

**KIGALI INDEPENDENT UNIVERSITY ULK**

**SCHOOL OF LAW**

**DEPARTMENT OF LAW**

**CRITICAL ANALYSIS OF THE ENJOYMENT OF RIGHTS OVER ACQUIRED PROPERTY  
FOR UNMARRIED COUPLES UNDER RWANDAN LEGAL FRAMEWORK.**

**A dissertation submitted in partial fulfillment of the academic requirements for award  
of bachelor's school of law.**

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**Kigali, August 2024**

**DECLARATION**

I Zawadi Murekatete declare that the work presented in this dissertation is original. It has never been presented to any university or institution. Where people's have been used, references have been provided, and in some cases, quotation made. In this regard, I declare this original.

MUREKATETE Zawadi

Signature.....

Date...../...../.....

**APPROVAL**

I hereby certify that I have supervised and here by recommend for the acceptance of this entitled critical analysis of the enjoyment over acquiring property for unmarried couples under Rwandan legal framework.

Supervisor's Name: Lecturer NKUNDUKOZERA Emmanel

Signature: .....

Date:...../...../.....

**DEDICATION**

I dedicate this final study to our lovely parents, my sisters and brothers who took care of me during my studies, I will always remember your assistance and encouragements in my academic undertakings. To my friends and church family who have supported me throughout the process, and also all the member of my institutions.

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**MUREKATETE Zawadi**

**ABSTRACT**

This research is, in part, a legal overview, analyzing how effective the enjoyment of the right over an acquired property is in Rwandan law when life partners plan to break their cohabitation relationship, be it during their lifetime or at the event of death. After showing what is in heart of the courts of justice and how effective the tension effect does exist among the judges, the courts of justice are seen putting and defending between many interests that of continuity over property. The pleasure of rich, the comfort, the share of property for tranquil life bring more intense reasons pushing people to follow a marriage like relationship. Of the life plans we are making in our sufficiently long period, a foundation of stability in family life, the fact that family relations can be crushing while the relationship is broken, the continuity of the right to use the in divided property. Such reasons are driving the life partners to require recognition of their cohabitation, the grant of the right to use the acquired property, its continuation until the future stabilities are established.

**Table of contents**

<b>DECLARATION</b> .....	I
<b>APPROVAL</b> .....	II
<b>DEDICATION</b> .....	III
<b>ACKNOWLEDGMENTS</b> .....	IV
<b>ABSTRACT</b> .....	V
<b>LIST OF ABBREVIATIONS AND ACRONYMS</b> .....	1
<b>GENERAL INTRODUCTION</b> .....	3
1.1. Background of the study.....	3
1.2. Problem statement.....	4
1.3. Research questions.....	4
1.4. Research objectives.....	5
1.4.1. General objectives.....	5
1.4.2. Specific objectives.....	5
1.5. Hypothesis.....	6
1.6. Methodology.....	7
1.6.1. Research Techniques.....	7
1.6.2. Documentary techniques.....	7
1.6.3. Research method.....	7
1.6.3.1. analytical method.....	8
1.6.3.2. Exegetic methods.....	8
1.6.3.3. synthetic methods.....	8
1.6.3.4. Comparative methods.....	8
1.6.3.5. Historical research.....	8
1.7. significance of the study.....	9
1.7.1. scope of the study.....	9
<b>CHAPTER I: CONCEPTUAL AND THEORITICAL FRAMEWORK</b> .....	10
2.1. The concept of human right.....	10
2.2. The place of land and other property in human rights.....	11
2.2.1. The concepts of rights to property as recognizes human rights.....	12
2.3. Acquiring property on unmarried couples as the government sovereign right to property.....	14
2.3.1. Overview of acquiring property on unmarried couples.....	15
2.3.2. condition for lawful acquiring property on unmarried couples and legal framework.....	16

**CHAPTER II. ANALYSIS OF THE PROBLEMATIC OF MANAGEMENT OF PROPERTY FOR UNMARRIED COUPLES IN RWANDA.....18**

3.1. Factual Context.....	18
3.2. The different international approaches to regulating unmarried couples, and how do they compare in terms of their strengths and weaknesses.....	19
3.2.1. the main challenges in regulating property rights for unmarried couples internationally.....	19
3.3. Assessment of violations of human rights.....	20
3.3.1. Legal framework.....	20
3.3.2. How does Rwandan law compare to international standards on property rights for unmarried individuals.....	22
3.3.3. Critical analysis.....	

**CHAPTER III. WAYS FORWARD FOR ACQUIRING PROPERTY ON UNMARRIED COUPLES WITH FUNDAMENTAL HUMAN RIGHTS.....24**

4.1. Improve planning and process when acquiring property for unmarried couples.....	26
4.2. Increase opportunities for different contract that can be signed with unmarried couples.....	26
4.3. Mitigate negative impact on unmarried couples when it comes to property.....	26
4.4. Improve transparency and accountability when acquiring property on unmarried couples.....	28
4.5. Carry out legal reforms.....	28
4.6. Mechanisms for the prevention of human rights violation over enjoyment on acquiring property on unmarried couples.....	28
4.7. Effective remedies action for victims of human rights violations resulting on enjoyment of acquiring property over unmarried couples.....	30
4.8. the mechanisms to address the challenges of the enjoyment of properties by unmarried couples.....	32
5.1. Conclusion.....	32
5.2. Recommendations.....	32



**REFERENCES**

V. LEGISLATION.....	34
V.I. NATIONAL LEGISLATION.....	34
V.II. INTERNATIONAL LEGISLATION.....	36
VII. CASE LAWS.....	36
VIII. BOOKS.....	38
V. GENERAL PRINCIPLES OF LAW.....	40
IX. DOCTRINES.....	42
X. OTHER INTERNET SOURCES.....	42

**LIST OF ABBREVIATION AND ACRONYMS**

**CC:** Civil Code

**CCPR:** Centre For Civil And Political Rights

**CEDAW:** Convention On The Elimination Of All Forms Of Discrimination Against Woman

**CPRC:** Community Psychiatric Rehabilitation Center

**ECHR:** European Convention On Human Rights

**GBV:** Gender Based Violence

**GOV:** Government

**HR:** Human Rights

**ICCPR:** International Covenant On Civil And Political

**ICESCR:** International Covenant on Economic, Social and Cultural Rights

**ISBN:** International Standard Book Number

**NCHR:** National Commission for Human Rights

**OHCHR:** Office Of The High Commissioner For Human Rights

**UDHR:** Universal Declaration Of Human Rights

**UK:** United Kingdom

**ULK:** Université Libre De Kigali

**UNCRC:** United Nations Convention on the Rights of the Child

**UN:** United Nations

## **GENERAL INTRODUCTION**

Data find that there are many challenges unmarried couples faces during their cohabitation, in this study I will focus on the challenges the couple face and how to overcome them.

### **I. BACKGROUND OF THE STUDY**

This is a study on property rights of unmarried couples in Rwanda. The fact that more and more couples live together without getting legally married makes this study relevant. Thus, the more our century is transforming, the more we feel the need to know whether current laws can solve current social problems. In that line, a considerable number of couples have chosen to live together without getting legally married which may trigger some problems in case one of the partners decides to abandon the family under his own responsibility. Besides, if marriage is no longer a guarantee for stability and happiness of the family, can we still adhere to the saying which goes that man and family are the base and the principle of the community? When humans are married, it is easy to establish a family, but when they cohabit together, it is always difficult to claim that a family must be systematically founded.

The enjoyment of rights over acquired property for unmarried couples in Rwanda is a complex issue shaped by the country's legal framework, which primarily recognizes formal marriages while often excluding de facto unions from property rights protections.

Rwanda's legal system is influenced by both statutory and customary laws, with significant implications for property rights. The Law on Inheritance and Marital Property Rights (2024) provides equal inheritance rights to sons and daughters and protects the property rights of surviving spouses. However, these protections are largely contingent upon formal marriage, as the law does not recognize consensual cohabitation or polygamous unions. This lack of recognition means that unmarried couples, despite potentially long-term cohabitation, do not enjoy the same legal protections regarding property rights as formally married couples.

The rights of unmarried couples who stay together are recognized in our laws, but these couples encounter various challenges such as the issue of property in the event of the dissolution of their cohabitation, either due to the breakdown and the decision of separation of the relationship. Rwandan family law gives some rights to unmarried couples who are in a continuous relationship that has rules with the Code of Persons and Family. Women, in particular, face significant challenges under the current legal framework. The law stipulates that only women in officially recognized marriages have direct

inheritance rights. Consequently, women in de facto unions often find themselves excluded from property claims, even when they have contributed to the household's economic stability. This situation perpetuates gender inequality and economic vulnerability among women, as they lack legal recourse to claim shared property acquired during cohabitation.

The law gives the right to compensation only to one of the unmarried couples if they have a non-formal marriage, as well as to the terms used in the law which do not define all the types of unmarried relationships based on the various conditions. According to the classification of countries, there are two types of relationships: cohabitation and domestic partnership. However, the comparison between them brings out that cohabitation is the type of unmarried relationship that provides particular rights for couple members. This research seeks to analyze the enjoyment of rights over acquired property for unmarried couples who are in a continuous relationship and face legal problems under the Rwandan legal framework. The research will be conducted using a qualitative research method in which respondents will be selected in order to obtain accurate and detailed information that will be easier to analyze and generalize.

Customary practices continue to dominate family and land matters in Rwanda, often reinforcing patriarchal structures that favor men in property control. While the Rwandan Constitution promotes gender equality, the practical application of these principles is inconsistent, particularly in rural areas where customary law prevails. This disparity highlights the need for comprehensive legal reforms to ensure that the rights of unmarried couples, especially women, are adequately protected.

The enjoyment of rights over acquired property for unmarried couples in Rwanda is significantly hindered by legal limitations and cultural practices. While there have been strides towards gender equality in property rights, the current legal framework does not adequately protect the interests of those in non-registered unions. Addressing these gaps requires a comprehensive review of existing laws and a shift in societal attitudes towards informal relationships. Further research and advocacy are essential to ensure that all individuals, regardless of marital status, can enjoy equitable rights over property and inheritance.

Rwanda's legal framework regarding property rights is primarily governed by the Law on Matrimonial Regimes, Donations, and Successions (Law n° 71/2024), which outlines the rights and duties of spouses within various matrimonial regimes. However, this law primarily recognizes only formally registered marriages, leaving a significant gap for unmarried couples, including those in de facto unions. The law does not provide any legal recognition or protection for property rights of individuals in such unions, which can lead to severe implications for women, who often face discrimination in property ownership and inheritance rights.

Despite Rwanda's progressive constitutional provisions promoting gender equality, the practical application of these rights remains inconsistent. Women in de facto unions are typically excluded from

inheritance and property rights that are otherwise granted to those in formal marriages. The Law on Inheritance and Marital Property Rights aims to ensure equal inheritance rights for sons and daughters, but this does not extend to those in unregistered marriages.

Culturally, Rwandan society has historically favored men in matters of property control, a trend that persists despite legal reforms. Customary laws often override statutory provisions, particularly in rural areas, where traditional practices dictate property rights and inheritance. This creates a dual legal system that complicates the situation for unmarried couples, as customary laws may not recognize their contributions to shared property, leading to potential disputes and inequities.

Culturally, Rwandan society has historically favored men in matters of property control, a trend that persists despite legal reforms. Customary laws often override statutory provisions, particularly in rural areas, where traditional practices dictate property rights and inheritance. This creates a dual legal system that complicates the situation for unmarried couples, as customary laws may not recognize their contributions to shared property, leading to potential disputes and inequities.

