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Original Research

THE CONSTRAINTS UNDERMING THE EFFECTIVE IMPLEMENTATION OF THE PRINCIPLE OF THE BEST INTEREST OF THE CHILD UNDER RWANDAN LAW.

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ABSTRACT
The principle of the best interest of the child is a fundamental standard guiding the protection and care of children in all matters affecting them, including divorce. In Rwanda, this principle is embedded in national legislation and supported by international human rights instruments to which Rwanda is a party. This research paper explored the key challenges facing the realization of the best interest of the child in divorce matters or any other separation of parents of a child under Rwandan law; main legislations which are closely related to the protection of children and family in Rwanda were qualitatively analyzed. It has argued that despite the essential efforts taken by Rwanda to align its family laws and laws protecting the children with international child protection standards, the implementation still faces challenges associated with laws and cultural perceptions, among other, which required to be addressed for effective protection of best interest of child._To ensure that this principle aforementioned is effectively mentioned is effectively implemented, both judicial measures and non-judicial measures must be taken into account.

Key Words: Child, Best Interest, Divorce, Rwanda,

INTRODUCTION
Generally, the principle of best interest of the child is a legal standard which was incorporated in International Conventions (UN Convention on the Rights of the Child, 1989) and State members were requested to accord a primary consideration to the best interest of the child in taking any decision or action either by public institutions including executive, judiciary and parliament or private relevant institutions (Art. 3 CRC, 1989). The principle of the *best interest of the child* is a fundamental guideline in family law, intended to ensure that all decisions concerning children prioritize their overall well-being, safety, and development. In Rwanda, this principle is

enshrined in various legal instruments, including Law governing persons and family, and supported by international conventions such as the United Nations Convention on the Rights of the Child (CRC) to which Rwanda is a party. (See Article 4 of the UN Convention on the Rights of the Child, 1989, ratified by Presidential Order No. 773/16 of 19 September 1991). However, despite its legal recognition, applying this principle in the proceedings of divorce (Case No. RCA 002/15/TGI/NYGE, 2015) or cessation of cohabitation which is one of the matters concerning children indirectly remains a complex and often contested issue. The dissolution of a marriage by divorce and any other dissolution which leads to the separations of the parents of a child undoubtedly results in the disturbance of the life style of all family members. No one can ignore that a child is the most vulnerable family member to be affected by the marriage breakdown (Art. 18, Law of Persons and family, 2024). In fact, this process is initiated and controlled by the parties (parents) in a divorce process, with its outcome directly affecting the children, without their presence or involvement. In Rwanda, children are neither present nor represented by an attorney or any third party to safeguard their interests in divorce proceedings. The court hears parents and their attorneys, if they have them, on matters regarding divorce and also on who should be the child's custodian.

This situation and status of child of being the most vulnerable family member to be affected by the marriage breakdown motivate this research paper in exploring the key challenges facing the realization of the best interest of the child in divorce matters or any other separation of parents of a child under Rwandan law, highlighting both structural and practical obstacles that need to be addressed for the principle to be truly effective. This paper contributes to the existing scholarship pertaining to the best interest of the child and will allow the community member to understand well the family law in Rwanda, by the deep understanding about the challenges associated with the divorce of spouses to their children. The doctrinal methods helped in this paper. Hence, this paper qualitatively analyses several Rwandan laws including the constitution, laws relating to the protection of child vague, family law, Law on succession, the customary practices among others. It begins with the introduction. It proceeds to examine the challenges associated gender bias and custodial assumptions, enforcement challenges, economic and social factors, cultural and community pressure, access to Legal Aid, child maintenance and support Issues, the customary practices and formal law, and the conclusion.

Ambiguity in Legal Interpretation

Although Article 45 of Law nº 71/2024 of 26/06/2024 governing persons and family emphasizes the best interests of the child in custody decisions, the term itself is not precisely defined in law. This vagueness allows for subjective interpretation by courts or parties involved, which can lead to inconsistent rulings (Law of Persons and family, 2024).

