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## **Reevaluating African Women's Inheritance Rights in Indigenous Customary Law and Statutory National Law**

Mallory Matheson<sup>1</sup> and Ashleigh Heinze<sup>2</sup>

Imagine, as a woman, that your husband has just passed. In the midst of your grieving, his male relatives break into your home and violently force you from the property on which you have lived for the past thirty years. They beat you and several of them rape you, exercising their family's continued dominance over you as a female kin member. Throughout the physical abuse, all verbally claim their rightful ownership of your property as the surviving male relatives of your husband. You and your children are now unjustly homeless. Your jeopardized physical and financial safety leaves all of you vulnerable to further abuse and hardship. Incidents like this scenario have long occurred in African countries which practice indigenous customary law. Yet property grabbing—the illegal eviction of women by men from the women's property by use of physical force, threat, property destruction, and other coercive means, which remains widely practiced under indigenous customary law—violates statutory national law in Botswana, Zimbabwe, and Uganda which protects women's legal right to property inheritance upon male relatives' death.<sup>3</sup>

All three countries have a legal pluralistic order which allows for courts to practice, respectively, indigenous customary law and statutory national law. When provisions of these legal frameworks conflict, indigenous customary law often retains an advantage over statutory national law because it structurally embodies long-imbedded social and cultural norms. Social and cultural norms within traditional patriarchal societal orders, like those in Botswana, Zimbabwe, and Uganda, exclude and disempower women. Gender-discriminatory social norms promote the continued violation of women's inheritance rights for three reasons.

First, indigenous customary law extends the gender hierarchy in societal social norms, leading to widely accepted, often unprosecuted abuse and exclusion of women from public life on numerous individual and societal levels (e.g., domestic partner violence and abuse, preclusion

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<sup>2</sup> Ashleigh Heinze graduates from Brigham Young University in April of 2019 with a degree in Psychology. She will attend law school in August of 2019. Ashleigh would like to thank her co-author, Mallory, for the hard work she put into the paper, as well as the BYU Prelaw Review editing board for their hard work.

<sup>3</sup> INTERNATIONAL JUSTICE MISSION, *PROPERTY GRABBING FROM UGANDAN WIDOWS AND THE JUSTICE SYSTEM* 9 (2012), <https://www.ijm.org/documents/studies/IJM-Property-Grabbing-from-Ugandan-Widows-and-the-Justice-System.pdf>.

of women attaining political office, economic dependency, etc.).<sup>4</sup> As the patriarchal system construes women as non-valuable and non-legitimate members of society, these customs manifest in individual-level interactions between genders. Micro-level interactions in turn shape social norms. Such norms manifest in structural and institutional components of society, including the rule of law and the court system. Indigenous customary law thus disallows fair and equal protection for all genders under the law due to the gender discriminatory customs ingrained in its provisions and practice.

Second, many women will not press legal charges on inheritance rights infractions. Property grabbing leaves women destitute and homeless, begging for food and work. Many become forced to turn to sex work in order to ensure their and their children's survival, leaving them vulnerable to further sexual exploitation by men.<sup>4</sup> With no resources and facing severe stigma and abuse, many women find themselves in social situations in which they face extreme obstacles to building a case against the perpetrators and bringing it to court. Women often fear violent repercussion from male kin should they fight against their relatives' property grabbing. Further, women often remain unaware of their rights under national law.<sup>5</sup> Many also lack access to courts: some women cannot afford transportation both in terms of monetary cost and temporal cost by taking time off of work, household duties, and other obligations to attend court hearings. Women living in rural areas become especially affected by limited court access, as most non-customary courts are located in cities.

Third, the ethicality and logistics of enforcing national law remain nebulous. When customary law conflicts with human rights, which legal systems have the authority to drive the guiding principles intended to resolve such disputes? Which groups—if any—hold the responsibility, jurisdiction, and capacity to ensure compliance with national law in cases of human rights violations? Such discussions necessarily revolve around the issue of respecting cultural sovereignty while preventing human rights abuses and promoting social inclusion.

These realities must be thoughtfully and diligently addressed in order to remedy women's inheritance rights violations. The key issue here is: How can we reshape prejudicial sociocultural conceptions and attitudes of men toward women to *prevent* gender-based human rights abuses, rather than *respond* to them? Given long-established male-favoring hierarchical social structures, many men will perceive initiatives to restore women's rights as a threat to their social status because these measures deprive them of the privilege and dominance which they have historically held over women. Consequently, resistance from men will surely arise as women gain both top-down and bottom-up access to fair legal procedure and begin claiming their rights to inheritance.

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<sup>4</sup> RACHEL C. LOFTSPRING, *Comment: Inheritance Rights in Uganda: How Equal Inheritance Rights Would Reduce Poverty and Decrease the Spread of HIV/AIDS in Uganda*, 29 U. PA. J. INT'L L. 248, 272, 248-271 (2007) (discussing property grabbing and induced sex work among women in Uganda).

