
Orphans' Land Rights in Post-War Rwanda: The Problem of Guardianship

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ABSTRACT

In 1994, the Rwandan civil war and genocide produced thousands of orphans. Alongside the war, the growing HIV/AIDS crisis in Rwanda has produced a current population of about 300,000 orphans — many of whom are compelled to head households. These orphans urgently require land use rights, but many find that their rights to their deceased parents' customary land holdings are denied or restricted by their guardians and others. Despite the legal protections for children that are guaranteed within Rwanda's laws, the reality is that many guardians do not respect orphans' land rights and few orphans have sufficient access to administrative and legal forums to assert and defend these rights. In contrast to most accounts in the literature that discuss more generally the issue of African orphans' land rights in the context of adults' land rights, this article focuses on specific cases in which Rwandan orphans independently pursued their land rights. Ultimately, the article concludes that in Rwanda — and elsewhere in Africa — government officials should re-examine their ideas about guardianship and grant orphans urgent attention as individuals and as a special interest group.

INTRODUCTION: ORPHANS IN AFRICA

According to a 2001 report by UNAIDS, there are about 108 million orphans in the world, of whom 13.4 million (12.4 per cent) are 'AIDS orphans' (see also UNICEF, 2003). UNAIDS speculates that by 2010, there will be 107 million orphans in the world (almost no change from 2001), of whom a proportionately higher 25 million will be AIDS orphans.¹

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1. Other reports put the number higher, stating that there are currently 16 million AIDS orphans and that there will be about 40 million orphans in ten years (IRIN Plus News, nd).

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The UNAIDS (2001) report also states that in Africa alone, there are about 34 million orphans, of whom about 11 million are AIDS orphans (nearly 80 per cent of the world total). In some parts of Africa, one out of every three children is an orphan.

The statistics are alarming. In general, most orphans are less well cared for in terms of their physical, psychological, and intellectual needs (for example, nutrition, healthcare, clothing, shelter, nurturing, and schooling). Many orphans, particularly 'AIDS' orphans, are poorly integrated within their communities. Many orphans are subject to abuse or exploitation through, for example, forced child labour or sex trafficking. And many are exploited for their land and property.² The growing number of orphans in Africa has resulted in considerable short-term costs that are imposed upon the families and communities that must care for them, as well as in rising long-term costs that will increasingly be imposed upon the states that must accommodate a less educated, less healthy, and more traumatized population (see Drimie, 2002; Guest, 2001; Nyambedha et al., 2001; Subbarao, 2002; UNICEF, 2003).

The African studies literature commonly refers to 'vulnerable children' and 'orphans'. Vulnerable children are usually considered to be any children who lack family support, are poor, are in prison, or experience frequent changes in residence due to homelessness or refugee status. Orphans, who are a special category of vulnerable children, are considered to be any children who lack one or both parents. The literature refers to 'single' orphans who have lost one parent as opposed to 'double' orphans who have lost both parents. It also refers to 'paternal' orphans who have lost their father as opposed to 'maternal' orphans who have lost their mother. Moreover, the literature refers to several types of orphans according to the following factors: cause of orphaning, such as 'war' orphans and 'AIDS' orphans; support systems, such as 'foster-care' orphans; and place of residence, such as 'street' orphans.

The fact that conflicts in Africa and elsewhere create 'war' orphans is not new. What is new is that the number of war orphans in many African countries is growing, while the number of a more recent type of orphans, 'AIDS' orphans, is exploding. Meanwhile, the extended family³ support systems that traditionally would absorb and assume care for such orphans are weakening as a consequence of larger social, economic, and political developments. Significantly, in many parts of Africa, population growth rates are high and thus the land resources distributed per capita are shrinking.⁴ At the same time

2. Drimie and Mullins (2002), reporting on Kenya, and Human Rights Watch (2003) and Siens et al. (2003: 3), reporting on Rwanda, comment that some orphans are dispossessed of or exploited for their land.
3. The extended family consists of members of a person's lineage who are descended from a common male or female ancestor; these members share mutual rights and obligations.
4. Rwanda has long had one of the highest population growth rates in Africa, with the rate in 2004 estimated at about 1.82 per cent. See www.indexmundi.com/rwanda/population_growth_rate.html.

that populations are growing and land resources are becoming scarcer, societies are becoming more urbanized and industrialized, and more focused on nuclear families and individual economic advancement. The consequence of these interrelated factors is that many people do not feel that they can or should be burdened with the guardianship of orphans. Indeed, many potential guardians of orphans not only reject such a role, but they even become competitors for scarce land with the same orphans for whom they might have been expected to become (or eventually do become) guardians. The increasing numbers and types of orphans throughout Africa are stretching already weakened traditional support systems to the breaking point, and modern support systems are not yet adequate to fill the care-giving gap. In the absence of the old safeguards that once served to protect the most vulnerable family members, many orphans are left to fend for themselves.

