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**CRITICAL ANALYSIS ON THE PROTECTION OF  
CHILDREN BORN OUT OF WEDLOCK AGAINST  
DISCRIMINATION UNDER RWANDAN SUCCESSION LAW**

A Dissertation Submitted and Presented to the  
School of Law in a Partial Fulfillment of the  
Academic Requirements for the Award of a  
Bachelor's Degree with Honors in Law.

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**Supervisor: Lecturer NDIYAYE UWIMANA Innocent**

**Kigali, August 2024**

## **DECLARATION**

I, **IRAKIZA MUGISHA J M Viateur**, hereby declare that, to the best of my knowledge, the work presented hereinafter "**critical analysis on the protection of children born out of wedlock against discrimination under Rwandan succession law**" is my original work and it has not been prepared and presented by anybody else at any other academic qualifications at any University or any Institution of High Learning for any award. Where any source was consulted, references have been duly provided in footnotes and Bibliography as well. This work was conducted under the supervision of Mr. **NDIYAYE UWIMANA Innocent**

**Date:**...../...../2024

**Signature:**.....

**IRAKIZA MUGISHA Jean Marie Viateur**

**APPROVAL**

This dissertation entitled "**CRITICAL ANALYSIS ON THE PROTECTION OF CHILDREN BORN OUT OF WEDLOCK AGAINST DISCRIMINATION UNDER RWANDAN SUCCESSION LAW.**"

Is an original research of **Mr IRAKIZA MUGISHA JEAN MARIE VIATEUR** under my supervision as partial fulfilment of the academic requirement for the award of a bachelor's degree in law (**LLB**) at Kigali Independent University.

**Date:** ...../...../2024

**Signature:**.....

**Supervisor: Lecturer NDIYAYE UWIMANA Innocent**

## **DEDICATION**

This dissertation is dedicated:

To Almighty God

To my late Father **HABUMUGISHA Raphael** and my beloved Mum **UWUMUREMYI Speciose**

To my beloved family Among others; My brother **MUGISHA JEAN MARIE Virgile** and his Family, My sisters **NZAMUKOSHA Antoinette** and **ABIMANA Pacifique**, My workmates **NKURUNZIZA Patrick** and **NSHOGOZA Cyprien**, My friends **Aaron Nova & Steven**, **Me NDEJEJE Pascal**, **Me HIGIRO Nasère** and his family.

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Last but not least, my sincere consideration goes to my family which was always behind my everyday life success. Your Love and Compassion towards my success made it real.

May God bless you All.

**IRAKIZA MUGIUSHA Jean Marie Viateur**

## LIST OF ABBREVIATIONS AND ACRONYMS

<b>Art.</b>	: Article
<b>CCBI</b>	: Civil Code Book I
<b>HoD</b>	: Head of Department
<b>Http</b>	: Hyper Text Transfer Protocol
<b>Ibid</b>	: same author, same page
<b>Id.</b>	: Same author, different page
<b>LL. B</b>	: Law Level Bachelor
<b>LL.M</b>	: Master of Laws
<b>N°</b>	: number
<b>O. G</b>	: Official Gazette
<b>O.G.</b>	: Official Gazette
<b>Op.cit.</b>	: said above
<b>Para (s).</b>	: Paragraph(s)
<b>Suppra</b>	: Already said
<b>UK</b>	: United Kingdom
<b>ULK</b>	: Université Libre de Kigali
<b>UN</b>	: United Nations
<b>USAID</b>	: United States Agency for International Development
<b>GBV</b>	: Gender Based Violence
<b>WWW</b>	: World Wide Web

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## 1. GENERAL INTRODUCTION

This research project entitled “**critical analysis on the protection of children born out of wedlock against discrimination under Rwandan succession law**” is intended to protect children born out of wedlock during succession of their deceased parent particularly in community of property regime, where the surviving spouse holds the whole estate until they die for succession to open during this period the property can be sold, hidden, mismanaged which led to no access to those children born out of wedlock hence their rights to succeed their deceased parent violated and normally need to be protected regardless their birth status as it will be discussed in detail, the challenges faced by those children and the mechanisms need to be put in place so that they are well protected like other children born in marriage fairly.

## 2. Background of the study

Inheritance in Rwanda is a major means of transfer or exclusion from the transfer of people's accumulated physical capital. In some countries inheritance laws and customary practices can exclude individuals, particularly women and children from inheriting the property. Rwanda is the most densely populated country in Africa with a population of nearly 12 million people. The country was colonized by Germany and then Belgium until 1962.<sup>1</sup>

Since 1994, the Rwandan Government has pursued an ambitious law reform agenda, which has been supported by international governments such as the UK Department for International Development and the United States Agency for International Development (USAID). Several proposed laws are in the works, including addressing gender-based violence, and the issue of inheritance, which may contain the country's first recognition of the property rights of cohabiting partners, however, the Rwandan government is often praised for its gender initiatives.<sup>2</sup>

It is further historically provided that, in many other African countries, statutory law often clashes with Customary law with the latter prevailing, especially over inheritance issues and among many rural populations, however, customary land tenure in Rwanda holds a different

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<sup>1</sup> benschop, m. and sait, m. (2006) “the progress report on removing discrimination against women in respect of property and inheritance rights” nairobi: united nations human settlements programme. available at, [www.unhabitat.org/downloads/docs/3983\\_71713\\_inheritance\\_percent20final\\_percent20071006.pdf](http://www.unhabitat.org/downloads/docs/3983_71713_inheritance_percent20final_percent20071006.pdf), see also human rights watch (2003). double standards: women's property rights violations in kenya. new york. human rights watch, available at <http://www.hrw.org>.

<sup>2</sup> fao. (2009). land tenure working paper 14, see also gender monitoring office. (2011) gender impact assessment of the law no 22/09 of the civil code and to institute parts five regarding matrimonial. kigali, august, 2011

meaning and significant practice than, for instance in Kenya, Uganda, Ghana as well as Mozambique.<sup>3</sup>

There are different laws addressing the issue of inheritance of property in Rwanda those laws are such as, the constitution of Rwanda as amended time to time, Intestate succession and marital property law, land law, customary law, civil code Law No 27/2016 of 08/07/2016 as well as succession law just to mention the few among others.

The Constitution of Rwanda provides clearly on the equal rights of Rwandan women and men as far the right to property is concerned. However, in relation to owns of property the constitution provides inter alia that, only registered marriage has the right to property, but unregistered marriage does not have equal protection of their property and inheritance rights under Rwandan law. Intestate succession and marital property law, among other things, provide the opportunity for gender equity by granting equal inheritance rights to sons, and daughters as well as protecting surviving spouses.<sup>4</sup>

The law of inheritance has regulations to ensure that there is order and fairness of the process when a property owner dies. Regardless of the law to provide so application requires significant awareness as well as commitment from many actors, which may not exist.<sup>5</sup>

Hence the study will analyze and identify different challenges facing deceased heirs who are born out of wedlock in relation to the right of inheritance as well as assess the effectiveness of existing succession laws to ensure the protection of deceased heirs and make a conclusion and recommendation to the problem as afore stated.

### **3. Significance of the study**

This research provides decision makers, policy makers, and practitioners with field evidence as far as the impact of succession law on heir's rights is concerned. It further analyzes gaps in implementation and challenges heirs face in claiming their rights.

Also, the study will provide future researchers with rich field information to serve as empirical and theoretical evidence for their studies.

As far as this study is concerned the primarily motivation for selection of this research topic is conduct an analysis of the succession laws as far as heirs of the deceased person protection

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<sup>3</sup> ibid, para 68

<sup>4</sup> rwandan constitution of republic of rwanda of 2003 as amended up to time

<sup>5</sup> law no 27/2016 of 08/07/2016

is on the point as a result, this study aims to address three distinct areas of interest as explained hereunder below as follows,

### **3.1. Personal interest**

The study will contribute to the expansion of my knowledge as well as understanding in the field of succession law on the concerns protection of heirs. The study further presents an opportunity to delve deeper into the intricacies and complexities of this specific area, fostering a comprehensive comprehension of the subject matter.

### **3.2. Social interest**

Socially speaking, this research holds a great significant as it seeks to shed light on challenges face deceased heirs in society regarding property inheritance. This is by examining the issues in relation to heirs' protection as provided and determined by the law, also the study aims to contribute to a broader social discourse on discrimination of deceased heirs. It further seeks to promote inclusivity justice and equal rights between customary rights as well as the rights provided by the succession law, therefore this study has the potential for awareness raising on the right to inherit.

### **3.3. Academic interest**

This research will be undertaken as part of the academic requirements for the completion of a bachelor's degree in law. It should be noted that this research academically will serve as a valuable resource and guide for fellow student studying law, who may find it beneficial for their own research or academic pursuits.

## **4. Delimitation of the study (Scope)**

The research is limited in terms of domain, space, and time. So, this research will emphasize on Rwandan succession laws, at the course of this study, other statutes and legal documents will be referred to but are not considered as part of the scope of this research. In terms of space, this research will be the concerns of national aspects of issues relating to inheritance and succession law. While in time namely, 1902s–2023, because it is said that the term inheritance, started to dominate during the period.

## 5. Problem statement

There are different laws governing inheritance right in Rwanda, the existing laws provides on the rights that deceased heirs born out of wedlock have in relation to property that deceased person left. Article 2 of the Law No. 27/2016 of 08/07/2016 provide on the meaning of rightful heirs to mean that, the surviving spouse and legitimate children.<sup>6</sup> The same law under Article 55,<sup>7</sup> the law stipulate that, one among of the persons eligible for succeed is heir, the law provide also for equal treatment of children in succession particularly under Article 54.<sup>8</sup> Despite Rwandan laws provision on equal inheritance rights to sons and daughters as well as the surviving spouses, the challenge still exist on protection of child born out of wedlock, in case surviving spouses he/she is the one who hold the property in case is married under community of property, this illustrate that surviving spouses must hold the remaining property as stipulated in article 76 item 1° *‘if one of the spouses dies, the surviving spouse is entitled to the entire property and fulfils the duty to take care of their children and that of the legitimate children of the de cujus’*<sup>9</sup>, what if he/she sale it, what is protection of child born out of wedlock? They can’t have access to that property.

Existing laws also are not put into effect but also it is application on the society is quite different as to what is provided in the law due to the existing disputes and challenges facing deceased heirs in the Rwandan society. The law also provides that, there is no legal protection as far as unregistered marriages is on the point hence this also make difficulties on the women left with their husband with unregistered marriage because they don’t have any right to inheritance.

There is problem also to the minor children that have not attained the age of majority, the law provides inter alia that, the inherited property of minor children is kept under appointed guardianship until they reach age of majority, the study finds that, most of the children after attained their age of majority they are not given the right that they are required to get from guardianship.

Despite the existence of legal provisions, the enforcement and application of these laws in society often diverge from their intended purpose due to various disputes and challenges faced by heirs in Rwandan society. Additionally, the law lacks adequate protection for

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<sup>6</sup> ibid, article 2

<sup>7</sup> ibid, article 54

<sup>8</sup> ibid, article 55

<sup>9</sup> idem, article 76

individuals in unregistered marriages, leaving women in such unions without inheritance rights after the death of their spouses.

Furthermore, minor children who have not yet reached the age of majority face significant challenges. Although the law mandates that their inherited property be held under guardianship until they reach adulthood, many children are not granted the rights they are entitled to when they come of age. This study aims to address these discrepancies and highlight the difficulties faced by children born out of wedlock and those from unregistered marriages under the current Rwandan succession law.

## **5. Research questions**

1. To what extent the law protects children born out of wedlock under Rwandan succession law?
2. Which mechanisms can be adopted to protect children of the de cujus born out of wedlock during succession?

## **6. Research hypotheses**

These are the tentative answers to the research-specific objectives which will be verified during the study. Hereunder is the hypothesis accordingly,

1. The Rwandan succession laws do not provide full protection of deceased heirs especially children born out of wedlock.
2. There is a need of amendment of succession law and allow the children of De cujus to have the right to succession of their deceased parent together with the surviving spouse immediately.