<sup>5</sup> Jacqueline Asiimwe, *MAKING WOMEN'S LAND RIGHTS A REALITY IN UGANDA: ADVOCACY FOR CO-OWNERSHIP BY SPOUSES*, 4 Yale Human Rights and Development Journal, 182, 171 (2014).

Scholars and practitioners alike understand that this type and scale of change typically cannot happen easily or quickly, but the root problem in women's inheritance rights violations—culturally-based gender inequality—necessitates nothing less. We need fundamental changes in men's perception of women and women's roles, as well as in women's perception of both themselves and their roles at the individual, familial, and societal levels. Without these paradigm shifts, externally-imposed structural, institutional, and legal changes across the regional-societal and national levels will not survive, as is already evidenced by ethnic groups' adherence to customary law over national law on the issue of women's inheritance rights. We argue that grassroots efforts to induce gender-based societal change must develop in tandem with institutional and legal reformation, as gender-egalitarian sociocultural foundations will best incentivize compliance with national law on women's inheritance rights. We propose three key tasks to begin this process of utilizing both legal and nonlegal reformation initiatives together: first, mobilize women to achieve legal awareness; second, secure men as educated allies; and third, reform accessibility to fair courts and legal protection.

In this comparative study, we chose to study countries with similar cultural demographics and laws and practices on women's property inheritance rights. This allows us to control for any vast differences across countries' cultural and legal traditions that may affect women's inheritance rights, thus freeing us to better cross-compare discrepancies in legal practice amongst the countries and more accurately compare reform initiatives that exist within similar cultural and institutional structures. We chose to examine Botswana, Uganda, and Zimbabwe in light of these conditions. Each has a majority Christian-based religious population, which may imply that the practice of customary law today does not remain rooted in religious or spiritual beliefs, even if this custom stemmed from traditional beliefs pre-colonization. However, urban population remains a key difference between these countries. 69.4% of the Botswanan population lives in urban areas, while only 23.8% of the Ugandan population and 32.2% of the Zimbabwean population reside in urban areas.<sup>6</sup> Urbanization facilitates residents' accessibility to courts. Many women residents of rural areas do not have the financial or temporal means to obtain transportation to non-local courts. Because most rural courts deal in customary law, women often face barriers to appealing discriminatory rulings to civil and common courts which remain clustered in urban areas. Further, these countries share identical national levels of discrimination in law and practice on women's inheritance rights. Codified law in all three countries presents some level of discrimination against women in regard to property rights. Yet in practice, women undergo significant discrimination surrounding inheritance rights. Given these similarities and

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<sup>6</sup> THE WORLD FACTBOOK, AFRICA: BOTSWANA (U.S. CENT. INTELLIGENCE AGENCY January 8, 2019), <https://www.cia.gov/-library/publications/the-world-factbook/geos/bc.html>; THE WORLD FACTBOOK, AFRICA: UGANDA (U.S. CENT. INTELLIGENCE AGENCY January 8, 2019), <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>; THE WORLD FACTBOOK, AFRICA: ZIMBABWE (U.S. CENT. INTELLIGENCE AGENCY January 8, 2019), <https://www.cia.gov/library/publications/the-world-factbook/geos/zi.html>.

differences across the countries, we can more closely explore why legal cases on women's inheritance rights generally meet certain outcomes in each country.

We begin in Part I by outlining national and interstate law concerning identity-based discrimination and inheritance rights in Botswana, Uganda, and Zimbabwe. In Parts II, III, and IV, we present one landmark case on women's inheritance rights from each country that provides insight on discrepancies between the institution and practice of statutory national law when in conflict with indigenous customary law. With this background, we then identify in Part V current legal and nonlegal reformation initiatives conducted by both state and non-state actors to minimize abuse of women's inheritance rights. We propose strategic modifications to existing reformation endeavors designed to empower both women and men to reconstruct the status of women in their societies through legal and nonlegal means. Lastly, in part VI we reflect on several considerations to keep in mind in future endeavors to reform the practice and protection of women's inheritance rights.

## **I. National and Interstate Law on Inheritance Rights**

Botswanan national statutory law contains provisions that both uphold and undermine women's inheritance rights. Botswana's 1966 Constitution, last amended in 1997, does not use the terms "women" or "woman." Yet Section 3 contains general anti-discrimination provisions which proclaim that every person, regardless of sex, is entitled to protection under the law. Section 8 mandates that citizens cannot take possession of property unless the action is "necessary" for the interests of the public, which implies that property grabbing remains illegal. Section 8 also allows significant power to other non-constitutional laws so long as they are "reasonably justifiable in a democratic society" and provide legal proceedings to address provisions involving property acquisition. This vague allowance indicates that customary law may supersede constitutional law in certain cases. Section 15 further cements the power of customary law with explicit permittance of discriminatory laws concerning devolution of property upon relatives' death.