The Constitution of Rwanda, (2003, revised update) makes clear the equal rights of Rwandan women and men. However, the Constitution contains that "only civil monogamous

marriage between a man and a woman is recognized". This means that most adult women in Rwanda (who are not in registered marriages but in consensual cohabiting relationships) do not have equal protection of their property and inheritance rights under Rwanda's laws (Bird & Pratt, 2004). The Constitution can provide practical relevance for property and inheritance rights through the requirement that 30 percent of all governmental decision-making bodies should be composed of women. This applies to both local land administration and dispute resolution bodies which may be the first approach for individuals who seek to claim their rights.

Talking about polygamy The Law nº 71/2024 of 26/06/2024 governing persons and family, presume that legitimate children of the *decujus* succeed in equal portions without any discrimination between male and female (Article 54). This therefore bring about challenges in its implementation because the law presumes only legitimate children to have the right of seceding not talking about the children born out of marriage. Because during the implementation of the law they also seek to succeed.

Gender bias and custodial assumptions

In practice, there may still be a presumption that mothers are more suitable to take custody of children, especially younger ones. This traditional bias can undermine a balanced and individualized assessment of the child's actual needs and interests. Another challenge facing the children during the implementation of the law in Rwanda is that, people are still ignorant of the law and most of the time they are influenced by the culture by the thinking that only men are eligible for succeeding their parents properties. Rwanda's 2024 Law on succession maters provides opportunities for gender equity by granting equal inheritance rights to sons and daughters and protecting surviving spouses' and children's rights to property (Cooper, 2008). During marriage, property rights legislation outlines that the written and registered consent of both spouses is required for transactions such as the sale, donation, exchange, mortgage, or long-term lease of land. This consent is valid for up to six months after the transaction; if not obtained, the transaction is not final until five years have passed without an affirmative objection from the spouse. This creates an important incentive for any potential buyer or mortgage lender to ensure that consent of the spouse is obtained. The law also states that if a couple divorces, property should be equally divided between them. These stipulations set precedents for spouses' succession rights to property. According to the succession law, a surviving spouse married under the community of property marriage regime inherits all property as long as s/he provides assistance to the "needy parents" of the deceased. If the surviving spouse remarries s/he is to keep only half of the original inherited property with the other half shared equally among the deceased' s (legitimate and illegitimate) children. However, if a spouse remarries with children from a deceased partner, s/he retains one quarter of property in full ownership and three quarters is administered for the children. If both husband and wife die, their children are supposed to inherit their property (Cooper, 2010).

Limited Role of the Child's Voice

While the law permits children to be heard, in reality, the child's opinion is not always given due weight especially in rural or conservative communities (Cooper, 2010). This can result in decisions that do not reflect the child's actual feelings, preferences, or welfare. "Immediately, a "Council of Succession" is to be established, which includes the surviving spouse, a delegated child of the deceased of majority age, a delegate of the deceased's family, a delegate of the surviving spouse's family, a friend of the deceased and a friend of the surviving spouse.

A Family Council is also to be set up to determine how some heritable property will be earmarked for raising minor children, while other property will be equally shared among the deceased's children who have reached majority age. Allowing some flexibility, or testimonies are considered during disputes that are taken to courts, if done in the presence of all or some of the rightful heirs and two additional witnesses. (Bird, K. and Pratt, N. with O'Neil, T. and Bolt, V. 2004).

In such cases where a plot of land cannot be divided (partition of less than one hectare is not allowed under the Land Law), the Inheritance and Marital Property Law instructs that agreement must be reached on other ways of providing equal values of inheritance to all heirs. This opens the way for sale of heritable land or shared use of the land, and in both cases, division of proceeds. The law also includes sanctions against neglect of the deceased during illness, and of the deceased's dependents or relatives afterwards. An individual can be excluded from inheriting if s/he deliberately broke off a relationship with the deceased or deliberately neglected care during a deceased person's illness. As well, if the surviving (not remarried) spouse is found to neglect care of the deceased's children, three quarters of the inherited property will be redistributed to the children.