The Rwandan government has initiated various policies to encourage formal marriages as a means to protect women's rights. These include mass wedding campaigns and educational programs aimed at raising awareness about the benefits of official marriage. However, these measures may not adequately address the underlying issues faced by women in de facto unions, as they do not provide immediate legal protections for those who choose not to marry formally.

Understanding the relationships of unmarried adult couples is central to understanding contemporary family life in the United States. As a growing share of adults in the United States are postponing or foregoing marriage, marriage rates have declined and the percentage of adults in unmarried and cohabiting relationships has increased. Unmarried relationships can range from fragile on-again, off-again relationships to highly committed relationships that resemble marriage.

Despite the growing prevalence of unmarried adult relationships, evidence about why these relationships end is limited. In contrast to the many studies that have examined individuals' and couples' self-reported reasons for divorcing, fewer studies have looked at the reasons for relationship dissolution among unmarried couples. Evidence on the reasons adult unmarried relationships end can both (1) help address a key gap in the knowledge base on relationship dynamics and (2) help curriculum developers and program providers improve the delivery and effectiveness of healthy marriage and relationship education (HMRE) programs. Many HMRE programs funded by the federal government aim to support relationship stability among unmarried parents and strengthen couples' relationships regardless of their level of commitment or the presence of children in the relationship. At the same time, unhealthy and high-stress relationships have serious negative consequences for partners and their children and exiting these relationships can improve individuals' well-being. As a result, some HMRE programs also help participants learn the skills

to recognize and safely exit unhealthy relationships.

The enjoyment of property rights for unmarried couples in Rwanda is hindered by a legal framework that does not recognize their unions. While there have been significant strides toward gender equality in property rights, the lack of legal recognition for de facto relationships leaves many individuals, particularly women, vulnerable. Further reforms are necessary to align the legal framework with the realities of contemporary relationships and to ensure equitable property rights for all individuals, regardless of their marital status.

This study aims to critically analyze these dynamics, exploring both the legal and socio-cultural factors that impact the enjoyment of property rights for unmarried couples in Rwanda.<sup>12</sup>

## **II. INTEREST OF THE STUDY**

The Interest of study on the enjoyment of rights over acquired property for unmarried couples under the Rwandan legal framework is significant for several reasons, particularly in the context of gender equality and property rights.

Rwanda has made considerable progress in reforming its legal framework to protect property rights, especially for women, following the 1994 genocide. The legal landscape includes various laws aimed at ensuring gender equality, such as the Constitution of 2003 and the Organic Land Law of 2005, which affirm equal rights to land for both men and women. However, the reality for unmarried couples remains complex, as the law does not recognize cohabitation as a legal marriage, which significantly impacts property rights.

The methodology used in conducting this research is based on the diverse and scholarly study of the different theories and doctrines which have as their point of overlap both the acquisition of rights and civil union regimes, the process the acquired rights of couples unmarried, the study of the registry of Gacaca as well as the establishment and organization of the general administrative and communal allocation of property. The implementation of the research methods was carried out in particular by resorting to the interpretative, synthesis, systematic, historical, comparative, and critical method. The results we were able to generate from the analysis of the research methodologies implemented from the interviews and the documentary analysis are numerous and path breaking in the forensic research of

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<sup>11</sup> Law n° 71/2024 of 26/06/2024 governing persons and family

<sup>2</sup> Official Gazette n° Special of 10/06/2021 N° 27/2021 of 10/06/2021 Law governing land

Rwanda's legal framework. This is due to the approach followed in treating the subject as wide as the various issues raised.

In conclusion, the study on the enjoyment of rights over acquired property for unmarried couples under the Rwandan legal framework is vital for addressing the gaps in legal protections, promoting gender equality, and supporting the rights of individuals in informal relationships.

### **II.1 PERSONAL INTEREST**

By conducting this research, I will gain more knowledge by getting to know about international, regional and Rwandan law governing law of persons and family, by putting into practice of all theories that the researchers have learnt for all academic year.

### **II.2. ACADEMIC INTEREST**

Future students will take it as a document of reference in the field of the concerned laws.

### **II.3. SCIENTIFIC INTEREST**

The researchers will be helped by this research as the documentation for realizing their studies, having knowledge on how unmarried couples should face their situation.

## **III. DELIMINATION OF THE STUDY**

The research aims to investigate and critically analyze the enjoyment of rights over acquired property after termination of cohabitation of unmarried couples under the Rwandan legal framework. Unmarried couples who cohabit in good faith under the same roof acquire joint property during cohabitation, which necessitates the love and affection that grows a spirit of community of life. Cohabitation requires rights and obligations of both parties towards the other party as any family member. This legal anomaly encroaches on the love, affection, protection, and desire for the social stability of non-marital union. Furthermore, it divides the legal ties amongst unmarried couples who cohabit in good faith under the same roof, which implies the criminal punishment of repudiating the cohabitation.

In summary, the Rwandan legal framework focuses on protecting the property rights of married couples and their children. Unmarried couples, including those in long-term relationships, have limited legal recourse to claim ownership of property acquired together or to pass on property to their children upon death or separation. More research is needed to understand the prevalence of unmarried relationships in Rwanda and the challenges faced by women in these unions.

### **III.1. DELIMITATION IN TIME**

The duration of my research will be covering the period of 2016 where law N°32/2016 of 28/08/2016 Law governing persons and family was invented up to 2024 where it was repealed with Law n° 71/2024 of 26/06/2024 governing persons and family and it is the year I closed my research.

### **III.2. DELIMITATION IN SPACE**

This research will be carried out on Rwanda territory in order to facilitate the researchers in a way of accessing the information.

### **III.3. DELIMITATION IN DOMAIN**

Researchers chose this research based on the individual who encountered this specific issues, and using concerned laws like Law n° 71/2024 of 26/06/2024 was invented up to the time I closed the research.

## **IV. PROBLEM STATEMENT**

The enjoyment of rights over acquired property for unmarried couples in Rwanda is primarily governed by the legal framework surrounding marriage and property rights. The current laws create significant challenges for unmarried couples, particularly in terms of property rights and inheritance.

Rwandan law governing Persons and Families stipulate that only legal spouses has the right to inherits the property of his/her dead spouses even if it was brought by only one of them. and when it comes to unmarried couples, if one person dies and they both acquired the property having name on it, the survived spouses will not be able to acquire the whole property even if he/ she had a big role in buying the property. For example: if the unmarried couples buys the property together on their names and land documents come out with their names on it and one of them dies, the surviving person has no right to claim his/her property just like in married couples.

This lack of a consistent legal framework creates various challenges, at least there must be some legal agreement that says clearly how the property should be managed once one paterner dies or is incapable to guide his/her property, there is a lack of legal certainty for individuals considering or engaging in surrogacy, leading to potential legal disputes and challenges in ensuring the rights and responsibilities of all involved parties are regulated.

Rwanda is no exception, with the country facing a similar dilemma. This critical analysis aims to provide an in-depth examination of the international approach to Cohabitation and the legitimacy of this practice in Rwanda, with a focus on the need for a uniform regulatory system.



It doesn't mean that this will encourage people not to get married rather to give some consideration for those who didn't get married under some circumstances, there are many things that can make people to enter into cohabitations, like not reaching the limited ages, financial problems, losing interest of civil marriage due to previous marriage issues or divorces, and decide to live with their partner without entering into marriages.

## **V. RESEARCH QUESTIONS**

### Main Research Questions

How can Rwanda create a uniform regulatory system for unmarried couples, protect the right of all parties involved and promote the wellbeing of both parties as well as their children, considering the international landscape and Rwanda's specific context?

1. What are the different international approaches to regulating unmarried couples, and how do they compare in terms of their strengths and weaknesses?
2. What are the mechanisms to address the challenges of the enjoyment of properties by unmarried couples?

## **VI. RESEARCH HYPOTHESES**

The research hypothesis for the study on international approach and legitimacy of unmarried couples in Rwanda could be put into words as follows:

1. There is a need for a uniform regulatory system for unmarried couples in Rwanda to ensure the protection of the rights of all parties involved, including the persons involved, and the best interest of children born through that situation.
2. The implementation of a uniform regulatory system for unmarried couples in Rwanda will contribute to the ethical practice of the family, maintenance the well-being and rights of all individuals involved.

## **VII. RESEARCH OBJECTIVES**

The objectives of this research are to:

- \* Examine the current international approach to unmarried couples, including the legal and ethical frameworks that govern the practice.

Normally, this would scrutinize on Review and compare regulatory frameworks for unmarried couples in diverse countries. Identify key strengths and weaknesses of these international approaches. Analyze the adaptability of best practices to the Rwandan context.

\* Evaluate the need for a uniform regulatory system in Rwanda to govern unmarried couples, and make recommendations for such a system.

### **VII.I GENERAL OBJECTIVES**

The general objectives of this research is to conduct a critical analysis of the enjoyment of rights over acquiring property by unmarried couples under legal framework of Rwanda. To achieve the general objectives, there are a number of specific objectives that need to be achieved.

### **VII.II. SPECIFIC OBJECTIVES**

The Rwandan legal framework provides equal rights for married couples to acquire and own property, but does not recognize the property rights of unmarried couples living in de facto unions. Here is a critical analysis of the key issues:

1. To determine challenges faced vis a vis with unmarried couples in case of acquiring properties.
2. To suggest strategies means to overcome those challenges.

## **VIII. RESEARCH METHODOLOGY AND TECHNIQUES**

The research methodology for a critical analysis on the international approach and legitimacy of unmarried couples, with a focus on the call for a uniform regulatory system in Rwanda, would involve several key steps, on Literature Review, Data Collection, Comparative Analysis, Ethical Considerations, Proposal for Uniform Regulatory System. The first step would be to conduct an extensive literature review on international laws, regulations, and ethical considerations related to unmarried couples. This would involve studying academic journals, books, government reports, and international treaties to understand the various approaches taken by different countries and international organizations towards unmarried couples.

The next step would involve collecting data on the current status of unmarried couples in Rwanda. This could include gathering information on existing laws and regulations, as well as statistics on the prevalence of couples in the country. Additionally, interviews with experts in the field of families affair and law may provide valuable insights into the local context.

A comparative analysis would be conducted to compare the international approaches to unmarried couples with the existing situation in Rwanda. This would involve identifying similarities and differences in regulatory frameworks, ethical considerations, and societal attitudes towards unmarried couples.

Ethical considerations play a crucial role in the analysis of unmarried couples. The research methodology would include an in-depth exploration of ethical issues such as exploitation of unmarried couples, and the rights of all parties involved.

## **VIII.1 RESEARCH TECHNIQUES**

During this study the following research will be used

### **VIII.I.I. DOCUMENTARY TECHNIQUES**

According to Richard a report or research paper, documentation is the evidence provided for information and ideas borrowed from others. Documentary technique will be used to gather all the necessary information on the internet, This research will be used to collect data on the internet, and by watching videos and all sources on the internet in order to get more information on the research and get well informed.

### **VIII.II. RESEARCH METHODS**

During this study the following methods will be used to do the possible research on the study around the region and all over the world by reading books, laws on how they say on the subject, the law which will help me will be law of persons and family, and look into property law.

#### **VIII.II.I. ANALYTICAL METHOD**

According to Walter 2011, this method helped to analyze systematically the Data collected and information from the field. The researcher will use the analytical method to systematically analyze all the data that will be collected.

