ sex.¹⁴³ In the case RCC 30127, 7 heirs including four boys and three girls, were to share the estate comprising four plots of land (two of which were in dispute) located in Bujumbura, as well as rural land, in compliance with the deceased’s will and family agreements.¹⁴⁴

As they failed to settle, they brought the matter before the tribunal of first instance of Kinama, which annulled the will and other agreements the family had made. The court ordered that the daughters should receive the plots under dispute.¹⁴⁵ Not satisfied with the judgment, the three sisters appealed to the High Court of Ntahangwa, which upheld the judgment of the High Court of Kinama. Finally, they appealed to the Supreme Court’s cassation chamber, which was expected to rule on the question of whether the surviving children inherited the property left by their father on an equal basis.¹⁴⁶ According to the judge, all children are

¹³⁹ E Kimararungu ‘La jurisprudence des tribunaux de résidence en matière successorale : cas des tribunaux de Résidence de Gitega’ Dissertation, Université du Burundi 2009 43 quoted in Manirakiza (n 106) 187.

¹⁴⁰ A Manirakiza (11) 188.

¹⁴¹ G Gatunange ‘Plaidoyer pour une loi sur les successions au Burundi’ (2015) *Revue de l’Université du Burundi* 63 quoted in Manirakiza (n 106) 188.

¹⁴² Manirakiza (n 106) 188.

¹⁴³ Manirakiza (n 115) 714.

¹⁴⁴ RCC 30127 quoted in Cour Suprême ‘Recueil de jurisprudence foncière’ 12.

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*

equal. The case was subsequently overturned and referred back to the trial judge for a ruling on the division of the estate into equal shares for the deceased's children, without discrimination on the grounds of gender.¹⁴⁷

In rural areas, the situation has not improved as in most cases the estate consists of lineage property.¹⁴⁸ According to the courts, custom recognises that women should not inherit in the same way as their brothers, and in this case, the law enshrines a difference in treatment between women and their brothers, and this applies to all women regardless of their marital status.¹⁴⁹

However, the majority of the population acquires land ownership by inheritance; other forms of property acquisition, in a particular purchase, acquisitive prescription and acquisition through transfer by the State, are exceptional.¹⁵⁰ For instance, when married women demand the same treatment as their brothers, the most progressive courts grant them a small plot of land known as 'igiseke' the size of which may or may not be specified, but which is always smaller than the size of the land received by their brothers.¹⁵¹

An exemplary case is the judgment of the Tribunal of the first instance of Kirundo cited above, which awarded the nine married women 1/8 of the inheritance of lineage land at a time when their brothers shared 7/8 of their father's estate equally.¹⁵² Nevertheless, some Tribunals go so far as to decide that the married woman does not even have the right to the small piece of land known as 'igiseke'. This situation is illustrated by a judgment of the Tribunal of First Instance of Bugendana. A married woman claimed that the land left to her by her father should be shared between all her children without distinction based on gender. The Tribunal justified its decision to refuse this share-out by the fact that 'the woman was married and had no problems in her marital home'.¹⁵³

¹⁴⁷ *ibid.*

¹⁴⁸ Manirakiza (n 115) 718.

¹⁴⁹ Manirakiza (n 106) 189.

¹⁵⁰ E Nukuri 'L'apport du nouveau code foncier en matière de résolution des conflits au Burundi' (2014) *KAS African Law Study Library* 737.

¹⁵¹ Manirakiza (n 106) 187.

¹⁵² RC 753/2009 quoted in Manirakiza (n 106) 187.

¹⁵³ RC771/86 quoted in G Gatunange 'Plaidoyer pour une loi sur les successions au Burundi' (2015) *Revue de l'Université du Burundi* 66 quoted in Manirakiza (n 106) 187.

It is important to point out that even on these small plots of land granted to them by the so-called progressive courts, married women only exercise a right of life usufruct.¹⁵⁴ For instance, in the case RC 2910/2016, three married women took their father to the tribunal after he had allocated shares of his family land to the boys only. The Tribunal of First Instance of Mbuye ruled that their father was obliged to give each of his daughters a piece of land ‘*igiseke*’ on the family estates, over which the women would only have a life usufruct right, insofar as they could not transfer ownership on death or dispose of it in their lifetime.¹⁵⁵

The tribunal of the first instance of Gitega delivered a similar judgment in the case RC1184/2010 between two married women and their brother. It was decided that the married women would have a life usufruct right to the inherited land.¹⁵⁶

The supreme court, the country’s highest court, shares this view. An example of such a decision is judgment RCC 10881/2005 of the Cassation Division of the Supreme Court of Burundi, which rejected an appeal brought by a woman against a judgment of the High Court of Mwaro granting her only a life usufruct over the ‘*igiseke*’ she had inherited. The division of cassation held that the high court had applied a relevant custom that provides that a woman does not inherit in the same capacity as her brothers when she is married.¹⁵⁷

3.2.4 Inheritance rights of surviving spouses

Traditionally, women did not inherit from either their parents or their husbands.¹⁵⁸ In addition to inheritance, matrimonial regimes are not yet governed by any specific law. By definition, a matrimonial property regime is a set of rules governing the property status of spouses in their relations with each other and with third parties.¹⁵⁹ The current Personal and Family Code sets out the rights, obligations, and powers of spouses.¹⁶⁰ However, the management of spouses’ property in the event of death or divorce is

¹⁵⁴ A Manirakiza (n 106) 190.

¹⁵⁵ RC 2910/2016 quoted in Manirakiza (n 106) 190.

¹⁵⁶ RC 1184/2010 quoted in Manirakiza (n 106) 190.

¹⁵⁷ RCC 10881/2005 quoted in G Gatunange ‘Plaidoyer pour une loi sur les successions au Burundi’ (2015) 61 *Revue de l’Université du Burundi* quoted in Manirakiza (n 106) 191.

¹⁵⁸ Niyonkuru (n 117).

¹⁵⁹ G Gatunange ‘Le régime matrimonial de droit commun en droit burundais’ (2015) *Revue Burundaise de Droit et Société* 36.

¹⁶⁰ Personal and Family Code arts 121 and 138.

not yet regulated. This research does not deal with the different matrimonial property regimes that apply in divorce cases, because Burundi's courts and tribunals are not unanimous on the question of which regime to apply.¹⁶¹ It will be limited to the treatment of surviving spouses.

In the absence of a law regulating matrimonial property regimes, women are treated differently from men in the case of widowhood. If the surviving spouse is a man and his predeceased wife has property of her own, there are two possibilities. If they had no children in common, the surviving husband receives all his wife's property and can transfer or even alienate it.¹⁶² If they did have children in common, the surviving spouse receives only a right of usufruct over his predeceased wife's property.¹⁶³

On the other hand, if the surviving spouse is a woman, she only has a right to usufruct, whether she has children in common with the predeceased husband or not.¹⁶⁴ For example, the High Court of Muramvya ruled that 'In the event of widowhood of the wife, whether or not she has children, she continues to administer the landed property of her predeceased husband until her death, without however having the right to give it away as a gift or to dispose of it'.¹⁶⁵

Similarly, in its ruling, the Supreme Court of Burundi clearly states that 'After the deceased's land estate has been divided into six equal shares (one share going to his wife), the latter 'may neither transfer nor sell the property in her share; on her death, this property will be divided between her children'.¹⁶⁶

The surviving wife's right to usufruct is subject to the condition that she does not remarry.¹⁶⁷ If she decides to remarry outside her deceased husband's family and has children in guardianship, case law recognises her right to continue administering her ex-husband's property for the benefit of those children.¹⁶⁸ The surviving wife therefore has legal enjoyment of her children's estate,

¹⁶¹ Gatunange (n 159) 38.

¹⁶² J Robbert *Le droit de la famille au Burundi : de l'organisation familiale traditionnelle au code des personnes et de la famille* (1996) 94 and 96.

¹⁶³ *ibid.*

¹⁶⁴ G Sinarinzi 'Le régime juridique du conjoint survivant à la lumière du droit coutumier et du droit écrit' Dissertation, Université du Burundi, Faculté de droit 1979 36 quoted in Manirakiza (n 106) 207.

¹⁶⁵ RCA 8896/2018 quoted in Manirakiza (n 106) 207.

¹⁶⁶ RCC 10652/2005 quoted in Manirakiza (n 106) 207.

¹⁶⁷ Robbert (n 162).

¹⁶⁸ Manirakiza (n 106) 208.

and the family council often keeps a close eye on how she uses and enjoys this property.¹⁶⁹ All these conditions do not apply to men and are justified by custom as a way of keeping property in the family. It is assumed that if the surviving wife were allowed to take ownership of her husband's land, the property would leave the husband's family and belong to a person outside the family.¹⁷⁰

3.3 The effects of inheritance practices on women's socioeconomic rights

Having explained the rules followed by the courts when they are called upon to rule matters of succession, the following paragraphs will show the effects of these practices on the right of access to land, women's empowerment, food security, and right to education.

3.3.1 Right to access land

The property right is guaranteed by UDHR,¹⁷¹ ICESCR,¹⁷² IC-CPR,¹⁷³ ICERD,¹⁷⁴ CRPD,¹⁷⁵ and the constitution of Burundi.¹⁷⁶

Nukuri distinguishes four options for the acquisition of land ownership in Burundi.¹⁷⁷ Firstly, land ownership can occur by succession. The provisional constitution of 30 January 1962 conferred the right to property to Burundians.¹⁷⁸ Therefore, they had the right to transfer it to their successors, either by estate or intestate succession.¹⁷⁹

¹⁶⁹ Robbert (n 162) 96.

¹⁷⁰ Manirakiza (n 106) 208.

¹⁷¹ UDHR art 2

¹⁷² ICESCR art 3.

¹⁷³ ICCPR arts 2(1) and 3.

¹⁷⁴ ICERD art 1(1).

¹⁷⁵ CRPD art 5(2).

¹⁷⁶ The Constitution of Burundi art 36.

¹⁷⁷ E Nukuri 'La protection constitutionnelle du droit de propriété foncière en droit burundais' PhD thesis, KU Leuven 2019 12.

¹⁷⁸ Constitution provisoire du Royaume du Burundi Act 20 of 1962 quoted in Nukuri (n 177)12.

¹⁷⁹ *ibid.*

Land acquisition may also be by prescription, which means continuous possession for the required period and under other conditions specified by law.¹⁸⁰ The acquisition of property by prescription was introduced by the Belgian colonial legislator for land governed by written law and for a useful possession period of 15 years.¹⁸¹ Currently, Burundians have the option of acquiring property by prescription in compliance with the Land Act (Code Foncier) which extended the 15 years to 30 years.¹⁸²

Thirdly, land ownership can be acquired by transferring state-owned land. Cession is a contract for valuable consideration or gratis whereby the State transfers to a third-party rights to land in its private domain.¹⁸³ Under Burundian law, anyone wishing to obtain the transfer of land in the State's private domain must submit a request to the competent authority.¹⁸⁴ Land in the private domain may be transferred or granted for valuable consideration, gratuitous consideration, or as an easement.¹⁸⁵ As a result of the cession, ownership is transferred from the State to the private individual who is the beneficiary of the cession contract.¹⁸⁶

Finally, land may be acquired by purchase contract. Before colonisation, the King (*Mwami* in the national language) was the exclusive and absolute owner of the land in his kingdom, so there was no such thing as individual land ownership.¹⁸⁷ The land was family property and was not subject to trade; it was collective property that had to be preserved in the interests of the family.¹⁸⁸ Today, Burundian law recognises the possibility of obtaining possession of the property through a contract such as a sale, exchange, or gift.¹⁸⁹ Even family property is the subject of commercial transactions.