Other statutory law may restrict women's inheritance rights in Botswana, such as the 1972 Administration of Estates Act, which states that ethnic groups have the right to devolve property according to their customs and practices.<sup>7</sup> However, the 2008 Bogosi Act states in Section 2 that customary law cannot be considered the custom of a community if it is "injurious to the welfare of members thereof or repugnant to the Constitution or any other enactment."<sup>8</sup> In terms of international law, Botswana ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the largest international women's rights treaty, on August 13, 1996.<sup>9</sup> Botswana also endorses the Southern Africa Development Community (SADC) Declaration on Gender and Development.<sup>10</sup> Both treaties require statutory compliance with anti-gender-discrimination provisions to end violence against women.

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<sup>7</sup> Administration of Estates Act, Ch. 31 § 01 (2008) (Bots.).

<sup>8</sup> Bogosi Act, Ch. 41 § 01 (2008) (Bots.).

<sup>9</sup> Convention on the Elimination of all Forms of Discrimination against Women, Sep. 3, 1981, 13 U.N.T.S 1249.

<sup>10</sup> Bogosi Act, Ch. 41 § 01 (2008) (Bots.).

The 1995 Ugandan Constitution, amended last in 2005, upholds gender equality without mentioning women's inheritance rights. Affirming in Objective 15 that Uganda will "recognize the role of women in society," the Constitution goes on to state more concretely in Section 33 that the document prohibits any "laws, cultures, customs and traditions" which harm women and undermine their status. Gender-discriminatory provisions of customary law remain explicitly illegal under Ugandan constitutional law. Further, Articles 26 and 27 state that every person holds the right to individually or collectively own property without interference, while Article 31 charges Parliament with the creation of laws to protect widows' rights to inherit their deceased spouses' property. Beyond the Constitution, women's rights activists have identified gender-discriminatory sections in the 2000 Succession Act. Sections 26 and 29 limit women's power over the matrimonial home and do not address women who financially contributed to the property during their marriage. Customary law explicitly conflicts with the national government's promises to ensure gender equality in inheritance rights, as well as Uganda's ratification of CEDAW on July 22, 1985.<sup>11</sup>

Zimbabwe's Constitution of 2013 states in Section 56 that women and men are equal under law. Section 17 specifies several measures of gender equality, charging all government agencies to ensure women's access to land and other resources "on the basis of equality with men." Section 71 states that persons cannot be deprived of their property unless, among other conditions, "the deprivation is in terms of a law of general application." The Zimbabwean Constitution most notably states in Section 80, "All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement." This provision appears to nullify anti-women provisions of customary law, as well as any interpretation of the Section 71 stipulation on laws of general application. Zimbabwe ratified CEDAW on May 13, 1991.

Botswana, Uganda, and Zimbabwe are among 53 out of the 54 African states which have signed the African Charter on Human and People's Rights, or the Banjul Charter.<sup>12</sup> Constructed by a group of African countries in 1981, the charter states in Article 18 that ratifying countries must dismantle all forms of discrimination against women.<sup>13</sup> Article 14 also states, without mentioning the word gender, that the right to property shall be guaranteed unless it is in the public interest to "encroach upon" individuals' property rights "in accordance with the provisions of appropriate laws."<sup>14</sup> Earlier, the charter includes a statement affirming countries' right to consider their historical traditions and values in conceptualizing human rights. This provision may be interpreted as tacit endorsement of customary legal tradition if one considers the system as preservation of national and regional cultural norms. The charter's influence lies not only in the document itself, but also in subsequently created oversight bodies. The quasi-judicial African Commission on Human and Peoples' Rights supervises interpretation of the charter.<sup>15</sup> States send to the Commission biennial reports on legislative and other measures taken to actualize the rights outlined in the charter. The Commission reviews the reports and

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<sup>11</sup> Afr. Renewal, *Women Activists Petition Court on Property Inheritance Rights*, ALLAFRICA INC. (March 17, 2006).

<sup>12</sup> African Charter on Human and Peoples' Rights 5, 21 I.L.M. 58 (1982).

<sup>13</sup> African Charter on Human and Peoples' Rights 5, 21 I.L.M. 58 (1982).

<sup>14</sup> African Charter on Human and Peoples' Rights 5, 21 I.L.M. 58 (1982).

<sup>15</sup> African Charter on Human and Peoples' Rights 5, 21 I.L.M. 58 (1982).

complaints of violations to note any discrepancies in state parties' fulfillment of the charter, yet it cannot adjudicate violation claims.

Despite remaining party to much national and interstate law which prohibits gender discrimination, these countries maintain varying levels of commitment to these laws as evidenced by several recent cases concerning violations of women's inheritance rights. As courts decided whether to prioritize indigenous customary law over statutory national law, their rulings either disrupted or allowed to continue traditional discriminatory practices surrounding women's inheritance rights today.