Lack of trained family courts or personnel

Rwandan courts may lack specialized family law judges, psychologists, or social workers to assess what arrangement serves the child's best interest. This leads to decisions based more on legal formalism than child-centered analysis. The Law nº 71/2024 of 26/06/2024 governing persons and family rigorously outlines expectations and procedures which may be used as a blueprint for action. But its application requires significant awareness and commitment from many actors, which may not exist. There are also major limitations to this law. Most significantly, it applies only to registered legal marriages, which are not common in Rwanda, and excludes cohabiting and polygamous unions. For instance, upon the death of a man who had one legal marriage and other cohabiting "wives", the wife and children of the legal marriage would have rights to a larger portion of the heritable estate. However, even widows of legally registered marriages have limited rights to the use of their matrimonial house and its furniture: a surviving spouse is not permitted to sell, mortgage or exchange the property, and if she is judged to be damaging the property, the Council of Succession can take it from her (UN-Habitat report).

There is some confusion over whether ancestral land becomes marital community property or not. In practice, the law has often been interpreted to restrict widows' land inheritance rights (e.g. widows inherit as land managers or trustees rather than owners). The current wording of the Inheritance and Marital Property Law anticipates directions concerning land inheritance in forthcoming land regulations. To this end, Rwanda' s 2005 land law, simply states that land is inheritable. Under the law, orphaned children' s heritable property rights are required to be protected by an appointed guardian until children reach the age of majority (21 years in Rwanda); however, neglect and abuse of these provisions have been reported. To prevent such violations, public awareness, legal aid and enforcement of the existing law is required. Additionally, it is necessary to expand the legal concept of guardianship; for example, to make it possible for the courts to grant "active legal capacity" to minors on the basis of their mental maturity, their interest in becoming independent and in asserting their land rights; and to amend the requirement that orphans must obtain consent in order to be legally emancipated from their guardians.

A significant challenge for this exercise in policy reform will be the opposition to cohabitating, unmarried unions from influential religious groups and customary rulers. This opposition requires a broader recognition and engagement of "stakeholders".

Enforcement challenges

Even when courts issue child custody or maintenance orders based on the best interest principle, enforcement mechanisms are weak. Non-compliance by one parent (often the father) regarding child support or visitation rights remains a serious issue, especially in rural settings. The so-called Organic Land Law (2021) establishes the framework for land rights in Rwanda; however, its implementation must still be laid out in forthcoming laws and regulations.

Significant stipulations include that land is ultimately owned by the state, but individuals can hold long-term, secure rights to use it (i.e. long-term leases that can be sold, purchased, mortgaged, sub-leased, etc.), and that women and men have equal rights to land. Its agenda to adjudicate and register all land rights aims to resolve uncertainty over multiple land claims caused by past conflicts and migrations and encourage the consolidation of small land holdings (within which are parcels of land registered to different people) to increase agricultural productivity. In fact, the law states that if land is not protected (e.g. against degradation) or used productively, it may be temporarily or permanently appropriated by the government. The law also requires that major land administration functions, such as registration and land use management, are decentralized to district, municipal and village levels with both women and men staffing these bodies (Benschop & Sait, 2006). Setting a precedent for land inheritance rights, the Land Law requires that all land transactions should have prior consent, as evidenced in signed (or fingerprinted) and witnessed documents, of all members of the family who hold rights in the land. These include legally married spouses, children who have reached

majority age and minors represented by their guardians or incompetent children represented by their tutors. The enduring challenge for legally protecting most adult women's land rights is found in the lack of requirement for obtaining the consent of non-married partners prior to land transfers.

There is also a piece of secondary legislation, passed in 2008, which provides the means for a woman to be registered as the sole named landowner of a holding, potentially with her male partner registered as a holder of interest in the land.

This provision was intended to offer an opportunity to establish legal property protection for second and subsequent wives in polygamous marriages who do not have land rights through their unions. However, uptake of this provision has been minimal and there is little monitoring and evaluation of how or why.