#### **VIII.II.II. EXEGETIC METHODS**

This methods will be used to careful analyses the study in order to produce useful information and interpretations on the study.

### **VIII.II.III. SYNTHETIC METHODS**

According to Wen-Chun Zhang 1997 it is synthesized, that is to say globalized information and data into coherent whole. This method will allow the current researchers to synthesize the information gathered from different sources.

### **IX. SUBDIVISION OF THE STUDY**

This research is composed by general introduction, three chapters and general conclusion including general introduction which is composed by the background of the study, the significance of the study, the scope and area of the study, statement of the problem, research questions and hypotheses, research objectives, research methodology and research techniques of data collection and organization of the study. It generally will give an overview of what the study will intend to analyze. The first chapter will be review related literature including definitions of key concepts theoretical framework. The second chapter will be analyze and interpret the first research hypothesis of the study. The third chapter will analyze and interpret the second research hypothesis of the study. Finally, the study was ended by summarizing the findings of the study and provide the recommendations.

### **GENERAL CONCLUSION**

Briefly, addressing the international approach and legitimacy of cohabitation, requires careful consideration of ethical principles, legal frame works and societal prospective. In Rwanda's back ground, establishing a uniform regulatory system is imperative to provide clarity and protection for all parties involved in cohabitation arrangements. By drawing on international experiences and engaging diverse stake holders in the legislative process, Rwanda can develop a regulatory framework that promotes ethical cohabitation practices, while safe guarding the rights and wellbeing of individuals concerned.

## **RECOMMENDATIONS**

Recommendations for establishing a uniform regulatory system in Rwanda should consider international best practices while also reflecting the cultural and societal context of the country. It is essential to engage in comprehensive interested party consultations involving legal experts, healthcare professionals, Human rights advocates, and representatives from religious and community organizations. This inclusive approach can facilitate the development of legislation that balances the protection of all parties' interests while upholding ethical standards.

Furthermore, the regulatory framework should address issues such as informed consent, financial issues in case of both parties wanting marriage, parental rights and responsibilities, as well as mechanisms for resolving disputes or unexpected outcomes arising from unmarried couples arrangements. Emphasizing transparency, accountability, and ethical considerations within the regulatory system is crucial to ensure that cohabitation (unmarried couples) are conducted in manner which complying with international standard that respects human dignity and rights.

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

### **I.1 Definition and key concepts**

#### **I.1.1 Couples**

A couple is defined as two people who are married, engaged, or in a romantic relationship. This can include individuals living together or having a sexual relationship. For example, "The couple celebrated their anniversary" refers to two people in such a relationship.

#### **I.1.2 Unmarried couples**

Unmarried couples are defined as two individuals who are not legally married but live together in a long-term relationship that resembles marriage. This definition can vary slightly depending on the context, such as legal or social frameworks.

#### **I.1.3 Property**

is defined as anything that can be owned by a person or entity, encompassing both tangible and intangible assets. It represents a legal relationship that grants the owner certain rights over the property, including the rights to possess, use, transfer, and dispose of it.

#### **I.1.4 Unmarried Couples**

Unmarried couples are individuals who are in a romantic relationship but have not formalized their partnership through marriage or a civil union. This term encompasses a variety of living arrangements, including cohabitation, where partners share a home and life together without being legally married. The concept of unmarried couples is significant in various social, legal, and cultural contexts.

### **I.2 Conceptual Framework**

From the analysis of laws governing the enjoyment of acquired property, it is established that in principle, the enjoyment of rights over acquired property depends on a marital bond. This inspiration reflects the generality of traditional laws which granted property rights access to married couples, while very little attention was given to couples that choose a cohabitation bond. Consequently, couples that remained unmarried for lack of resources to host a traditional wedding were discriminated against. This vision prevailed for a long time despite the fact that the legal departure from customary practices, especially the family law of 2016 and its repealed of 2024, and the constitution of the Republic of Rwanda of 2003, provided legal instruments for enjoying other rights related to the enjoyment of acquired property.

The period before the family code of 1988 positioned husbands as property holders within the framework

of the marital partnership, while the woman's contribution was morally assessed in view of the labor, and women became property holders through inheritance. The insufficiency of current legal provisions allows for unmarried or non-registered citizens to claim the property in which they collaborated in acquiring by invoking forced cohabitation, which recognizes the facts of common life as circumstances sought to invoke some of the oldest laws in premarital cohabitation. The government proposal indicates that proof of common life for a period of not less than one year is not determinative. The establishment of this proof is required and applied on a case-by-case basis.

### **I.2.1. The place of land and properties in human right**

Land and property rights are integral to the broader framework of human rights, intersecting with various social, economic, and cultural dimensions. The significance of these rights can be understood through several key aspects:

#### **I.2.1.1. Economic and Livelihood Rights**

Land is often a primary source of livelihood for many individuals and communities. It is essential for agricultural production, housing, and access to resources. The Office of the United Nations High Commissioner for Human Rights (OHCHR) emphasizes that land is not only a means of economic survival but also a foundation for identity and community cohesion. The right to land is thus linked to economic rights, such as the right to work and the right to an adequate standard of living.

Cultural and Social Identity <sup>3</sup>For Indigenous peoples and local communities, land is deeply connected to cultural identity and social practices. International human rights law recognizes the land rights of Indigenous peoples, asserting that they cannot be forcibly relocated without their free, prior, and informed consent. The loss of land can lead to the erosion of cultural heritage and social structures, further marginalizing these communities.

#### **Legal Framework and Controversies**

The Universal Declaration of Human Rights (UDHR) states that everyone has the right to own property, which includes land. However, the right to property is often contentious; it can be seen as a means of protecting the interests of the wealthy at the expense of marginalized groups. Historical events, such as land dispossession during colonialism or state-led collectivization, illustrate the potential for property rights to result in significant human rights violations.

#### **I.2.1.2. Conflict and Displacement**

Land rights are particularly critical in conflict and post-conflict settings. Issues surrounding housing, land,

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<sup>3</sup> constitution of republic of rwanda

and property rights can significantly impact peace building efforts, especially for returning refugees and internally displaced persons. Proper management of these rights is essential for rebuilding communities and fostering reconciliation.

### **I.2.1.3. Environmental Considerations**

The intersection of land rights with environmental sustainability is increasingly recognized. Indigenous lands often harbor significant biodiversity and natural resources. When land rights are respected, it can lead to better environmental stewardship. Conversely, corporate exploitation of land can lead to environmental degradation, further threatening the livelihoods of those who depend on these lands. In summary, land and property rights are multifaceted human rights that encompass economic, cultural, and social dimensions. They play a crucial role in the livelihoods of individuals and communities, particularly for Indigenous peoples, and are essential for fostering social justice and environmental sustainability.

According to human rights formulations (economic, social, and cultural rights), everybody should enjoy the right to property, and such property can be acquired through working efforts. In this perspective, each person can acquire both movable and immovable property in accordance with the law. Many countries, including Rwanda, have rules opposed to individual right to have its share in property acquired when being in non-married relationships. This contradiction between law and relationship enjoyment brings several disputes after the relationship collapses. These disputes can always bring the entire relationship into a poor state or sometimes can lead to legal fights.<sup>4</sup>

Though Rwanda ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa that provides for equality among spouses and the property regime, Rwandan law does not allow couples to enter into different kinds of marriage. Meaning that in this context, marriage is reserved for couples who meet the regular requirements provided for by marriage laws and have it solemnized in conformity with the official procedures. A couple living together but unmarried, in terms of civil status, have no personal rights and could not take any personal action against each other as far as the property at issue is concerned.

Nowadays, due to changes brought to society, relationships between those who were meant to unite and start families immediately when such relationships are established are enduring highly known changes. In the past, traditional relationship norms only dictated married people exclusive rights to the enjoyment of rights over acquired property. Today, due to changes in mindsets, people do not marry one immediately when they establish a serious relationship. Rather, they prefer to organize and carry on with their lives in a stable relationship without getting married. As generally understood, people in such relationships unite,

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<sup>4</sup> Official Gazette n° Special of 10/06/2021 N° 27/2021 of 10/06/2021 Law governing land



live together, and carry on various activities that help them to be in a better state of development without getting married. Each party always brings something on board when deciding to unite, meaning that they can both contribute to the development of the relationship. The relationship itself or serious connection with intent to get married are basically those that legitimate the two parties' union.

The legal framework governing property rights for unmarried couples in Rwanda presents significant challenges, particularly in the context of gender equality and property ownership. While Rwanda has made strides in reforming laws to protect property rights, the legal recognition of unmarried couples remains limited.

The legal framework in Rwanda, while progressive in many respects, still falls short in addressing the rights of unmarried couples concerning property ownership. The lack of recognition for consensual unions and the dominance of customary laws create significant barriers, particularly for women, in claiming and inheriting property. Ongoing efforts to reform these laws and improve awareness of property rights among citizens are essential to ensure equitable access to land and property for all individuals, regardless of marital status.<sup>5</sup>

### **I.2.2. The Concepts Of Right To Property As Recognizes Human Rights**

The recognition of property rights by different international human rights treaties has created the belief that each human being has a right to property, and that the duty of the state and each third party is to respect, protect, and promote the enjoyment of this right. Nevertheless, the recognition of the right to property and the facilitation of ownership of property according to human rights principles are not the same as the recognition of property rights between individuals. One needs, first, to have clear human rights concepts and, second, a legal framework that obliges individuals to respect the property rights of other individuals.

International human rights treaties and declarations have received universal support and have given some directives or international laws for the principles recognizing property rights among states or at the international level, state obligations towards its citizens or between the state and citizens or third parties, including in relation to foreign individuals wishing to be owners in a determinate location and states' obligations regarding the control of foreign acquisitions. This forms the first step toward the recognition of a relationship between individuals. The second step, which is the relationship between individuals themselves, is included in the second half of the society's obligations according to human rights treaties. The other part is the state obligations contained in the human rights treaties themselves.

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<sup>5</sup> Official Gazette n° Special of 10/06/2021 N° 27/2021 of 10/06/2021 Law governing land

The legal framework governing property rights in Rwanda presents significant challenges, particularly for unmarried couples, in the context of human rights and property ownership. This analysis focuses on the implications of Rwandan law regarding the enjoyment of property rights for unmarried individuals, especially women, in light of the broader concepts of human rights.

The Rwandan legal framework, while progressive in many respects, still falls short in recognizing and protecting the property rights of unmarried couples. This gap represents a significant human rights concern, particularly for women, who are disproportionately affected by the lack of legal recognition and protection. Addressing these issues through comprehensive legal reforms is essential for ensuring equitable enjoyment of property rights and advancing gender equality in Rwanda.

The Rwandan legal framework, while progressive in many respects, still falls short in recognizing and protecting the property rights of unmarried couples. This gap represents a significant human rights concern, particularly for women, who are disproportionately affected by the lack of legal recognition and protection. Addressing these issues through comprehensive legal reforms is essential for ensuring equitable enjoyment of property rights and advancing gender equality in Rwanda.<sup>67</sup>

### **I.3. Theoretical Framework**

In most cases, it happens that unmarried couples leave the same dwelling where some of the children are born and cohabit for an undetermined number of years while others are born... explode or end the cohabitation. In such situations, difficult legal issues arise when the relationship is terminated, for property owned or assumed by one or both of the parties during its duration... the complex legal implications of this union, forming respect for the principle of autonomy of private transaction, are contradicted and facilitated in the scheme of legal regulation of the property relationship between those who leave the community regime?... public order and apply to the regime of legal property or the principles of private autonomy and the agreement should be judged in the light of its validity requirements, being among them the respect of the scope of an intervention for ex nihilo validity of this agreement on the mutual benefits, economic value, duration and maintenance of cohabitation, scope that cannot include stipulations that relate to requiring the exclusiveness of use of the property or stipulate a settlement assignment in case of dissolution, clauses that do not have automatic efficiency as a real credit

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<sup>6</sup> N° 27/2021 of 10/06/2021 Law governing land

<sup>7</sup> Official Gazette n° Special of 10/06/2021 N° 27/2021 of 10/06/2021 Law governing land

and employment intervention and are not null or void, can only be rejected as these are contrary effects to the nature of the relationship and the property can return to the original configuration.