Although the literature on orphans in Africa is expanding, particularly concerning AIDS orphans, most authors make only anecdotal mention of the land access problems experienced by orphans. Those who do touch on the subject usually comment only briefly that some orphans are experiencing difficulties in asserting land rights, particularly when confronted with land-grabbing by relatives and neighbours (see, for example, Drimie and Mullins, 2002).⁵ The majority of researchers do not discuss in detail the contextual nature of the orphans' land access difficulties or how the orphans deal with these problems. In reality, many researchers in Africa are less concerned with orphans' immediate, independent land interests than with children's future land interests within the context of land reform initiatives (see, for example, Renne, 1995 on Nigeria).

Far more researchers in Africa have focused on women's land access problems (on Rwanda, for instance, see André, 1998; Burnet and RISD, 2003; Rose, 2004), usually in the context of the AIDS epidemic (for example, Mullins, 2001, on South Africa), than on orphans' land access problems. Holmes (2003) writes that African women who lose a husband to AIDS often also lose land and property rights (including to cattle and farm equipment), while also being burdened with caring for AIDS orphans. Roys (1995) discusses in detail an AIDS widow in Uganda who had trouble retaining land and property rights as well as guardianship rights for her orphaned children. In effect, Holmes and Roys view the land and property interests of AIDS orphans in the context of those of their widowed mothers (and other relatives). Unfortunately, when orphans' interests are not considered separately, they may be compromised or negotiated away (see Himonga, 2001: 460 on Zambia).

5. Interestingly, in a 1990 paper about AIDS orphans in Uganda, Susan Hunter argued that orphans were experiencing many land disputes, although their land rights were generally respected, and that orphans were still mostly being cared for within the extended family system. However, she observed that orphans' access to land would likely be threatened with the spread of AIDS (Hunter, 1990: 681, 683).

The topic of African orphans' land rights constitutes a neglected area of research inquiry because orphans are widely viewed as a non-category of land claimant: their land rights are perceived as deferred and potential — to be realized when the orphans reach maturity — rather than as current and actual. Moreover, orphans are viewed as a non-category of land disputant.⁶ The truth is that orphans are an important category of land claimant and disputant, deserving of urgent attention as individuals and as a special interest group.

This article will make the following points about orphans' land rights in Rwanda: first, ideas about guardianship are changing, with the consequence that many guardians do not respect or defend orphans' land rights; second, customary and national laws and policies (both existing and pending) either do not adequately protect orphans' land rights or are not enforced; and third, many orphans are not able to adequately defend their land rights (as demonstrated by land dispute cases). The article concludes that lawmakers in Rwanda need to strengthen and protect orphans' land rights by better enforcing existing laws and by implementing legal reforms, such as expanding the concept of 'active legal capacity'⁷ in order that more orphans of minority age can independently take their land cases to court without depending on other persons to act as guardians. The lawmakers also need to develop new approaches to guardianship.

THE PROBLEM OF GUARDIANSHIP IN AFRICA: FOCUS ON RWANDA

The concept of 'guardian' has meant different things across generations and cultures in Africa, although it usually refers to a person who is legally responsible for the care and management of an 'incompetent' person, such as an orphan, and his or her property. An orphan does not necessarily reside with his or her guardian. In the absence of well-developed state welfare

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6. Daudelin (2002: 6 and 9) writes about land disputes in post-conflict societies in terms of gender, class, and ethnic factors but does not discuss age.
 7. Varul et al. (2004: 100–1) look at the harmonization of European Union (EU) law with the national laws of the EU member states. They explain that the active legal capacity of a natural person is 'the capacity to enter independently into valid transactions'. The various national legal systems of the EU provide that persons can have one of three types of active legal capacity: full active legal capacity; restricted active legal capacity; or no active legal capacity. According to the authors, there are two generally recognized reasons for a person not to have full active legal capacity: being a minor and having a permanent mental disorder. They argue that the category of persons having no active legal capacity should be abolished in order to help protect minors and to provide balance for legal transactions. They also argue that some minors should be granted full active legal capacity or 'extended' active legal capacity (for example, more than restricted but less than full active legal capacity) on the basis of their mental maturity and their need to be independent in conducting certain transactions.

systems in most modern-day African countries, the formal administrative and legal regulation of guardianship is minimal.