## II. Botswana Case: *Mmusi and Others v. Ramantele and Another*

In 2012, the Botswana High Court ruled that the Constitution took precedence over Ngwaketse customary law in *Mmusi and Others v. Ramantele and Another*.<sup>16</sup> Four sisters—Edith M. Mmusi, Bakhani Moima, Jane Lekoko, and Mercy K. Ntshakisang—challenged their nephew's claim to ownership of their deceased father's house.<sup>17</sup> Ngwaketse customary law, one of several forms of customary law in Botswana, maintains that the next male heir should inherit the family house.<sup>18</sup> This provision designated the sisters' brother as the rightful heir, who then arranged to give the home to his half-brother. However, both died shortly after their father, inducing the half-brother's son to claim the house and attempt to evict the sisters from their home. Citing Section 3a of the Botswana Constitution, which guarantees equal protection to all citizens under law, Mmusi and her sisters brought their case to the Lower Customary Court in Botswana in 2007. The court ruled in favor of Ramantele. The sisters appealed to Kgosi Lotlaamoreng's court, which also favored Ramantele. A further appeal to the Customary Court of Appeal was met with the same decision, based on the custom that the last-born child must inherit the family home in customary law.<sup>19</sup> Mmusi then brought her case to the Botswana High Court. Citing national and international documents prohibiting discrimination under law, such as the Constitution, African Charter on Human and People's Rights, International Convention on Civil and Political Rights (ICCPR), and CEDAW, the Botswana High Court ruled in Mmusi's favor.<sup>20</sup> When Ramantele later appealed to the Botswana Court of Appeals in 2013, the Court upheld the ruling in Mmusi's favor. This ruling fundamentally changed the way women's inheritance rights function today in Botswana.

Within the Constitution's provisions on equality before the law, two exemptions exist. When the rights and freedoms of individuals prejudice those of others or conflict with public interest, individuals may be exempt from protection of equality under the law.<sup>21</sup> As enabling women to inherit property would not compromise these interests—and in fact would expand the rights of others—the High Court allowed Mmusi's constitutional argument to stand. Further, in

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<sup>16</sup> *Mmusi and Others v. Ramantele and Another* (2012) 2 BLR 590 HC (Bots.).

<sup>17</sup> *Mmusi and Others v. Ramantele and Another* (2012) 2 BLR 590 HC (Bots.).

<sup>18</sup> Tabeth Masengu, *Customary Law Inheritance: Lessons Learnt from Ramantele v Mmusi and Others* (University of Cape Town, Working Paper No. 6, 2015).

<sup>19</sup> *Mmusi and Others v. Ramantele and Another* (2012) 2 BLR 590 HC (Bots.).

<sup>20</sup> *Mmusi and Others v. Ramantele and Another*, WOMEN'S LINK WORLDWIDE, <https://www.womenslinkworldwide.org/en/gender-justice-observatory/court-rulings-database/mmusi-and-others-v-ramantele-and-another>.

<sup>21</sup> Constitution of Botswana, Section 3(c).

Ramantele's 2013 appeal, the Court of Appeals stated that because custom and tradition never remain static, they have yielded and must always yield to "express legislation and the preeminence of the Constitution."<sup>22</sup> The court also cited sections 2 and 3 in the African Charter on Human and People's Rights, which prohibit discrimination on the basis of sex and further maintain that "(a) Every individual shall be equal before the law [and] (b) Every individual be entitled to equal protection of the law."<sup>23</sup> The ICCPR likewise protects all individuals from discrimination on various grounds, including sex, and further mandates "effective" protection of this right.<sup>24</sup> Articles 15 and 16 of CEDAW hold state parties to nondiscrimination surrounding women's property rights.<sup>25</sup> State parties cannot restrict or deny women their fundamental freedoms, including political, economic, social, cultural, and civil freedoms—all of which remain present in inheritance rights.<sup>26</sup> With this extensive body of statutory national law, the judge pronounced that Ngwaketse customary law seeks to "subject women to a status of perpetual minority, placing them automatically under the control of male heirs, simply by virtue of their sex."<sup>27</sup>

Since the court's binding decision, Botswanan women can now inherit land and property.<sup>28</sup> No longer are gender-discriminatory traditional inheritance practices enshrined in indigenous customary law seen as acceptable. Further, Justice Key Dingake of the High Court urged the government to remove all discriminatory law from Botswana's statute books.<sup>29</sup> By upholding the Constitution as the highest standard of law, the High Court affirmed that statutory national law supersedes indigenous customary law. As all lower courts must abide by the High Court's ruling, its precedence will drive the outcomes of future cases surrounding women's inheritance rights.

### III. Uganda Case: Justice Obstructed

When researching potential cases for our Uganda study, we could not find a single finished case for a woman whom brought to court her grievances about violated inheritance rights. Although Uganda aligns with Botswana and Zimbabwe in supporting non-gender-discriminatory national law while yet maintaining high rates of discriminatory inheritance rights practices, the state apparently holds no recorded cases concerning this crime. With no precedence for establishing the preeminence of national law over customary law, women in Uganda remain subject to discriminatory inheritance practices under customary law without

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<sup>22</sup> Botswana High Court, 8/11/2012, "Mmusi and Others v. Ramantele and Another," (2012-28).

<sup>23</sup> African Charter on Human and Peoples' Rights 5, 21 I.L.M. 58 (1982).

<sup>24</sup> International Covenant on Civil and Political Rights, U.N.T.S. 14668.

<sup>25</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, U.N.T.S.

<sup>26</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, U.N.T.S.