¹⁸⁰ A Verbrugge *Le régime foncier coutumier au Burundi* (1965) 64 quoted in Nukuri (n 177) 15.

¹⁸¹ Nukuri (n 177)15.

¹⁸² Code foncier Act 13 of 2011 art 22.

¹⁸³ Code foncier (n 182) art 218 (1).

¹⁸⁴ Code foncier (n 182) art 224.

¹⁸⁵ Code foncier (n 182) art 217.

¹⁸⁶ Code foncier (n 182) art 217 (4).

¹⁸⁷ OD Nimpagaritse 'Organisation foncière et disparité des statuts immobiliers au Burundi, arrière-plan historique, courbes de développements et nécessité d'intégrer un nouveau droit' PhD thesis, Bruxelles, 1983 49 quoted in Nukuri (n 177) 18.

¹⁸⁸ Nukuri (n 177) 17.

¹⁸⁹ *ibid.*

Although there are options, inheritance is the most common acquisition option, with other acquisition options being the exception.¹⁹⁰ As this dissertation has already shown, women and men are not treated equally regarding inheritance. In the absence of a specific law, customary rules still prevail. Consequently, women are restricted in their access to land. The most recent General Census of Population and Housing (2008) showed that 62.5% of the 80.2% of the population who own land are men and 17.7% are women.¹⁹¹

3.3.2 Women's economic empowerment

'For many people, the land is a source of livelihood and a central economic right'.¹⁹² According to the ESCR Committee, secure and equitable access to, use of, and control over land can have direct and indirect implications for the enjoyment of ICESCR.¹⁹³

Women's economic empowerment is required to achieve women's rights and gender equality.¹⁹⁴ For this reason, the SDGs have enshrined gender equality and the empowerment all women and girls in Target 5, as one of the 17 targets to end poverty, hunger, AIDS, and discrimination against women and girls within 15 years.¹⁹⁵ UNDP has outlined three key dimensions of women's economic empowerment.¹⁹⁶ These include developing women's economic opportunities, improving the legal status and rights of women, and participation and inclusion of women in economic decision-making processes.¹⁹⁷

¹⁹⁰ Nukuri (n 150) 737.

¹⁹¹ Republic of Burundi 'Country Gender Equality profile' (2023) 64.

¹⁹² OCHR and land and Human Rights <www.ohchr.org/en/land> accessed 31 August 2024.

¹⁹³ ESCR Committee General Comment 26 on land and economic, social and cultural rights (2022) para 5.

¹⁹⁴ *ibid.*

¹⁹⁵ Sustainable Development Goals (SDG) <<https://sdgs.un.org/goals>> accessed 10 September 2024.

¹⁹⁶ UNDP 'Innovative Approaches To Promoting Women's Economic Empowerment' (2008) 9 <www.undp.org/sites/g/files/zskgke326/files/publications/INNOVATIVE%20APPROACHES.pdf#page=23.08> accessed 10 September 2024.

¹⁹⁷ *ibid.*

Access to productive resources

In Burundi, land is a precious asset for agricultural production.¹⁹⁸ Access to land includes the right to use the land for growing crops, the right to make decisions on how the land should be used and to benefit financially from the sale of the crops and the right to transfer or to sell it.¹⁹⁹ For women, land is an essential resource for satisfying subsistence needs and for accessing other goods and services, such as credit.²⁰⁰

Due to customary inheritance practices that discriminate against women, they are particularly affected by the lack of access to land.²⁰¹ The lack of access to land hinders access to credit. Since they have no land to pledge as collateral, women - especially those in rural areas - cannot access credit.²⁰² Without credit, it is impossible to gather the capital needed for investment.²⁰³

Since 2015, the Government of Burundi has put in place various initiatives enabling women to access microfinance loans.²⁰⁴ Women have also been the first to integrate income-generating activities that enable them to access informal credit from local savings and credit groups. However, practice shows that they rarely control how these credits are used.²⁰⁵ Thus, Burundian women in rural areas will need their husband's permission to take part in different local saving and credit group activities, to have loans that they can use for household purposes, or to start a small business.²⁰⁶

Economic dependence

In addition to the challenges of access to credit, women have very limited time to engage in income-generating activities. The division of roles and responsibilities within a household is inspired by Burundian norms and beliefs based on patriarchy and favouring men over women.²⁰⁷

¹⁹⁸ FAO 'Agricultural income determinants among smallholder farmers' farming knowledge platform www.fao.org/family-farming/detail/en/c/294543/

¹⁹⁹ FAO and land Tenure studies 'Gender and access to land' (2002).

²⁰⁰ ESCR Committee (n 193) para 14.

²⁰¹ Republic of Burundi 'Country Gender Equality Profile' (2023) 64.

²⁰² Search for Common Ground & USAID 'Analysis of barriers to women's economic empowerment in Burundi' (2021) 23.

²⁰³ *ibid.*

²⁰⁴ *ibid.* 30.

²⁰⁵ USAID 'Burundi Gender Analysis' (2017) 65.

²⁰⁶ Search for Common Ground & USAID (n 202) 29.

²⁰⁷ USAID (n 205) 24.

Burundian women are expected to take care of household activities such as looking after the children and other family members, fetching wood and water, cooking, and doing the washing. They also do farm work which is unreported and unpaid.²⁰⁸ According to an FAO study, 97.4% of women of working age make a significant contribution to the agricultural sector, which accounts for more than 50% of the GDP.²⁰⁹ Due to a lack of access to land, women cannot get security for the land upon which they work hard. In most cases, they have neither access to and control over profits nor the decision-making power to decide how profits are to be used. This means that they cannot sell part of their harvest to support themselves or their children without the prior permission of their husbands. The reason often given is that the land that the women cultivate legally belongs to the husband.²¹⁰ In other words, since farms are generally owned by men, the women who do farm work are considered to be working for their husbands. Therefore, the income from the farms is the main household income which is managed and controlled by the husbands.²¹¹

This grants men a financial advantage in deciding household finances and makes women economically dependent instead. Moreover, even large livestock are the property of the man, and women can own small livestock (such as goats, sheep, and chickens). However, even when women own livestock, their husbands are still allowed to use the livestock for whatever use(s) they consider necessary.²¹²

Traditionally, women manage household and farm activities alone, even when they are pregnant or carrying a child on their back. As for the men, they are traditionally involved in activities linked to the production of cash crops (such as coffee, cotton, and tea) and banana plantations, which bring them profits. In addition, they are very likely to engage in trade and carpentry, or to become employees.²¹³ To date, no data is available on the time allocation of women and men in Burundi.

²⁰⁸ USAID (n 205) 24.

²⁰⁹ A Niyonkuru 'Femme-agronomie-développement : le cas du Burundi' (2009) *Tropicultura* 253.

²¹⁰ USAID (n 205) 25.

²¹¹ Care International 'Norms and practices impending gender equality in Burundian society' (2017) 6.

²¹² USAID (n 205) 25.

²¹³ African Development Bank Group 'Profil Genre du Burundi' (2011) 19.

Men and women agree that they all contribute to the family income, but most men argue that men should be solely responsible for providing for their families and therefore decide how the household income is spent. As for the women, they would like to be involved, since their husbands decide on everything to do with money and often end up spending most of the money on personal items such as alcohol rather than on household needs.²¹⁴

Besides making access to production resources easier, access to land also reduces women's exposure to violence.²¹⁵ As inheritance and access to land issues hinder women's economic independence, they are more vulnerable to gender-based violence (GBV) as they are economically dependent on men. In Burundi, economic violence is one of the most common forms of GBV. It takes the form of the denial of access to family resources or employment to one of the spouses.²¹⁶ In fact, denying access to or control over the benefits of household assets and the harvests from their agricultural production, as well as decision-making on household expenditure, constitute acts of economic violence. Men have been known to use household income to buy alcoholic beverages or to entertain their concubines, which is a form of economic GBV.²¹⁷

Despite the enactment of specific legislation, gender-based violence is surrounded by a culture of silence. 42.80% of the women who took part in the survey conducted by Care International believe that women should not report the violence they experience.²¹⁸ Their point of view shows how economic dependence limits their ability to leave abusive marriages and weakens them in terms of decision-making within the household. Their economic dependence forces them to endure all this violence to bring up their children. Although men say they do not support domestic violence, they still believe that such cases should not be reported to the police.²¹⁹

²¹⁴ Care International (n 211) 21.

²¹⁵ B Agarwal 'Women and Poverty: Reducing Domestic Violence, Enhancing Group Rights' (2007) people and policy paper 4.

²¹⁶ Loi portant prévention, protection des victimes et repressions des violences basées sur le genre (GBV) Act 13 of 2016 art 2(s).

²¹⁷ *ibid* art 2(r).

²¹⁸ Care International (n 211) 24.

²¹⁹ *ibid*.

GBV persists because the victims do not report it, and these cases are handled out-of-court by the community. In short, women who have access to land are less exposed to GBV because they can flee domestic violence and seek protection. They also have confidence in their abilities and are closely involved in family decision-making.²²⁰

Worldwide, women earn on average slightly more than 50 per cent of what men earn and still, they are living in poverty and are often denied access to critical resources such as credit, land, and inheritance. Their labour goes unrewarded and unrecognised.²²¹

This is particularly true since the lack of access to land contributes to the feminisation of poverty,²²² insofar as women are more vulnerable and more likely to become poor, employed in precarious conditions, in poorly paid jobs, and are less likely to have access to land ownership rights, credit, and education.²²³

3.3.3 Food security

Access to use and control over land has repercussions on various rights enshrined in the ICESCR.²²⁴ Land is essential to guarantee the exercise of the right to food.²²⁵ The right to adequate food is inseparable from the intrinsic dignity of the human person and is indispensable for the realisation of other fundamental rights.²²⁶

Forty-one per cent two per cent of the population is affected by food insecurity,²²⁷ making Burundi the second most food-insecure country in the world²²⁸. The smallholder farmers are unable to produce enough for their families²²⁹. In Burundi, women are

²²⁰ ESCR Committee (n 193) para 14.

²²¹ UN Women 'The Feminization of Poverty' <www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm#:~:text=The%20Feminization%20of%20Poverty&text=World-wide%2C%20women%20earn%20on%20average,labour%20goes%20unrewarded%20and%20unrecognized> accessed 11 September 2024.

²²² D Pearce *The feminization of poverty: Women work* (1978) 1.

²²³ S Mishra 'Feminization of Poverty and Dimension of Women's Agencies' (2018) *Asian Journal of Multidisciplinary Studies* 95.

²²⁴ ESCR Committee (n 193) para 5.

²²⁵ ESCR Committee (n 193) para 6.

²²⁶ ESCR Committee (n 193) para 7.

²²⁷ WFP 'Analyse Globale de la Vulnérabilité, de la sécurité Alimentaire et de la Nutrition au Burundi' 2023 29.

²²⁸ A Keesler & others 'Mobilizing farmers to stop land degradation: a different discourse from Burundi' (2020) *Wiley Online Library* 3403.