## **7. Research objectives**

In this research, there are two types of objectives namely, general and specific objectives.

### **7.1. General objective**

The primary aim of this research is to critically examine Rwandan laws on their adequacy as far as the protection of heirs is concerned.

## **7.2. Specific objectives**

- i. To analyze the extent to which the Rwandan succession law protects the child born out of wedlock.
- ii. To suggest mechanisms meant to protect children born out of wedlock under Rwandan succession law.

## **8. Research Methodology**

Research methodology among other things refers to the systematic way to solve the research problem. It details the research questions the researcher undertakes and the way the researcher interprets the results of these operations in terms of the central problem.<sup>10</sup>

As far as this study is concerned the researcher employed different methods such as documentary techniques, doctrinal, comparative as well as analytical approaches as the research methods.

### **8.1. Research Techniques**

During this study, the following techniques will be used

#### **8.1.1. Documentary techniques**

A documentary technique is a secondary source of data and is defined as the analysis of documents which include any written material that contains information about documents relating to this research. Therefore, in this research, I use to read books, journals, dissertations as well as law documents.

### **8.2. Research Methods**

During this study, the following methods will be used

#### **8.2.1. Doctrinal method**

Doctrinal legal research methodology generally focuses on the letter of the law rather the law in action. As far as this method is on the point, the researcher composes a descriptive and detailed analysis of legal rules found in primary sources that is cases, statutes, or

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<sup>10</sup> kothari, c.r. (2004) research methodology: methods and techniques, 2<sup>nd</sup> edition, new age international publisher, new delhi, page. 8.



regulations.<sup>11</sup> The purpose of this method is to gather, organize and describe the law, provide commentary on the sources used, then, identify and describe the underlying theme or system and how each source of law is connected.

The explained method that the research uses it of great important as because it helps to identifies different ambiguities as well as criticism of succession law as far as the issue of right to inherit deceased properties is concerned and offer solutions to the existing problem. Sources of data as in doctrinal research include inter alia that, commentaries, literature on the study as well as cases.

### **8.2.2. Analytical method**

Analytical method provides on the critical and logical analysis as far as the concept of a given subject area is concerned. It is therefore giving a critical appraisal or evaluation of a given concept with a view to evaluate, understand and proffer solution to the problem, the method enables us to evaluate and understand the identified problems with the aim of suggesting solutions in this research.

### **8.2.3. Comparative method**

It is defined as the critical analysis of different bodies of law to examine how the outcome of a legal issue could be different under each set of laws. I make comparison between different international laws on how they address the concept of a deceased heir's protection.

The comparative approach is of great importance because will allow us to identify the benefits of comparing from different jurisdictions as well as periods. Accordingly, the comparative method will help to better understanding our home jurisdiction by analyzing how other jurisdictions handle the same issue of children born out of wedlock

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<sup>11</sup> vijay m. g (2017), doctrinal legal research method: a guiding principles in reforming the law and legal system towards the research development. international journal of law, 3(5), 128

## **9. Subdivision of the study**

The study comprises three chapters, specifically providing the general introduction of the study, that is background of the study, problem statement, research questions, hypothesis of the study, objectives, choice and interest of the study, significances, limitation of the study, research methodology and organization of the study. Chapter One reflects on the review of different literature concerning the study that is theoretical literature, research gaps identification, conceptual framework and summary, Chapter two provides challenges of succession of children born out of wedlock and on the protection of deceased heirs as addressed at international levels, and protection of deceased heirs under Rwandan laws as far as chapter three is concerned to mechanisms for addressing the issue of succession of children born out of wedlock as well as general conclusion and recommendations.

## **CHAPTER I: CONCEPTUAL AND THEORETICAL FRAMEWORK**

This chapter lays the foundation for the critical analysis by defining key terms and exploring relevant theoretical approaches. It will also provide an overview of the legal principles of succession, highlighting the norms governing inheritance rights. By establishing this conceptual and theoretical framework, the chapter aims to equip the study with the necessary tools to evaluate whether Rwandan succession law effectively protects children born out of wedlock and ensures their rights without discrimination.

### **1.1. Conceptual framework**

The clarifications and definitions in each research are of great importance so, in this part we want to emphasize on general terms which was used in this field of law related to the research topic.

#### **1.1.1. Marriage**

This is a legally and socially sanctioned union, usually between a man and a woman, that is regulated by laws, rules, customs, beliefs, and attitudes that prescribe the rights and duties of the partners and accords status to their offspring (if any). The universality of marriage within different societies and cultures is attributed to the many basic social and personal functions for which it provides structure, such as sexual gratification and regulation, division of labour between the sexes, economic production and consumption, and satisfaction of personal needs for affection, status, and companionship. Perhaps its strongest function concerns procreation, the care of children and their education and socialization, and regulation of lines of descent.<sup>12</sup>

Marriage confers various rights and responsibilities to the partners involved. These legal aspects encompass issues such as property rights, inheritance, spousal support, and the right to make medical and financial decisions for one another. Beyond the legal framework, marriage holds immense social significance, providing a stable foundation for families, emotional support, and a context for the upbringing of children.<sup>13</sup>

In conclusion, marriage stands as a multifaceted institution that transcends cultural, legal, and historical boundaries. Its enduring presence in societies worldwide underscores its

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<sup>12</sup> marriage in britannica, available on <https://www.britannica.com/topic/marriage>, accessed on 04/01/2024.

<sup>13</sup> becker, gary s. "a theory of marriage: part ii." *journal of political economy* 1974,33

fundamental role in shaping familial structures and providing a framework for interpersonal relationships. As societal norms continue to evolve, the institution of marriage adapts, reflecting the complex interplay between tradition, individual choice, and the pursuit of enduring partnerships. Understanding the diverse facets of marriage is essential for navigating its complexities and appreciating its enduring significance in the fabric of human societies.

### **1.1.2. Succession**

Succession, in legal terms, refers to the process through which the rights and obligations of a deceased person are transferred to their heirs or beneficiaries. This process involves the distribution of the deceased's estate, including property, debts, and any other legal rights or responsibilities, to those who are legally entitled to receive them. The concept of succession is fundamental in ensuring that the assets and liabilities of an individual are appropriately managed and distributed after their death, thereby providing a structured and orderly transition of ownership and responsibility.<sup>14</sup>

There are generally two types of succession: testate and intestate. Testate succession occurs when a person dies having left a valid will. In such cases, the distribution of the estate is carried out according to the wishes expressed in the will, provided it complies with legal requirements. The will typically appoints an executor, who is responsible for managing the estate and ensuring that the deceased's wishes are fulfilled. Testate succession allows individuals to have control over the disposition of their assets, providing an opportunity to support loved ones, make charitable donations, and specify legacies.

Intestate succession, on the other hand, occurs when a person dies without leaving a valid will. In this scenario, the distribution of the estate is governed by the laws of intestacy, which vary from one jurisdiction to another. These laws establish a hierarchy of beneficiaries, typically prioritizing close family members such as spouses, children, and parents. The primary aim of intestate succession laws is to ensure a fair and predictable distribution of the deceased's estate, reflecting societal norms about family relationships and dependency.<sup>15</sup>

In conclusion, succession is a critical legal process that ensures the orderly transfer of a deceased person's rights and obligations to their heirs or beneficiaries. It encompasses both

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<sup>14</sup> pickett, s. "models, mechanisms and pathways of succession." *the botanical review* 1987, 335-371.

<sup>15</sup> article 72 and 73 of the law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions

testate and intestate succession, governed by specific legal principles and procedures. By providing a structured approach to inheritance, succession law plays a vital role in upholding justice, fairness, and the protection of vulnerable individuals within society.

### **1.1.3. Discrimination**

All Rwandan are protected equally on right to property before legal framework especially under constitution law of Rwandan Republic, but in succession law, there is many lacuna particularly in protection of the child born out of wedlock in relation to surviving spouse and their child, that why child born have to be protected, in fact in many international succession law, books and general principle of law, child born out of wedlock are well protected, that's why we need such protection under Rwandan succession law, this law bring a full legal right to surviving spouse to be the owner of all property without protection for those child born out of wedlock<sup>16</sup>;

### **1.1.4. De Cujus**

This is a Latin term which means the deceased. In fact, *Dead* and *deceased* both mean “no longer living,” but *deceased* is a gentler term, and people often use it when the person who died was close to them or when they are talking to someone who knew the person who died.<sup>17</sup>

*De Cujus* refers to the deceased person whose estate is subject to distribution among heirs during the succession process. It serves as the legal starting point for identifying the beneficiaries, determining the legitimate heirs, and establishing the parameters for the division of assets. The concept is foundational in succession law, providing a legal identity to the individual whose wishes and intentions guide the execution of the estate.<sup>18</sup>

The significance of "*De Cujus*" extends to testamentary intent, where the deceased individual's will or testament articulates their desires regarding the distribution of assets. The legal frameworks surrounding succession rely on the identification of the "*De Cujus*" to interpret and execute these testamentary directives. Understanding the deceased's legal

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<sup>16</sup> Art 16 of The constitution of the Republic of Rwanda

<sup>17</sup> deceased in britannica , available on <https://www.britannica.com/dictionary/deceased>, accessed on 05/01/2024.

<sup>18</sup> garth jones and john t. rowland , *the law of succession*, oxford university press, oxford 2020, pp. 10-15.

persona becomes crucial in ensuring the fulfillment of their wishes within the bounds of applicable laws.<sup>19</sup>

In conclusion, the legal concept of "*De Cujus*" stands as a cornerstone in succession law, representing the deceased individual whose estate is subject to distribution among heirs. Understanding the role of "*De Cujus*" is fundamental for legal practitioners, heirs, and those involved in the execution of successions. It provides a legal identity to the deceased, shaping the framework for the fulfillment of testamentary intent and ensuring an equitable and legally sound distribution of assets in accordance with the deceased's wishes.

#### **1.1.4. Polygamy**

Polygamy is a marital arrangement in which an individual has more than one spouse simultaneously. It can take different forms, such as polygyny and polyandry. Polygamy is the custom in some societies in which someone can be legally married to more than one person at the same time.<sup>20</sup>

Polygyny is the most common form of polygamy, where a man is married to multiple wives at the same time. Each wife typically has her own separate household, and the relationships are recognized as legal marriages.<sup>21</sup>

Polyandry: This is a less common form where a woman is married to multiple husbands simultaneously. Similarly, each husband may have his own separate household, and these relationships are recognized as legal marriages.

Polygamy is practiced for various reasons, including cultural, religious, social, or economic factors. Different societies and legal systems have diverse perspectives and regulations regarding the practice of polygamy. It contrasts with monogamy, where an individual has only one spouse at a time.

#### **1.1.5. Concubinage**

This is the situation by which a man and a woman may live together like husband and wife while the marital union was not celebrated. It is a cohabitation without legal marriage.<sup>22</sup> The

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<sup>19</sup> *ibid.*

<sup>20</sup> polygamy in collins available on <https://www.collinsdictionary.com/>, accessed on 12/12/2023.