The enjoyment of rights over acquired property for unmarried couples in Rwanda is a complex issue influenced by the legal framework governing property rights, marriage, and inheritance. This analysis focuses on the implications of Rwandan laws for unmarried couples, particularly in terms of property rights and the challenges they face.

Rwanda's legal framework regarding property rights is primarily governed by the Law n° 71/2024 of 26/06/2024 which addresses matrimonial regimes, donations, and successions. This law stipulates that only civil marriages are legally recognized, which means that informal unions or cohabitations do not confer any legal rights or protections regarding property ownership or inheritance for either partner. Article 374 of this law Heirs are entitled to inherit in the following order: (a) children of the deceased; (b) father and mother of the deceased. (c) full-blood brothers and sisters of the deceased; (d) half-brothers and half-sisters of the deceased; (e) grandparents of the deceased; (f) paternal and maternal uncles and aunts of the deceased.

By addressing these areas, Rwanda can move towards a more inclusive legal framework that protects the rights of all individuals, regardless of their marital status.

### **I.3.1 Critical Analysis**

Rwandan legal framework in force (the Civil Code, Organic Law No. 39/2016/OL of 12/08/2016 determining the organization of Family, Organic Law N° 10/2008/CTN on the Legal Regime of Secured Interests in Movable Property and Organic Law No. 02/2014/OL of 20/04/2015 approving the Land law) provides the enjoyment of rights over "acquired" property or the "roaming" of the property (etc) for (married and) cohabitating couples as provided respectively by the Civil Code (articles 208, 557, etc) and Family Law (article 89, no 4, ...). The law also recognizes that this family has rights over this property that were acquired through the work or effort of either of the cohabitating partners, held in common. The cohabitation may be followed or not by the effect of marriage. This paper aims at:

(i) examining how the legal framework treats this right banner for cohabitating couples; (ii) analyze the content of the laws regulating this issue, particularly the conditions set in family law and civil law for cohabitating partners to enjoy this right banner; (iii) offer some suggestions and finally (iv) present these results in a critical field. The research methodology encompassed a combination of field interviews and literature review.

The population under study includes cohabitating partners, lawyers specialized in family and civil law,

and responsible leaders of the organizations in charge of promoting the rights of family in Rwanda. The results of our study revealed a quite noteworthy lack of definition in the laws establishing the manner in which these rights over cohabitation should be applied by the cohabitating partners. It was therefore suggested that the legal provisions on the rights of cohabitating partners should be revised and complemented by implementing regulations to remove this gap in legal doctrine.

The legal framework governing property rights for unmarried couples in Rwanda presents significant challenges, particularly in the context of gender equality and inheritance rights. This analysis will explore the implications of Rwandan laws on the enjoyment of rights over acquired property for unmarried couples, focusing on both statutory provisions and customary practices.

For unmarried Rwandan couples, discussions about their rights seem hard to come by. First, traditional norms make it impossible for unmarried individuals to jointly own property: traditionally, property is owned jointly by a man and his wife, and there is no place for people cohabiting without marrying. Second, generational wariness about discussing non marital relationships leads to practices of silence.<sup>8</sup>

Fearful of the social shaming that can come from simply asking for information on inheritance rights, many unmarried couples lack the access to knowledge that informs planning for long-term relationships. Despite urunana and urugwiro cohabitation practices, and the prevalence of unmarried couples living together in contemporary Rwandan society, the omission of no married partners from the country's family inheritance framework evolves inadvertently, ignoring clear social and economic trends.<sup>9</sup>

#### **I.4. Acquiring Property On Unmarried Couples As The Government Sovereign Right To Property**

Real-life legal disputes among couples who buy property when they cohabit cannot always be foreseen. Although getting legal advice before buying the property can help resolve disputes that arise during the intended lifetime of the relationship, it may not eliminate the need for resort to the courts afterwards. Hence, irrespective of whether the couple are married or unmarried, it is important for them to think seriously about what would happen to their property and rights when disputes arise upon the dissolution of their relationship. Since unmarried couples cannot apply for marriage stabilization, this gives the

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<sup>8</sup> the Civil Code, Organic Law No. 39/2016/OL of 12/08/2016  
Organic Law No. 02/2014/OL of 20/04/2015

<sup>9</sup> the Civil Code, Organic Law No. 39/2016/OL of 12/08/2016  
Organic Law No. 02/2014/OL of 20/04/2015

couple less protection at the end of their relationship. Moreover, they are often required to turn to the civil justice system when they face difficulties in their personal relationships. As is notorious, both are combative and cumbersome.

Acquiring property as an unmarried couple in Rwanda presents unique challenges within the legal framework. The Rwandan legal system primarily recognizes civil marriages, and there is no automatic legal recognition of consensual unions, which complicates property rights for unmarried couples.

#### **I.4.1. Property Ownership for Unmarried Couples**

Property ownership is an important consideration for unmarried couples who purchase a home together or separately because so much property law is developed in a marriage context. Therefore, to treat more than one million cohabiting unmarried heterosexual and virtually all homosexual couples similarly, an attorney should be informed of the property implications of the couple's relationship. Many legal options are available.

##### **I.4.1.1. Separate Ownership**

Generally, property acquired by unmarried couples remains individually owned unless explicitly stated otherwise. Each partner retains ownership of property purchased before the relationship, and anything acquired during the relationship typically remains the property of the person whose name is on the title.

##### **I.4.1.2. Joint Ownership Options**

Unmarried couples can choose to own property jointly, either as joint tenants or tenants-in-common. Joint tenancy allows for equal ownership with rights of survivorship, meaning if one partner dies, the other automatically inherits their share. Conversely, tenants-in-common can own unequal shares, and upon death, a partner's share is passed according to their will or state laws.

##### **I.4.1.3. Cohabitation Agreements**

To mitigate potential disputes over property rights, couples are encouraged to draft cohabitation agreements. These legal documents outline ownership details and how assets will be divided if the relationship ends. Such agreements can clarify intentions and protect both parties' interests.

In summary, unmarried couples must proactively address property rights through clear agreements and legal documentation. Understanding the limitations of their rights compared to married couples is crucial for protecting their interests and ensuring fair outcomes in the event of separation or death. Seeking legal advice is recommended to navigate these complexities effectively.

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for protecting their interests and ensuring fair outcomes in the event of separation or death. Seeking legal advice is recommended to navigate these complexities effectively.

### **I.5. Overview Of Acquiring Property On Unmarried Couples**

Unmarried couples often face unique challenges regarding property ownership and rights, particularly when it comes to purchasing and managing shared assets. Understanding these dynamics is crucial for protecting individual and joint interests.

#### **I.5.1. Property Ownership Options**

When unmarried couples decide to buy property together, they typically have two main options for ownership:

##### **I.5.1.1. Joint Tenancy**

In this arrangement, both partners share equal ownership of the property (usually 50/50). A key feature is the "right of survivorship," meaning that if one partner dies, their share automatically passes to the surviving partner, avoiding probate.

##### **I.5.1.2. Tenancy in Common**

This allows partners to own different percentages of the property. If one partner dies, their share does not automatically transfer to the other partner but is instead passed according to their will or state intestacy laws. This arrangement can lead to more complex estate planning needs.

### **I.6. Condition For Lawful Acquiring Property On Unmarried Couples And Legal Framework**

In Rwanda, the legal framework regarding property rights for unmarried couples is primarily governed by the distinction between officially recognized marriages and consensual unions. Here are the key points regarding the conditions for lawful acquisition of property by unmarried couples and the relevant legal framework:

#### **I.6.1. Ownership Options**

Unmarried couples can own property jointly, just like married couples

Common ownership options include:

1. Joint tenancy with right of survivorship: Property automatically passes to surviving partner upon death
2. Tenancy in common: Each partner owns a specified share that is transferred via their will or intestacy laws upon death

The deed or title should clearly specify the ownership shares

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### **I.6.2. Cohabitation Agreements**

A cohabitation agreement is a legally binding contract that outlines the rights and responsibilities of unmarried couples in case of separation

It can define property ownership shares, financial responsibilities, and asset division

Seeking legal advice when drafting a cohabitation agreement is highly recommended.

In summary, while Rwanda has made strides toward gender equality in property rights through its legal framework, significant challenges remain for unmarried couples, particularly women, who lack legal protections and rights associated with property ownership and inheritance.<sup>1011</sup>

### **I.7. assessment of violations of human rights on acquiring property on unmarried couples**

The assessment of human rights violations concerning property acquisition by unmarried couples highlights significant legal disparities compared to married couples. These disparities can lead to substantial financial insecurity, particularly for women and children, and disproportionately affect individuals from specific ethnic and religious backgrounds.

The legal relationship emerging between unmarried couples is not arranged as it is wanted to be under Turkish Law. It is known that there is no specific regulation regulating the legal regime of the property of the cohabitation when the relationship between unmarried couples ends. However, these properties in scope, as will be mentioned in the sections, in violation of the personality of the woman of what is called commonly as concubinage, should be reviewed emotionally and financially, by not confiscating the main purpose of the opinions that are extracted under Turkish Law for breach of agreement with the Constitution and its basic principles.

In fact, when we examine today's general social situation, it may be inevitable to find concubinage among public order. It is something that should be legally arranged. Considering the interaction of private law with public law, it should be expected that some rights and obligations may need to be arranged in the nature of their economic services or share something based on an equal partnership. The fact that there are also increasing assessments within the international dimension is another concrete proof of this expectation.

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<sup>10</sup> Rwanda civil code

<sup>11</sup> N° 27/2021 of 10/06/2021 Law governing land

The purpose of this study is that the Protection of Personality, a part of constitutional laws that appear in various areas of law, regulate the property to the extent it falls within its scope. In this context, within Turkish Law and Continental Law, it is intended to attract attention by emphasizing the main views of the doctrine about the legal regime of the property during the cohabitation of the unmarried couple.

The main assessment of these views is made to examine the absence of personality protection in the area of property. In the last part, the necessity is emphasized by referring to the cases by considering both the internal legislation and doctrine views and developing Turkey's international commitments. In essence, and above all, the reason for the study is to remind that the property, limited or unrestricted, should also be subject to property sharing and equal property sharing at the end of the cohabitation of the unmarried couple, to the extent that it is considered as a constitutionally fundamental right. Finally, it is found appropriate to finalize the assessment by emphasizing the necessity of presenting regulations resolved for judicial practices.

### **1.7.1. Societal Implications**

The legal shortcomings in protecting unmarried couples' property rights are particularly concerning for women from ethnic minority backgrounds who may enter religious-only marriages that lack legal recognition. These women often find themselves without the protections afforded to married couples, exacerbating their vulnerability in the event of relationship breakdowns.

In summary, the current legal landscape surrounding property rights for unmarried couples presents significant challenges and potential human rights violations, particularly for those who may not have the means or knowledge to secure their interests through legal agreements. The ongoing discussions about reform indicate a recognition of these issues and a potential pathway toward greater equity in property rights.