²²⁹ S Niragira and others 'Food for Survival: Diagnosing Crop Patters to Secure Lower Threshold Food Security Levels in Farms Households of Burundi' (2015) *Sage* 196.

particularly vulnerable to food insecurity.²³⁰ In sub-Saharan Africa, agriculture is the source of economic growth. However, alongside climate change, gender norms are one of the causes of low agricultural production.²³¹ In Burundi, although women make a significant contribution to agricultural production, they are constrained by a lack of access to land that limits their production resources.²³² Besides lacking access to land, women do not have the same access as men to agricultural inputs and are less involved in training on modern agricultural and livestock techniques.²³³ Indeed, the power to decide which seeds, methods, and budget to use lies with men.²³⁴ Although widows are at the head of the household, they are not unaffected either, as their families-in-law keep an eye on the management of their resources.²³⁵

Thus, inheritance practices hinder women's participation in agriculture and can exclude them from economic activities.²³⁶ In addition, the lack of decision-making power over harvests contributes to food insecurity within households. It is not uncommon for men to use household resources, particularly agricultural harvests, to buy alcohol or meat for themselves rather than using the harvests to feed the whole household.²³⁷

It is worth highlighting that promoting women's access to production resources can have a positive impact on production growth. This would reduce malnutrition within households and communities.²³⁸ Since Burundi is a member State of ICESCR, the right to food is to be guaranteed for every Burundian.²³⁹

²³⁰ WFP (n 123) 30.

²³¹ E Nchanji & others 'Gender norms and differences in access and use of climate-smart agricultural technology in Burundi' (2023) *Frontiers in Sustainable Food Systems* 1.

²³² *ibid.*

²³³ USAID (n 205?) 65.

²³⁴ *ibid.*

²³⁵ F Iradukunda and others 'Understanding gender roles and practices in the household and on the farm: implications of banana disease management innovation processes in Burundi' (2019) *ResearchGate* 5.

²³⁶ Nchanji & others (n 127).

²³⁷ USAID (n 205?) 15.

²³⁸ FAO 'Why is gender equality and women's empowerment central to the work of FAO' <www.fao.org/gender/background/en> accessed 10 September 2024.

²³⁹ ICESCR art 11.

3.3.4 Right to education

The adoption of free primary education has enabled Burundi to achieve parity between girls and boys at the primary school level.²⁴⁰ However, the country is still facing high rates of non-enrolment. Girls are 3% more likely than boys to be out of school. They are 4% less likely than boys to be enrolled in secondary education and 8% less likely to be enrolled in higher education.²⁴¹

Women are in favour of children's education insofar as female-headed households spend much more on education than male-headed households.²⁴² However, due to the lack of access to land, women lack economic independence and decision-making power. They rely on their husband's goodwill to provide for their children's schooling. In situations where the man is not responsible, the children's right to education is violated.

Poverty is the second biggest obstacle to girls' right to education in Burundi.²⁴³ Although school fees have been abolished at the primary school level, families with limited financial means have difficulty obtaining uniforms and school supplies for their children. The tendency is therefore to prioritise boys over girls. In fact, after dropping out of school, girls help their mothers with household activities.²⁴⁴

The poverty experienced by women in Burundi has an impact on access to menstrual hygiene kits. Seventy point two per cent of girls do not have access to a hygiene kit to manage their menstrual cycles.²⁴⁵ The lack of access to basic hygiene kits is also an obstacle to education, as it leads to repetitive absences and non-performance at school, which in most cases ends in drop-out.²⁴⁶

²⁴⁰ A Sultana 'Patriarchy and Women's Subordination: A Theoretical Analysis' (2011) *The Arts Faculty Journal* 12.

²⁴¹ République du Burundi & UNESCO 'Analyse du secteur de l'éducation' (2021) 175.

²⁴² K Ndayikeza 'Analyse des facteurs influençant les dépenses d'éducation des ménages au Burundi' Masters thesis 2023 84.

²⁴³ UNICEF, 'Situation des enfants au Burundi' <www.unicef.org/burundi/media/3376/file/UNICEF_Situation%20des%20enfants%20au%20Burundi_FR_2023.pdf> accessed 10 September 2024.

²⁴⁴ Care International (n 211) 23.

²⁴⁵ M Sallami & T R Niyonzima 'Empowering Burundian girls: Leading the way in education' *World Bank Blogs* 23 February 2024 <<https://blogs.worldbank.org/en/nasikiliza/empowering-burundian-girls-leading-way-education-afe-0224>> accessed 10 September 2024.

²⁴⁶ AMADE, 'Favoriser au Burundi l'accès des collégiennes aux protections menstruelles' <www.amade.org/fr/missions/sante/dignite-pour-les-femmes/favoriser-au-burundi-loeacs-des-collégiennes-aux-protections-menstruelles.html> accessed 10 September 2024.

Consequently, the illiteracy rate among women is 25%, which affects their access to employment.²⁴⁷ They mostly work in the agricultural sector, which is more exhausting and generates lower incomes.²⁴⁸ While they account for 35.6% of the formal sector workforce, it should be specified that they are generally employed in positions that require low qualifications.²⁴⁹ For instance, from 2014 to 2018, out of 16,581 people recruited into the Public Service, only 5,637 were women.²⁵⁰

Ensuring girls' education is key to the empowerment of women and girls, which is fundamental to promoting rapid and equitable economic growth and long-term stability at both community and national levels.²⁵¹

3.4 Inheritance practices from a human rights perspective

All the international human rights instruments that the State has ratified and incorporated into its constitution recognise the right to equality and non-discrimination. Under CEDAW,

discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.²⁵²

²⁴⁷ République du Burundi 'Analyse du secteur de l'éducation' (2021) 104 <<https://unesdoc.unesco.org/ark:/48223/pf0000379789>> accessed 10 September 2024.

²⁴⁸ UNDP 'Egalite des Genres' <www.undp.org/fr/burundi/projets/egalite-des-genres#:~:text=Au%20niveau%20institutionnel%2C%20le%20Burundi,au%20s%C3%A9nat%20et%20au%20gouvernement> accessed 10 September 2024.

²⁴⁹ *ibid.*

²⁵⁰ Yaga <www.yaga-burundi.com/turashoboye-quoi-evolution-economique-femme/> accessed 10 September 2024.

²⁵¹ Care International (n 211) 9.

²⁵² CEDAW art 1.

The Committee on the Elimination of Discrimination against Women clarifies that discrimination against women is not only merely different treatment explicitly based on grounds of sex. It can also take a form of law, policy, programme or practice which is neutral as regards men and women but has a discriminatory effect in practice on women, insofar as the law or policy does not address pre-existing inequalities.²⁵³

However, any difference in the treatment of men and women is not always discrimination. To constitute discrimination within the context of CEDAW, the difference in treatment should have the purpose of ‘impairing or nullifying a woman’s rights.’²⁵⁴ Equal treatment may also constitute discrimination if it has the effect of impairing or nullifying a woman’s right.²⁵⁵ To constitute discrimination within the definition of CEDAW, the difference in treatment must infringe on a woman’s rights, in other words, the human rights and fundamental freedoms of a woman enshrined in various human rights instruments.²⁵⁶

This research has shown that, in the absence of a specific law, the courts and tribunals apply traditional practices that promote a difference in the treatment of men and women. From the human rights perspective, these practices constitute discrimination against women in terms of unequal treatment on the grounds of sex.

In addition, inheritance practices constitute discrimination because they limit women’s fundamental rights and freedoms, such as access to land, access to food, access to productive resources, and the empowerment of women.

As a member state of CEDAW, Burundi has joined other countries in eliminating all forms of discrimination against women to achieve gender equality.²⁵⁷ The fact that a law on inheritance has not yet been established constitutes a breach of the state’s obligation to guarantee formal equality. Burundi is bound not only to proclaim theoretical equality but also to take measures to ensure the full development and advancement of women and the

²⁵³ Committee on the Elimination of Discrimination against Women (CEDAW) General recommendation 28 on the core obligations of States parties under article 2 of the CEDAW (2010) para 16.

²⁵⁴ CEDAW art 1.

²⁵⁵ CEDAW (n 253).

²⁵⁶ S Cusack & L Pusey ‘CEDAW and the Rights to Non-discrimination and Equality’ (2013) *Melbourne Journal of International Law* 8.

²⁵⁷ CEDAW (n 253) para 4.

full realisation of the rights set out in different human rights instruments to achieve substantive equality.²⁵⁸ Substantive equality takes into account the biological, social, and cultural differences between men and women.²⁵⁹

3.5 Right to access justice

The right to access justice is recognised by many instruments of Human Rights including ACHPR (African Charter).²⁶⁰ Furthermore, the African Commission on Human Rights and People's Rights emphasises that 'Everyone has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the Constitution, by law, or by the Charter, notwithstanding that the acts were committed by persons in an official capacity'.²⁶¹

In this context, women have the right to appeal to the Burundian courts and tribunals, since their exclusion from inheritance is inconsistent with the constitutional principles of equality and non-discrimination. Land conflicts account for 71.90% of disputes heard by courts and tribunals.²⁶² Burundians are so attached to their land that, in some regions, they would prefer to sell all their possessions to avoid losing a land case that represents both a pride of honour and a family tradition.²⁶³

This section highlights the challenges faced by a woman seeking justice in a patriarchal society so tied to the land.

²⁵⁸ CEDAW (n 253) para 8.

²⁵⁹ *ibid.*

²⁶⁰ ACHPR art 7(1) a.

²⁶¹ ACHPR 'Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa' (2003) C (a).

²⁶² RCN justice et démocratie 'Statistiques judiciaires Burundaises, rendement, délais et typologie des litiges dans les tribunaux de résidence' (2009) 25.

²⁶³ C Ntampaka 'Gouvernance foncière en Afrique Centrale' (2008) 5.

3.5.1 Legal challenges

Women seeking justice face various legal challenges. Firstly, the lower courts (tribunals of first instance and high courts), which have jurisdiction to hear cases relating to inheritance, do not guarantee the equality of brothers and sisters in inheritance matters relating to land property.²⁶⁴ The argument frequently put forward is the lack of a law on inheritance.²⁶⁵

The second factor is that Burundian judges make only limited use of international law.²⁶⁶ Although Burundian judges can apply international human rights treaties directly, the extent to which they apply these treaties is quite limited.

The third factor is the non-existence of the rule of precedent in the Burundian legal system.²⁶⁷ 'A judgment pronounced by one court, even the highest court in the Burundian judicial system, namely the Supreme Court, is not binding on the other courts, nor is it binding on the same court that pronounced it.'²⁶⁸

3.5.2 Accessibility

Women seeking justice experience several challenges in terms of accessibility. The first challenge is access to legal information. Few litigants are aware of the laws relating to State intervention in legal aid and legal assistance to enable people to defend their interests themselves.²⁶⁹ In addition, the number of Courts is not sufficient to cover an entire country.²⁷⁰ Each commune indeed has a tribunal of first instance, but to take an appeal, one must travel to the provincial administrative centre, and to bring an appeal in cassation, one must cross several provinces, which is very difficult for women with limited financial means and the burden of domestic work. This makes justice less equitable because the courts are concentrated in the country's former capital (Bujumbura) and the provincial cities. The third challenge is the delays in the administration of justice. When people go to court, they not

²⁶⁴ Manirakiza (n 106) 193.