<sup>21</sup> <https://www.britannica.com/topic/polygamy-marriage> accessed on 12/12/2023

<sup>22</sup> massoda armel Joris, *concubinage under Cameroonian family law*, available on [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3997008](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3997008), accessed on 19/07/2023.

law n°59/2008 of 10/09/2008 on prevention and punishment of gender- based violence define concubinage as the fact that two people live permanently as if they were spouses though they are not married while one of them is legally married.<sup>23</sup>

In fact, Concubinage refers to a domestic partnership or cohabitation between individuals who live together and engage in an intimate relationship without formalizing their union through legal marriage. Unlike polygamy, which involves multiple spouses in recognized marriages, concubinage typically implies a less formal or legally recognized arrangement. Concubinage involves a relationship that lacks the legal or formal recognition associated with marriage. Individuals in a concubinage arrangement may live together as a couple but without the legal obligations and rights conferred by marriage.<sup>24</sup>

Individuals in a concubinage relationship share an intimate and companionship bond similar to that of a married couple. They may cohabit, share responsibilities, and engage in a long-term committed relationship. Unlike spouses in a legal marriage, individuals in concubinage do not have the same legal rights and obligations. There may be no formalized contract or ceremony establishing their union under the law.<sup>25</sup>

Concubinage is a culturally and historically varied concept, and its societal acceptance and legal implications differ across cultures and jurisdictions. In some places, it may be recognized or regulated by law, while in others, it may not have legal standing. The status and rights of individuals in concubinage often depend on local legal frameworks and cultural norms. Note that any person guilty of concubinage is punishable under Rwandan laws.<sup>26</sup>

### **1.1.6. Cohabitation or consensual union**

Cohabitation, often referred to as consensual union or domestic partnership, represents a modern living arrangement where unmarried individuals choose to share a common residence and engage in a domestic life without undergoing a formal marriage ceremony. Unlike historical notions of concubinage, cohabitation is a more contemporary term that reflects evolving societal attitudes toward relationships and marriage.<sup>27</sup>

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<sup>23</sup> art 2 of the law n°59/2008 of 10/09/2008 on prevention and punishment of gender- based violence.

<sup>24</sup> <https://www.oxfordlearnersdictionaries.com/definition/english/concubine> accessed on 24/11/2023

<sup>25</sup> *ibid.*

<sup>26</sup> *id.*, 21.

<sup>27</sup> *cohabitation* in encyclopedia of gerontology and population aging pp 1–8, available on [https://link.springer.com/referenceworkentry/10.1007/978-3-319-69892-2\\_313-1](https://link.springer.com/referenceworkentry/10.1007/978-3-319-69892-2_313-1), accessed on 10/07/2024.

One prominent feature of cohabitation is the mutual residence of unmarried partners who share a domestic setting similar to that of a married couple. This arrangement typically involves individuals in a romantic or intimate relationship, though the decision to cohabit does not necessarily imply a commitment to marriage. Cohabiting couples engage in an informal union, living together for reasons ranging from testing compatibility and economic considerations to personal preferences.<sup>28</sup>

The legal status of cohabitation varies widely across jurisdictions. In some regions, common-law marriage laws may confer certain rights to cohabiting couples, recognizing the relationship as akin to a legal marriage. However, in other places, there may be no formal legal recognition of cohabitation and the rights and responsibilities of partners may differ significantly from those of married couples. The evolving nature of legal frameworks and societal attitudes contributes to the diverse landscape of cohabitation.

Cohabitation has become an increasingly common living arrangement in many societies, reflecting changing perspectives on marriage and family structures. Couples may choose cohabitation as a precursor to marriage, as a long-term alternative to formal marriage, or as a means of enjoying companionship without the legal constraints of marriage. This contemporary significance underscores the fluidity of relationship dynamics in today's diverse and evolving social landscape.<sup>29</sup>

In conclusion, cohabitation represents a dynamic and contemporary approach to domestic partnerships. Uniting individuals in romantic relationships within a shared living space, cohabitation offers a flexible alternative to traditional marriage. The legal and social implications of cohabitation vary widely, and the significance of this living arrangement continues to evolve in response to shifting societal norms and individual preferences.

### **1.1.7 Wedlock and children born out of wedlock**

Wedlock, commonly known as marriage, is the legally or socially recognized union between two individuals, establishing a framework of mutual rights and obligations. This union is formalized through legal registration or ceremonial events, which confer upon the couple various benefits such as property rights, inheritance rights, financial support, and parental

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<sup>28</sup> Katherine Newman and David B. Grossman, *Cohabitation*, Basic Books, New York 2002 pp. 1-18

<sup>29</sup> Linda J. Waite, *Cohabitation: Unmarried Couples and Our Children*, The Guilford Press, New York 2000, 97.



responsibilities. Marriage forms the bedrock of family structures in many societies, providing stability and a recognized framework for raising children.<sup>30</sup>

Children born out of wedlock, also referred to as illegitimate or non-marital children, are those whose parents are not legally married at the time of their birth. Historically, these children have faced numerous challenges and discrimination due to their birth status. The legal implications for non-marital children can be significant, particularly concerning inheritance rights and parental responsibilities. Traditionally, such children have had limited rights to inherit property from their parents, especially their fathers, unless legal paternity is established. However, modern legal reforms in many jurisdictions have aimed to eliminate these disparities, ensuring that children born out of wedlock have the same inheritance rights as those born within marriage.<sup>31</sup>

Establishing parental rights and responsibilities can be more complex for children born out of wedlock. Legal recognition of paternity often requires voluntary acknowledgment or court proceedings. This legal recognition is crucial for securing child support, custody, and visitation rights, ensuring that the child receives adequate support from both parents. Additionally, in some regions, access to social security benefits, health insurance, and other entitlements may be linked to the legal recognition of the child's parents, further complicating the situation for non-marital children.<sup>32</sup>

In conclusion, wedlock, or marriage, is a significant institution with profound legal and social implications. Children born out of wedlock, who have historically faced discrimination, are increasingly being recognized and protected under modern legal frameworks. These evolving legal and social perspectives aim to ensure that all children, irrespective of their birth status, enjoy equal rights and opportunities, reflecting a broader commitment to justice and equality.

### **1.1.8. Legacy**

A legacy is a donation made in the form of will, the full ownership of which is acquired by the legatee only after the death of the testator. A legacy, in its essence, is a profound testament to an individual's desire to extend their influence beyond the constraints of mortality. This unique form of donation, made through a will, bestows upon the legatee the

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<sup>30</sup> <https://www.journals.uchicago.edu/doi/abs/10.1086/250103> accessed on 12 July 2024

<sup>31</sup> gibson-davis, christina. "magic moment? maternal marriage for children born out of wedlock." *demography* 2014, 1345-1356.

<sup>32</sup> *ibidem*

full ownership of assets only after the demise of the testator. The concept of legacies transcends the mere transfer of material wealth; it is a manifestation of values, aspirations, and the enduring impact one seeks to leave on the world.<sup>33</sup>

A legacy, as a legal instrument, finds its roots in the testamentary intent of an individual. The testator, fully aware of their impending mortality, drafts a will to outline the distribution of their estate. This document serves as a roadmap for the disposition of assets, ensuring that the testator's wishes are honored posthumously.<sup>34</sup>

While legacies often involve the transfer of material wealth, such as property, money, or possessions, their significance extends beyond the tangible. Material inheritance, though a crucial component, is but a facet of the broader legacy. The allocation of assets reflects the testator's values, priorities, and the relationships they hold dear.

Legacies are not confined to the realm of material possessions; they can also encompass cultural and educational contributions. Endowments, scholarships, or donations to cultural institutions are examples of legacies that transcend the boundaries of personal wealth. These contributions serve to enrich the intellectual and cultural fabric of society, ensuring a lasting impact.<sup>35</sup>

A legacy can be a powerful tool for philanthropy and social change. Testators may choose to allocate a portion of their estate to charitable organizations, thereby supporting causes they hold dear. This form of legacy is a testament to the individual's commitment to making a positive impact on the world, fostering a sense of responsibility that extends beyond their lifetime.

A legacy represents more than a mere transfer of material wealth; it is a multifaceted expression of an individual's values, aspirations, and desire for lasting impact. The legal framework of legacies ensures that the testator's wishes are honored, while the diverse forms of inheritance be they material, cultural, educational, or philanthropic, contribute to a rich tapestry of human interconnectedness. As individuals contemplate the legacy they wish to leave, they engage in a profound act of self-reflection, considering the enduring impact they can have on the world long after they have departed.

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<sup>33</sup> article 39 of law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions.

<sup>34</sup> *ibid.*

<sup>35</sup> <https://dictionary.cambridge.org/us/dictionary/english/legacy> accessed on 05/01/2024

### 1.1.9. Donation

A donation is a gift usually one of a charitable nature. A donation is a voluntary transfer of property (often money) from the transferor (donor) to the transferee (donee) with no exchange of value (consideration) on the part of the recipient (donee). The recipient gives nothing in exchange for the donated property. When a donor knowingly, intentionally, and unconditionally conveys property (or a symbol of the intended property) to a donee, the donation goes into effect and becomes irrevocable upon the donee's acceptance thereof.<sup>36</sup>

In the realm of charitable giving and benevolence, the term "donation" holds a distinct legal significance, embodying the voluntary transfer of property, often in the form of money, from a donor to a donee. Unlike transactions involving consideration, donations are characterized by the absence of an exchange of value on the part of the recipient. This essay seeks to unravel the intricacies of donations, emphasizing the voluntariness, intentionality, and irrevocability that define this act of generosity.<sup>37</sup>

A donation, fundamentally, is a gift bestowed with a charitable nature. It encapsulates the intentional and voluntary transfer of property, typically money, from a donor to a donee. This act is distinguished by its altruistic nature, as the recipient, or donee provides nothing in return for the donated property. The essence of a donation lies in the selfless intention of the donor to contribute to a cause or benefit the donee without expecting material gain in return.<sup>38</sup>

Crucial to the concept of a donation is the voluntariness and intentionality with which the transfer of property occurs. For a donation to take effect, the donor must knowingly, intentionally, and unconditionally convey the property or its symbolic representation to the donee. This deliberate act underscores the altruistic motive behind donations, emphasizing the freedom of choice and the absence of external pressures in the giving process.

Once a donation is made, its legal character becomes irrevocable upon the donee's acceptance. This transformative moment solidifies the act of generosity, rendering the donation binding and irreversible. The irrevocability of the donation serves as a legal safeguard, ensuring that the benefactor's wishes are honored and the donated property is dedicated to its intended purpose without the possibility of retrieval.

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<sup>36</sup> donation in legal information institute, available on <https://www.law.cornell.edu/wex/donation>, accessed 04/01/2024.

<sup>37</sup> article 27 of law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions

<sup>38</sup> *ibid.*

Beyond the altruistic motivations, donations carry legal implications that regulate the transfer of property. Understanding the legal dynamics of donations is essential for both donors and donees to navigate the complexities of charitable giving. Additionally, the philanthropic impact of donations reverberates through society, contributing to various causes, initiatives, and charitable organizations that rely on the generosity of individuals to effect positive change.

In conclusion, the concept of donations encapsulates a selfless and voluntary act of giving, defined by the absence of consideration and the altruistic intentions of the donor. The legal framework surrounding donations underscores the importance of voluntariness, intentionality, and the irrevocability of the transfer. As a driving force for positive societal impact, donations play a pivotal role in fostering benevolence, supporting charitable causes, and contributing to the betterment of communities and the world at large.

## **1.2. Theoretical Framework**

Prior to 2016, the prevailing legislation exclusively favored a surviving spouse with offspring from the deceased. Presently, amendments have been made to the law, allowing the surviving spouse to inherit the De cujus's property based on the specific matrimonial regime chosen by the contracting parties.

### **1.2.1. History of succession under Rwandan laws**

The history of Rwandan laws on succession is deeply intertwined with the country's social, cultural, and political evolution. Prior to the colonial era, Rwanda operated under a customary legal system that governed various aspects of life, including inheritance and succession. The customary laws were orally transmitted and were deeply rooted in Rwandan culture and traditions.

#### **1.2.1. Succession during Rwanda Pre-Colonial Era**

The precolonial era in Rwanda was characterized by a rich tapestry of customary practices that governed various aspects of life, including the intricate nuances of succession. Rooted in traditions passed down orally through generations, these customary laws shaped the social fabric of Rwandan society. This part of the study seeks to elaborate on the complexities of

succession during this period, exploring the customs, lineage systems, and external influences that defined the inheritance landscape.<sup>39</sup>

Pre-colonial Rwanda was marked by a mosaic of customary practices, each unique to different clans and regions. Descent and inheritance followed distinct patrilineal or matrilineal lineages, intricately woven into the social fabric. Primogeniture, the practice of the eldest son inheriting the majority of the estate, was prevalent in some regions. However, the diversity of practices was evident, with ultimogeniture (youngest inheriting) and equal distribution among children emerging as alternative patterns.<sup>40</sup>

Women played pivotal roles in Rwandan society, yet their inheritance rights were nuanced and contingent on specific customs. In some instances, women could not inherit land and property, underscoring a recognition of their contribution to familial and societal dynamics. However, the extent of their inheritance was not universal, varying across regions and subject to control by male relatives. The intricate dance between gender roles and inheritance practices added layers of complexity to the precolonial succession landscape.