<sup>12</sup>In Rwanda, the legal framework governing property rights for unmarried couples is complex and influenced by various laws and customary practices. Here are the key points regarding property acquisition and rights for unmarried couples:

gap in legal recognition and rights, leading to vulnerabilities for individuals in these relationships. Ongoing discussions and potential reforms may help address these issues in the future.

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<sup>12</sup> Constitution of the Republic of Rwanda article 33  
Rwanda Civil code



## **I.8. How Does Rwandan Law Compare To International Standards On Property Rights For Unmarried Individuals**

Rwandan law regarding property rights for unmarried individuals, particularly in the context of inheritance and land ownership, presents significant challenges compared to international standards.

### **I.8.1. Land Registration Issues**

The Rwandan land registration system requires the consent of all individuals with rights to land before any transfer can occur. However, the lack of legal recognition for cohabiting partners means that many women are not registered as landholders, leaving them vulnerable to losing access to land in cases of separation or death of their partner.

In summary, while Rwandan law has provisions aimed at promoting gender equity in property rights, significant gaps remain, particularly for unmarried individuals. The lack of recognition for consensual unions and the predominance of customary practices undermine the rights of women and unmarried individuals, contrasting sharply with international standards that advocate for equal property rights for all. Further reforms are necessary to align Rwandan law with these international principles and ensure comprehensive protection for all individuals, regardless of their marital status.

## **I.9. Critical Analysis**

Without a doubt, an ideal situation in a relationship where property has been achieved during cohabitation would be one where both parties freely decide upon the shares involved. But not all relationships are about love, nor does this kind of decision always occur. Generally, without written legal evidence, issues are likely to arise and intensify in proportion to the residual bitterness of the parties. Therefore, and particularly when a jurisdiction fails to recognize the property rights of unmarried couples with an equivalent deference to recognizing the same rights of married couples, issues that arise must be dealt with through logical, coherent, and equitable reasoning to ensure that the ends of justice.

Acquiring property as an unmarried couple in Rwanda presents unique challenges and opportunities, primarily influenced by the interplay of statutory and customary laws. The legal framework in Rwanda recognizes various forms of relationships, but significant gaps exist in protecting the property rights of individuals in consensual unions, which are not formally recognized as marriages.

### **I.9.1. Property Registration Issues**

When property is purchased or acquired, it is often registered solely in the name of the male partner, leaving the female partner without legal claim to the property, despite her contributions. This situation is

exacerbated by the requirement that all land transactions must have the written consent of both spouses, which does not extend to unmarried partners.

### **I.9.2. Vulnerability in Case of Separation**

In the event of a separation or the death of a partner, individuals in consensual unions may find themselves without any legal claim to shared property. Unlike married couples, who can claim equitable distribution of property upon divorce, unmarried partners have no such legal recourse.

### **I.9.3 Land Registration Initiatives**

Recent efforts to document all individuals with interests in land provide a potential avenue for recognizing the rights of women and partners in consensual unions. These initiatives could help ensure that both partners are registered as co-owners of property, thereby enhancing their legal protections.

### **I.9.4. Gender Sensitization**

Programs aimed at educating communities about the importance of gender equality in property rights can help shift cultural norms that currently disadvantage women and unmarried partners.

Acquiring property as an unmarried couple in Rwanda is fraught with legal complexities and cultural challenges. While the legal framework provides some protections, the lack of recognition for consensual unions leaves many individuals vulnerable. Addressing these gaps through legal reforms, advocacy, and community education is crucial for ensuring equitable property rights for all individuals, regardless of marital status.<sup>13</sup>

## **I.10. Fundamentals of Human Rights**

Article 8 of the Human Rights Act protects the right to respect for private and family life, home and correspondence. This includes the right to live your life privately without government interference and develop personal identity and relationships. However, Article 8 does not give an absolute right to housing. It is a right to enjoy your existing home peacefully, which may require positive action from public authorities in some circumstances to enable you to participate in society.

In summary, while human rights frameworks protect certain aspects of private and family life, unmarried couples still face significant challenges in acquiring and protecting joint property rights compared to married couples in many legal systems. Reforms to marital property laws and practices are needed to address this inequality.

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<sup>13</sup> Official Gazette n° Special of 10/06/2021 of Law governing land N° 27/2021 of 10/06/2021  
Law n° 71/2024 of 26/06/2024 governing persons and family

## **CHAPTER II. ANALYSIS OF THE PROBLEMATIC OF MANAGEMENT OF PROPERTY FOR UNMARRIED COUPLES IN RWANDA**

### **II.1 Factual Context**

The issue of property rights for unmarried couples in Rwanda is marked by significant legal and social challenges. Unmarried couples often face recurring abuses of rights, particularly regarding the acquisition and ownership of property. The legal framework in Rwanda traditionally favors married couples, leaving unmarried partners vulnerable to discrimination and lack of legal protection.

In Rwanda, property rights are heavily influenced by marriage laws, which are designed to protect the interests of married individuals. Unmarried couples do not have the same legal recognition, which can lead to disputes over property ownership when relationships end or when one partner dies. This lack of recognition often results in one partner being unjustly deprived of their rights to property acquired during the relationship.

The situation is further complicated by gender dynamics. Women, in particular, may find themselves at a disadvantage in property disputes, as societal norms often prioritize male ownership. This is exacerbated by the lack of legal recourse available to unmarried women, who may not have the same access to resources or support as their married counterparts.

There have been discussions about reforming property rights to better protect the interests of unmarried couples. For instance, proposals have emerged suggesting that women in informal unions should be granted rights to land and property, recognizing their contributions to the relationship and the household. Such reforms aim to address the systemic inequalities that unmarried individuals face in property ownership.

The recurring abuses of rights concerning property acquisition for unmarried couples in Rwanda highlight a critical area for legal reform. Addressing these issues requires a comprehensive approach that includes legal recognition of unmarried partnerships and equitable property rights to ensure that all individuals are protected under the law, regardless of their marital status.<sup>14</sup>

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<sup>14</sup> Official Gazette n° Special of 30/07/2024 Law n° 71/2024 of 26/06/2024 governing persons and family  
Official Gazette n° Special of 10/06/2021 N° 27/2021 of 10/06/2021 Law governing land

## **II.2. Case Laws**

There are some courts cases which talks about the study:

### **II.2.1. NYIRAHAKUZIMANA CASE**

This case took place at GASABO Court case no RC 01218/2023/TB/GSBO, where NYIRAHAKUZIMANA Rose was claiming to have a full right on the property which was untitled to her and her late partner who died years ago and they lived together illegally (unmarried). And NYIRAHAKUZIMANA claimed to be the owner of the property because even in the contract paper she used buying the property she was the only person who signed on it, and her Husband signed as a witness, and that's what she used as an evidence and request the court to give her full right to it. Unfortunately court declined her request, and without reasonable explanations.

And I thought it was unfair for court to want to put even the children of her late partner on the land title, where if it was on his late partner court wouldn't grant her anything on the property due to that they were unmarried, that's why I think it's unfair.

### **II.2.2. JONES V KERNOTT**

#### **Facts**

An unmarried, co-habiting couple, Mr. Kernott and Ms. Jones, purchased a home with a mortgage in joint names. The couple co-habited the home and contributed to its expenses for eight years, after which Mr. Kernott left the property and made no further contributions. Ms. Jones remained in the property with their children and paid all further expenses towards the acquisition of the property.

#### **Issues**

The question arose as to the beneficial interests that each party had in the property, in light of its registration under joint names as well as their ensuing conduct in relation to it.

#### **Decision/Outcome**

The Supreme Court upheld that, if a property is purchased in joint names for a couple, there is a presumption that their beneficial interests in the property coincide with their legal estate.<sup>15</sup>

The Court placed emphasis that the presiding presumption is reflective of a couple's joint venture to purchase a property, underpinned by an emotional and economic relationship of trust that does not hold

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<sup>15</sup> Gasabo court of law accessed on july 2024

Jones v Kernott [2010] EWCA Civ 578 accessed on july

each party separately account financially.<sup>16</sup>

However, albeit with a high threshold, this presumption can be rebutted by evidence concerning subsequent conduct in relation to the property, such as unequal contributions to the acquisition of the property under a mortgage. In this case, the Court deduced that “objectively from [the parties’] conduct” following from the initial joint registration, there can be no presumption of joint beneficial ownership in a family home. (paras 52-53). Accordingly, the Court held that each of Mr. Kernott and Ms. Jones hold differing beneficial shares in the property that are reflective of their respective contributions to the house. Overturning the Court of Appeal’s previous decision, this was determined to be 10% for Mr. Kernott and 90% for Ms. Jones.

### II.2.3. TAYLOR V POLACKWICH

In the case of Taylor v. Polackwich, decided on August 15, 1983, by the California Court of Appeal, Janina Taylor sued Joseph Polackwich to establish a one-half interest in a property they had acquired while living together. Both parties appealed the judgment rendered by the trial court. Case Background Janina Taylor and Joseph Polackwich were involved in a romantic relationship and acquired property during their time together. After their relationship ended, Taylor sought to claim a 50% interest in the property, arguing that they had a mutual understanding regarding their ownership rights.

#### **Background**

The court addressed two main appeals:

**Defendant's Appeal:** Polackwich contested the trial court's decision to grant a rehabilitative award to Taylor, arguing that it lacked legal or equitable basis. The trial court had justified the award by emphasizing the need for Taylor to rehabilitate herself, considering her responsibilities to her five minor children and the benefits Polackwich enjoyed during their cohabitation. However, the appellate court found that the award was improper, stating that an equitable remedy cannot be used to grant assistance to someone without an underlying right to relief.

**Plaintiff's Cross-Appeal:** Taylor argued that the trial court erred by not awarding her an interest in the property based on the theory of constructive trust. The court explained that a constructive trust is a remedy to prevent unjust enrichment, compelling the return of property to someone who is justly entitled to it. However, the court ultimately ruled against Taylor, reinforcing the notion that a rehabilitative award

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<sup>16</sup> Jeffrey S. Rosen, Taylor v. Polackwich: Property Rights of Unmarried Cohabitants - From Marvin to Equity, 14 Golden Gate U. L. Rev. (1984). <http://digitalcommons.law.ggu.edu/ggulrev/vol14/iss3/14>  
Violation and remained biases in favor of the government some victims of human rights abuses.

is only appropriate when there is a valid underlying claim.

### **Legal Principles**

The case is significant in the context of California's evolving jurisprudence regarding cohabitation and property rights. It built upon the precedent set in *Marvin v. Marvin*, which established that agreements between cohabitants could be enforceable if they did not rely on illicit considerations. The court in *Taylor v. Polackwich* reiterated that while equitable remedies exist, they cannot create new substantive rights where no legal foundation exists.

### **Conclusion**

The appellate court's decision in *Taylor v. Polackwich* underscored the limitations of equitable remedies in cases involving cohabiting partners, emphasizing the necessity for a valid legal basis for claims regarding property interests acquired during the relationship. The ruling clarified that rehabilitative awards are not a means to provide support without a corresponding legal right to such support.

## **II.3 General Principles Of Law**

### **II.3.1. Lack of Legal Recognition for Unmarried Couples**

Rwandan law only recognizes civil monogamous marriages and does not provide any legal protections or property rights for unmarried couples living in de facto unions.

Women in consensual unions have no rights under the Inheritance and Marital Property Law, which governs property rights for legally married couples.