²⁶⁵ RC 8125/2017 quoted in Manirakiza (n 106) 193.

²⁶⁶ Manirakiza (n 106) 193.

²⁶⁷ Manirakiza (n 106) 194.

²⁶⁸ G Gatunange 'Plaidoyer pour une loi sur les successions au Burundi' (2015) *Revue de l'Université du Burundi* 65 quoted in Manirakiza (n 106) 195.

²⁶⁹ M Masabo 'L'accès à la justice : le volet 'Commodités d'accès'' (2017) *Revue Burundaise de droit et société* 27.

²⁷⁰ *ibid.*

only want their rights to be upheld, but they also want the judgement to be delivered within a reasonable time. Very often, judgements are issued several years after the case was brought before the court.²⁷¹

Another challenge concerns litigation costs. Justice is free if the applicant does not pay for the services of the judge and judicial officials.²⁷² Burundi does not yet have a legal text establishing that justice is free, and the registration of a case on the court's list is subject to a deposit by the applicant, which is reimbursed if the applicant wins the case.²⁷³ This means that no case can be brought without a deposit unless the applicant presents a certificate of extreme poverty issued by the local administrator, stating that the person concerned does not have sufficient income to cover the legal costs, in which case all documents are issued to him as a debit.²⁷⁴ Women, who in most cases do not have sufficient financial means to pay a deposit, find themselves excluded from the justice system.

3.6 Chapter conclusion

The realisation of women's socio-economic rights in Burundi remains a dream, and one of the main reasons for this is inheritance practices based on patriarchy, which places Burundian women at a disadvantage. Burundian women have been excluded from inheritance, the main means of acquiring land, by custom. Even today, they are still subject to the weight of custom, since no law on inheritance has yet been promulgated. Burundi's courts and tribunals, which have the power and duty to apply the Constitution, favour customary law, which perpetuates discrimination against women.

This discrimination harms the economic empowerment of Burundian women, can lead to the feminisation of poverty and the perpetuation of GBV. Yet women are fundamental agents of change in the fight against rural poverty, hunger, and

²⁷¹ Masabo (n 269) 29.

²⁷² *ibid.*

²⁷³ Code de procédure Civile du Burundi arts 399&400.

²⁷⁴ Masabo (n 269) 43.

malnutrition.²⁷⁵ This research argues that if women had the same access as men to productive resources, they could significantly increase the yields from their farms and thus reduce the number of people suffering from hunger in Burundi.²⁷⁶

²⁷⁵ FAO 'Empowering rural women, powering agriculture' (2018) 3 <<https://openknowledge.fao.org/server/api/core/bitstreams/e31ea1b4-3378-499e-81da-85552d69ceeb/content>> accessed 11 September 2024.

²⁷⁶ *ibid.*

4. Promoting gender equality in inheritance rights for women in Burundi: lessons from South Africa

4.1 Introduction

South Africa has made significant strides in advancing women's inheritance and property rights, establishing a robust national legal framework to protect these rights. This chapter seeks to highlight the best practices and key lessons that Burundi can adopt to promote gender equality in property and inheritance rights for women.

The choice to analyse South African legal reforms is based on the fact that this country has customary laws, which, in the past, considered women to be legal minors under the guardianship of their husbands, fathers, or brothers. Under these precepts, women could not acquire or own land without the assistance or affiliation with their male relatives.²⁷⁷ The country has succeeded in overcoming the injustices of the past by introducing gender-affirming and neutral legislation that seeks to promote equality among genders.

4.2 Constitutional safeguards

The Constitution of the Republic of South Africa enshrines the equality of all persons before the law. It proclaims equality which encompasses the full and equal enjoyment of all rights and freedoms.²⁷⁸ Thus, it aims to achieve equality through ensuring that the domestic legislation is largely based on the aim to protect

²⁷⁷ Women's Legal Centre 'Women's property rights under Customary Law' 2010 4.

²⁷⁸ The Constitution of the Republic of South Africa, 1996 sec 9(2).

or advance persons, or categories of persons who have been previously or currently disadvantaged by unfair discrimination.²⁷⁹ The state and individuals therefore have a duty not to discriminate unfairly, directly or indirectly, on the grounds of sex.²⁸⁰

Section 9 of the Constitution states that: ‘Everyone is equal before the law and has the right to equal protection and benefit of the law’.²⁸¹

Furthermore,

The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.²⁸²

The rights guaranteed by the Constitution of South Africa include property rights.²⁸³ Besides the guarantee against arbitrary deprivation of property and expropriation,²⁸⁴ the State of South Africa has an obligation to take legislative measures, within its available resources, to foster conditions that enable citizens to access land on an equitable basis.²⁸⁵

The Constitution of the Republic of Burundi also guarantees the right to equality and non-discrimination.

Article 22 of the Constitution stipulates that

All citizens are equal before the law, which assures them equal protection.

No one may be targeted of discrimination based on, notably: origin, race, ethnicity, sex, colour, language, social situation, religious, philosophical, or political belief, physical or mental handicap, HIV/AIDS status or having any other incurable illness.²⁸⁶

Moreover,

²⁷⁹ The Constitution of the Republic of South Africa sec 9(2)

²⁸⁰ *ibid* sec 9(3) and (4).

²⁸¹ *ibid* sec 9(1).

²⁸² *ibid* sec 9(3).

²⁸³ *ibid* sec 25.

²⁸⁴ *ibid* sec 25 (2).

²⁸⁵ *ibid* sec 25 (5).

²⁸⁶ The Constitution of Burundi art 22.

All Burundian people are equal in merit and dignity. All citizens enjoy the same rights and have the same protection of the law. No Burundian will be excluded from the social, political, or economic life due to their race, language, religion, sex, or ethnic origin.²⁸⁷

In addition, the State of Burundi

is tasked with the realisation of the Burundian people's aspirations, in particular to heal the divisions of the past, to improve the quality of life of all Burundians, and to guarantee to all the option to live in Burundi sheltered from fear, discrimination, disease, and hunger.²⁸⁸

However, in comparison to the Constitution of the Republic of South Africa, the Burundi Constitution does not explicitly provide for the introduction of legislative measures to protect women who continue to endure the disproportionate burden of poverty and culture.²⁸⁹ Moreover, while the Constitution of Burundi protects everyone's right to property and guarantees against arbitrary deprivation of liberty,²⁹⁰ it is silent on equitable access to land.

4.3 Domestic legislation's relationship with the Constitution

4.3.1 The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 of South Africa

To enhance gender equality in property and inheritance rights, South Africa has introduced national legislation to safeguard women's rights. The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 was enacted to give effect to the letter and spirit of the Constitution, particularly, the promotion of equality,²⁹¹ the prevention of unfair discrimination, and the protection of human dignity.²⁹²

²⁸⁷ The Constitution of Burundi art 13.

²⁸⁸ *ibid* art 17.

²⁸⁹ Republic of Burundi 'Gender National Policy' (2012) 2.

²⁹⁰ The Constitution of Burundi art 36 (2).

²⁹¹ Act 4 of 2000 sec 2 (b) (ii).

²⁹² Act 4 of 2000 sec 2 (b) (iv).

This act sets out the procedures for the determination of circumstances under which discrimination is unfair.²⁹³ Under the Act, discrimination against a person on the grounds of gender is a form of unfair discrimination.²⁹⁴ This may be a system of preventing women from inheriting family property,²⁹⁵ a policy or conduct that unfairly limits access of women to land rights, finance, and other resources,²⁹⁶ or systemic inequality of access to opportunities by women resulting from the sexual division of labour.²⁹⁷

The case *MEC for Education: Kwazulu-Natal v Pillay* was interpreted and adjudicated in the context of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.²⁹⁸ The case was between the ‘Department’ and the ‘Durban Girls’ High School’ and Ms Navaneethum Pillay who represented her minor daughter Sunali.²⁹⁹

In 2002, Sunali was enrolled by her mother at Durban Girls’ High School. She was admitted upon her mother’s signature of the Code of Conduct of the school.³⁰⁰

In September 2004, Sunali with her mother’s permission, got her nose pierced and inserted a small gold stud. In October 2004, the mother was informed that her daughter could not continue to wear the gold stud because it was against the code of conduct.³⁰¹ However, special permission was given to allow the piercing to heal.³⁰² Ms Pillay explained that Sunali was to keep the gold stud as part of her cultural and religious practice.³⁰³ In its decision, the Governing Body met and did not authorise Sunali to keep the gold stud during school hours.³⁰⁴

²⁹³ Act 4 of 2000 sec 2 (d).

²⁹⁴ Act 4 of 2000 sec 8.

²⁹⁵ Act 4 of 2000 sec 8 (e).

²⁹⁶ Act 4 of 2000 sec 8 (f).

²⁹⁷ Act 4 of 2000 sec 8 (h).

²⁹⁸ *MEC for Education: Kwazulu-Natal v Pillay* 2007 2 SA 106 (CC) para 1.

²⁹⁹ *ibid* para 2.

³⁰⁰ *ibid* para 4.

³⁰¹ *ibid* para 5.

³⁰² *ibid* para 5.

³⁰³ *ibid* para 7.

³⁰⁴ *ibid* para 8.

Unsatisfied by the Governing Body's decision, Ms Pillay took the case to the Equality Court in July 2005,³⁰⁵ The Equality Court was asked to decide whether the school's refusal to allow Sunali to wear a nose stud at school was unfair discrimination under the Equality Act.³⁰⁶ In the Equality Court's decision, the discrimination was not unfair as the School Code aimed to promote uniformity.³⁰⁷

Ms Pillay appealed to the High Court of Pietermaritzburg, claiming that she was not satisfied with the Equality Court's decision. The High Court, relying on the Promotion of Equality and Prevention of Unfair Discrimination Act, ruled that the school's conduct was discriminatory.³⁰⁸ The court therefore declared null and void the decision and order of the Equality Court.³⁰⁹

The case was finally brought before the Constitutional Court following an application for leave to appeal. The Constitutional Court had to rule on whether the discrimination complained of by Ms Pillay stemmed from the Code or from the school's decision to refuse an exemption.³¹⁰ In its ruling, the Constitutional Court declared that 'The decision of the Governing Body of Durban Girls' High School to refuse Sunali Pillay an exemption from its Code of Conduct to allow her to wear a nose stud, discriminated unfairly against her'.³¹¹

The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 allowed the Constitutional Court to develop and advance the jurisprudence of equality in South Africa. This judgment highlights how the Act is central to preventing both direct and indirect discrimination and requiring institutions to reasonably accommodate groups or classes of persons.³¹²

Furthermore, this Act provides for measures to facilitate the eradication of unfair discrimination on the grounds of gender, including education and public awareness on the importance of promoting equality and overcoming unfair discrimination.³¹³

³⁰⁵ *MEC for Education: Kwazulu-Natal v Pillay 2007 2 SA 106 (CC)* para 10.

³⁰⁶ *ibid* para 11.

³⁰⁷ *ibid* para 14.

³⁰⁸ *ibid* para 15.

³⁰⁹ *ibid* para 18.

³¹⁰ *ibid* para 36.

³¹¹ *ibid* para 119 (3) and (1).

³¹² *ibid* para (46) and (117).