While customary laws formed the bedrock of succession practices, external influences exerted subtle impacts. The *Bami* or kings of Rwanda, wielded considerable influence, shaping succession practices in specific areas. Interactions with neighboring kingdoms and the gradual arrival of Europeans introduced foreign legal elements. However, the degree of influence from external sources on succession practices before colonization remains a subject of debate, with the prevailing view suggesting a limited impact during this era.

In conclusion, precolonial succession in Rwanda was a tapestry woven with the threads of customary practices, lineage systems, and external influences. The diversity of inheritance customs, the role of lineage in determining familial legacy, and the subtle interplay of external factors created a complex mosaic that defined the precolonial era. Understanding these dynamics provides a nuanced perspective on the historical roots of Rwandan succession practices, offering insights into the intricate web that shaped familial legacies in times gone by.

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<sup>39</sup> richards, a. i., *rwanda: ethnographic survey* (vol. 2), cambridge university press 1964 available online at [early rwanda history: the contribution of comparative ethnography | history in africa | cambridge core](#) accessed on 12/07/2024.

<sup>40</sup> *ibid.*

### 1.2.2. Succession during the colonial period

The colonial period in Rwanda ushered in a transformative chapter, reshaping the traditional fabric of Rwandan society, including the intricate domain of succession. European powers, particularly Belgium, played a pivotal role in introducing legal frameworks that intersected with and, at times, clashed with existing customary practices. This essay aims to explore the contours of succession during the colonial era, shedding light on the laws that governed this critical aspect of Rwandan life. They initiated a civil code to govern all aspects of civil laws.<sup>41</sup>

Colonial powers, notably Belgium, sought to impose their legal structures on Rwandan society, leading to a complex interplay between colonial laws and existing customary practices. European legal concepts, such as primogeniture and individual land ownership, were introduced, challenging the established norms of inheritance within clans and lineages. The imposition of these foreign legal frameworks created tensions within Rwandan communities, as traditional practices collided with the colonial legal apparatus.<sup>42</sup>

During the colonial era, efforts were made to codify laws that would govern various aspects of Rwandan life, including succession. The colonial authorities introduced legal instruments that aimed to standardize and regulate inheritance practices. These legal codes, often influenced by European civil law traditions, were instrumental in shaping the landscape of succession. The legal codification brought about a formalization of rules and procedures, impacting the traditional fluidity of succession practices.

The introduction of colonial laws had a divisive impact on Rwandan society. While some embraced the changes as a symbol of modernization and progress, others resisted, viewing the foreign legal impositions as a threat to their cultural heritage. The tensions between colonial laws and customary practices sowed seeds of discord that would resonate long after the colonial period.<sup>43</sup>

In conclusion, the colonial era in Rwanda left an indelible mark on the landscape of succession. The imposition of European legal frameworks disrupted longstanding customary practices, introducing a formalized system that sought to regulate inheritance. The tension between colonial laws and traditional customs created a complex and at times contentious

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<sup>41</sup> civil code book five

<sup>42</sup> christopher c. taylor, *colonial justice in rwanda: the politics of rights and recognition 1907-1962*, palgrave macmillan, new york 2010.

<sup>43</sup> *ibid.*

environment, laying the foundation for subsequent legal developments in independent Rwanda. Understanding the nuances of succession during this pivotal period is crucial for unravelling the layers of Rwanda's legal history and the enduring legacy of colonial influences on its legal landscape.

### **1.2.3. Post-Independence Reforms**

After gaining independence in 1962, Rwanda continued to grapple with legal reforms to reconcile traditional customs with modern legal principles. The post-independence period witnessed efforts to formalize and codify succession laws, drawing from both customary practices and Western legal norms. In 1999 the first Rwandan law to govern succession was enacted.<sup>44</sup>

One of the significant milestones in the evolution of Rwandan succession laws occurred with the enactment of law no 22/99 law to supplement the civil code and to institute part five regarding matrimonial regimes, liberalities and donations. This legal reform aimed to modernize and harmonize various aspects of civil law, including succession. The new legal framework sought to address issues of gender inequality in inheritance by introducing provisions that acknowledged the rights of both male and female heirs.<sup>45</sup>

The legislative journey begins with Law no 22/99 of 11/12/1999, a landmark piece of legislation that aimed to supplement the civil code and address various aspects of matrimonial regimes, liberalities, and donations. However, as societal perspectives evolved, particularly in the pursuit of gender equality, it became apparent that additional legal adjustments were required to ensure fairness in the succession process.

In response to the imperative of fostering gender equality, Law n°27/2016 emerged as a transformative piece of legislation governing matrimonial regimes, donations, and successions. Enacted on 08/07/2016, this law represents a paradigm shift in Rwandan succession dynamics. Its overarching goal is to rectify historical imbalances, particularly in the realm of inheritance, by dismantling gender-based barriers that perpetuated unequal succession rights between male and female heirs.<sup>46</sup>

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<sup>44</sup> law no 22/99 of 11/12/1999 law to supplement the civil code and to institute part five regarding matrimonial regimes, liberalities and donations.

<sup>45</sup> *ibid.*

<sup>46</sup> law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions

One of the central pillars of Law n°27/2016 is the commitment to ensuring equal succession rights between boys and girls. By doing so, the legislation not only aligns with the broader global movement toward gender equality but also addresses deeply rooted cultural norms that may have perpetuated discriminatory inheritance practices. This legal shift is not merely symbolic; it embodies a tangible commitment to reshaping societal perceptions and dismantling gender-based barriers within the succession framework.

Beyond succession, Law n°27/2016 also governs matrimonial regimes and donations. The legislation introduces a comprehensive framework that considers the rights and responsibilities of parties involved in these legal processes. By addressing various aspects of family law, the law seeks to create a more inclusive and equitable legal environment that reflects the evolving societal values of contemporary Rwanda.

In conclusion, the recent legislative developments in Rwanda, marked by the repeal of Law no 22/99 and the enactment of Law n°27/2016, signify a progressive shift in the legal landscape governing succession. This legal evolution is not a mere exercise in statutory revision but a deliberate stride toward gender equality, challenging ingrained norms and ensuring that both male and female heirs enjoy equal rights in the inheritance of familial legacies. As Rwanda continues to navigate its legal journey, these legislative changes stand as a testament to the nation's commitment to fostering justice, equality, and inclusivity in its evolving legal framework.

#### **1.2.4. Succession in recent laws**

In recent years, Rwanda has been proactive in addressing gender disparities within its legal framework. The government has implemented legal reforms to promote gender equality, and this includes aspects of inheritance and succession. Efforts have been made to ensure that daughters have equal rights to inherit family property alongside their male counterparts.<sup>47</sup>

Rwanda continues to evolve its legal framework, including laws related to succession. The legal system aims to strike a balance between traditional customs, which still hold significance in Rwandan society, and contemporary legal principles that emphasize equality and justice.

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<sup>47</sup> *ibid.*



### 1.2.5. Gender Based Violence

This is any act that results in a bodily, psychological, sexual and economic harm to somebody just because they are female or male. Such act results in the deprivation of freedom and negative consequences. This violence may be exercised within or outside households them.<sup>48</sup>

Gender-based violence (GBV) is a serious violation of human rights and a life-threatening health and protection issue. When people flee their homes, they are often at greater risk of physical, sexual and psychological violence, such as rape, sexual abuse, trafficking and forced prostitution. The consequences of gender-based violence are devastating and can have life-long repercussions for survivors. It can even lead to death.<sup>49</sup>

At its core, gender-based violence is deeply intertwined with power dynamics that favor one gender over another. It is often rooted in entrenched societal norms, stereotypes, and patriarchal structures that perpetuate inequality. The imbalance of power between genders creates an environment where individuals feel justified in exerting control over others, leading to various forms of violence. Structural factors, such as discriminatory laws, economic disparities, and unequal access to education, further contribute to the prevalence of GBV.<sup>50</sup>

The impacts of gender-based violence are profound and extend beyond the immediate victims. Individuals who experience GBV may suffer physical injuries, psychological trauma, and long-term emotional scars. The fear of violence can limit individuals' freedom and opportunities, hindering their ability to fully participate in society. Moreover, the broader societal consequences include reinforcing gender inequalities, perpetuating cycles of violence across generations, and impeding overall social and economic development.<sup>51</sup>

Efforts to combat gender-based violence require a multi-faceted approach that addresses its root causes, challenges societal norms, and provides support for survivors. Legislative measures, such as criminalizing acts of GBV, are crucial, but so is fostering societal awareness, challenging harmful stereotypes, and promoting education that dismantles gender biases. Support services, including counseling, shelters, and legal aid, play a vital role in assisting survivors and holding perpetrators accountable.

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<sup>48</sup> law n°59/2008 of 10/09/2008 on prevention and punishment of gender- based violence, art 2.

<sup>49</sup> *gender-based violence*, in unhcr available at unhcr, the un refugee agency | unhcr, accessed on 18/09/2023.

<sup>50</sup> <https://www.who.int/health-topics/violence-against-women> accessed on 12 december 2023.

<sup>51</sup> *ibid*

In conclusion, gender-based violence is a pervasive issue with deep-seated roots in societal structures and power imbalances. Recognizing and understanding the various forms of GBV is essential to developing effective strategies for prevention and intervention. As societies evolve, addressing gender-based violence requires not only legislative measures but also a fundamental shift in cultural norms and attitudes to create a world where individuals are free from violence based on their gender.

### **1.2.6. Theoretical Approaches to Non-Discrimination for Children Born Out of Wedlock in Succession Law**

Considering the rights of children born out of wedlock in the context of succession law, particularly when a deceased parent has adopted a community of property regime, various theoretical approaches to non-discrimination become essential. These approaches offer frameworks for ensuring that all children, regardless of their birth status, are treated equitably in the inheritance process.

#### **1.2.6.1. Equality Theory**

Equality theory posits that all individuals should have equal rights and opportunities under the law, without discrimination based on arbitrary characteristics such as birth status. In the context of succession law, this theory would argue that children born out of wedlock should have the same inheritance rights as those born within marriage. When a deceased parent has properties to be inherited, equality theory supports the notion that all offspring, regardless of their birth status, should be entitled to a fair share of the estate. This approach challenges any legal provisions that prioritize the surviving spouse exclusively, advocating instead for the inclusion of all children in the succession process.<sup>52</sup>

#### **1.2.6.2. Human Rights Approach**

The human rights approach is grounded in the principles articulated in international human rights instruments, such as the United Nations Convention on the Rights of the Child (UNCRC). This convention emphasizes that children should not face discrimination on any grounds, including birth status. Under this approach, the law must ensure that children born out of wedlock are not deprived of their right to inherit from their deceased parent. The

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<sup>52</sup> morand, david a., *equality theory as a counterbalance to equity theory in human resource management*, journal of business ethics 111 (2012): 133-144.

community of property regime, which may prioritize the surviving spouse, must be balanced against the fundamental human rights of all children to receive an inheritance and enjoy economic security following the death of a parent.<sup>53</sup>

### **1.2.6.3. Best Interests of the Child Principle**

Rooted in both domestic and international legal frameworks, the best interests of the child principle mandates that any decision affecting a child must prioritize their overall well-being and future prospects. Applying this principle to succession law means ensuring that children born out of wedlock are not unjustly excluded from inheriting their deceased parent's property. The surviving spouse's rights should be balanced with the children's needs and entitlements, ensuring that the children's best interests are served by providing them with a share of the inheritance, which can be crucial for their development and stability.<sup>54</sup>

### **1.2.6.4. Social Justice Theory**

Social justice theory advocates for the fair distribution of resources and opportunities within society, aiming to rectify historical and systemic inequalities. In the context of succession law, this theory supports the idea that children born out of wedlock, who may have been marginalized or discriminated against, should be given equal inheritance rights to promote fairness and equity. This approach would critique any legal framework that disproportionately benefits the surviving spouse at the expense of the children, emphasizing the need for a more balanced and just allocation of the deceased's estate.<sup>55</sup>

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<sup>53</sup> johari, ridhima, *state responsibility as respects human rights' violation amidst succession*, *ejil* 1996, 469

<sup>54</sup> eekelaar, john. "the role of the best interests principle in decisions affecting children and decisions about children." *the international journal of children's rights* 23.1 (2015): 3-26.