There is no provision in Rwandan law to automatically recognize a relationship as a marriage based on the length of time the couple lived together, the existence of children, or the recognition of the marriage by customary or religious institutions.

### **II.3.1. Implications for Property Rights**

Since unmarried couples are not legally recognized, property acquired during their relationship is usually only registered in the name of the male partner.

If the relationship ends, the woman has no legal claims to any of the couple's possessions, despite having contributed for years to the household property and income.

Women in de facto unions are excluded from the legal protections that an official marriage offers in the event of a divorce or separation.

### **II.3.3. Government Approach**

The official Rwandan policy to address this issue is to encourage unmarried couples to enter into a civil marriage.

The government organizes mass weddings and sensitizes rural populations about the advantages of official marriages.

However, this approach does not address the underlying reasons why some couples choose not to officially register their marriage.

In summary, Rwandan law does not recognize unmarried couples or provide any legal protections for their property rights. Women in de facto unions are particularly vulnerable, as they have no legal claims to property acquired during the relationship and lack the protections offered by an official marriage. The government's approach of promoting civil marriages has had limited success in addressing this issue.<sup>17</sup>

#### **II.4. Doctrines**

In Rwanda, cohabitation outside wedlock is considered a violation of the national law, promoting polygamous marriages (or monogamous with a male head) through the National Unity and Reconciliation Commission law No 33/2002 of 31/07/2002. A woman joining cohabitation is not entitled to any property ownership over the partner's acquired property prior to the legally recognized marriage. As such, this paper explores the doctrines on acquiring property over unmarried couples under Rwandan sentimental law for the period of 2010 to date. Primary data collection was conducted through descriptive-study interviews and questionnaires while secondary sources relied on documents relevant to the national law, Enhanced Integrated Framework assessments, Rwanda Development Board documents, and others. It presents an overview of the cohabitation norms under the contemporary Rwandan law, with attention to doctrine definitions, cohabitation key ideas under Rwandan child and family laws, and the protection for women cohabiting with the male head of monogamous marriage (Karuppiah, 2017).

**II.4.1. The Inheritance and Marital Property Law** of 1999 grants equal inheritance rights to sons and daughters, and protects the property rights of surviving spouses and children. However, this law only applies to legally married couples.

**II.4.2. The law requires the registered consent of all individuals** with rights in land prior to any land transfers. However, there are challenges in determining the rights of women in cohabiting unions without registered marriages.

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<sup>17</sup> Official Gazette n° Special of 30/07/2024 Law n° 71/2024 of 26/06/2024 governing persons and family

Muiruri Muniu, M. "Property rights in cohabitation unions in Kenya." (2018).

Karuppiah, B. "Property division of unmarried cohabitants in Malaysia." (2017).

## **II.5. Different International Approach To Regulate Unmarried Couples, And How Do They Compare In Terms Of Their Strengths And Weaknesses**

Unmarried couples face varying regulations regarding property rights across different jurisdictions, which can significantly affect their financial security and legal standing. This comparative analysis highlights the strengths and weaknesses of international regulations on property rights for unmarried couples, particularly focusing on cohabitation agreements, property ownership, and legal protections.

### **II.5.1. General Legal Framework**

Unmarried couples, or cohabiting couples, do not enjoy the same legal protections as married couples. In many jurisdictions, property rights are determined by ownership rather than partnership status, leading to potential disputes during separation. For instance, if a couple splits up, the property owned by one partner typically remains theirs unless a cohabitation agreement specifies otherwise.

### **II.5.2. International Perspectives**

#### **II.5.2.1. European Union**

In the EU, regulations can differ widely. While some countries recognize de facto unions and provide certain rights regarding property and inheritance, others do not offer any legal recognition to cohabiting partners. For instance, in countries that do recognize such unions, partners may have rights similar to those of married couples concerning property and maintenance payments after separation. However, the lack of uniformity means that enforcement of these rights can be problematic, particularly for same-sex couples in jurisdictions where their relationships are not recognized.

#### **II.5.2.2. United Kingdom**

In the UK, the legal landscape for unmarried couples is often criticized for being outdated. The absence of automatic rights means that cohabiting couples are at a disadvantage, particularly women and children, who may suffer from financial insecurity if the relationship ends. Reports have called for reform to provide better protections for cohabiting partners, reflecting changing societal norms.<sup>18</sup>

### **II.5.3. Strengths and Weaknesses**

#### **Strengths**

**Flexibility:** Cohabitation agreements allow couples to customize their arrangements according to their specific needs and circumstances.

**Legal Clarity:** In jurisdictions where cohabitation is recognized, couples can secure rights that provide

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<sup>18</sup> Conway, H. and Girard, P. "No Place Like Home: The Search for a Legal Framework for the Family Home in Canada and Britain." (2014).



some level of protection similar to marriage.

### **Weaknesses**

**Lack of Uniformity:** The absence of consistent regulations across jurisdictions creates confusion and potential legal pitfalls for couples moving or traveling internationally.

**Limited Rights:** Unmarried couples often lack the same financial claims upon separation, leading to potential inequities, particularly for partners who may have sacrificed career opportunities for family responsibilities.

### **II.5.4. The Main Challenges In Regulating Property Rights For Unmarried Couples Internationally**

There is a significant and growing number of cohabiting couples internationally. However, the law in many jurisdictions has not kept pace with this evolution. Consequently, in the event of a relationship breakdown, these couples may face financial hardship because property rights accrued during that relationship are being disregarded. Several jurisdictions are now looking at how to respond to this challenge and offer greater protection to cohabiting couples. In early 2015, the British government announced its intention to consult on allowing a cohabiting couple to make a claim concerning the family home, akin to the current position for married couples. This paper considers the current approaches to property rights of cohabiting couples in four jurisdictions internationally (Britain, Kenya, Canada, and Scotland) and examines the challenges facing legislators who must craft new laws in response to social change

#### **II.5.4.1. Lack of International Conventions**

One of the foremost issues is the absence of international conventions that specifically address the property rights of unmarried couples. Unlike marriage, which is governed by well-established laws and international agreements, unmarried cohabitation lacks a cohesive legal structure. This gap leads to inconsistencies and uncertainties in property rights across different countries, complicating matters for couples who may have cross-border relationships or assets.

#### **II.5.4.2. Varying National Laws**

National legislation on property rights for unmarried couples varies widely. In many jurisdictions, unmarried couples do not enjoy the same legal protections as married couples. For instance, property acquired during cohabitation may not be automatically considered joint property, leading to disputes over ownership if the relationship ends. Additionally, the legal recognition of cohabitation can differ, with some countries offering minimal or no rights to unmarried partners, particularly in matters of inheritance and financial support.

### **II.5.4.3. Complexity of Cohabitation Agreements**

While cohabitation agreements can provide a framework for managing property rights, their enforceability can be problematic. In many cases, such agreements are not recognized by courts unless they meet specific legal standards, which can vary significantly by jurisdiction. This inconsistency can create challenges for couples attempting to protect their interests, especially in the event of a relationship breakdown.

### **II.5.4.4. Gender and Socioeconomic Disparities**

The legal landscape often disproportionately affects women and marginalized groups. For instance, women who may have sacrificed career opportunities to raise children within a cohabiting relationship often find themselves without financial security upon separation. This issue is exacerbated for women from ethnic minority backgrounds who may be in religious-only marriages that lack legal recognition, leaving them vulnerable in terms of property rights and inheritance.

### **II.5.4.5. Enforcement Issues**

Even in jurisdictions that recognize cohabitation agreements or provide some legal protections, enforcing these rights can be challenging. Legal disputes may arise over the interpretation of agreements, and the complexity of property laws can make resolution difficult. Additionally, the applicable law may depend on where the property is located, further complicating enforcement.

### **II.5.4.6. Conclusion**

The regulation of property rights for unmarried couples is fraught with challenges stemming from the lack of international standards, diverse national laws, and enforcement difficulties. As societal norms evolve, there is a growing call for legal reforms to address these disparities and provide clearer protections for unmarried couples, reflecting their rights and responsibilities in a modern context.<sup>19</sup>

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<sup>19</sup> Sessler, DT Lichter - Journal of Marriage and Family, 2020 - Wiley Online Library. Cohabitation and marriage: Complexity and diversity in union-formation patterns.  
Conway, H. & Girard, P., 2014. No Place Like Home: The Search for a Legal Framework for the Family Home in Canada and Britain

## **CHAPTER III. Ways Forward For Acquiring Property On Unmarried Couples With Fundamentals Human Rights.**

### **III.1. Legal Mechanisms**

Understanding the legal mechanisms surrounding property acquisition and rights for unmarried couples is essential, particularly in light of fundamental human rights principles. This area of law varies significantly by jurisdiction, impacting how property is owned, divided, and protected.

#### **III.1.1. Law n° 71/2024 of 26/06/2024 governing persons and family**

Rwandan law recognizes three marital property regimes for legally married couples: community property, limited community of acquests, and separate property.

Couples can choose their marital property regime when they get married. Community property is the default if they don't specify.

These marital property laws do not apply to unmarried couples living in consensual unions.

#### **III.1.2. Law N° 27/2021 of 10/06/2021 governing land**

Under Rwandan inheritance law, unmarried partners have no inheritance rights over their deceased partner's property.

Children born to unmarried couples may have indirect inheritance rights through their father, but only if he previously recognized them by registering them. But this doesn't apply on unmarried partners.

#### **III.1.3. Law n° Special of 24/12/2015 The Constitution Of The Republic Of Rwanda Of 2003 Revised In 2015**

The Rwandan constitution guarantees the right to private property, but does not specifically address unmarried couples.

Laws provide some protections for property rights, unmarried couples are largely excluded. Women in these relationships have very limited legal recourse to claim property rights, even if they have lived with their partner for years and have children together.

#### **III.1.4. Recommendations for Legal Reform**

To enhance the protection of property rights for unmarried couples, legal reforms may be necessary. This could involve:

Establishing clearer legal definitions and protections for cohabiting couples.

Introducing statutory frameworks that facilitate equitable property division.

Ensuring that laws comply with international human rights standards, thereby reducing discrimination against unmarried couples.

In conclusion, while unmarried couples face unique challenges regarding property rights, understanding the legal mechanisms available can help them navigate these complexities and protect their interests effectively.<sup>20</sup>

### **III.2. Institution Mechanisms**

#### **III.2.1. Ministry of Justice**

The Ministry of Justice plays a crucial role in overseeing the promotion of the rule of law and ensuring that human rights are respected and upheld in Rwanda. It collaborates with the NCHR and other organizations to implement human rights policies and monitor their effectiveness.

#### **III. 2.2. National Commission for Human Rights (NCHR)**

The NCHR is a key governmental body responsible for promoting and protecting human rights in Rwanda. It monitors the implementation of human rights laws and policies, provides recommendations to the government, and engages in public awareness campaigns. The Commission also collaborates with various stakeholders, including civil society organizations, to enhance human rights practices across the country.

#### **III.2.3. United Nations Human Rights Office in Rwanda**

The UN Human Rights Adviser's Office, established in 2008, works to integrate human rights into the UN's programs in Rwanda. It provides technical support to national institutions and engages in capacity-building activities. The office has been involved in training judicial staff and civil society members on human rights standards and mechanisms.

These institutions collectively contribute to the framework for human rights protection in Rwanda, addressing various issues and promoting awareness among the population. Their efforts are crucial in fostering a culture of respect for human rights and ensuring accountability within the government and society at large.