³¹³ Act 4 of 2000 sec 2 (e).

Lastly, the Act defines measures aimed at improving the situation of people disadvantaged by unfair discrimination.³¹⁴ Hence, the State,³¹⁵ the persons operating in public domain,³¹⁶ all persons as well as non-governmental organisations, community-based organisations and traditional organisations have the obligation to promote equality.³¹⁷

The State of Burundi has a law on the prevention, protection of victims and repression of GBV, which criminalises economic violence as one of the forms of GBV,³¹⁸ The law also sets out the government's determination to eradicate all cultural practices and stereotypes based on the idea of women's inferiority through awareness-raising campaigns.³¹⁹ The law promotes the equal rights of spouses over household assets and criminalises economic violence as well as preventing the surviving spouse from benefiting from household assets.³²⁰ The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 can inspire Burundi, whose law on GBV is deficient in terms of explicitly criminalising discrimination against women concerning inheritance and other land rights one hand, and the introduction of measures to improve the situation of people disadvantaged by unfair discrimination on the other hand.³²¹

4.3.2 Laws of succession comparison

Wills Act 3 of 1953

South Africa has a law on succession, Wills Act 3 of 1953. A law enacted to consolidate the law relating to the execution of wills.³²² This act provides for the formalities required in the execution of a will,³²³ the validity of certain wills executed in accordance with the domestic law of certain other states,³²⁴ and the competency to make a will.³²⁵

³¹⁴ Act 4 of 2000 sec 2 (g).

³¹⁵ Act 4 of 2000 sec 25.

³¹⁶ Act 4 of 2000 sec 26.

³¹⁷ Act 4 of 2000 sec 27.

³¹⁸ Loi portant prévention, protection des victimes et repressions des violences basées sur le genre (GBV) Act 13 of 2016 art 50.

³¹⁹ *ibid* art 5.

³²⁰ *ibid* art 7, 50 & 59.

³²¹ Act 4 of 2000 sec 8 (e).

³²² Act 7 of 1953.

³²³ Act 7 of 1953 sec 2.

³²⁴ Act 7 of 1953 sec 3.

³²⁵ Act 7 of 1953 sec 4.

Where a person dies with a valid will,³²⁶ their estate is regulated in terms of their will. It is therefore a testate succession where the Wills Act is directly applied. However, if the deceased left an invalid will,³²⁷ a partially invalid will, or a will but failed to dispose of the whole estate,³²⁸ the rules of the Intestate Succession Act apply.

Intestate Succession Act 81 of 1987

In South Africa, in cases where a person dies without a will, their estate is regulated according to the Intestate Succession Act to ensure that their estate is distributed fairly and justly among their surviving relatives. This act establishes the order of heirs in the case of intestate succession,³²⁹ The children inherit equally from their deceased parents' estate, while the spouse would also be posed to inherit equally. This form of succession in South Africa eradicates the unfair discrimination of women and girl children from inheriting fairly.

The case *Govender v Ragavayah* has been interpreted in the spirit of Intestate Succession Act.³³⁰ In this case, the deceased died intestate leaving behind a wife to whom he had been married since 2004 under Hindu rites. He also left behind his father and mother, who did not contest the union.³³¹ After the death of his son in 2007, the father was appointed executor in the deceased's estate.³³²

The applicant brought the case before the High Court of South Africa requesting that the term 'spouse' as defined under the Intestate Succession Act include the surviving to a monogamous Hindu marriage.³³³

³²⁶ Act 7 of 1953 sec 2.

³²⁷ B Sember 'What makes a will invalid' <www.legalzoom.com/articles/what-makes-a-will-invalid> accessed 07 October 2024.

³²⁸ J-L Koste 'Wills, Estate, and Trusts: Intestate Succession-What does it mean to die without a will?' <<https://dkvg.co.za/wills-estates-and-trusts-intestate-succession-what-does-it-mean-to-die-without-a-will/>> accessed 07 October 2024.

³²⁹ Act 81 of 1987 sec 1 (1).

³³⁰ *Govender v Ragavayah* 2009 (3) SA 178 (D) para 1.

³³¹ *ibid* para 12.

³³² *ibid*

³³³ *ibid* para 1.

This case was essentially about who should inherit the estate given that if the applicant was successful, she would inherit the entire estate. Similarly, if the defendants won the case, they would inherit the entire estate in equal shares.³³⁴

In the order granted by the court, the applicant was declared a spouse under section 1 of the Intestate Succession Act. Accordingly, she was declared heir of the estate.³³⁵ Prior to this act, the Court set a legal precedent for cases involving the inheritance rights of surviving spouses in religious marriages or customary marriages.

In the cases where the deceased died intestate and has neither a spouse nor descendants, the estate is to be divided among their family members in accordance with the provisions of the Intestate Succession Act 81 of 1987 section 1(1) (d) (i) to section 1(1) (1) (f).

Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009

South Africa also adopted the Reform Customary Law of Succession and Regulation of Related Matters Act in 2009.³³⁶ This act prioritises women's rights to property, as it protects extra-marital children and women whose unions are recognised under customary law. Hence, this act intends to 'clarify certain matters relating to the law of succession and the law of property'.³³⁷

This act governs certain aspects of the customary law of succession which used to be regulated by section 23 of the Black Administration Act. This section was amended because of the principle of male primogeniture which it contained.³³⁸ The principle discriminates against women insofar as it hinders women's access to land.³³⁹

³³⁴ *Govender v Ragavayah* 2009 (3) SA 178 (D) para 11

³³⁵ *ibid* paras 44 (2) and (3).

³³⁶ Act 11 of 2009.

³³⁷ *ibid*.

³³⁸ Act 38 of 1927 s 23.

³³⁹ *Bhe v Khayelitsa* 2005 1 BCLR 1 (CC) para 138.

In Burundi, there is a legal gap in the inheritance field. No law comparable to those mentioned above exists yet. These different laws implemented by South Africa could inspire the Burundian legislator to fill this gap. The Wills Acts would help Burundi, whose law on the establishment and management of the notarial profession is deficient as regards the validity and competence to make a will.³⁴⁰

As for the Intestate Succession Act, it would help Burundi to establish the order of heirs and to ensure non-discrimination in the division of assets that constitute the estate. Finally, the law on the reform of customs would inspire the Burundian legislator to enact a specific law protecting children from extra-marital unions and would abolish customary rules that discriminate against women in terms of access to land.

Matrimonial Property Act 88 of 1984

South Africa has a Matrimonial Property Act which regulates matrimonial property.³⁴¹ Due to the promulgation of this Act, marital power was abolished.³⁴² Marital power held wives in a position similar to minors in relation to their husbands. Therefore, it limits women in their independent access to property, credit, reproductive health services, and inheritance.³⁴³ Women's rights were thereby promoted to the point where they could now enjoy the same rights as men in terms of property ownership.³⁴⁴

This act recognises two types of marital property regimes, including marriage in community of property.³⁴⁵ It also recognises marriage out of community of property.³⁴⁶ If the couple chooses marriage out of community of property, a contract specifying whether the marriage is out of community of property with accrual or excludes expressly the accrual must be concluded.³⁴⁷ Otherwise, the marriage is automatically governed under the marriage in community of property regime.

³⁴⁰ Organisation of notarial profession in Burundi art 67.

³⁴¹ Act 88 of 1984.

³⁴² Act 88 of 1984 s 11(1).

³⁴³ N Arekapudi and NMS Martins 'Challenging entrenched marital power in South Africa' (2021) *Women, Business and the Law* 3.

³⁴⁴ *ibid* 4.

³⁴⁵ Act 88 of 1984 s 14, 15, 16 & 17.

³⁴⁶ Act 88 of 1984 s 2,3,4,5,6,7,8,9 & 10.

³⁴⁷ Act 88 of 1984 s 6 (1).

When a marriage is dissolved upon the death of one of the spouses or divorce, the division of the estate is calculated according to the marital regime governing the marriage. The cases below show how this law protects and promotes the rights of the surviving spouse.

NS v MF case

The high court interpreted *NS v MF case* in the light of the Matrimonial Property Act. This case was between spouses married under the regime of community of property since 2015. They had had 2 children and wanted to bring their marriage to an end.³⁴⁸

The court had to rule on certain issues, including to whom the residence of 2 children would be awarded, the contact that should be awarded to the parent who did not reside with the children, the maintenance payable by the spouse who did not reside with the children, the division of property and joint estate, and the costs of the divorce proceedings.³⁴⁹ In the joint estate, the spouses had 3 immovable properties, movable property, life insurance, pension interest, and income.³⁵⁰

In the divorce judgment, the Court awarded the applicant parental guardianship of the children. The other parent was granted the right to maintain personal relations with the children and was required to contribute to their maintenance.³⁵¹ Regarding the division of the joint estate, the applicant received 50% of the shares of the property located in Danville while the defendant received 100% of the property located in Loeries Park. The judge appointed a liquidator and asked the parties to determine the net value of the undivided property, including the 3rd property and the movable real property.

This case sets a precedent for equality before the law in divorce cases. The Court applied the law by dividing the estate and gave the wife a pension so that she wouldn't be left alone with the responsibility of looking after the children after the divorce.

³⁴⁸ *NS v MF* 2023 ZAGPJHC 1065 para 25.

³⁴⁹ *ibid* para 11.

³⁵⁰ *ibid* para 34, 43, 44, 46, 47, 48 and 49.

³⁵¹ *ibid* para 74 (1), (2), (3), (4) and (5), 6 and 7.

M S v M J case

In *MS v MJ*, the High Court of South Africa applied the Matrimonial Property Act to rule on the case. The appellant and the first respondent had been married since 2017 out of Community of Property, with application of the accrual system.³⁵² When this present case was brought before this Court, the applicant and the first respondent had already initiated divorce proceedings.³⁵³

The appellant applied to this Court for an urgent interdictory relief prohibiting the respondents from selling or disposing of the former matrimonial home pending finalisation of the divorce proceedings between the appellant and the first defendant.³⁵⁴ In addition, the appellant sought an anti-dissipation interdict, if the property has already been sold, whereby the proceeds of the sale of the property were to be paid into and held in trust until the divorce proceedings were finalised.³⁵⁵

The appellant argued that the alienation of one of the first defendant's properties before the dissolution of their marriage by divorce prejudiced her claim. In other words, the alienation affected the reduction in the amount of the assets before the determining date of the accrual claim, thereby reducing the difference in accrual between the two estates.³⁵⁶

After hearing the case, the appellant won. The Court heard the case as an urgent application. In addition, the defendants were enjoined from selling the property before the end of the divorce proceedings. If the property had already been sold, the Court ordered that the proceeds of the sale of the property should be paid into and held in a trust account of an attorney until the end of the divorce proceedings. Finally, the first and second defendants were ordered to pay the legal costs.³⁵⁷

The Matrimonial Property Act promotes women's rights. In the out of community of property with accrual system regime, the assets of the spouses remain separate during the marriage. The marriage dissolution, by divorce or death, entitles the spouse who

³⁵² *SM v JM* 2023 ZAGPJHC 704 para 3.

³⁵³ *ibid* para 5.

³⁵⁴ *ibid* para 1.

³⁵⁵ *ibid* para 2.

³⁵⁶ *ibid* para 7.