<sup>55</sup> bogotch, ira e. *educational leadership and social justice, theory into practice*. 2000, 56.

## **CHAPTER II: CHALLENGES OF SUCCESSION OF CHILDREN BORN OUT OF WEDLOCK UNDER RWANDAN LAW**

This chapter deals with the challenges faced by children born out of wedlock in inheriting from their deceased parents. It explores the legal, social, and cultural barriers that impede their rightful claims to succession. Despite modern legal reforms aimed at promoting equality, many jurisdictions still harbor laws and practices that prioritize marital children and surviving spouses, often to the detriment of non-marital children. These legal challenges are compounded by social stigmas and cultural norms that marginalize children born out of wedlock, further undermining their rights and opportunities. The chapter examines how these obstacles affect the well-being and equality of these children, highlighting the urgent need for more inclusive and equitable legal frameworks.

### **2.1. Legal Challenges Faced by Children Born Out of Wedlock in Succession**

The issue of succession for children born out of wedlock presents a complex legal and social challenge, especially in jurisdictions where succession laws favor the surviving spouse to the exclusion of non-marital children. When the deceased has adopted a community of property regime, and the law dictates that the surviving spouse inherits the entire property, these children face significant obstacles. These challenges can be categorized into legal, social, and practical dimensions, each with profound implications for the rights and well-being of these children.<sup>56</sup>

#### **2.1.1. Legal Exclusion from Immediate Inheritance**

Under the community of property regime, the legal structure designates the surviving spouse as the sole immediate inheritor of the deceased's estate, creating a significant challenge for children born out of wedlock. This regime often results in the exclusion of these children from inheriting directly upon the death of their parent, deferring their rights to inherit until the death of the surviving spouse. This legal framework, while designed to provide financial security to the surviving spouse, introduces a range of issues that affect the immediate and future well-being of children born out of wedlock.<sup>57</sup>

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<sup>56</sup> see article 76 of the law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions.

<sup>57</sup> kreiczler-levy, *inheritance legal systems and the intergenerational bond*, *real prop. tr. & est. lj* 46 2011, 495.

### **2.1.1.1. Immediate Financial Impact**

The most direct consequence of this exclusion is the immediate financial disadvantage faced by children born out of wedlock. Inheriting only after the surviving spouse's death means these children do not have access to assets or financial support that could be crucial for their immediate needs. For instance, the death of a parent often leaves behind financial obligations such as education fees, medical expenses, and general living costs. Without direct access to their inheritance, these children might struggle to meet these financial demands, potentially impacting their quality of life and long-term stability.<sup>58</sup>

Moreover, the immediate financial strain can force these children to seek alternative sources of support, such as relying on public assistance or other family members who may not be able to provide adequate help. This dependency can further marginalize them and delay their ability to achieve financial independence.

### **2.1.1.2. Risk of Asset Mismanagement**

The deferral of inheritance rights until the death of the surviving spouse introduces the risk of asset mismanagement. When the surviving spouse inherits the entire estate, there is no immediate legal mechanism to ensure that the assets are managed in a way that preserves their value for the eventual heirs. This risk is particularly concerning if the surviving spouse lacks financial expertise or has a personal interest in depleting the estate.<sup>59</sup>

For example, the surviving spouse might sell valuable property or invest funds in a manner that benefits them personally, thereby diminishing the estate's value. In cases where the surviving spouse is financially irresponsible or deliberately chooses to mismanage the assets, the children born out of wedlock may find that their inheritance is significantly reduced or even entirely depleted by the time they are entitled to it. This mismanagement undermines the financial security and future prospects of these children.

### **2.1.1.3. Procedural and Legal Complexities**

The delay in succession also creates procedural and legal complexities for children born out of wedlock. To claim their inheritance after the surviving spouse's death, these children must navigate a potentially convoluted legal process, which can be both time-consuming and

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<sup>58</sup> camille m. "mother's baby, father's maybe-intestate succession: when should a child born out of wedlock have a right to inherit from or through his or her biological father." *colum. j. gender & l.* 22 (2011): 531.

<sup>59</sup> nocera joe, *mismanagement of assets in succession*, 2009, 123.

costly. They may need to prove their relationship to the deceased parent, a process that can be complicated if there are disputes or lack of documentation.<sup>60</sup>

Additionally, the legal costs associated with asserting inheritance rights can be prohibitive, particularly for individuals who may not have the financial resources to afford legal representation. This barrier can further delay the resolution of their claims and increase the financial burden on these children, compounding the challenges they face.<sup>61</sup>

#### **2.1.1.4. Emotional and Psychological Impact**

The exclusion from immediate inheritance has significant emotional and psychological impacts on children born out of wedlock. The knowledge that their inheritance rights are postponed until the death of the surviving spouse can create a sense of insecurity and frustration. These children may feel marginalized and undervalued, as their rights to their parent's estate are subordinated to the interests of the surviving spouse.<sup>62</sup>

The uncertainty surrounding their future inheritance can lead to anxiety and stress, affecting their overall well-being. The emotional toll of navigating these challenges, coupled with the potential strain on familial relationships, can have lasting psychological effects on these children.<sup>63</sup>

The legal exclusion of children born out of wedlock from immediate inheritance under the community of property regime presents significant challenges. The immediate financial impact, risk of asset mismanagement, procedural complexities, and emotional distress all contribute to the difficulties faced by these children. Addressing these issues requires a re-evaluation of inheritance laws to ensure that all children, regardless of their birth status, have equitable access to their parent's estate. Implementing legal reforms to provide for immediate inheritance rights and protect the interests of all children is essential to creating a fair and just legal system.

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<sup>60</sup> legal complexities for succession available at <https://mural.maynoothuniversity.ie/9083/1/maddoxposthumousconceptionandinheritance.pdf> accessed on 13 July 2024

<sup>61</sup> *ibidem*

<sup>62</sup> elbad, elham, "identification of psychological factors related to succession: a qualitative study." *iranian evolutionary educational psychology journal* 2022, 178-190.

<sup>63</sup> *ibidem*

### **1.1.2. Risk of Mismanagement or Dissipation of Assets**

Under the community of property regime, the surviving spouse inherits the entire estate of the deceased, a legal arrangement that aims to provide financial stability to the surviving spouse. However, this structure introduces significant risks related to the mismanagement or dissipation of assets, particularly for children born out of wedlock. Without immediate access to their inheritance, these children must rely on the surviving spouse to manage the estate responsibly until they can claim their share. Unfortunately, this reliance is fraught with potential pitfalls, including the deliberate hiding of assets, misuse of assets, and a general lack of accountability in the management of the estate.<sup>64</sup>

#### **2.1.2.1. Hiding Assets**

One of the most concerning risks is the possibility that the surviving spouse may deliberately conceal assets to prevent the children from claiming their rightful inheritance. This can involve transferring assets to undisclosed accounts, hiding valuable items, or underreporting the value of the estate. Such actions not only deprive the children of their rightful inheritance but also make it exceedingly difficult for them to discover and prove the existence of these concealed assets.<sup>65</sup>

For example, the surviving spouse might transfer substantial sums of money to a private account or a trust that is not disclosed to the children. In other cases, valuable property or assets might be sold or transferred to relatives or friends under the guise of legitimate transactions. These actions can effectively strip the estate of its value, leaving the children with significantly less than they are entitled to inherit. The deliberate hiding of assets requires robust legal mechanisms to detect and prevent such malpractices, which are often lacking or insufficiently enforced.

#### **2.1.2.2. Misuse of Assets**

Another significant risk is the misuse of assets by the surviving spouse. Without proper oversight or fiduciary responsibility, the surviving spouse may spend or invest the assets in ways that do not preserve their value. This misuse can take various forms, such as

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<sup>64</sup> risk of mismanagement in succession available at <https://assets.publishing.service.gov.uk/media/57a08added915d622c000957/pn-inheritance-rwanda.pdf>, p.4 accessed on 13 July 2024

<sup>65</sup> *idem*, p5.

extravagant spending, poor investment decisions, or using the estate's resources for personal gain rather than maintaining them for future heirs.<sup>66</sup>

For instance, the surviving spouse might sell family property to fund a lavish lifestyle or invest in high-risk ventures that ultimately fail. Such actions can rapidly deplete the estate's resources, leaving little or nothing for the children to inherit later. The lack of financial acumen or personal interest in preserving the estate for the children exacerbates this risk. Without legal safeguards or oversight, the estate can be significantly diminished, undermining the financial security and future prospects of the children born out of wedlock.

### **2.1.2.3. Lack of Accountability**

A critical issue contributing to these risks is the lack of accountability in the management of the estate. Often, there are no legal mechanisms in place to ensure that the surviving spouse manages the estate in a way that preserves its value for the future heirs. This lack of accountability means that the surviving spouse can operate with minimal oversight, increasing the likelihood of mismanagement or dissipation of assets.<sup>67</sup>

In many jurisdictions, the law does not impose a fiduciary duty on the surviving spouse to act in the best interests of the children born out of wedlock. Without this legal responsibility, there is little incentive for the surviving spouse to manage the estate prudently or transparently. Furthermore, the legal system may lack effective means to monitor or intervene in the estate's management, leaving the children with limited recourse if the estate is mismanaged.

### **2.1.3. Legal and Procedural Hurdles**

Children born out of wedlock often encounter significant legal and procedural hurdles when asserting their inheritance rights. These challenges can be particularly daunting under legal frameworks that prioritize the rights of the surviving spouse and impose stringent requirements on non-marital children. The primary hurdles include the necessity to prove parentage, the need for legal representation, and the complexities and delays associated with

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<sup>66</sup> *idem* p.5

<sup>67</sup> *idem* p.6



legal processes. Each of these factors can significantly impede the ability of these children to claim their rightful inheritance, exacerbating their financial and emotional distress.<sup>68</sup>

### **2.1.3.1. Proof of Parentage**

One of the most significant legal hurdles faced by children born out of wedlock is the requirement to prove their relationship to the deceased parent. This process can be both complicated and contentious, particularly if the surviving spouse contests their claims. Proving parentage typically involves gathering and presenting substantial evidence, such as birth certificates, DNA tests, and other documentation that can establish a biological connection to the deceased.<sup>69</sup>

However, this process can be fraught with difficulties. For instance, in cases where the deceased parent did not formally acknowledge the child or where there are disputes over the authenticity of the presented evidence, the children may face significant opposition. The surviving spouse, who may have a vested interest in minimizing the claims on the estate, might challenge the evidence, leading to protracted legal battles. These disputes can be emotionally taxing and financially burdensome, creating a significant barrier to asserting inheritance rights.

### **2.1.3.2. Legal Representation**

Navigating the legal system to assert inheritance rights often requires legal representation, which can be challenging and costly for children born out of wedlock. Legal representation is crucial for effectively managing the complexities of inheritance laws, filing necessary paperwork, and advocating for the children's rights in court. However, securing competent legal representation can be prohibitively expensive, particularly for children who may already be facing financial hardships due to the loss of their parent.<sup>70</sup>

Without adequate legal representation, these children are at a severe disadvantage. They may struggle to understand the legal procedures, miss critical deadlines, or fail to present their case effectively in court. This lack of representation can result in unfavorable outcomes, such

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<sup>68</sup> fink dean, *the succession challenge: building and sustaining leadership capacity through succession management*, 2010, 122.