<sup>27</sup> Botswana High Court, 11/8//2012, "Mmusi and Others v. Ramantele and Another," (2012-60).

<sup>28</sup> ROSALIE KINGWILL, [En]gendering the Norms of Customary Inheritance in Botswana and South Africa 48 THE J. OF LEGAL PLURALISM AND UNOFFICIAL L. 208, 223-230 (July 12, 2016) (discussing the ability of women to inherit and own property).

<sup>29</sup> Constance Johnson and Wendy Zeldin, *Botswana: Landmark Case Ends Patriarchal Inheritance System*, THE LIBRARY OF CONGRESS (October 16, 2012), <http://www.loc.gov/law/foreign-news/article/botswana-landmark-case-ends-patriarchal-inheritance-system/>.



legitimate, accessible avenues of recourse. Much anecdotal evidence on these women's experiences details how national law on women's inheritance rights has been violated, and imply why some women do not pursue justice for these violations.

In 2005, Evelyn Kalungi's husband died without leaving a will. Kalungi's in-laws claimed the family home and land which his father had bequeathed him, as he neither acquired the title deed nor left a will specifying to whom the land should be accorded, before he died.<sup>30</sup> Because the land remained registered in her father-in-law's name, Kalungi needed his consent to sign transfer forms to obtain the title in her name. However, she discovered that her in-laws had registered the title in her children's names in order to keep the property in the male line and prevent her from asserting inheritance rights to the family property.<sup>31</sup> With little hope of successfully gaining the land back, she did not pursue legal charges.

When Tabisa Kirya's husband died, a man from her husband's clan began farming on her land.<sup>32</sup> He threatened her with an ax and once burned her property to convince her to leave her land. Kirya sought assistance at several Local Council courts, which have left her case untouched for nearly eight years. In the meantime, her neighbor took her to the police seven times, placed her in custody, and sent an armed policeman to arrest her. His blatant abuse goes unpunished by local courts and law enforcement officials.

These and other stories reflect the societal problem that women's inheritance rights pose for Uganda and other countries. Further, they indicate larger institutional deficiencies that perpetuate the government's legal evasion of protecting women's inheritance rights. In 1998, the Ugandan government created the Land Act to counter gender inequality by, among other initiatives, expanding women's inheritance rights. The parliament had approved the inclusion of a clause allowing spouses to co-own family property, a huge step forward in enabling women to maintain the family property if their husbands should die. However, the parliament purposefully left out the clause upon passing the Act.<sup>33</sup> While property grabbing remains entirely too commonplace for both local and national government officials and judges to feign ignorance of its presence, the male-favoring discriminatory provisions of indigenous customary law have cemented the practice into culture, which induces perennial barriers to combatting it through creation of new and enforcement of previous gender-inclusive legislation.

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<sup>30</sup> Florence Akiiki Asiimwe and Owen Crankshaw, *The Impact of Customary Laws on Inheritance: A Case Study of Widows in Urban Uganda*, 3 J. of L. and Conflict Resol. 7, 10-11 (2011) (discussing anecdotal stories of women's experiences with customary law and inheritance).

<sup>31</sup> Florence Akiiki Asiimwe and Owen Crankshaw, *The Impact of Customary Laws on Inheritance: A Case Study of Widows in Urban Uganda*, 3 J. of L. and Conflict Resol. 7, 10-11 (2011) (discussing anecdotal stories of women's experiences with customary law and inheritance).

<sup>32</sup> Jacqualine Asiimwe, *MAKING WOMEN'S LAND RIGHTS A REALITY IN UGANDA: ADVOCACY FOR CO-OWNERSHIP BY SPOUSES*, 4 Yale Human Rights and Development Journal, 171, 172 (2014) (discussing co-ownership by spouse of family property).

<sup>33</sup> Jacqualine Asiimwe, *MAKING WOMEN'S LAND RIGHTS A REALITY IN UGANDA: ADVOCACY FOR CO-OWNERSHIP BY SPOUSES*, 4 Yale Human Rights and Development Journal, 171, 172-173 (2014) (discussing co-ownership by spouse of family property).

#### IV. Zimbabwe Case: Magaya v. Magaya

In *Magaya v. Magaya*, a landmark 1999 case on women's inheritance rights, the Supreme Court of Zimbabwe ruled that customary law took precedence over the Constitution.<sup>34</sup> Upon the death of Shonhiwa Magaya, a local community court appointed Venia Magaya, his firstborn daughter and an unmarried seamstress, as heir to his estate. As Shonhiwa Magaya did not leave a legal will, the court determined his children's inheritance on the basis of birth order rather than sex. Ms. Magaya obtained the house through presentation of her parents' marriage certificate to the court with her mother's support.<sup>35</sup>

Ms. Magaya's younger half-brother, Nakayi Magaya, successfully appealed to a magistrate court because he and other family members had not been notified of the community court hearing and thus had been unable to vey for the property. The magistrate court determined that, according to African customary law, Mr. Magaya was the rightful heir because "a lady [...] cannot be appointed to [her] father's estate when there is a man" in the family who is eligible to claim the property.<sup>36</sup>