Throughout Africa, various relatives of an orphan may fill the role of guardian. Most often, a parent, grandparents, uncles or aunts, and older brothers or sisters become guardians. In recent reports from UNICEF (2003: 16, 25) and the World Bank (Subbarao, 2002: 13), caregiving for orphans in several African countries is compared across categories of relatives. According to these reports, the guardianship role of surviving parents remains strong in most of the countries, although the role of grandparents is growing. Two non-governmental organizations (NGOs), HelpAge International and International HIV/AIDS Alliance, report that increasing numbers of grandparents are struggling to care for children orphaned by AIDS, although inadequate attention is accorded to them or the orphans under their care by national policymakers (Clark, 2003).

The roles assumed by guardians in Africa vary according to national, local, and individual contexts. Under ideal circumstances, an orphan's guardian is expected to ensure that his or her physical and material needs, including nutrition, shelter, clothing, and schooling, are met. In some national and local contexts, a guardian may be responsible for arranging an orphan's marriage (exchange of bridewealth) and for managing an orphan's personal property and land for his or her benefit until he or she reaches the age of majority or marries. A guardian may act as the legal representative of an orphan, sometimes bringing an action on his or her behalf, such as in a property or land dispute.

The important point is that the traditional concepts and practices of guardianship and caregiving for Africa's orphans are changing as a result of several factors, ranging from poverty to greed. The ideal, which holds that an orphan's extended family members should care for him or her, is no longer always put into practice (Christiansen, n.d.: 6); in fact, many potential guardians are refusing to undertake caregiving roles, and many actual guardians are neglecting or abusing their caregiving roles. The net effect of the changes in guardianship is that many orphans are assuming full responsibility for all domestic and agricultural tasks within their households; they are also assuming full responsibility for protecting their own land and property interests. Despite orphans' greater responsibilities, they are often denied active legal capacity in administrative or legal actions — even when their guardians are not acting in their best interests, such as when their guardians take over and occupy their land, or when their guardians transact or alienate their land for their own (the guardians') personal benefit, for instance through temporary rental agreements or permanent sales to other parties (see Rwezaura, 2001: 416–7 on Tanzania).

As far as Rwanda is concerned, guardianship practices began to change in the pre-war period (pre-1990) as land became scarcer and family members increasingly competed with one another for available land. It might be argued that in the years just before the war, fewer members of extended families and communities were interested in assuming the traditional role of

Nkundabana (caregiver or mentor for orphans) because they were burdened by many obligations in a context of growing poverty⁸ and shrinking land resources. Nonetheless, the declining interest in this role did not represent a crisis in guardianship because orphans were few in number and extended families were often large. During the war and genocide, however, the declining interest became a full-scale crisis because thousands of children lost parents and members of their extended families. After the war and genocide, when many newly-orphaned children returned to their communities, they discovered that their parental land had been taken over by extended family or community members — even though in pre-war times these people would presumably have acted as their guardians and looked after their land interests. Other orphaned children discovered that family or community members were too preoccupied with their own problems to assume guardianship for them and defend their land interests. Still other orphaned children discovered that family or community members wanted to assume guardianship over them in order to gain access to their land and property. In the decade since the end of the war, the crisis in guardianship has only deepened as many more children have lost their parents to AIDS and other causes.

Today, thousands of orphans in Rwanda lack any or adequate caregiving from surviving family members or other caregivers. Only a small number of these orphans are able to maintain land rights independently. Unfortunately, many orphans without any or adequate caregiving must defend threatened or confiscated land rights on their own and against the counter-claims of land-hungry family members or other parties. Moreover, many other orphans without any or adequate caregiving cannot claim land rights at all because their deceased parents were landless. The dispossessed and landless orphans must live in temporary homes (often obtaining shelter in exchange for labour), in children's centres, or on the streets (Human Rights Watch, 2003). Only a few of the orphans who lack effective guardianship and who are experiencing land problems are fortunate enough to be granted active legal capacity so as to assert independently their land rights before the local authorities or court officials, and these are mostly older, mature orphans.

THE RWANDAN SETTING

The tiny central African country of Rwanda⁹ was a centralized kingdom from the fourteenth century until the late 1890s, at which time Germany assumed control of both Rwanda and neighbouring Burundi, subsequently

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8. Poverty levels worsened during the 1980s when world prices for coffee, the main export of Rwanda, fell.
 9. According to the World Factbook (<http://cia.gov/cia/publications/factbook/index.html>), Rwanda's population in 2003 was estimated at 7,810,056 in an area of 26,338 sq. km.

ruling them as part of German East Africa. Following the German defeat in World War I, the League of Nations mandated control of the two territories to Belgium, which had already colonized neighbouring Congo. Rwanda achieved independence in 1962.