<sup>69</sup> kaneko-iwase, mai, and mai kaneko-iwase. "burden and standard of proof in determining unknown-ness of parentage." *nationality of foundlings: avoiding statelessness among children of unknown parents under international nationality law* (2021): 177-230.

<sup>70</sup> andreea diana, *succession representation and family* 2021, 403-410.

as the denial of their inheritance claims or the depletion of their rightful share due to legal technicalities. The financial barrier to accessing legal representation thus exacerbates the inequality faced by children born out of wedlock, further marginalizing them in the inheritance process.<sup>71</sup>

### **2.1.3.3. Delayed Legal Processes**

Even when children born out of wedlock successfully navigate the initial hurdles of proving parentage and securing legal representation, they often face further challenges due to the inherently lengthy and complex nature of legal processes. The legal proceedings to claim inheritance after the death of the surviving spouse can be protracted, involving multiple court hearings, extensive documentation, and potential appeals.<sup>72</sup>

These delays can have severe consequences for the children. During the prolonged legal battles, the estate's assets may be tied up in litigation, preventing the children from accessing their inheritance when they might need it most. Additionally, the longer the process drags on, the greater the risk of asset depreciation or mismanagement, further reducing the value of the inheritance.<sup>73</sup>

For example, valuable properties might lose their value over time due to neglect or market fluctuations, and financial assets might diminish due to legal fees or mismanagement by the surviving spouse. The extended duration of legal processes not only delays the children's access to their rightful inheritance but also increases the likelihood that the estate will be significantly diminished by the time the inheritance is finally distributed.

Children born out of wedlock face numerous legal and procedural hurdles in asserting their inheritance rights, including the need to prove parentage, the requirement for legal representation, and the delays inherent in legal processes. Each of these challenges can significantly impede their ability to claim their rightful inheritance, adding to their financial and emotional burdens. Addressing these hurdles requires legal reforms that simplify and streamline the inheritance process, provide accessible legal support, and ensure that all children, regardless of their birth status, can assert their rights effectively and equitably. By

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<sup>71</sup> *ibidem*

<sup>72</sup> what can cause delay in succession? available at <https://jcg.com/what-can-cause-delays-in-probate-proceedings/> accessed on 12 July 2024

<sup>73</sup> *ibidem*

mitigating these legal and procedural obstacles, we can move towards a more just and inclusive inheritance system that recognizes and protects the rights of all children.<sup>74</sup>

#### **2.1.4. Social and Psychological Impacts**

The exclusion from immediate inheritance and the subsequent legal and procedural challenges can have profound social and psychological impacts on children born out of wedlock. These impacts extend beyond financial hardship, deeply affecting their sense of identity, emotional well-being, and social standing. The key social and psychological issues faced by these children include stigma and discrimination, emotional distress, and a loss of identity and belonging.<sup>75</sup>

##### **2.1.4.1. Stigma and Discrimination**

Children born out of wedlock often face social stigma and discrimination due to their birth status. This stigma can be exacerbated by their exclusion from inheritance, which serves to publicly reinforce their marginalized status. Society's perception of these children as less legitimate or less deserving can lead to various forms of discrimination, including ostracism from extended family and community, bullying, and biased treatment in social, educational, and professional settings.<sup>76</sup>

For instance, the explicit exclusion from their parent's estate can be seen as a formal acknowledgment of their perceived inferior status, reinforcing societal prejudices. This stigmatization can hinder their social development, reduce their opportunities, and contribute to a sense of social alienation. The societal message that they are not worthy of equal recognition or inheritance rights perpetuates cycles of inequality and marginalization, impacting their long-term social integration and success.

##### **2.1.4.2. Emotional Distress**

The uncertainty and potential conflicts surrounding their inheritance rights can cause significant emotional distress for children born out of wedlock. The legal battles and procedural hurdles they must navigate to assert their rights can be emotionally exhausting, especially when faced with opposition from the surviving spouse or other family members.

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<sup>74</sup> *ibidem*

<sup>75</sup> social and psychological impacts in succession available at [https://link.springer.com/chapter/10.1007/978-3-319-77676-7\\_26](https://link.springer.com/chapter/10.1007/978-3-319-77676-7_26) accessed on 12 July 2024

<sup>76</sup> *ibidem*

These conflicts can strain familial relationships, creating an environment of tension and hostility.<sup>77</sup>

For example, ongoing disputes over inheritance can lead to family members taking sides, resulting in fractured relationships and ongoing interpersonal conflict. This environment of contention can exacerbate feelings of stress, anxiety, and sadness, affecting the children's mental health and overall well-being. The emotional toll of constantly having to fight for their rights can lead to long-term psychological issues, such as depression and low self-esteem.

Moreover, the lack of immediate access to their inheritance can lead to feelings of helplessness and frustration. The children may experience a deep sense of injustice and resentment, knowing that their rightful inheritance is withheld due to legal and procedural barriers. This emotional turmoil can have lasting effects, impacting their ability to form healthy relationships and navigate social situations effectively.

#### **2.1.4.3. Loss of Identity and Belonging**

Inheritance often carries symbolic value in addition to its economic significance. Being excluded from their parent's estate can profoundly affect children's sense of identity and belonging. The inheritance represents not just material wealth but also a tangible connection to their deceased parent and their family's legacy. Exclusion from this inheritance can lead to feelings of detachment and a diminished sense of belonging within the family.<sup>78</sup>

For instance, being denied a share of their parent's estate can make children feel like outsiders within their own family, further marginalizing them and reinforcing their perceived status as illegitimate. This loss of identity and belonging can be particularly damaging for children who already struggle with societal stigma and discrimination. It can erode their self-worth and confidence, making it challenging to develop a strong and positive sense of self.

The symbolic exclusion from their family's heritage and legacy can also impact their cultural and familial connections. In many cultures, inheritance is a crucial link to one's ancestry and heritage, providing a sense of continuity and identity. Being denied this connection can leave

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<sup>77</sup> emotional distress for children born out of wedlock available at <https://www.pennmedicine.org/news/news-blog/2022/january/mental-health-on-succession-why-the-hbo-series-is-more-relatable-than-we-think> accessed on 13 July 2024

<sup>78</sup> weedon, chris. *identity and culture: narratives of difference and belonging: narratives of difference and belonging*. mcgraw-hill education (uk), 2004.

children feeling rootless and disconnected from their cultural and familial history, further exacerbating their sense of isolation.<sup>79</sup>

The social and psychological impacts of exclusion from immediate inheritance are profound and far-reaching for children born out of wedlock. Stigma and discrimination, emotional distress, and loss of identity and belonging are significant issues that these children face, compounding the financial and legal challenges inherent in their situation. Addressing these social and psychological impacts requires a multifaceted approach, including legal reforms to ensure equal inheritance rights, societal efforts to combat stigma and discrimination, and supportive measures to help these children navigate the emotional and psychological challenges they encounter. By recognizing and addressing these impacts, we can work towards creating a more inclusive and equitable society that values and supports all children, regardless of their birth status.<sup>80</sup>

### **2.1.5. Inadequate Legal Protections**

In many jurisdictions, the legal protections for children born out of wedlock are insufficient to address the numerous challenges they face in asserting their inheritance rights. These inadequacies span from the lack of comprehensive legislation ensuring equal rights to weak enforcement mechanisms and inadequate guardianship provisions. The insufficiency of these legal protections exacerbates the difficulties faced by these children, leaving them vulnerable and marginalized.

#### **2.1.5.1. Lack of Comprehensive Legislation**

One of the most fundamental issues is the lack of comprehensive legislation that ensures equal inheritance rights for all children, regardless of their birth status. In many legal systems, children born out of wedlock are not given the same rights as those born within marriage, resulting in unequal treatment and systemic discrimination. This legal disparity undermines the principles of fairness and equality, perpetuating the marginalization of non-marital children.<sup>81</sup>

For instance, inheritance laws may explicitly or implicitly prioritize marital children, leaving those born out of wedlock with limited or no entitlement to their parent's estate. This lack of

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<sup>79</sup> *ibidem*

<sup>80</sup> *ibidem*

<sup>81</sup> see the law on law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions there si no provision to address this issue

inclusive legislation means that these children must often rely on contested and contentious legal battles to claim their rights, if they can claim them at all. Without clear and comprehensive legal provisions, the rights of children born out of wedlock remain precarious and subject to the whims of varying judicial interpretations.

#### **2.1.5.2. Weak Enforcement Mechanisms**

Enforcement mechanisms are often weak and ineffective. The mere presence of laws is not enough; these laws must be backed by robust enforcement structures to ensure that rights are respected and upheld. Unfortunately, weak enforcement means that children born out of wedlock frequently find themselves without effective recourse when their inheritance rights are violated.

For example, legal provisions might stipulate equal inheritance rights, but if there are no strong mechanisms to monitor, investigate, and rectify violations, these provisions are rendered practically meaningless. Children might face significant barriers in accessing justice, including lengthy legal procedures, bureaucratic inefficiencies, and lack of support from authorities. This lack of effective enforcement perpetuates the cycle of disadvantage and exclusion, leaving children without the means to assert their rights.

#### **2.1.5.3. Inadequate Guardianship Provisions**

Another significant issue is the inadequacy of guardianship provisions that are meant to safeguard the inherited property of children born out of wedlock until they reach the age of majority. While placing property under guardianship is intended to protect the assets until the children are old enough to manage them, these provisions often fall short of providing adequate safeguards.

In many cases, the appointed guardians may lack the financial acumen or ethical commitment necessary to manage the property responsibly. There may be insufficient oversight and accountability measures in place to ensure that the property is preserved and properly managed. As a result, the assets intended to support the children's future can be mismanaged, depleted, or misappropriated, leaving the children with diminished inheritance.<sup>82</sup>

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<sup>82</sup> rose, laurel l. "*orphans' land rights in post-war rwanda: the problem of guardianship.*" development and change 36.5 (2005): 911-936.

For instance, guardians might engage in self-serving behaviors, using the assets for personal gain rather than preserving them for the children. The legal system may not have stringent requirements for reporting and accountability, allowing such mismanagement to go unchecked. This inadequacy in guardianship provisions fails to protect the interests of children born out of wedlock, further undermining their financial security and future prospects.<sup>83</sup>

The inadequate legal protections for children born out of wedlock present significant challenges that exacerbate their vulnerability and marginalization. The lack of comprehensive legislation, weak enforcement mechanisms, and inadequate guardianship provisions collectively undermine the rights of these children, leaving them without effective means to secure their inheritance. Addressing these issues requires comprehensive legal reforms to ensure equal inheritance rights, strengthen enforcement mechanisms, and enhance guardianship provisions to protect and preserve the assets for the children's future. By addressing these legal inadequacies, we can work towards a more just and equitable system that recognizes and upholds the rights of all children, regardless of their birth status.<sup>84</sup>

All in all, the challenges faced by children born out of wedlock in succession under the community of property regime are multifaceted and deeply impactful. Legal frameworks that prioritize the surviving spouse to the exclusion of non-marital children create significant financial, legal, and social obstacles. Addressing these challenges requires comprehensive legal reforms that recognize and protect the inheritance rights of all children, irrespective of their birth status. This includes ensuring immediate and fair access to their inheritance, robust mechanisms for asset management and protection, and legal and social support to mitigate the adverse impacts on their well-being.

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<sup>83</sup> *ibidem*  
<sup>84</sup> *ibidem*

## **CHAPTER III: MECHANISMS FOR ADDRESSING THE ISSUE OF SUCCESSION OF CHILDREN BORN OUT OF WEDLOCK**

This chapter explains various mechanisms necessary to address the problematic related to cases of children born out of wedlock when it comes to succession under Rwandan Law.

### **3.1. Legal mechanisms**

This section deals with legal mechanisms that can be instituted to ensure that children born out of wedlock are fully protected in cases of succession under Rwanda law.