Mr. Magaya promptly evicted Ms. Magaya, who then appealed to the all-male panel of judges comprising the Supreme Court of Zimbabwe. The Supreme Court upheld the appellate decision, 5-0, in reference to Article 23(3) of the Constitution. Although the Constitution more broadly protects against discrimination, Article 23(3) exempts both disputes surrounding the devolution of property upon death and African customary law from these provisions. The judge stated, famously, that the so-called discrimination against women in this case found basis in "the [patrilineal] nature of African society," sparking outrage among activists. Citing Zimbabwe's conflicting ratification of CEDAW, several Zimbabwean women's rights groups and lawyers' associations protested the Magaya ruling to the Supreme Court and the Parliament, concerned that the decision would set precedent for future cases. The Supreme Court discourteously dismissed their concerns.

Apart from officially declaring it legal under the constitution, the ruling did not change much about the already rampant practice of discriminatory customary law. Mr. Magaya had even sold the house before the Supreme Court's official decision. His actions evidence wider, deeply ingrained cultural adherence to the principles of customary law which place men above women in all measures of standing. The ruling violated national law ensuring women's rights to be free from discrimination and to equal protection under the law. Some extend this argument to encompass women's right to a reasonable and fair standard of living.

#### V. Legal and Nonlegal Reformation Initiatives

In light of these cases, which highlight discrepancies between the legal protection and practice of women's inheritance rights, we can better understand how to evaluate and improve legal and nonlegal reformation initiatives to protect women's right to inherit property and access

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<sup>34</sup> Valerie Knobelndorf, *Zimbabwe's Magaya Decision Revisited: Women's Rights and Land Succession in the International Context*, 15 Colum. J. Gender & L. (Fall 2006) (discussing the outcome of the *Magaya v. Magaya* case of the Supreme Court of Zimbabwe).

<sup>35</sup> Ropafadzo Mapimhidze, *Magaya Vs Magaya: Custom Gone Awry*, THE HERALD, ALLAFRICA INC., (Dec. 18, 2002), <https://allafrica.com/stories/200212180390.html>.

<sup>36</sup> The Supreme Court of Zimbabwe, 16/2/1999, "Magaya v. Magaya," (1999-35).

fair standards of living. Current reform initiatives include efforts led largely by non-state actors such as international organizations (IOs), non-governmental organizations (NGOs), civil society groups, and activists.

Many IOs have actively facilitated coordination between fellow IOs on reformation efforts. For example, workshops for professionals have enabled collaboration on identifying key issues in women's rights and brainstorming initiatives to more effectively address these issues. One such workshop on women's land rights occurred in South Africa in 2003, hosted by The Food and Agriculture Organization of the United Nations (FAO) and Oxfam GB.<sup>37</sup> Seventy-five delegates from various IOs and NGOs attended presentations given by experts on women's issues, including researchers, professors, and heads of IO programs. In issue-based working groups, they identified effective strategies of past outreach initiatives, gaps in approaches to women's land rights based on their regional experience, and next steps. Participants identified a need to: first, scale-up program work, community-inclusive research, and organization collaboration by using existing networks; second, link research directly to policy-making and advocacy work; third, increase urban-rural interactions on land rights; fourth, monitor women's human rights violations; and fifth, produce interactions between development workers and community members centered on community empowerment. Each organization represented then committed to one activity, attached to a deadline, to implement several of the discussed issues in their existing work. Such events create and strengthen networks between organizations doing similar work, which can enhance each's ability to create sustainable impact by entering into informal and formal partnership and coordination efforts so long as they follow through.

IOs can also support local organizations with resources such as funding. The UN donated \$1.5 million USD in grants to twenty organizations in sub-Saharan Africa to advocate for women's inheritance rights in 2011.<sup>38</sup> Three of these organizations are located in Uganda, while four others are stationed in Zimbabwe. These entities include organizations which provide community paralegal help for women seeking to press charges for inheritance rights violations, conduct education campaigns amongst other organizations seeking to help affected women, mobilize various actors in civil society to lobby for policy reform, and train local police forces and traditional leaders to better eliminate inheritance rights crimes. Financially supporting well-structured, impactful local nonprofits can often be one of the most effective forms of assistance offered by IOs.

When examining and proposing legal and nonlegal reformative initiatives, all parties must prioritize local community empowerment and involvement. IOs often command reformation efforts; yet their organizations, programs, and representatives must meet the needs of and work with local community leaders and members to establish community-driven measures of monitoring and advocating for women's inheritance rights. Community support enables sustainability; without it, outside interventionist attempts to change sociocultural aspects of any

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<sup>37</sup> THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS AND OXFAM, REPORT OF THE FAO/OXFAM GB WORKSHOP ON WOMEN'S LAND RIGHTS IN SOUTHERN AND EASTERN AFRICA 1-48 (2003).