Over the years, beginning with the social revolution in 1959, in which a Hutu¹⁰ government came to power, and more particularly with the start of the civil war in 1990 when the Tutsi-dominated Rwandan Patriotic Front (RPF) invaded Rwanda from Uganda, Rwandans have experienced several outbreaks of violence.¹¹ Many observers have attributed this violence to ethnic tensions and political competitions for power and control of increasingly scarce resources, including land. The ongoing hostilities in Rwanda reached fever pitch on 6 April 1994, after the plane of the Hutu President, Juvénal Habyarimana, was shot down outside the country's capital, Kigali, killing everyone on board. Within minutes of the crash, ultra-nationalists, primarily representing the majority Hutu ethnic group, began implementing a plan to systematically eliminate their enemies, including members of the minority Tutsi ethnic group and moderate Hutus who favoured a power-sharing arrangement with the Tutsis. During the war and genocide, which were carried out by armies, militias, and ordinary citizens, members of both ethnic groups killed members of the opposite group as well as sometimes of their own group, although Tutsis sustained the greatest losses: more than 600,000 Tutsis were killed, amounting to an estimated 70 per cent of all Tutsis in the country. In July 1994, the invading RPF forces defeated the Hutu regime and ended the killing, but approximately 2 million Hutu refugees — many fearing Tutsi retribution — fled to neighbouring Burundi, Tanzania, Uganda, Zaire, and elsewhere. Another 2 million people abandoned their homes and fled to safer areas within the country. By the late 1990s, most of the externally located refugees had returned to Rwanda.

After the RPF declared victory, it installed a new government, which faced the monumental task of rebuilding a war-ravaged country. The war and genocide had resulted in the deaths of hundreds of thousands of people, the internal and external displacement of about half the country's eight million people, and the widespread destruction of public infrastructure (legal and medical services, buildings, bridges, and roads). The death or displacement of millions of people, as well as the return to Rwanda of earlier (pre-1994)

10. Until the early 1990s, Hutus comprised about 84 per cent of Rwanda's population, while Tutsis comprised about 15 per cent of the country's population. A third ethnic group, the Twa, represented about 1 per cent of the country's population.

11. In 1959, three years before independence from Belgium, the majority ethnic group, the Hutus, overthrew the ruling Tutsi king. Over the next several years, thousands of Tutsis were killed, and some 150,000 were driven into exile in neighbouring countries. The children of these exiles later formed a rebel group, the Rwandan Patriotic Front, and began a civil war in 1990. The war, along with several political and economic upheavals, exacerbated ethnic tensions (see Mamdani, 2001).

refugees, who came to be known as 'old caseload' refugees (as opposed to 1994 'new caseload' refugees), had disrupted land occupancy patterns and put added pressure on limited land and housing resources: vast numbers of people were occupying other people's homes or living in temporary shelters.

The aftermath of the war and genocide presented the country's new leaders with numerous daunting tasks. One task was that of rebuilding the decimated legal system in order to address massive war crimes. Most courts had been damaged or destroyed during the war and virtually all legal professionals had been killed or were in flight. By the time the Tutsi rebels put a stop to the genocide and took control of the government in July 1994, tens of thousands of suspected war criminals, including eventually about 5,000 children, were gradually being apprehended and held for trial in grotesquely overcrowded community jails and urban prisons (Human Rights Watch, 2003: 18).

A second task was that of reforming the land tenure system in order to correct long-standing problems and to address new, post-war problems, particularly the resettlement of dislocated citizens. The conflict had disrupted the country's already overstressed land tenure system, which before the war had been increasingly unable to accommodate a rapidly expanding population, of which more than 90 per cent depended for survival on subsistence agricultural activities conducted on customary landholdings.

By the early 1990s, several researchers had observed that higher population densities throughout the country were putting increased pressures upon limited land and resources, thereby leading to unequal land distributions, land dispossessions and sub-divisions, land overcultivation, and more frequent land disputes (André and Platteau, 1998; Ford, 1993). With each passing generation, a Rwandan family's landholding was becoming increasingly fragmented, as illustrated in a study which reported that by 1986, smallholder families were working an average of 1.2 hectares of land each. According to this study, the consequence of the progressive land fragmentation was that, for an average family with four sons, each son could expect to inherit only 0.3 hectare: ultimately, the sons' future customary land inheritances would be grossly inadequate, since a household of four persons needs between 1 and 2 hectares to meet basic subsistence needs (Diessenbacher, 1995: 80).