#### **3.1.1. Protection of the Right to Succession under International Laws**

International law does not directly address the individual right to succession in the sense of inheriting property or title. However, several relevant legal frameworks and principles should influence national laws and guide state behavior, providing a foundation for protecting inheritance rights, particularly for children born out of wedlock.

##### **3.1.1.1. Universal Declaration of Human Rights (UDHR)**

The Universal Declaration of Human Rights (UDHR) is a foundational document in the realm of human rights, illuminating the fundamental principles that safeguard individuals' inherent dignity and worth. In the context of succession, particularly for children born out of wedlock.<sup>85</sup>

The UDHR crystallizes the unequivocal right to own property, encompassing both individual and collective ownership. While not explicitly addressing the concept of succession, this right lays the groundwork for national succession laws by affirming the sacrosanct nature of property ownership. For children born out of wedlock, this article forms a crucial shield against arbitrary deprivation of inherited assets. It establishes the foundational principle that individuals, regardless of their birth status, have an inherent right to property, thereby setting the stage for inheritance laws to recognize and protect the possessions accrued through familial ties.<sup>86</sup>

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<sup>85</sup> article 17 and article 7 of the universal declaration of human rights (udhr)

<sup>86</sup> *ibidem*



Additionally, the UDHR fortifies the right to non-discrimination, asserting that inheritance laws should not unfairly disadvantage individuals based on factors such as birth status, sex, religion, or ethnic origin. In the realm of succession for children born out of wedlock, this article takes on heightened significance. It serves as a bulwark against discriminatory practices that might arise due to their birth status. By emphasizing equality before the law, Article 7 advocates for inheritance laws that treat children born out of wedlock on par with their counterparts born within wedlock, ensuring that the right to inherit is grounded in the principles of justice and non-discrimination.

Together, these articles establish a robust human rights framework for the inheritance rights of children born out of wedlock. Article 17 establishes the general right to property ownership, providing a foundational basis for recognizing assets accrued through familial relationships. Article 7 acts as a sentinel against discrimination, asserting that inheritance laws must operate on principles of equality, irrespective of the birth status of individuals. By weaving these principles into the fabric of succession laws, nations can ensure that children born out of wedlock enjoy the same rights and protections as those born within wedlock, fostering a legal landscape that upholds the principles of justice, equality, and human dignity in matters of inheritance.

### **3.1.2. Succession under regional laws**

In the evolving legal context of Rwanda, the complexities surrounding the succession of children born out of wedlock present a nuanced and critical aspect of the national legal framework. As societal norms and family structures undergo transformation, addressing the rights and succession entitlements of these children becomes increasingly relevant. This exploration delves into the intricate legal considerations surrounding the succession rights of children born out of wedlock in Rwanda, navigating through principles of equality, non-discrimination, and the evolving dynamics of family relationships within the national legal framework.

#### **3.1.2.1. Convention on the Rights of the Child**

This convention aimed for the state parties to ensure that the child is protected from any forms of discrimination regardless their birth status<sup>87</sup> and in all actions concerning children,

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<sup>87</sup> article2 of the convention on the rights of the child.

the best interest of the child shall be considered primarily in this regard also children born out of wedlock should be protected in all aspects including succession of their deceased parent<sup>88</sup>.

### **3.1.2.2. African Charter on Human and Peoples' Rights (ACHPR)**

The African Charter on Human and Peoples' Rights (ACHPR) is a pivotal human rights instrument adopted by the Organization of African Unity (now the African Union) to safeguard and promote the fundamental rights and freedoms of individuals and communities across the African continent. While the ACHPR does not explicitly address succession rights for children born out of wedlock, its broader provisions contribute to the overarching principles of equality, non-discrimination, and the right to own property, which are relevant to addressing the challenges faced by these children in succession matters.<sup>89</sup>

The ACHPR prohibits discrimination on various grounds, including sex and birth status. This provision sets the stage for promoting equal rights and protections, suggesting that inheritance laws should not discriminate against children born out of wedlock based on their birth status. By advocating for non-discrimination, the ACHPR supports the development of legal frameworks that ensure children born out of wedlock are not unfairly disadvantaged in matters of inheritance.<sup>90</sup>

The ACHPR recognizes the right to property, stating that every individual shall have the right to use and enjoy their property. While not explicitly addressing inheritance, this article lays the groundwork for acknowledging and protecting property rights, which is fundamental to succession. For children born out of wedlock, this provision underscores their right to inherit property from their deceased parents, reinforcing the need for inclusive and equitable succession laws.<sup>91</sup>

The African Charter underscores the significance of the family as a fundamental unit and foundation of society. This provision explicitly recognizes the family's entitlement to legal, economic, and social protection. In doing so, it implies that legal systems and frameworks, including those governing inheritance, should be considerate of and adaptable to the diverse structures that families may take, including those with children born out of wedlock. The

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<sup>88</sup> article 3 of the convention on the rights of the child.

<sup>89</sup> article 14 of the african charter on human and peoples' rights.

<sup>90</sup> article 18 of the african charter on human and peoples' rights.

<sup>91</sup> *idem*, article 14

emphasis on legal protection implies that the rights and interests of all family members, irrespective of their birth status, should be safeguarded by the law.<sup>92</sup>

The ACHPR asserts the right of all peoples to equality and the enjoyment of the same rights. This principle reinforces the overarching theme of equality in the ACHPR and implies that inheritance rights should be extended without discrimination, irrespective of birth status. This commitment to equality calls for succession laws that treat children born out of wedlock fairly and equitably, ensuring their rightful access to inheritance.<sup>93</sup>

### **3.2. Institutional mechanisms**

This section investigates deferent institutions in which the issue of protection of children born out of wedlock is under their responsibility and what mechanisms should be put in place.

#### **3.2.1. Ministry of Gender and Family promotion**

The Ministry of Gender and Family Promotion (MIGEPROF) in Rwanda plays a crucial role in safeguarding the rights and welfare of all family members, including children born out of wedlock. To address the challenges these children face in succession matters, especially under the current legal framework where the surviving spouse inherits the entire estate in the community of property regime, MIGEPROF must implement comprehensive strategies that combine legal reforms, public awareness campaigns, and robust support systems.

One of the primary steps MIGEPROF should undertake is advocating for and facilitating legal reforms that ensure equitable succession rights for children born out of wedlock. These reforms could include amending existing succession laws to explicitly include provisions that protect the succession rights of children born out of wedlock. This could involve ensuring that a portion of the estate is set aside for these children, irrespective of the community property regime. Additionally, developing regulations that require appointed guardians to manage inherited property responsibly, including periodic audits and oversight mechanisms, can prevent mismanagement or dissipation of assets meant for children. Legal provisions that impose strict penalties for surviving spouses who conceal or misuse inherited assets,

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<sup>92</sup> *idem*, article 18.

<sup>93</sup> *ibidem*

including mandatory asset declarations and transparency requirements, should also be introduced.<sup>94</sup>

Public awareness is essential to combat stigma and discrimination against children born out of wedlock and to ensure that their rights are understood and respected. Launching nationwide campaigns to educate the public about the rights of children born out of wedlock is crucial. These campaigns should emphasize that all children, regardless of their birth status, have equal rights to inheritance and protection under the law. Engaging community leaders and local organizations to spread awareness and advocate for the rights of these children can foster a more inclusive and supportive environment. Additionally, integrating inheritance rights education into school curricula and community education programs will help build a foundation of understanding and respect for these rights from a young age.<sup>95</sup>

MIGEPROF should establish and strengthen support systems that provide direct assistance to children born out of wedlock in matters of inheritance. Setting up legal aid clinics specifically designed to help children born out of wedlock navigate inheritance disputes is essential. These clinics should offer free or subsidized legal representation to ensure that children can assert their rights effectively. Providing psychological counseling and support services for children and families dealing with the emotional stress of inheritance disputes can help mitigate the social and psychological impacts identified earlier. Moreover, developing programs that educate surviving spouses and guardians on effective financial management and the importance of preserving inherited assets for the rightful heirs, such as workshops, seminars, and resource materials, is critical.<sup>96</sup>

Effective change requires collaboration between multiple governmental and non-governmental institutions. MIGEPROF should work closely with the judicial system to ensure that courts are aware of and sympathetic to the inheritance rights of children born out of wedlock, which can involve specialized training for judges and court staff. Partnering with NGOs and other civil society organizations that focus on child rights and family welfare can help amplify efforts and provide additional resources and support. Establishing mechanisms to monitor and evaluate the implementation of these strategies is also necessary. Regular

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<sup>94</sup> child protection available at: <https://www.migeprof.gov.rw/news-detail/gender-and-family-promotion-minister-calls-for-synergized-efforts-in-tackling-family-issues> accessed on 17 July 2024

<sup>95</sup> *ibidem*

<sup>96</sup> davidson, j., b., *child online protection in rwanda*, 2019, 132

assessments can help identify gaps and areas for improvement, ensuring that the initiatives remain effective and responsive to the needs of children born out of wedlock.<sup>97</sup>

In conclusion, the Ministry of Gender and Family Promotion has a pivotal role in addressing the challenges faced by children born out of wedlock in succession matters. By implementing comprehensive legal reforms, raising public awareness, providing robust support systems, and fostering institutional collaboration, MIGEPROF can ensure that these children are protected and their rights to inheritance are upheld. Through these concerted efforts, Rwanda can move towards a more equitable and just society where all children, regardless of their birth status, are given the opportunity to thrive and succeed.

### **3.2.2. The Parliament of Rwanda**

The Parliament of Rwanda holds a significant responsibility in addressing the challenges faced by children born out of wedlock in matters of succession. Under the current legal framework, where the surviving spouse inherits the entire estate in the community of property regime, the Parliament must enact and support comprehensive measures that ensure these children receive equitable treatment and protection of their succession rights.

Firstly, the Parliament should prioritize legal reforms to ensure that children born out of wedlock are not excluded from inheritance. This includes amending existing succession laws to explicitly recognize the inheritance rights of all children, irrespective of their birth status. Such reforms should mandate that a portion of the estate is reserved for children born out of wedlock, even in the community property regime, ensuring their immediate inheritance rights. Furthermore, the Parliament should develop stringent regulations to ensure that guardians managing inherited property are held accountable. This can include periodic audits and oversight mechanisms to prevent mismanagement or dissipation of assets intended for these children. Introducing legal provisions that impose severe penalties for any attempts by surviving spouses to conceal or misuse inherited assets is also crucial. These provisions should require mandatory asset declarations and transparency to protect the children's inheritance.<sup>98</sup>

In addition to legal reforms, the Parliament should focus on raising public awareness and education. Nationwide campaigns that educate the public about the rights of children born out

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<sup>97</sup> *ibidem*

<sup>98</sup> the world bank, *parliaments as peacebuilders in conflict-affected countries*, washington, d.c 2008

of wedlock are essential. These campaigns should emphasize that all children have equal rights to inheritance and protection under the law, regardless of their birth status. Engaging community leaders and local organizations in these efforts can foster a more inclusive and supportive environment. Moreover, incorporating inheritance rights education into school curricula and community education programs will help build a foundation of understanding and respect for these rights from a young age.<sup>99</sup>

The Parliament should also ensure the establishment and strengthening of support systems that provide direct assistance to children born out of wedlock in inheritance matters. This includes setting up legal aid services specifically designed to help these children navigate inheritance disputes. These services should offer free or subsidized legal representation to ensure that children can assert their rights effectively. Providing psychological counseling and support services for children and families dealing with the emotional stress of inheritance disputes is equally important, as it can help mitigate the social and psychological impacts identified earlier. Additionally, the Parliament should develop programs that educate surviving spouses and guardians on effective financial management and the importance of preserving inherited assets for the rightful heirs. These programs could include workshops, seminars, and resource materials.<sup>100</sup>

Effective change requires collaboration between multiple governmental and non-governmental institutions. The Parliament should work closely with the judiciary to ensure that courts are aware of and sympathetic to the inheritance rights of children born out of wedlock. This collaboration could involve specialized training for judges and court staff to ensure fair and just handling of inheritance cases. Partnering with NGOs and other civil society organizations that focus on child rights and family welfare can amplify efforts and provide additional resources and support. Establishing mechanisms to monitor and evaluate the implementation of these strategies is also necessary. Regular assessments can help identify gaps and areas for improvement, ensuring that the initiatives remain effective and responsive to the needs of children born out of wedlock.<sup>101</sup>

In conclusion, the Parliament of Rwanda plays a crucial role in addressing the challenges faced by children born out of wedlock in succession matters. By enacting and supporting comprehensive legal reforms, raising public awareness, establishing robust support systems,

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<sup>99</sup> *ibidem*

<sup>100</sup> role of the parliament available at <https://www.parliament.gov.rw/business/about> accessed on 17 July 2024

<sup>101</sup> *ibidem*

and fostering institutional collaboration, the Parliament can ensure that these children are protected and their rights to inheritance are upheld. Through these concerted efforts, Rwanda can move towards a more equitable and just society where all children, regardless of their birth status, are given the opportunity to thrive and succeed.