³⁵⁷ *ibid* para 47 1, 2, 3, & 4.

has accumulated the smaller accrual to a claim equivalent to half of the difference between the accrual of the respective estates of spouses.³⁵⁸ This contributes to valuing the wife's unpaid work in the home.³⁵⁹

The Matrimonial Property Act can inspire Burundi on how to promote equality and non-discrimination in the events of divorce or widowhood in the sense that the Code of Persons Family of Burundi is deficient in the regulation of matrimonial property regimes and the abolition of marital power.³⁶⁰

4.4 Codification of customary law

Customary law is defined as the customs and usages traditionally observed among the indigenous African peoples of South Africa, which form part of the culture of these peoples.³⁶¹ At the time of the British occupation of South Africa, Roman-Dutch law was the fundamental law of the land.³⁶² However, they had a non-interference policy in the usages and customs of the indigenous populations, on the one condition that these were not contrary to public order and the principles of natural justice.³⁶³

In 1927, some customs and usages were brought together in the Black Administration Act 10 to deal with disputes between Africans.³⁶⁴ Customary law was universally recognised, although it was applied by customary courts and special courts set up to deal with cases 'between natives involving matters of custom followed by natives'.³⁶⁵ Although this law has been modified, the customary law is recognised by the Constitution of the Republic of South Africa.³⁶⁶ It must be applied by the courts when customary law is

³⁵⁸ Act 88 of 1984 s 3,4.

³⁵⁹ Waheeda Amien, 'South African marriage ruling is a win for divorcees and surviving spouses: it guides the sharing of their assets' *The Conversation* 31 January 2024 <<https://theconversation.com/south-african-marriage-ruling-is-a-win-for-divorcees-and-surviving-spouses-it-guides-the-sharing-of-their-assets-217695>> accessed 05 October 2024.

³⁶⁰ Burundi Personal and Family Code art 122.

³⁶¹ Act 120 of 1998 sec 1.

³⁶² C Rautenbach 'South Africa Common and Customary Law of Intestate Succession: A question of Harmonisation, Integration or Abolition' 2008 *Journal of Comparative Law* 120.

³⁶³ *ibid.*

³⁶⁴ I Moodley 'The Customary law of intestate succession' PhD Thesis, University of South Africa, 2012 49.

³⁶⁵ Act 38 of 1927 sec 11(1).

³⁶⁶ The Constitution of the Republic of South Africa sec 211.

applicable,³⁶⁷ and consistent with the Bill of Rights.³⁶⁸ It should be emphasised that customary marriages are recognised and regulated by the Recognition of Customary Marriages Act 120 of 1998. This act contributes to the promotion of gender equality as it safeguards equal status and capacity of spouses.³⁶⁹

Customary law is not static, it is a living law based on the actual practices of people or their day-to-day lives.³⁷⁰ Codification of customary law is a step towards promoting women's inheritance rights, insofar as this law needs to change and adapt to the realities of modern society.

In Burundi, customs are not yet codified. By referring to customs in the litigation of land inheritance, Burundian judges are exposed to an undefined normative framework.³⁷¹ Therefore, judges refer to a set of local practices, inherited from the past or adapted, constantly evolving and variable, which are transmitted from one person to another.³⁷² Most Burundian judges favour equality between men and women, but in the absence of a specific law on inheritance, they are reticent about the direct application of constitutional principles, as they are convinced that judgments issued on this basis are often not well received by the community.³⁷³

4.5 The judicial systems available to deal with discrimination

South Africa has established specialised courts known as Equality Courts to hear and determine allegations of unfair discrimination, hate speech, or harassment.³⁷⁴

The victims of unfair discrimination and persons whose right to equality has been infringed have the right to legal remedies.³⁷⁵ These courts have already delivered a variety of judgments, including the case *MEC for Education: Kwazulu-Natal v Pillayan* analysed

³⁶⁷ The Constitution of the Republic of South Africa sec 211 (3).

³⁶⁸ The Constitution of the Republic of South Africa sec 39 (3).

³⁶⁹ Act 120 of 1998 s 6.

³⁷⁰ C M Fombad 'Gender equality in African customary law: has the male ultimogeniture rule any future in Botswana?' (2014) *The Journal of Modern African Studies* 485. See also R Ozoemena 'Living Customary Law: A Truly Transformative Tool?' (2014) *Constitutional Court Review* 148.

³⁷¹ RCN Justice et Démocratie 'Droits et coutumes' (2008) 19.

³⁷² *ibid.*

³⁷³ RCN Justice et Démocratie (n 371) 20

³⁷⁴ Act 4 of 2000 sec 16, 21.

³⁷⁵ Act 4 of 2000 sec 2 (f).

above. Cases of discrimination are also brought before the country's other courts. Since non-discrimination is a constitutional principle, the South African Constitutional Court regularly rules on cases of discrimination.

The judicial system in South Africa has been a powerful force in promoting women's inheritance rights. For instance, the principles of customary law that discriminated against women on the grounds of sex, and the acts that protected these principles, were declared unconstitutional by the Constitutional Court. The judges did, however, promote the principles of equality and non-discrimination enshrined in section 9 of the Constitution, which is the supreme law.³⁷⁶ Two cases in which the Constitutional Court dealt with women's inheritance rights are analysed below.

Bhe v Magistrate Khayelitsha

This case concerns the estate of the deceased, who died intestate in October 2002. He left behind a woman with whom he had lived for 12 years and two minor daughters from the union.³⁷⁷ Therefore, in the interest of the two children, Bhe (the appellant) applied to the Court. She argued that the principle of primogeniture in succession as provided for by customary law should be declared unconstitutional.³⁷⁸ The Court was thus called upon to answer the question of whether the two daughters born from an extra-marital union, had the right to inherit their father's estate.³⁷⁹ The estate comprised the informal temporary shelter, the property on which it stood, and various items of moveable property that Mrs Bhe and the deceased had acquired in common over the years, including building materials for the house they intended to build.³⁸⁰ Under the system of intestate succession under section 23 and the regulations, in particular, regulation 2(e), the two minor children did not qualify to be heirs to their deceased father's intestate estate.³⁸¹

³⁷⁶ The Constitution of the Republic of South Africa sec 2.

³⁷⁷ *Bhe* (n 339) paras 10 & 14.

³⁷⁸ *ibid* para 11.

³⁷⁹ *ibid* para 3.

³⁸⁰ *ibid* para 14.

³⁸¹ *ibid* para 16.

The Constitutional Court declared section 23 of the Black Administration Act 38 of 1927, the Regulations for the Administration and Distribution of the Estates of Deceased Blacks (R200), and Section 1(4) (b) of the Intestate Succession Act 81 of 1937 to be invalid and inconsistent with the Constitution. Furthermore, the rule of male primogeniture was declared to be inconsistent with the Constitution and invalid to the extent that it excludes or hinders women and extra-marital children from inheriting property. Lastly, in the application of sections 1(1) (c) (i) and (1) (4) (f) of the Intestate Succession Act 81 of 1987 to the estate of the deceased person who is survived by more than one spouse, Nonkululeko Bhe and Anelisa Bhe were declared the sole heirs of the deceased estate of Vuyo Elius Mgolombane, registered at Khayelitsha Magistrates' Court under reference no 7/1/2-484/2002.³⁸²

Shibi v Sithole

This case also concerns intestate succession. Daniel Salomon Sithole died intestate in Pretoria in 1995. The deceased was single, had no descendants, parents nor grandparents. He left behind a sister. His closest male relatives were his cousins Mantabeni Sithole and Jerry Sithole (first and second respondents).³⁸³

Considering that the deceased was a black man, and that the estate was intestate, the provisions of section 23 of the Black Administration Act 38 of 1927 should be applied. In accordance with Regulation 3(2) of that Act, an enquiry was held to determine the persons entitled to the estate of the deceased.³⁸⁴

Mrs Charlotte Shibi (the appellant in this case) therefore applied to the Court on the basis that she had been excluded from the estate despite being the sister of the deceased.³⁸⁵ In other words, her application challenged the constitutional validity of the customary law principle of the right of descent and section 23 of the Black Administration Act 38 of 1927.³⁸⁶ The main question was whether the appellant was entitled to inherit her brother's intestate estate.³⁸⁷

³⁸² *Bhe* (n 339) para (2), (3), (4), (5), (7), &136 (11) (a) (i).

³⁸³ *Shibi v Sithole 2005 (1) SA 580 (CC)* para 21.

³⁸⁴ *ibid* para 22.

³⁸⁵ *ibid* para 21.

³⁸⁶ *ibid* para 31.

³⁸⁷ *ibid*.

In its decision, the Court declared Charlotte Shibi the sole heir of the deceased estate of Daniel Solomon Sithole registered at Pretoria North Magistrate District of Wonderboom under the reference no 7/1/2-410/95.³⁸⁸

These two cases were heard by the Constitutional Court together because they both concerned succession. These cases fundamentally changed women's inheritance rights to the extent that they challenged customary law, specifically the principle of primogeniture, which recognised the right of inheritance to male descendants only and discriminated unfairly on the grounds of gender, age, and birth.³⁸⁹ Not only were the principles and the statutory laws declared invalid, but South Africa's national legislation adopted gender-affirming and neutral legislation such as the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009.

The State of Burundi does not have courts specialised in equality, therefore, the jurisdiction to hear discrimination claims falls to the ordinary courts. Like South Africa, Burundi has a Constitutional Court whose jurisdiction includes ruling on the constitutionality of laws and interpreting the Constitution.³⁹⁰ Compared with the Constitutional Court of South Africa, the Constitutional Court of Burundi is not actively involved in ruling on the unconstitutionality of laws and customs.

4.6 Chapter conclusion

This chapter has analysed the lessons that Burundi can learn from South Africa's legal reforms in the context of women's property and inheritance rights. This research has shown that the Republic of South Africa, having guaranteed the right to equality and non-discrimination in its Constitution,³⁹¹ subsequently adopted a national legal framework in accordance with the Constitution. In fact, South Africa had already codified customary law; it

³⁸⁸ *ibid* para 136 (11) (b) (i).

³⁸⁹ *Shibi v Sithole 2005 (1) SA 580 (CC)* para 147.

³⁹⁰ Organisation et fonctionnement de la Cour Constitutionnelle Act 20 of 2019 art 24.

³⁹¹ The Constitution of the Republic of South Africa s 9.

then abolished certain principles of customary law that were incompatible with the Constitution and finally adopted other laws to better protect categories of people disadvantaged by unfair discrimination.³⁹²

Burundi has limited itself to guaranteeing the principle of equality and non-discrimination in its Constitution.³⁹³ Yet, contrary to South Africa, the country still has many legal gaps, especially in the domains of inheritance and matrimonial regimes. Additionally, laws that are incompatible with the Constitution are still in force, and customary law has yet to be codified. Faced with this situation, Burundian courts and tribunals continue to apply customs and laws that discriminate against women.

³⁹² *ibid* s 9(2).

³⁹³ The Constitution of Burundi arts 13 and 22.

5. Conclusion and recommendations

5.1 Conclusion

In Burundi, the issue of inheritance rights for women remains problematic. This research has shown that traditional inheritance practices limit access to land for women. This discrimination based on sex affects their right to food, access to credit, and other resources such as agricultural inputs; it also undermines women's decision-making power.