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<sup>20</sup> Law n° 71/2024 of 26/06/2024 governing persons and family

Law N° 27/2021 of 10/06/2021 governing land

### III.3. Legal Framework

Property acquisition in Rwanda, particularly as it pertains to unmarried couples, presents significant challenges that broadly relate to general human rights such as equity, economic stability, equality and dignity. In many countries, including Rwanda, the personal laws of different religious denominations as well as customary law govern property acquisition on separation. In cases of separation, spouses married in accordance with the Marriage Law and who have opted for the regime of community of property are entitled to share equally the matrimonial assets acquired by the partnership during the subsistence of the marriage.

Rwanda's legal framework regarding property rights for unmarried couples is limited and primarily favors formally recognized marriages. Here are the key mechanisms and considerations:<sup>2122</sup>

The right to property is recognized by Article 33 of the Constitution of the Republic of Rwanda, which states that "Every person has the right to own property as permitted by law." Although the right to property is given to every person regardless of his/her marital status, the existing legal framework relates to property beyond what is provided by the Civil Code as amended to 2013. It applies more to those who are married or to family, to the detriment of those who are not married and happen to have properties in common. Through this paper, we strive to demonstrate how the legal framework of acquiring property for unmarried couples is organized, how it is applied, and how it can be improved. We propose, among other recommendations, to extend to couples who are not married, such as cohabitations, the regime of legal separation of property for spouses.

By definition, the right to property denotes that the owner has the right to possess the property he owns like any other owner and not to suffer any interference in his/her property, know, and dispose of the property without opposing any restrictions. In relation to the possession of property, property must be permanent and not temporary, so it should not be given to others who could create a situation that would interfere with the right to property. Concerning access to property, the property owner has no specific right to establish his/her property, and the owner may give access to his/her property except, in the event of necessity, prohibition, or limitation established by the law.

In Rwanda, the legal framework governing property rights for unmarried couples is complex and influenced by various laws and customary practices. Here are the key points regarding property acquisition and rights for unmarried couples:

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<sup>21</sup>Bonthuys, E., 2017. Exploring Universal Partnerships and Putative Marriages as Tools for Awarding Partnership Property in Contemporary Family Law.

22 JD Munderere - RWANDA LAW JOURNAL - [rwandalawjournal.ac.rw](http://rwandalawjournal.ac.rw). The Management of Cohabitation of Separated Spouses under Rwandan Law.

### **III.3.1. Matrimonial Regimes**

The 2024 Law Governing Matrimonial Regimes, Donations and Successions further defines rules around marriage, donations between spouses and parents-children, and inheritance. It maintains the principle of equal inheritance rights regardless of gender.<sup>23</sup>

### **III.3.2. Lack of Legal Recognition**

Unmarried couples, particularly those in cohabiting relationships, do not have formal legal recognition under Rwandan law. This absence of recognition means that individuals in such unions lack the property rights afforded to married couples.

### **III.3.3. Inheritance Rights**

The Law on Inheritance and Marital Property Rights in Rwanda primarily protects individuals in formal marriages. Unmarried partners do not benefit from the same inheritance rights, leaving them vulnerable in cases of separation or death of a partner. For example, women in de facto unions often have no legal claims to property acquired during the relationship, despite their contributions.

### **III.3.4. Property Acquisition**

While the Land Law of 2013 states that both men and women have equal rights to land, this equality does not extend to unmarried couples. If property is acquired during a consensual union but is registered solely in one partner's name, the other partner may have no legal claim to it.

### **III.3.5. Recommendations for Improvement**

#### **III.3.5.1. Legal Reforms**

There have been calls for legal reforms to provide better protection for the property rights of unmarried couples. This includes recognizing consensual unions within the legal framework, which would allow for shared property rights similar to those enjoyed by married couples.<sup>24</sup>

#### **III.3.5.2. Awareness and Education**

Government initiatives have focused on encouraging formal marriages as a means to secure property rights. However, this approach may not adequately address the needs of those in long-term cohabiting relationships, highlighting the need for more inclusive policies and education regarding property rights.

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<sup>23</sup> Constitution of the Republic of Rwanda article 33  
Rwanda Civil code

<sup>24</sup> Official Gazette n° Special of 10/06/2021 of Law governing land N° 27/2021 of 10/06/2021

The current legal framework in Rwanda does not adequately protect the property rights of unmarried couples, particularly women. There is a significant

### **III.3.5.3 Inheritance Rights**

Rwanda's 2024 Law on Inheritance and Marital Property Rights grants equal inheritance rights to sons and daughters.

If a couple divorces, property should be equally divided between them, or If both husband and wife die, their children are supposed to inherit their property.

The Organic Land Law of 2005 and the Law on Inheritance and Marital Property Rights of 2024 are key statutes that address property rights in Rwanda. These laws provide equal inheritance rights to sons and daughters, and protect the rights of surviving spouses to property. However, they do not recognize consensual cohabiting unions or polygamous marriages, which leaves many women without legal protection regarding property rights.

In summary, while Rwanda's laws provide opportunities for gender equity in acquiring property rights, the legal framework is still evolving to address the challenges faced by unmarried couples and cohabiting partners.

## **III.4. Improve planning and the process when acquiring property for unmarried couples**

Rwanda, often dubbed as “the land of a thousand hills,” is admired for its breathtaking hilly landscape and beautiful scenery. In addition, its progress in various domains coupled with good governance, peace, and security, has earned it respect among countries struggling to uplift the welfare of their people and development. However, the fact that there is no research and documentation detailing the experiences of unmarried couples in the planning and acquisition processes of property ownership under Civil Law is striking context of unmarried couples is lacking in the Rwandan setting.

### **III.4.1. Legal Recognition and Joint Registration.**

#### **III.4.1.1. Legal Framework for Cohabiting Couples**

Rwandan law does not automatically recognize consensual unions, which poses significant challenges for unmarried couples wishing to acquire property. Only civilly registered marriages confer legal rights and obligations, leaving many cohabiting couples vulnerable in property matters.

### **III.4.1.2. Joint Registration of Property**

It is crucial that both partners in a consensual union are registered as joint holders of any property acquired together. The Rwandan Civil Code contains provisions for co-ownership, and these should be explicitly utilized or amended to allow for joint registration in consensual unions. This would provide legal protection and clarity regarding property rights in the event of separation or death.

### **III.4.2. Inheritance Rights**

#### **III.4.2.1. Inheritance Laws**

Current inheritance laws can disadvantage women and unmarried partners, as they often do not recognize the rights of individuals in unregistered unions. Amendments to the Inheritance and Marital Property Law should clarify that partners in consensual unions have rights similar to those in registered marriages, especially concerning property acquired during the relationship.

#### **III.4.2.2. Research and Advocacy**

Further research is necessary to understand the implications of inheritance laws on unmarried couples and to advocate for reforms that ensure equitable rights to property and inheritance for all partners, regardless of marital status.

### **III.4.3. Practical Steps for Property Acquisition**

#### **III.4.3.1. Documentation and Certification**

Unmarried couples should obtain a certificate of celibacy, which is necessary for land registration and other legal processes. This certificate confirms their single status and can facilitate property transactions.

#### **III.4.3.2. Utilizing Government Resources**

Couples should engage with resources such as the Kigali City One Stop Center and the Irembo eGovernment portal, which streamline access to various government services, including land acquisition and registration.

### **III.5. Mitigate negative impact on unmarried couples when it comes to properties**

Unmarried couples often face unique challenges when it comes to property rights. Unlike married couples, they do not benefit from the same legal protections regarding property ownership, inheritance, and division of assets upon separation or death. Therefore, it's crucial for unmarried couples to proactively address these issues.

Like many other African countries, Rwanda is also a unique place where various customary practices



domesticated and exercising pre-colonial and post-colonial lenses come to vivid light. Such practices include cultural perspectives on marriage customs, family structures, obligations and liabilities, responsibilities and power relations, property ownership and transfer with a glimpse on succession perspectives) and death rituals.

### **III.5.1. Lack of Recognition**

Rwandan law only recognizes civil marriages, which means that individuals in consensual unions do not have legal rights to property or inheritance. This absence of recognition results in women, who often contribute to household income and property, having no claims to assets upon separation or death of their partner.

### **III.5.2. Inheritance Rights**

The existing inheritance laws provide for equal rights for sons and daughters, but these protections do not extend to individuals in unregistered marriages. Consequently, women in consensual unions can be entirely excluded from inheriting property, exacerbating their economic vulnerability.

### **III.5.3. Customary Law vs. Statutory Law**

Customary practices in Rwanda often favor men, particularly in matters of land and property control. While statutory laws have made strides toward gender equality, customary laws continue to dominate family and land issues, leading to discriminatory practices against woman.<sup>25</sup>

By addressing these legal and social challenges, Rwanda can help protect the rights of unmarried couples and promote greater equity in property ownership and inheritance.

## **III.6. How Unmarried Couples Can Protect Themselves**

Marital property rights have been elusive in legal practice and jurisprudence, but it appears there is a mode of analysis that, when applied, could clarify the situation immeasurably. There is a body of ratified National Secular Human Rights, given force by Legislative Act Laws of the United Nations that all nations are primordially entitled to have enacted and enforced in their legal systems.

### **III.6.1. Cohabitation Agreements**

A cohabitation agreement is a legal document that outlines the rights and responsibilities of each partner

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<sup>25</sup> Muiruri Muniu, M., 2018. Property rights in cohabitation unions in Kenya.

in the relationship, especially concerning property and finances. This agreement can specify:

**1. Ownership of Property:** It should detail how the property is owned, whether as joint tenants (where ownership passes to the surviving partner upon death) or tenants in common (where each partner's share can be inherited by someone else).

**2. Division of Assets:** The agreement can clarify how assets will be divided in the event of a breakup, including property and financial contributions made by each partner.

### **III.6.2. Joint Ownership of Property**

When purchasing property, it is advisable for unmarried couples to hold the title in joint names. This can provide equal rights and responsibilities regarding the property.

**1. Joint Tenancy:** This allows the surviving partner to automatically inherit the property if one partner dies.

**2. Tenants in Common:** This arrangement allows each partner to specify who inherits their share of the property, which can be outlined in a will.<sup>26</sup>

By taking these steps, unmarried couples can better protect their interests and ensure clarity in their shared financial and property matters.

## **III.7. Improve Transparency And Accountability When Acquiring Property On Unmarried Couples**

### **III.7.1. Legal Agreements**

**1. Cohabitation Agreements:** Unmarried couples should consider drafting cohabitation agreements that outline each partner's rights and responsibilities regarding the property. This document can cover financial contributions, property management, and what happens if the relationship ends or one partner wants to sell their share.

**2. Co-Ownership Agreements:** Establishing a co-ownership agreement can provide clarity on how the

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<sup>26</sup> Conway, H. & Girard, P., 2014. No Place Like Home: The Search for a Legal Framework for the Family Home in Canada and Britain.

Aloni, E., 2014. Deprivative Recognition.

W. Waggoner, L., 1994. Marital Property Rights in Transition

property will be managed and how proceeds from a sale will be divided. This is essential to prevent disputes and ensure both parties understand their financial obligations and entitlements.

### **III.7.2. Ownership Structures**

**III.7.2.1. Joint Tenancy vs. Tenancy in Common:** Couples must decide how to hold the property title. Joint tenancy means equal ownership with rights of survivorship, while tenancy in common allows for different ownership percentages based on financial contributions. Understanding these options can help couples choose the structure that best fits their relationship and financial situation.

**III.7.2.2. Estate Planning:** It's advisable for each partner to create wills that specify what happens to their share of the property in the event of their death. This ensures that the property is passed on according to their wishes rather than defaulting to the other partner or their heirs.