Economic and social factors

After divorce, children often face economic hardship due to the reduced financial capacity of the custodial parent (usually the mother). Poverty, housing insecurity, and school dropout are common issues that directly impact the child's well-being yet are not always adequately considered in legal decisions. Subject to the provisions of Articles 56 and 57 of the Law on succession, an heir shall not be debarred from succession if, before death, the *decujus* knew the reason for debarment from succession and did not raise such debarment (Art. 58).

Cultural and community pressure

In Rwandan society, extended families and community leaders often exert influence on custody and care arrangements. These informal pressures may conflict with formal court decisions and compromise the best interest of the child. A person debarred from succession is excluded from succession of the estate of *decujus*. His/her supposed portion is added to the respective portions of other heirs. Debarment from succession only affects the right to succeed to the estate of the person offended and may not affect the right to succeed to other property of the family. However, any person debarred from succession under Article 56 of this Law loses the right to succeed the whole estate of his/her family, disregarding of the management of the property regime (Art. 59). The heir or the legatee excluded from succession as a result of debarment from succession, during his/her lifetime, is bound to return all inherited or bequeathed property or the value thereof.

Limited Access to Legal Aid

Many parents especially mothers lack legal representation in divorce proceedings, reducing their ability to effectively argue for their child's best interests. This disproportionately affects vulnerable children whose custodians are unaware of their rights or unable to assert them in court. The law presumes the amendment of a will by stating that a will may be amended and

recorded under testamentary provisions found in several wills which is, to the extent practicable, executed jointly. Where the provisions of two or more wills are inconsistent with one another, those contained in the most recently drawn up will prevail (Art. 66). The challenge here is that before death the *decujus* predicts how the property will be divided after death, and once it amended it is done differently to his/her will.

Maintenance and Support Issues

Determining and enforcing adequate child maintenance is a persistent problem. Even with court orders, some non-custodial parents avoid payments, affecting the child's education, health, and general development. There are plenty of challenges that must be addressed in proper succession planning. Some of the most important include: The review revealed that succession planning, important as it is, is not a priority in any United Nations system organization. However, the alarming demographics in most of the organizations across the system do not allow them the luxury to wait any longer. The organizations have to expedite their succession planning. This will enable them to prevent potential loss of institutional memory and interruption of knowledge transfer and business continuity in their leadership positions and other crucial functions. Succession planning will soon be added to the revised Framework for Human Resources. (IPMA 2002; JIU reports). Management of the International Civil Service Commission (ICSC). Its addition to the framework, which is intended to form the basis of all organizations' work on human resources policies and procedures, reaffirms succession planning as one of the framework's important components for effective human resources management across the system. The Inspector found that at present, no United Nations system organization has a formal succession planning process in place (EBRD, DHRSEC, IFAD, IMF, ISO, OECD, WBG, WTO). Hence, the review mapped the elements of the existing informal succession planning processes that are in line with the framework proposed in 2009 by the secretariat of the United Nations System Chief Executives Board for Coordination (CEB), in response to a relevant recommendation issued in 2007 by the Joint Inspection Unit (JIU).

Conflict between Customary Practices and Formal Law

Some communities still adhere to customary or traditional conflict resolution mechanisms, which may not prioritize the child' s rights or best interests. These informal systems often favor family unity or patriarchal interests over individual rights.

The Inspector found that the United Nations system organizations have not yet adopted any definition of succession planning, either at the organizational level or system-wide. Therefore, the review endorsed a definition of succession planning that is widely used in the international public sector, including the description of the basic steps involved in the process. Against that definition and process description, which are elaborated on in the introduction to the present report, the review examined whether and to what extent the United Nations system

organizations implement succession planning in practice (IPMA Workforce Planning Resource Guide for Public Sector Human Resource Professionals, 2002). In parallel, the review assessed the progress made in the system-wide discussions on succession planning that were initiated in 2009 in the framework of the CEB High-Level Committee on Management (HLCM) Human Resources Network. The Inspector regrets that the discussions were discontinued, resulting in a lack of progress at inter-agency level for more than six years now. Therefore, the Inspector recommends that the members of the Network consider the introduction of succession planning in the course of 2016 as a new, indispensable component of the revised ICSC Framework for Human Resources Management, as indicated above. The Inspector also invites the members of the CEB/HLCM Human Resources Network to restore the dialogue and exchange of ideas and good practices in the framework of the Network (2009 CEB/HLCM reports; CIPD 2015)