<sup>38</sup> *UN Women Awards Nearly \$1.5 Million in Small Grants to Support Grassroots and Community Initiatives Towards Realizing Women's Property and Inheritance Rights in The Context of HIV/AIDS in Sub-Saharan Africa*, UN WOMEN, March 14, 2011, <http://www.unwomen.org/en/news/stories/2011/3/un-women-awards-nearly-1-5-million-in-small-grants-towards-realizing-women-s-property-and-inheritan>.

society will eventually fail. Local NGOs and civil society groups have firsthand knowledge of the status of women's rights in their national and regional communities. By creating and continuing structured partnerships to pair their expertise with the additional expertise of IOs and decentralized experts on gender issues, national and local organizations can expand their outreach, capabilities, and impact. At a more grassroots level, civil society groups and activists often organize to protest unjust legislation both in person and online and to expand community networks. Each of these arms of nonlegal action—institutionalized and noninstitutionalized—remain necessary and impactful.

Both legal and nonlegal reformation must occur in coordination in order to make structural societal change. Legal reform will not be sustainable if the social narratives which drive the creation and reformation of legal infrastructure do not change over time. To fully ensure women's inheritance rights within a male-centric social system, nonlegal initiatives must be paired with legal reform to facilitate shifts in current societal value systems that will reshape women's roles as valuable members in society. Three key areas of focus must be targeted: mobilizing women to achieve legal awareness, securing men as educated allies, and reforming accessibility to fair courts and legal protection.

Media outreach has proved very effective throughout certain African countries in informing women about their rights and how to claim them. In Kenya, radio stations have highlighted stories of women who successfully brought their inheritance cases to court. We propose an expansion upon this method to include television broadcasts, Internet and mobile phone communications, street theatre, and straightforward written materials which explain women's rights, delineate in simple fashion pertinent laws and summaries of laws, and outline basic available legal procedures to resolve violations of these rights. Written materials may vary from pamphlets and posters to publications in newspapers and magazines. They must be published in multiple languages and disseminated to rural areas to ensure accessibility.

Educational campaigns will extend the impact of media outreach by facilitating in-person connection and trust which virtual communication cannot replicate. Experts on women's inheritance rights and physical security, from IOs and NGOs alike, can host traveling educational workshops and discussions on women's inheritance rights, discrepancies between customary law and national law, and legal recourse options for forced disinheritance. Female community leaders should be invited to participate in the workshop presentations to facilitate trust between attendee community members and non-resident presenters. By using their networks to reach out to local women to not only attend workshops and discussions, but also implement what they've learned in structural ways, local community leaders prove a powerful force for community mobilization. Educational programs should be strategically targeted at only women, only men, and/or both sexes depending on cultural, sociopolitical, and regional circumstances. In the issue of inheritance rights, women need space to learn about their rights without the presence of men. Because men are the people who initiate the violations of women's rights in property grabbing and forced disinheritance, women likely will fear retaliation for even attending workshops on the issue. They may feel uncomfortable speaking in sessions if surrounded by male relatives and neighbors. Accordingly, women-only workshops must be the baseline for educational programs.

However, organizations should also institute men-targeted educational workshops to tailor information on women's rights toward male reception. If men are not convinced of the legitimacy and importance of women's roles and rights in their societies, they will have no incentive or desire to change their treatment of women. Formal workshops should encompass education on issues surrounding both women's broader community status and their familial

status. Unequal power relations in the home constitute the basis for gender relations in society. Educational workshops and discussions must teach men about healthy and equal gender relations in the home, as well as explain women's economic, social, and political contributions—and potential for further contribution, as currently limited by societal standards of acceptable and unacceptable conduct of women—to their local communities and the larger society. Women must also be taught about these issues, which can provide a space for both men and women to learn together. Again, organizations should evaluate local situational factors before determining whether to host joint-sex workshops to protect the safety of participants.

To increase access to justice and legal representation, alternative dispute resolution methods, such as community tribunals, should be instituted at the community level in addition to previously existing courts. With focus on community-centric problem-solving, tribunals can prove more effective than litigatory courts in preserving inclusive community and kinship relations, and thus potentially prevent relatives' retaliation against women who seek legal recourse. Communities may elect residents to serve as judges and juries in community tribunal, who would then receive mandatory gender training facilitated by a local or national civil society group or NGO. Equal gender quotas should be established to ensure adequate representation of both men and women in the court leadership. Community tribunals typically hold hearings in public spaces, such as community centers and shared-space buildings, though restrictions on public attendance for safety reasons may be instituted at the request of the hearing participants. As women living in rural areas often lack access to non-customary courts, community courts allow an alternative mechanism for women to receive fair, anti-discriminatory legal recourse.