### **III.7.3. Professional Guidance**

#### **1. Consult Legal and Financial Experts**

Engaging with professionals can help couples navigate the complexities of property ownership. Lawyers can assist in drafting necessary agreements, while financial advisors can provide insights into the implications of different ownership structures and help with budgeting for ongoing expenses.

By implementing these strategies, unmarried couples can enhance transparency and accountability in their property acquisitions, ultimately protecting their financial interests and fostering a more equitable partnership.

### **III.8 Carryout Legal Reforms**

This is an added source of confusion and irony, especially as regards the issue of marriage where there is excessive sharp contrast in religious beliefs and traditions. The purpose of this paper is two-fold: to identify and discuss some of the legal problems posed in the enforcement of property rights among unmarried cohabitants in different jurisdictions, and to suggest some legal reforms which could ameliorate or eliminate such problems.

#### **III.8.1. Matrimonial Regimes, Liberalities and Successions Law (2024)**

This law allows unmarried couples to share their property, even when married under community of property.

It provides three marital property regimes: community property, limited community of acquests, and separate property. Community property is the default regime if couples do not choose otherwise.

The law applies to marriages entered into since 1999; prior marriages remain subject to their previous

marital property regime.

### **III.8.2. Organic Land Law (2005)**

This law establishes the basic framework for land rights in Rwanda, recognizing that women and men have equal rights to land.

It requires written consent from spouses and adult children before land rights can be transferred.

All land rights are to be adjudicated and registered, with a focus on formalizing customary land tenure.

### **III.8.3. Constitution of Rwanda (2015)**

The constitution recognizes only one legally married wife, which creates issues for the rights of women in polygamous marriages.

However, the constitution also states that women and men have equal rights, and the government has made efforts to address gender bias in land rights.

In summary, Rwanda has made significant progress in reforming its legal framework to protect the property rights of unmarried couples through the Matrimonial Regimes, Liberalities and Successions Law, the Organic Land Law, and the Constitution. However, some issues remain, such as the rights of women in polygamous marriages.<sup>27</sup>

## **III.9. Mechanisms For The Prevention Of Human Rights Violation Over Enjoyment On Acquiring Property On Unmarried Couples**

### **III.9.1. Human Rights Framework**

The right to respect for private and family life is protected under Article 8 of the Human Rights Act 1998 in the UK. This right encompasses the ability to enjoy one's home peacefully and maintain family relationships, which includes relationships between unmarried couples. However, the legal interpretation of "family life" can be narrow, often prioritizing legal marriage over cohabiting relationships. This can lead to situations where unmarried partners face discrimination or lack access to legal recourse in property disputes.

### **III.9.2. Mechanisms for Prevention of Human Rights Violations**

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<sup>27</sup>Official Gazette n° Special of 10/06/2021 N° 27/2021 of 10/06/2021 Law governing land

Muiruri Muniu, M., 2018. Property rights in cohabitation unions in Kenya.

The rapid increase in human rights violations across the globe has prompted the need for comprehensive studies into mechanisms for addressing such gross humanitarian abuses. With regard to a constitutional democracy, the focus is on violations of the right to enjoy property ownership through acquiring property. Property ownership is a fundamental human right that is essential for people's economic development, just as freedom of worship, expression, and association.

**III.9.2.1.Public Information Campaigns:** Educating cohabiting couples about their rights and the importance of legal agreements can empower them to protect their interests.

**Legal Reforms:** Advocating for changes in legislation to recognize cohabiting relationships more equitably with marriage can help prevent discrimination and ensure that partners have access to property rights upon separation or death.

**III.9.2.2.Cohabitation Agreements:** Encouraging the use of cohabitation agreements can provide clarity and legal protection for both partners regarding property ownership and financial responsibilities.

**Human Rights Advocacy:** Engaging with human rights organizations to highlight the disparities in legal protections for unmarried couples can foster broader societal and legislative changes.

**III.9.2.3.Human Rights Advocacy:** Engaging with human rights organizations to highlight the disparities in legal protections for unmarried couples can foster broader societal and legislative changes.

In conclusion, while unmarried couples have some protections under human rights laws, significant gaps remain that can lead to violations, particularly concerning property rights. Addressing these issues through legal reforms and increased awareness is essential to ensure that all couples can enjoy their rights fully, regardless of marital status.<sup>28</sup>

### **III.9.3. Effective Remedies For Victims Of Human Rights Violations Resulting On Enjoyment Of Acquiring Property Over Unmarried Couples**

Property rights violations in the context of human rights complaints are complex and multifaceted, necessitating the identification of effective remedies for victims. Property rights vary in their nature,

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<sup>28</sup> Conway, H. & Girard, P., 2014. No Place Like Home: The Search for a Legal Framework for the Family Home in Canada and Britain.

which complicates the determination of the most suitable remedy. This complexity is compounded by the involvement of multiple and diverse actors and institutions, as well as the fact that the victims are often marginalized and vulnerable and that rights violations are frequently interrelated. This paper examines the effective remedies available to victims of human rights violations resulting in the denial of property rights to unmarried couples cohabiting in Rwanda.

### **III.9.3.1 Access to Justice**

Victims must have equal and effective access to judicial remedies. This includes the ability to present claims in a fair and impartial manner, ensuring that their voices are heard in legal proceedings.

### **III.9.3.2. Reparation**

Victims are entitled to adequate, effective, and prompt reparations for the harm they have suffered. This may include compensation for physical and mental harm, lost opportunities, and moral damage, as well as rehabilitation services.

### **III.9.3.3. Protection and Support**

States are obligated to protect victims from intimidation and retaliation, ensuring their safety and privacy throughout the legal process. This includes providing assistance to help victims navigate the justice system.

### **III.9.3.4. Collective Claims**

In addition to individual claims, mechanisms should be in place to allow groups of victims to present collective claims for reparation, recognizing the shared nature of their experiences.

By leveraging these mechanisms and recommendations, victims of human rights violations can better navigate the complexities of seeking justice and reparations, particularly in the context of property rights for unmarried couples.<sup>29</sup>

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<sup>29</sup> LEGAL ASSESSMENT ONGENDER AND PROPERTY RIGHT REPORT  
Official Gazette n° Special of 30/07/2024 Law n° 71/2024 of 26/06/2024 governing persons and family

### **III.10. Mechanisms To Address The Challenges Of The Enjoyment Of Properties By Unmarried Couples**

#### **III.10.1. Lack of legal recognition and protection**

Rwanda's laws only recognize civil (registered) monogamous marriages between a man and a woman. Unmarried couples living in de facto or consensual unions are not afforded the same legal protections, particularly when it comes to inheritance rights.

#### **III.10.2. Insecure property rights for women**

Without being in a registered marriage, women in informal unions have very limited rights to the property they share with their partner. In the event of separation or the partner's death, the woman has no legal claim to the property.

#### **III.10.3. Perpetuation of customary practices**

Customary law in Rwanda has traditionally favored men when it comes to property rights, especially land inheritance. Despite legal reforms, these patriarchal customs persist, disadvantaging women in informal marriages.

#### **III.10.1.4. Potential for family conflicts**

The 1999 inheritance law, which aimed to give women more property rights, has inadvertently caused conflicts between women asserting their legal rights and their male relatives. This is exacerbated for women in informal unions who are seen as having less legitimate claims.

### **III.11. Conclusion**

The critical analysis of property rights for unmarried couples in Rwanda reveals a complex interplay of legal shortcomings and societal norms that continue to disadvantage women. Addressing these issues requires a multifaceted approach, including legal reforms, education, and enhanced enforcement mechanisms, to promote gender equity in property rights and improve the overall economic security of women in consensual unions.

The existing laws disproportionately favor men, as customary practices continue to dominate family and land matters. Women in de facto unions face significant disadvantages, particularly in the event of separation or death of a partner, as they are excluded from inheritance rights. The Rwandan government has attempted to address these issues by promoting official marriages through public awareness campaigns, but these measures have been criticized as inadequate and short-sighted.

Rwanda's legal system primarily recognizes civil monogamous marriages, with only registered marriages conferring legal rights and obligations. Unmarried couples, or those in consensual unions, do not receive the same legal recognition, which severely limits their rights to jointly owned property. For instance, property acquired during a consensual union is often registered solely in the name of the male partner, leaving women vulnerable and without legal claims to assets they may have contributed to financially or otherwise.

It is observed that unmarried couples in Rwanda are denied the rights to jointly acquired property during cohabitation. The provisions on the rights to property inheritance and ownership are only extended to married persons. Those who cohabit are left with the legal option to sue for unjust enrichment or seek restitution of their initial contributions to the estate as they are otherwise lumped with random partnerships. Although there are customary rights that apply to unmarried couples, their applicability especially to monogamous couples is doubtful. Coupled with cultural stigmas attached to cohabitation unions, many unmarried couples inadvertently lose ownership rights to property acquired during cohabitation given the new factors that have influenced the rise in property acquisition and wealth accumulation.

### **III.12. Recommendations**

The question of property rights between unmarried couples became a hot topic in the 1970s in England, when a cohabitant woman was denied any redress. There was a raging national debate about whether the law should change to remedy the injustices faced by cohabiting women.<sup>30</sup>

This critical analysis offers recommendations for the further development of the enjoyment of acquiring property by unmarried couples. In many European countries, non-marital relationships are socially recognized and accepted. However, structural equality for unmarried couples in family law is still lacking. Individual states have adopted different mechanisms to address this field of law. For some, the distance to an equal treatment within family law for unmarried couples is still far away; for others, it is unreasonably long. The trends in some Western European countries show a desire towards an equal treatment of unmarried couples.

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<sup>30</sup> Muiruri Muniu, M., 2018. Property rights in cohabitation unions in Kenya.

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1. While the 1999 Law on Inheritance and Marital Property Rights grants equal inheritance rights to sons and daughters, it does not provide direct inheritance rights to women in unregistered marriages. Customary practices often discriminate against women in such situations.

Efforts should be made to align customary practices with statutory laws, ensuring that women in all types of unions have equal rights to inherit and own property.

2. The Rwandan law governing matrimonial regimes emphasizes the community of property regime, where spouses manage property jointly. However, this does not apply to unmarried couples.

Consider introducing provisions that allow unmarried couples to opt for a similar regime, ensuring joint management and equal rights over acquired property.

3. Customary law continues to favor men in controlling land and property, even though statutory laws aim to promote gender equality.

Engage in cultural and social interventions to change these norms, ensuring that customary practices align with the principles of gender equality enshrined in statutory laws.

By addressing these areas, the Rwandan legal framework can be strengthened to better protect the property rights of unmarried couples, particularly women, and ensure greater gender equality in the enjoyment of property rights.<sup>31</sup>

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<sup>31</sup> Official Gazette n° Special of 10/06/2021 N° 27/2021 of 10/06/2021 Law governing land  
Official Gazette n° Special of 30/07/2024 Law n° 71/2024 of 26/06/2024 governing persons and family

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2. N° 27/2021 of 10/06/2021 governing land. Official Gazette n° Special of 10/06/2021.
3. Constitution Of The Republic Of Rwanda Official Gazette n° Special of 04/08/2023.

### **IV.2. INTERNATIONAL LEGISLATION**

1. In December 1966, the UN General Assembly adopted two international treaties that would further shape international human rights: the International Covenant on Economic Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR).
2. The United Nations Convention on the Rights of the Child (UNCRC) is a legally-binding international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities.
3. The Paris Convention, adopted in 1883, applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition.

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