The Constitution of Burundi guarantees the right to property to every person and the right to equality and non-discrimination. This implies a guarantee not to be excluded from social and economic life on the grounds of gender, and a guarantee of protection by law. However, there are gaps in the legislative and institutional framework. The national legal framework that protects women's rights is incomplete. Specific laws governing inheritance and matrimonial regimes are not yet in place. This situation is due to a lack of political will. Regarding the institutional framework, the Ministry of National Solidarity, Human Rights and Gender, whose main responsibility is to promote gender equality, is faced with various challenges such as the complexity of its mandate and the lack of material and human resources, which limits the effectiveness of its interventions.

Women's economic empowerment implies the right to access resources and is a precondition for achieving gender equality. International, regional, and sub-regional standards are the guarantees that the State must uphold and enforce. Burundi is a monist country that has incorporated all the treaties it has ratified into its constitution. Nevertheless, Burundian judges prioritise national

law; and given the gaps in the national legal framework protecting women's rights, they apply traditional practices whenever they are called upon to rule on land inheritance issues. They rarely apply international law when they can do so.

Moreover, this research took into consideration the experience of South Africa, where customary practices treated women as permanent minors who could not own or inherit property. In addition to the guarantee of equality and non-discrimination based on gender, the South African Constitution of 1996 introduced legislative measures to further protect and promote categories of people disadvantaged by unfair discrimination. The lessons drawn from the South African experience include the enactment of comprehensive, gender-affirming, and neutral legislation, but also, and more importantly the foresight of the judges, who in the presence of customary law discriminating against women, gave the supremacy to the Constitution and international law. They went so far as to recommend amendments for certain acts before the legislative power. The promotion of property and inheritance rights for women in South Africa is attributed to these legal reforms.

5.2 Recommendations

Based on the experience of Burundi and the lessons learned from the South African experience, this research proposes the following recommendations to the State of Burundi, Parliament, judges, NGO, and community leaders to promote women's inheritance rights.

Short-term recommendations

Parliamentary

A – The Parliament must, in all urgency, enact a law on succession. This law should include provisions reaffirming the principle of the equality of men and women; it should also establish non-discriminatory order of heirs and the nature of the assets to be inherited.

B – Parliament should also enact a matrimonial property law, which would govern the partition of spouses' property in the event of divorce and death.

C – Parliament should align national laws, particularly Article 122 of the Personal and Family Code, with the current Constitution.

D – Parliament should finally codify custom. The Burundian legislator should learn from the South African legislator by compiling customs and practices relating to inheritance in a single document that they would call Customary Law. The legislator should then ensure that the Customary Law is in harmony with the Constitution.

Judges

A – While awaiting the adoption of the Succession Act and Matrimonial Regulations Act, Burundian judges should take steps to apply international human rights treaties directly.

State of Burundi

A – The State of Burundi should significantly increase the budget of the Ministry of National Solidarity, the Human Person and Gender. It should also continue to support women's economic initiatives at the community level.

B – The State of Burundi, through its Ministry of National Solidarity, the Human Person and Gender, should intensify community awareness-raising on the laws and policies already in place, focusing particularly on gender equality and the inclusion of women in the control of household assets.

C – The State of Burundi, through the Ministry of Justice, should intensify the training of judges to ensure their sensitivity to gender equality.

NGOs

A – The NGOs should pursue advocacy activities in support of the enactment of the Succession Act and the Matrimonial Regimes Act.

B – Pursuant to Article 24 of the law on the Constitutional Court, NGOs and other women's rights activists should take action before the Constitutional Court on the unconstitutionality of the customary rules governing inheritance in Burundi.

C – The NGOs are also called upon to continue supporting the initiatives of the Government of Burundi, in particular community awareness-raising on gender equality, and women's economic empowerment.

Mid-term recommendations

The State of Burundi

A – In the era of digitalisation, it is unfortunate that the most recent publications of Supreme Court decisions date back to 2012. The State of Burundi should therefore make a budget available to ensure the continuity of this activity of the Supreme Court of Burundi. Although not bound by the rule of precedent, Burundian judges are allowed to refer to case law which is one of the sources of the law. Digitalisation would offer judges, particularly those in lower courts, the opportunity to stay informed about good practices. It would also help NGOs and activists in their work of raising awareness among judges and the community.

Bibliography

Books and articles

- Agarwal B, 'Women and Poverty: Reducing Domestic Violence, Enhancing Group Rights' (2007) people and Policy paper 1-4
- Ahmed D & E Bulmer, 'Social and Economic Rights' (2017) *International Institute for Democracy and Electoral Assistance second edition* 1-44
- Arekapudi N & NMS Martins, 'Challenging entrenched marital power in South Africa' (2021) *Women, Business and the Law* 1-6
- Banda F 'Women, Law and Human Rights in Southern Africa' (2006) *Journal of Southern Africa Studies* 13-27
- Corradi G, 'Can a legal pluralism advance Human Rights? How International Development Actors can contribute?' (2013) 3 *European Journal of Development Research* 1-15
- Cusack S & L Pusey, 'CEDAW and the Rights to Non-discrimination and Equality' (2013) *Melbourne Journal of International Law* 54-92
- Fombad C M, 'Gender equality in African customary law: has the male ultimogeniture rule any future in Botswana?' (2014) *The Journal of Modern African Studies* 475-495
- Francioni F, 'The rights of Access to Justice under Customary International Law' quoted in F Francioni (ed) 'Access to justice as a Human Right' (2007) *Oxford University Press* 1-56
- Gatunange G, 'Le régime matrimonial de droit commun en droit burundais' (2015) *Revue Burundaise de Droit et Société* 17-59
- Griffiths J, 'What is legal pluralism?' (1986) *The Journal of Legal Pluralism and Unofficial Law* 18 1-55
- Iradukunda F & others, 'Understanding gender roles and practices in the household and on the farm: implications of banana disease management innovation processes in Burundi (2019) *ResearchGate* 1-11
- Keesler A & others, 'Mobilizing farmers to stop land degradation: a different discourse from Burundi' (2020) *Wiley Online Library* 3403-3414
- Manirakiza A, 'La problématique de la mise en œuvre du principe d'égalité en droit burundais de la famille. Cas des droits successoraux de la femme' (2014) *KAS African Law Study Library – Librairie Africaine d'Etudes Juridiques* 705-725
- Manirakiza A, 'Le principe d'égalité et de non-discrimination dans le droit familial burundais : état des lieux, défis de mise en œuvre et perspectives de lege ferenda' PhD Thesis, Universiteit Antwerpen, 2020
- Masabo M, 'L'accès à la justice : le volet 'Commodités d'accès'' (2017) *Revue Burundaise de Droit et Société* 11-56
- Masuku M M & others, 'Gendered effects of land access and ownership on food security in rural settings in South Africa' (2023) *Frontiers in Sustainable Food Systems* 1-8
- Mishra S, 'Feminization of Poverty and Dimension of Women's Agencies' (2018) *Asian Journal of Multidisciplinary Studies* 93-100
- Moodley I, 'The Customary law of intestate succession' PhD Thesis, University of South Africa, 2012

- Mwasumbi A & others, (Eds) 'A Comparative Study on Access to Land for Women in Eastern Africa' (2016-2020) *Eastern Africa Land Administration Network* 2-10
- Mwasumbi A & others, (eds) 'A comparative study on success to land for women in Eastern Africa' (2024) *ResearchGate* 1-84
- Nchanji E & others, 'Gender norms and differences in access and use of climate-smart agricultural technology in Burundi' (2023) *Frontiers in Sustainable Food Systems* 1-13
- Ndayikeza K, 'Analyse des facteurs influençant les dépenses d'éducation des ménages au Burundi' Masters Thesis, université du Burundi, 2023
- Ndayiragije G, 'Images de la femme au Burundi à travers les contes et les épithalames' Masters Thesis, Université d'Oslo, 2011
- Niragira S & others, 'Food for Survival: Diagnosing Crop Patterns to Secure Lower Threshold Food Security Levels in Farms Households of Burundi' (2015) *Sage* 196-210
- Niyonkuru A, 'Femme-agronomie-développement : le cas du Burundi' (2009) *Tropicultura* 253-256
- Niyonkuru AP, 'Gender and access to justice in Burundi: conflicting norms, gaps in the law and the role of judges' (2021) *The Journal of Legal Pluralism and Unofficial Law* 570-592
- Nukuri E, 'L'apport du nouveau code foncier en matière de résolution des conflits au Burundi' (2014) 737 *KAS African Law Study Library* 726-751
- Nukuri E, 'La protection constitutionnelle du droit de propriété foncière en droit burundais' PhD Thesis, KU Leuven, 2019
- Nzohabonayo A & JDD Ndikumana, 'La Succession foncière de la femme burundaise face à la coutume' (2020) *European Scientific Journal* 224-247
- Ozoemena R, 'Living Customary Law: A Truly Transformative Tool?' (2014) *Constitutional Court Review* 147-163
- Pearce D, 'The feminization of poverty: Women, Work and Welfare' (1978) *Urban and Change Review* 28-36
- Rautenbach C, 'South African Common and Customary Law of Intestate Succession: A question of Harmonisation, Integration or Abolition' 2008 120 *Journal of Comparative Law* 1-15
- Trindade AAC, 'The Access of Individuals to International Justice' (2011) *Oxford University Press* 297-303
- Viljoen F, 'International Human Rights Law: A Short History' (2012) *Journal of Humanitarian Medicine* 4-8.
- Lamy E, 'Observation sous Tribunal du Mwami du Burundi, 9 février 1960' (1961) *Revue juridique de droit écrit et coutumier du Rwanda et du Burundi*.
- Gatunange G, 'Plaidoyer pour une loi sur les successions au Burundi' (2015) *Revue de l'Université du Burundi*.