Legislative reform surrounding ownership rights and documentation of relationships can further protect women's right to inheritance. As proposed in the 1998 Uganda Land Act, a co-ownership clause should be added to each country's relevant legislative documents. The clause will ensure that women retain ownership of the family property when their husbands die, enabling titles to remain in their own names. Alternatively, some land rights activists advocate separating formal ownership of the land from one's ability to use it. Under this arrangement, a man would be prevented from selling the property without his wife's, wives', or heir's consent.<sup>39</sup>

Women's right to inheritance will be further enshrined when systematically documented in wills and through marriage certificates. As women provide courts with wills authorizing their inheritance of family land, courts must observe the deceased persons' wills. Marriage certificates further facilitate court honoring of wills. Many marriages in sub-Saharan Africa remain performed under customary law, which ceremonies often do not include documentation of marriages.<sup>40</sup> Under civil law, a customary law-based marriage without documentation would be considered nonexistent, thus nullifying any stipulations surrounding a wife's inheritance rights in a will left by a deceased, supposed husband. Mandating wills and marriage certificates in local communities can enable women to overcome two simple, but common, barriers to maintaining their right to inheritance.

These outlined reform endeavors span the legal and nonlegal spectrum to enable an attack on gender discrimination and violation of women's rights from all levels of advocacy. They involve a variety of actors, including affected women and men themselves, to expand outreach

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<sup>39</sup> Afr. Renewal, *Women and Gender; Women Struggle to Secure Land Rights*, ALLAFRICA INC. (May 9, 2008).

and impact. Such initiatives can be made sustainable, perennial methods to uphold and protect women's inheritance rights in the face of longstanding discriminatory cultural norms.

## VI. Conclusion

Women's inheritance rights remain a key obstacle to the status of women in African societies. While much statutory national law in Botswana, Uganda, and Zimbabwe disallows gender discrimination, other legislation—both national and customary—explicitly contradicts these ideals. Institutional barriers limit women's access to courts and fair legal representation, while violations of women's inheritance rights in these countries rage. When women lose access to property, land, and the homes in which they have lived for years, they and their children become more vulnerable to violence, abuse, food insecurity, homelessness, and loss of livelihood.<sup>40,41</sup> Yet many women refrain from taking their relatives to court to avoid familial retaliation and severance of the widow's and her children's family ties. Community members often further ostracize women who seek justice.<sup>42</sup> If women do pursue dispute resolution in court, many judges remain insensitive to women's rights. Those practicing in customary courts prioritize traditional norms over national law, while some national courts still adjudicate customary cases according to customary law despite national legal provisions against discrimination. And ultimately, even if court rulings favor women, decisions are not often enforced.<sup>43</sup>

To remedy these injustices against African women, institutional gender-inclusive legal and nonlegal reform movements must be prioritized, initiated, and maintained by national governments, regional and national civil society organizations, decentralized activists and community members, NGOs, and IOs. All scholars and practitioners remain acutely aware of the gap between suggestion and implementation of reform recommendations. Culturally ingrained gender norms pose the biggest barrier in the way forward to ensuring women's inheritance rights. We quote at length an excerpt from a brief written by Abby Morrow Richardson, which passage exemplifies our message: "Changes in long-held traditional practices can never be achieved solely by passing a law. Laws are only effective if enforced; enforcement is possible only with understanding and acceptance; and respect for the law is secured only when the people believe in its necessity. Ultimately, women's right to inherit will be secured only when cultural understanding encompasses a respect for women's rights and when statutory legal systems respect and adapt to the cultures in which they will be applied."<sup>44</sup>

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<sup>40</sup> Afr. Renewal, *Women and Gender; Women Struggle to Secure Land Rights*, ALLAFRICA INC. (May 9, 2008).

<sup>41</sup> Afr. Policy Info. Ctr, *Zimbabwe: Women's Rights* ALLAFRICA INC. (July 14, 1999).

<sup>42</sup> Abby Morrow Richardson, *WOMEN'S INHERITANCE RIGHTS IN AFRICA: THE NEED TO INTEGRATE CULTURAL UNDERSTANDING AND LEGAL REFORM*, in Human Rights Brief 11-2 3 (American University Washington College of Law ed., 2004).

<sup>43</sup> Abby Morrow Richardson, *WOMEN'S INHERITANCE RIGHTS IN AFRICA: THE NEED TO INTEGRATE CULTURAL UNDERSTANDING AND LEGAL REFORM*, in Human Rights Brief 11-2 3 (American University Washington College of Law ed., 2004).

<sup>44</sup> Abby Morrow Richardson, *WOMEN'S INHERITANCE RIGHTS IN AFRICA: THE NEED TO INTEGRATE CULTURAL UNDERSTANDING AND LEGAL REFORM*, in Human Rights Brief 11-2 3 (American University Washington College of Law ed., 2004).

While these obstacles will not be quickly overcome, sustainable legal and nonlegal reform efforts can adapt to make this process more effective. These efforts must be based in cultural understanding and continuously improved upon by all relevant actors. The focus now must be on combining these institutional and noninstitutional means to mobilize women to achieve legal awareness, secure men as educated allies, and reform accessibility to fair courts and legal protection. While building upon and bridging existing nonlegal and legal endeavors requires more work to optimize coordination and resource mobilization among cross-sector actors, these investments will intensify the impact and scale of the work in which each sector remains engaged. Ultimately, standardized and structured collaboration between all invested actors and their methods of change remains the key to ensuring the sustainability and impact of endeavors to secure women's inheritance rights in Africa.