In recognition of the fact that staff members are their most vital asset, the United Nations system organizations have to recognize the importance of the people who lead and manage this asset as well as the importance of those who discharge critical functions that have an impact on all staff. For the proper implementation of succession planning, the Inspector suggests the application of five benchmarks based on leading practices in the private and public sectors: Firstly, formal succession planning is instituted with due regard to the organization's needs, taking into consideration its mission, its mandate and the nature of its work. Second, the organization adopts a holistic approach, integrating its formal succession planning and management into its overall human resources management activities. Third, the organization establishes by the best means at its disposal its current critical roles and positions, as well as the competencies required for those key roles and positions and plans for their future revision/identification with more sophisticated means, requesting the appropriate funding. Fourthly, the organization reviews by the best means at its disposal its current talent to identify staff members who have the potential to be considered for and take over key roles and positions immediately or shortly after some additional preparation. Finally, the organization communicates in a transparent way the staff development and career path requirements for staff members to be considered as potential candidates for succession to critical roles and positions; the organization provides staff members who are identified as potential talent with learning and development opportunities that will allow them to fulfil the responsibilities of those roles and positions (CEB/2009/HLCM/HR/11).

For the above mentioned to be well managed the following recommendations have been made. The legislative/governing bodies of the United Nations system organizations should exercise their oversight role and examine the causes for the lack of, and/or the delay in, the introduction of formal succession planning in their respective organizations, including the adequacy of current funding; and request the executive heads of these organizations to develop formal succession planning without any further delay, by the end of 2017.

The executive heads of the United Nations system organizations, who have not yet done so, should instruct their human resources management offices to develop and implement appropriate frameworks for succession planning strategies, and devise appropriate guidelines on the succession planning process without any further delay, by the end of 2017.

The executive heads of the United Nations system organizations should instruct their human resources management offices to adopt the benchmarks set out in the present report with a view to ensuring that their organizations have a sound succession planning process and should report on the progress made to their legislative/governing bodies.

The Secretary-General of the United Nations, in his capacity as Chair of the United Nations System Chief Executives Board for Coordination, should ensure that succession planning is reinstated as a main agenda item of the Human Resources Network of the High-level Committee on Management, and given the utmost attention and most serious consideration in the future sessions of the Network (JULIE SLOAN, 2015).

The International Organization for Standardization (ISO), in response to the current globalized marketplace, formed a technical committee to assist organizations in aligning and streamlining their human resource management practices. Its member countries are given the task of developing a set of human resource management standards that will offer broad, coordinating guidance to practitioners on key human resources functions appropriate to the context and need of the organization. The technical committees working groups examine topics that are discussed and voted on by the countries participating in ISO (James A Cannon and Rita McGee, 2007).

During this review, it was not possible to trace any focus group records in the archives of the CEB Human Resources Network pertaining to succession planning. Former and current officials of the CEB secretariat and United Nations system organizations commented that this lack of records could be attributed to two factors. Firstly, there is high turnover in the membership of the Network. According to the officials, the ex officio members of the Network, namely directors in charge of human resources services, change constantly, as the term of a director at this level does not usually last for more than five years. Subsequently, most officials who were serving as heads of human resources and were on the Network's focus group in 2009 have since left their posts. The second factor that might have contributed to the lack of records was the simultaneous disruption in the continuity of the work of the CEB secretariat, given that the post of senior adviser to the Network had remained vacant for years since 2009, until the current incumbent took up office. Therefore, there is no documented explanation as to why succession planning had disappeared from the agenda of the CEB/HLCM Human Resources Network from 2009 to March 2015, when it reappeared as one of the key workforce planning-related issues and at the discussion held on succession planning practices.