International instruments

- Universal Declaration of Human Rights (1948)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- International Covenant on Civil and Political Rights (1996)
- International Covenant of Economic, Social and Cultural Rights (1976)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of Persons with Disabilities (2006)
- Vienna Convention on the Law of Treaties (1969)
- Sustainable Development Goals (2015)
- Beijing Declaration and Platform for Action 'The Fourth World Conference on Women' (1995)

General comments

ESCR Committee General Comment 26 on land and economic, social and cultural rights, 2022

CEDAW General recommendation 25 on article 4, paragraph 1 of the CEDAW on temporary special measures, 2004

CEDAW General recommendation 28 on the core obligations of States parties under article 2 of the CEDAW, 2010

CEDAW Concluding comments of the Committee on the Elimination of Discrimination against Women Burundi, 2008

Regional instruments

African Charter on Human and People's Rights (1981)

Solemn Declaration on Gender Equality in Africa (2004)

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2005)

Agenda 2063: The Africa We Want (2015)

Constitutive Act of the African Union (2000)

Sub-regional

The Treaty for the Establishment of the East African Community (2007)

ACHPR 'Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa' (2003)

East African Community Gender Policy (2018)

The Pact on security, stability and development for the Great Lakes Region (2012)

Revised Treaty establishing the Economic Community of Central African States Treaty (2019)

ICGLR 'Protocol on Democracy and Good Governance' (2006)

Treaty establishing the Common Market for Eastern and Southern Africa (1994)

Dar Es Salaam Declaration (2023)

National

South Africa

The Constitution of the Republic of South Africa

Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009

Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

Matrimonial Property Act 88 of 1984

Succession Wills Act 7 of 1953

Recognition of Customary Marriages Act 120 of 1998

Intestate Succession Act 81 of 1987

Black Administration Act 38 of 1927

Black Administration Act 38 of 1927

Burundi – Acts

Final Constitution of the Kingdom of Burundi

Arusha Peace and Reconciliation Agreement for Burundi, 2000

Constitution of Burundi, 2018

Codes et Lois du Burundi, 2006

Individual and Family Code, 1993	Code de procédure Civile du Burundi, 2004
Law n 100/084 on the responsibilities, structure, and functions of the Ministry of Human Rights, Social Affairs, and Gender, 2020	Loi n 1/13 portant prévention, protection des victimes, et répression des violences basées sur le genre, 2016
Law n1/16 of 22 June 2023 establishing the general budget of the Republic of Burundi for the financial year 2023/2024	Loi n 1/004 portant organisation et fonctionnement du notariat ainsi que statut des notaires, 1996
Land Code, 2011	Loi organique n 1/20 portant Organisation et fonctionnement de la Cour Constitutionnelle, 2019
Code d'Organisation et de la Compétence Judiciaire, 2005	Décret-loi n 100/83 du 07 Décembre 2018 portant création des Cours d'Appel de Bujumbura Mairie, Makamba, Muha, Ntchangwa et leurs parquets généraux et délimitation de la Cour d'Appel de Bururi et son parquet général < https://www.presidence.gov.bi/wp-content/uploads/2018/12/183.pdf > accessed 04 September 2024
Loi régissant la Cour Supreme au Burundi, 2005	
Loi n 1/17 portant suppression du pourvoi en cassation devant la Cour Supreme et attribution de Compétence aux Cours d'Appel pour les affaires relatives aux terres rurales, 2014	
Ordinance of the General Administrator of Congo, 1886	
Burundi – Policies	
Politique Nationale Genre (Gender National Policy),2012	Programme National de Renforcement des capacités économiques de la femme (2019-2027)
Vision Burundi 2025	Document de politique sectorielle du ministère de la Justice 2016
National Development Plan Burundi (Plan National de Développement du Burundi), 2018	

Case law

South Africa

<i>Bhe v Khayelitsha Magistrate</i> 2005 BCLR 1 (CC)	<i>Govender v Ragavayah</i> 2009 (3) SA 178 (D)
<i>Shibi v Sithole</i> 2005 1 BCLR 1 (CC)	<i>SM v JM</i> 2023 ZAGPJHC 704
<i>MEC for Education: Kwazulu-Natal v Pillay</i> 2007 28 ILCJ 33 (CC)	<i>NS v MF</i> 2023 20 ZAGPJHC 1065

Burundi

RCC 1051/2005 Supreme Court	RCA 1996/1992 High Court of Muramvya
RCC 30127 Supreme Court	RC 753/2009 Tribunal of First Instance of Kirundo
RCC 10881/2005 Supreme Court	RC 2910/2016 Tribunal of First Instance of Mbuye
RCC 6500/2005 Supreme Court	RC 184/2010 Tribunal of First Instance of Gitega
RCA 8896/2008 High Court of Muramvya	
RCA 657/1990 High Court of Muramvya	

Internet sources

Burundi population <<https://countrymeters.info/en/Burundi>> accessed on 21 August 2024.

UN 'What are human rights' <<https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more>> accessed on 21 August 2024

Centre on Democracy, Development and the Rule of Law 'Second and Third Generation Rights in Africa' <https://cdrl.fsi.stanford.edu/research/second_and_third_generation_rights_in_africa> accessed on 21 August 2024

UN Member States <<https://www.un.org/en/about-us/member-states>> accessed 16 August 2024.

UN treaty body database <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=28> accessed 16 August 2024

AU Member States <<https://au.int/en/member-states/countryprofiles2>> accessed 22 August 2024.

2012 Investment Climate Statements: Burundi, Foreign Trade zone <<https://www.state.gov/reports/2021-investment-climate-statements/burundi/>> accessed 16 August 2024

Economic Community of Central African States <<https://au.int/en/recs/eccas>> accessed 16 August 2024

EAC Partner States <<https://www.eac.int/eac-partner-states>> accessed 21 August 2024

UN 'Economic, social and cultural rights' <<https://www.ohchr.org/en/human-rights/economic-social-cultural-rights#:~:text=Economic%20social%20and%20cultural%20rights,and%20sanitation%2C%20and%20to%20work>> accessed 31 August 2024.

Journal IWACU 'Enregistrement des parcelles : pas encore dans les mœurs des Burundais' <<https://www.iwacu-burundi.org/enregistrement-des-parcelles-pas-encore-dans-les-moeurs-des-burundais/#:~:text=Enregistrement%20des%20parcelles%20%3A%20pas%20encore%20dans%20les%20m%C5%93urs%20des%20Burundais,-15%2F08%2F2014&text=Plus%20de%2090%25%20des%20propri%C3%A9t%C3%A9s,nouveau%20Code%20foncier%20de%202011>>

UN Women 'Facts and figures: Economic Empowerment' <<https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures#:~:text=Women's%20economic%20empowerment%20means%20ensuring.at%20all%20levels%20from%20the>> accessed 10 September 2024

Sustainable Development Goals (SDG) <<https://sdgs.un.org/goals>> accessed 10 September 2024

SDG, Goal 5 'Achieve gender equality and empower all women and girls' <<https://sdgs.un.org/goals/goal5>> accessed 10 September 2024

2024 Investment Climate Statements: Burundi <<https://www.state.gov/reports/2024-investment-climate-statements/burundi/>> accessed 21 August 2024

UNICEF 'Investir en faveur des jeunes adolescentes pour un monde égalitaire (March 2024)' <[https://www.unicef.org/burundi/fr/communiqu%C3%A9s-de-presse/investir-en-faveur-des-jeunes-filles-adolescentes-pour-un-monde-%C3%A9galitaire#:~:text=Les%20cons%C3%A9quences%20des%20violences%20sexuelles,et%20ni%20form%C3%A9es%20\(2020\)](https://www.unicef.org/burundi/fr/communiqu%C3%A9s-de-presse/investir-en-faveur-des-jeunes-filles-adolescentes-pour-un-monde-%C3%A9galitaire#:~:text=Les%20cons%C3%A9quences%20des%20violences%20sexuelles,et%20ni%20form%C3%A9es%20(2020))> accessed 10 September 2024

IWACU 'Zéro grossesse à l'école' <<https://www.iwacu-burundi.org/zero-grossesse-a-lecole/#:~:text=Il%20est%20rapport%C3%A9%20plus%20de%20bus%2C%20des%20p%C3%AAcheurs%2C%20E2%80%A6>> accessed 10 September 2024

UN Women 'Burundi' <<https://africa.unwomen.org/en/where-we-are/eastern-and-south-ern-africa/burundi>> accessed 10 September 2024

Sallami, M & Niyonzima, T R 'Empowering Burundian girls: Leading the way in education' (2024) *World Bank Blogs* <<https://blogs.worldbank.org/en/nasikiliza/empowering-burundian-girls-leading-way-education-afe-0224>> accessed 10 September 2024

UN Women 'Facts and figures: Economic Empowerment' <<https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>> accessed 10 September 2024

UN Women 'The Feminization of Poverty' <<https://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm#:~:text=The%20Feminization%20of%20Poverty&text=Worldwide%2C%20women%20earn%20on%20average,labour%20goes%20unreward-ed%20and%20unrecognized>> accessed 11 September 2024

FAO 'Empowering rural women, powering agriculture' <<https://openknowledge.fao.org/server/api/core/bitstreams/e31ea1b4-3378-499e-81da-85552d69cee6/content>> accessed 11 September 2024

UNDP 'Programming for Justice: Access for All. A practitioner's Guide to a Human Rights-Based Approach to Access to Justice (2005)' <<https://www.un.org/ruleoflaw/blog/document/programming-for-justice-access-for-all-a-practitioners-guide-to-a-human-rights-based-approach-to-access-to-justice/>> accessed 05 September 2024

UNDP 'Innovative Approaches To Promoting Women's Economic Empowerment' (2008) <<https://www.undp.org/sites/g/files/zsk-gke326/files/publications/INNOVATIVE%20APPROACHES.pdf#page=23.08>> accessed 10 September 2024

OCHR and Land and Human Rights <<https://www.ohchr.org/en/land>> accessed 31 August 2024

UNDP 'Gender Equality' <<https://www.undp.org/fr/burundi/projets/egalite-des-genres?-search=englis>> accessed 12 August 2024

50 million African Women speak 'Women's Economic Empowerment Program' <https://www.womenconnect.org/web/burundi/empowerment/-/asset_publisher/O7GbVVJk4RxE/content/autonomisation-de-la-femme-et-programme-national-de-renforcement-des-capacites-economiques-de-la-femme-2019-2027-bujumbura-burundi-juillet-2019->> accessed 05 October 2024

Waheeda Amien, 'South African marriage ruling is a win for divorcees and surviving spouses: it guides the sharing of their assets' *The Conversation* 31 January 2024 <<https://theconversation.com/south-african-marriage-ruling-is-a-win-for-divorcees-and-surviving-spouses-it-guides-the-sharing-of-their-assets-217695>> accessed 05 October 2024

Reports

Hill Innovating Justice 'Innovations in Rule of Law', 2012

Annual World Bank Conference on Land and Poverty 'Improving access to land and strengthening women's land rights in Africa', 2013

Institut des Statistiques et d'Etudes Economiques du Burundi 'Recensement General de la Population et de l'Habitat du Burundi', 2008

Institut des Statistiques et d'Etudes Economiques du Burundi 'Rapport de l'Enquête Intégrée sur les Conditions de vie des Ménages au Burundi' (EICVMB), 2021

Ministry of National Solidarity, Social Affairs, Human Rights and Gender '6th National Report on the implementation of the Beijing Declaration and Platform for Action' ('6e Rapport national de la mise en œuvre de la Déclaration et du Programme de Beijing '), 2024

Ministère de la Justice' Annuaire des statistiques judiciaires' (2015-2016)

Ntampaka, C 'Gouvernance foncière en Afrique Centrale', 2008

RCN justice et démocratie 'Statistiques judiciaires Burundaises, rendement, délais et typologie des litiges dans les tribunaux de résidence', 2009

Ministry to the Presidency in charge of Good Governance, privatization, and General Inspection of the State and Local Administration 'Etude diagnostique sur la gouvernance et la corruption au Burundi', 2008

African Development Bank Group 'Profil Genre du Burundi', 2011

Care International 'Norms and practices impending gender equality in Burundian society', 2017

République du Burundi 'Analyse du secteur de l'éducation', 2021

Republic of Burundi 'Country Gender Equality profile', 2023

Search for Common Ground & USAID 'Analysis of barriers to women's economic empowerment in Burundi', 2021

USAID 'Burundi Gender Analysis', 2017

Women's Legal Centre 'Women's property rights under Customary Law', 2010

International Centre for Research on Women 'Property Ownership & Inheritance Rights of Women for Social Protection -The South Asia Experience', 2006

Cour Supreme and Land and Development Expertise Centre 'Recueil de jurisprudence fonciere'

FAO and land Tenure studies 'Gender and access to land' (2002)

UN General Assembly 'Women in development, Report of the Secretary-General' 2024



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