### **3.2.3. Haguruka**

HAGURUKA is a prominent civil society organization in Rwanda dedicated to assisting vulnerable groups, particularly women, young girls, and children who often bear the brunt of societal challenges such as poverty, abuse, and conflicts. Given the unique difficulties faced by children born out of wedlock in succession matters, HAGURUKA plays a vital role as an institutional mechanism to address these issues. Through its comprehensive five-year project, “Dufatanye Kubaka Ubutabera” (DKU), HAGURUKA seeks to increase access to quality justice for vulnerable people, including children born out of wedlock.

One of the primary ways HAGURUKA addresses the issue of succession for these children is by providing legal assistance and representation. Many children born out of wedlock face legal and procedural hurdles, such as the need to prove their relationship to the deceased parent and navigate complex legal systems. HAGURUKA’s legal aid services offer free or subsidized legal representation, ensuring that these children can effectively assert their inheritance rights. By helping them overcome challenges such as proof of parentage and obtaining legal documentation, HAGURUKA ensures that these children are not unjustly excluded from their rightful inheritance.<sup>102</sup>

In addition to direct legal assistance, HAGURUKA should also focus on advocacy and public awareness. The organization works to educate the public about the rights of children born out of wedlock, emphasizing the importance of non-discrimination and equal treatment under the law. Through community outreach programs, workshops, and awareness campaigns, HAGURUKA aims to reduce the social stigma and discrimination that these children often face. By fostering a more inclusive and supportive societal attitude, HAGURUKA helps create an environment where the rights of all children are respected and upheld.<sup>103</sup>

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<sup>102</sup> mukamunana, r., and p. a. brynard. "the role of civil society organisations in policy making process in rwanda." *journal of public administration* 40.si-3 (2005): 665-676.

<sup>103</sup> *ibidem*

Furthermore, HAGURUKA should play a critical role in policy advocacy, working with governmental and non-governmental stakeholders to promote legal reforms that protect the inheritance rights of children born out of wedlock. By engaging with lawmakers and participating in policy discussions, HAGURUKA advocates for changes in succession laws to ensure that these children are not disadvantaged due to their birth status. This includes pushing for amendments that provide for immediate inheritance rights, even under the community property regime, and ensuring that guardians managing inherited property are held accountable.

HAGURUKA should also provide psychosocial support to children and families dealing with inheritance disputes. The emotional distress and familial conflicts that arise from succession issues can have long-lasting impacts on children's well-being. HAGURUKA's counseling services help address the psychological impacts of these disputes, offering support to children and families as they navigate the complexities of inheritance laws. This holistic approach ensures that children receive both legal and emotional support, helping them cope with the challenges they face.<sup>104</sup>

In summary, HAGURUKA serves as a crucial institutional mechanism in addressing the succession issues faced by children born out of wedlock in Rwanda. Through legal assistance, public awareness campaigns, policy advocacy, and psychosocial support, HAGURUKA ensures that these children can access justice and protect their inheritance rights. By tackling both the legal and social dimensions of the issue, HAGURUKA helps create a more equitable and just society where all children, regardless of their birth status, are given the opportunity to thrive.

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<sup>104</sup> *ibidem*



## **GENERAL CONCLUSION AND RECOMMENDATIONS**

### **1. General conclusion**

Inheritance in Rwanda plays a significant role in transferring properties, but legal and customary practices can sometimes exclude individuals, particularly women and children, from inheriting their parent's property. Rwanda, with its dense population, has a history of colonization by Germany and Belgium, achieving independence in 1962. Since 1994, the Rwandan government has undertaken extensive legal reforms with international support, focusing on various issues, including gender-based violence and inheritance rights. Despite these efforts, conflicts between statutory and customary laws persist, especially in rural areas. Rwanda's constitution and various laws address inheritance issues, but challenges remain in ensuring equal protection for all, particularly children born out of wedlock and individuals in unregistered marriages.

This study focalized on general overview of the study and the significance of this study. The focal point of this research lies in its potential to provide valuable insights to decision-makers, policymakers, and practitioners regarding the impact of succession laws on heirs' rights. By identifying gaps in implementation and the challenges faced by heirs, this research aims to offer empirical and theoretical evidence for future studies. Personally, the study seeks to deepen the researcher's understanding of succession law, while socially, it aims to highlight the issues faced by heirs in property inheritance, promoting inclusivity and justice.

The study is confined to Rwandan succession laws and will consider relevant statutes and legal documents within the specified timeframe of 1902-2023. The problem statement emphasizes the discrepancies between legal provisions and their implementation, highlighting the lack of protection for children born out of wedlock and those in unregistered marriages. Despite laws ensuring equal inheritance rights, challenges in enforcement and societal application persist. The study will address these issues through various research methodologies, including doctrinal, analytical, and comparative approaches, aiming to offer solutions and enhance the legal protection of heirs.

Chapter one provides a comprehensive conceptual and theoretical framework essential for analyzing Rwandan succession law, particularly concerning the rights of children born out of wedlock. It begins by defining key terms such as marriage, succession, "De Cujus," polygamy, concubinage, cohabitation, and the legal status of children born out of wedlock.

Marriage is explored as a multifaceted institution providing legal and social frameworks, while succession is detailed as the process of transferring rights and obligations posthumously.

The chapter delves into historical contexts, tracing Rwandan succession laws from pre-colonial times through colonial and post-independence reforms. It discusses contemporary legal reforms aimed at addressing gender disparities, particularly concerning inheritance rights, reflecting Rwanda's commitment to gender equality. Gender-based violence is also examined, emphasizing its pervasive impact and the structural factors contributing to its prevalence.

Theoretical approaches to non-discrimination for children born out of wedlock in succession law are then explored. It summarizes theories like equality theory, human rights approach, best interests of the child principle, and social justice theory, advocating for equitable treatment of all offspring in inheritance matters. These frameworks challenge legal provisions that historically favored surviving spouses, advocating instead for inclusive succession laws that uphold the rights of all children.

This chapter establishes a foundational understanding of the terminology, historical evolution, contemporary reforms, and theoretical underpinnings essential for evaluating the effectiveness of Rwandan succession law in protecting the inheritance rights of children born out of wedlock. It underscores the complexities of balancing cultural traditions with modern legal principles, aiming to ensure justice and equality in familial succession dynamics.

The second chapter of the research delves into the formidable challenges confronting children born out of wedlock when seeking inheritance from their deceased parents. It elucidates how legal, social, and cultural barriers often hinder these children's rightful claims to succession, despite strides in modern legal reforms aimed at fostering parity. The prevailing community of property regime frequently designates the surviving spouse as the sole immediate inheritor, postponing the children's entitlement until after the spouse's demise. This delay not only precipitates immediate financial strain for the children, who may lack access to crucial assets for education and sustenance, but also heightens the risk of asset mismanagement by the surviving spouse.

Moreover, the legal landscape presents intricate hurdles for these children, including the necessity to substantiate their parentage and the challenges in securing affordable legal representation. The protracted legal processes involved in asserting inheritance rights prolong

their financial vulnerability and amplify the prospect of asset diminishment or mishandling. Beyond these legal complexities, children born out of wedlock contend with profound social and psychological repercussions. They often endure stigma and discrimination rooted in societal perceptions of legitimacy, exacerbated by their exclusion from inheritance rights. This exclusion engenders emotional distress, undermines their sense of identity and belonging, and perpetuates social marginalization.

In conclusion, it underscores the imperative for comprehensive legal reforms to rectify these systemic injustices. It advocates for equitable inheritance laws that afford all children, regardless of birth status, immediate access to their rightful inheritance and safeguards against asset mismanagement. Addressing these disparities not only upholds principles of fairness and equality but also fosters a more inclusive societal framework that respects and protects the rights of all children.

Chapter three explores the mechanisms designed to address succession issues for children born out of wedlock, examining both international and regional legal frameworks. While international human rights treaties like the Universal Declaration of Human Rights (UDHR) and the African Charter on Human and Peoples' Rights (ACHPR) do not explicitly address succession, they provide foundational principles such as the right to property ownership (UDHR Article 17) and non-discrimination (UDHR Article 7). These principles advocate for equitable inheritance laws that ensure children born out of wedlock are not unfairly disadvantaged.

In Rwanda, the Ministry of Gender and Family Promotion (MIGEPROF) and civil society organizations like HAGURUKA should play crucial roles. MIGEPROF would work to reform laws, raise public awareness, and establish support systems such as legal aid clinics to protect these children's inheritance rights. Meanwhile, HAGURUKA would provide legal assistance, advocacy, and psychosocial support through initiatives like the "Dufatanye Kubaka Ubutabera" project. Together, these efforts aim to create a more just and inclusive legal environment where all children, regardless of birth status, can inherit and thrive.

All in all, the ongoing efforts in Rwanda to ensure that children born out of wedlock receive fair treatment in succession matters. By aligning national laws with international human rights principles and bolstering institutional support, Rwanda strives to protect these children's rights to inheritance and foster a society that values equity and justice.

## **2. Recommendations**

From the research findings, the following recommendations can be made to address the existing gaps and enhance legal protections:

1. The Rwandan Parliament should prioritize amending succession laws to explicitly recognize and protect the succession rights of children born out of wedlock. This includes ensuring that these children are not excluded from succession, particularly under community property regimes where the surviving spouse may inherit the entire estate. Specific provisions should be introduced to guarantee a fair share of the estate for children born out of wedlock, regardless of the marital status of their parents.
2. The Ministry of Gender and Family Promotion (MIGEPROF) should lead nationwide campaigns to educate the public about the rights of children born out of wedlock under succession laws. These campaigns should emphasize equality before the law and combat social stigma and discrimination based on birth status. Engaging community leaders, schools, and local organizations in these efforts can foster a more inclusive societal attitude towards these children's rights.
3. The Ministry of youth should establish and strengthen support systems tailored to assist children born out of wedlock in navigating inheritance disputes. This includes setting up legal aid clinics that offer free or subsidized legal representation to ensure these children can effectively assert their rights in court. Additionally, providing psychosocial support services to help children and families cope with the emotional impacts of succession disputes is crucial.
4. Ministry of Justice,ensure effective implementation of legal reforms and policies aimed at protecting the succession rights of children born out of wedlock. This includes monitoring the application of these laws in practice and conducting regular assessments to identify and address any gaps or challenges faced by these children.
5. Rwandan judiciary is recommended to strengthen training of judicial personnel . Judicial training programs should be organized to enhance the capacity of judges and court staff in handling succession cases involving children born out of wedlock. Specialized training can ensure that legal professionals are equipped to apply the amended laws fairly and uphold the rights of these children without bias.

6. Organizations like HAGURUKA should continue to play a vital role in advocating for the rights of vulnerable groups, including children born out of wedlock. Collaborative efforts between governmental institutions and civil society organizations can amplify advocacy efforts, provide additional resources, and ensure a comprehensive approach to protecting these children's inheritance rights.

By implementing these recommendations, Rwandan institutions can strengthen legal protections for children born out of wedlock under succession law, promote equality, and create a more just society where all children have equal opportunities to inherit and thrive.

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