This review revealed that only 14 of the 24 United Nations system organizations reviewed mention succession planning either in their current human resources strategies or

frameworks, or in previous strategies or frameworks that are outdated and have not been renewed. Moreover, each of these organizations' links succession planning to different components of human resources management. Some of them consider it as a component of workforce planning and/or succession management that is connected either directly or indirectly to talent management or career development. The Inspector is of the view that it is time for all United Nations system organizations, including the above-mentioned organizations, to revisit the already accomplished work in the context of the CEB/HLCM Human Resources Network. Subsequently, the Network members should move forward, and irrespective of the maturity of their own succession planning initiatives at the organization level, they should eventually agree on a common definition of succession planning and a basic framework based on commonly defined features, as initially planned some years ago. (UNDP, UNHCR, UNOPS, ITU, FAO, ICAO, UNESCO, UNIDO, WHO, WIPO, WFP, UNRWA). The current United Nations system landscape demonstrates inconsistent implementation of the 2009 CEB note and does not reflect the implementation status of the relevant 2007 JIU recommendation, as stated by the participating organizations (IAEA, 2014).

In February 2014, the Office of Human Resources Management (OHRM), in conjunction with DFS, launched a project to develop a workforce planning system that could be applied across the Secretariat. A workforce planning advisory group was established, composed of individuals from various departments and offices with relevant experience in talent management, strategic planning and budgeting. In the initial, conceptual design phase of the project, from February to May 2014, the team reviewed current workforce planning practices and lessons learned, developed a vision and new methodology for workforce planning, and conducted a pilot project with the Medical Services Division within the Office for Human Resources Management of the Department of Management (MSD/OHRM/DM) (UNDP/OAI, 2013). The pilot project, which used a critical role approach to identify positions and plan for adequate workforce to fill them, was presented on 24 July 2014. According to the United Nations officials who were interviewed, the advisory group has not been convened since the MSD/OHRM/DM pilot project was presented; it was expected to be reconvened in the second half of 2015.

The Secretary-General's report argued that the workforce planning initiative was still in its infancy and additional pilot projects were required (Confidential Draft Global Support Strategy for United Nations Field Operations, 2015). While building workforce planning capacity within the human resources community in both field and non-field operations, more emphasis needed to be placed on testing and learning through doings. The Secretariat indicated that, in order to develop and implement a robust workforce planning system, a significant investment of resources and time would be required. Given the limited resources and other priorities in the human resources reform effort, the implementation of a workforce planning system would be phased over a number of years. It was envisaged that the timeline would be aligned with the phased deployment of the new mobility and career development framework.

However, no indications were given about parallel implementation of succession planning strategies for all departments of the Secretariat.

CONCLUSION AND RECOMMANDATIONS.

It comes to shed light that the principle of the best interest of the child is a fundamental standard guiding the protection and care of children in all matters affecting them, including divorce. In Rwanda, this principle is embedded in national legislation and supported by international human rights instruments to which Rwanda is a party. This principle stands as a cornerstone in divorce-related decisions under Rwandan law.

Despite the progressive legal framework in Rwandan efforts in aligning its family laws and laws protecting the children with international child protection standards, the implementation still faces challenges such as protection of only legitimate children to have the right of succeeding but still silence about the children born out of marriage, limited child welfare expertise among legal professionals, cultural perceptions that may hinder objective custody determinations. Therefore, the following recommendations can be taken into considerations so as to close the gaps notably:

- Rwanda should consider creating dedicated family courts or family divisions within existing courts, staffed with judges trained in child and family law, to ensure that cases involving children are handled with appropriate expertise and urgency.
- Provide continuous training and sensitization for judges, lawyers, prosecutors, and mediators on: The best interest of the child principle; Child psychology and welfare assessment and Rights-based and trauma-informed approaches
- Develop clear guidelines and procedures to ensure that children, especially those mature enough, can safely express their views in court through: Child psychologists or social workers; Child-friendly interview settings and Confidential and non-threatening methods

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