The war and genocide only worsened Rwanda's land tenure situation. Although families and communities had already been increasingly competing for scarce land resources, after 1994 the huge population dislocations plunged many communities and families into tumultuous, even violent, land competitions.¹² The residents of many communities experienced a

12. Interestingly, land resources continued to be scarce after the war, despite the fact that the Rwandan government opened up some land areas, such as Akagera Park, for settlement. Although many Rwandans had died during the war and genocide, the post-war population numbers quickly returned to pre-war levels due to the return of 'old caseload' refugees and to the high birthrate.

discontinuity in land tenure: those residents who had not left their communities during the war were concerned that their pre-war land rights were no longer secure, and those residents who had entered into communities after the war as returning or relocating refugees did not know if they could assert previous land rights or claim new land rights. Importantly, many orphaned children who lacked the assistance of adult caregivers were uncertain about the nature of their deceased parents' land rights and the appropriate methods to assert these rights. Indeed, the problem faced by many residents of post-war communities was that the unwritten rules of customary land law were not wholly adequate to regulate the complex land tenure requirements within the reassembled or newly created post-war communities. These rules had evolved over decades to regulate land tenure in established communities in which residents were bonded by long-term ties of kinship and cooperative friendship. Despite the inadequacies of customary rules in post-war communities, many Rwandans, including orphans, were compelled to rely upon them to address new and difficult types of land problems.

POST-WAR SITUATION OF ORPHANS

During the 1994 war, Rwandan children — both Tutsi and Hutu — experienced severe and traumatic losses for which they lacked the life experiences and skills to cope adequately. Many such children observed violent events, witnessed the death of family members and friends, lost their homes and material possessions, or were displaced to other locations within and outside the country.¹³

By the end of the war, many children had become orphans. In subsequent years, many other children became orphans when their parents died from war wounds, from ongoing rebel insurgencies, or from diseases, including AIDS. Currently, Rwanda presents an unusual picture, compared with most African countries, in that the number of non-AIDS orphans (mostly war orphans) is about equal to the number of AIDS orphans.¹⁴ In most other African countries, with the exception of Burundi, the number of AIDS orphans either greatly or somewhat exceeds the number of non-AIDS orphans (UNICEF, 2003: 11).

In 1999, there were about 270,000 orphans in Rwanda (Drimie, 2002: 4). Since then, it has been estimated that at least 45,000 households in Rwanda are headed by orphaned children; it is further estimated that about 90 per cent of these households are headed by orphaned girls (UNCHS, 2000). Another report, based on a study undertaken by the Agency for Co-operation and Research Development (ACORD), found evidence of a much higher number of orphan-headed households: this report estimated that 257,000 of Rwanda's

13. For accounts of the war's impact on children, see des Forges (1999), Geltman and Stover (1997), Government of Rwanda (2000), and Omaar and de Waal (1994).

14. About one in nine Rwandans have HIV/AIDS, or about 11 per cent of the population of 8 million (Mageria, 2001).

1.7 million households are headed by children. Significantly, almost all the orphans in the ACORD study had become household heads in the 1990s: only 2 per cent had become household heads in the 1980s. These households, which mostly lived off agriculture, usually had less than 1 hectare of land, with about one-third owning less than 0.5 hectare and about one-quarter having no land at all (ACORD, 2001).

Clearly, most orphans in Rwanda do not have adequate access to land, and as mentioned, the country's post-war legal system is ill-equipped to address their land access problems. The following sections will argue that neither the customary (unwritten) nor national (statutory) laws fully specify and protect orphans' land rights, and that the inadequate attention afforded orphans in customary and national laws provides openings for land-hungry adults to usurp their land rights.

CHILDREN AND THE LAW

Rwanda is a party to the international Convention on the Rights of the Child and to the African Charter on the Rights and Welfare of the Child, both of which recognize children as rights-bearers and further define their rights. Basically, the Rwandan Government has accepted its obligation under the Convention to protect children who are deprived of family care (Article 20) and to protect children who experience violence, neglect, or exploitation on the part of a parent, guardian, or other caregiver (Article 19). Human Rights Watch (2003: 78) argues that the Rwandan government has not sufficiently protected children's rights, including the right to inherit property, according to the standards established by the Convention and the African Charter.

As outlined below, customary law and several legislative acts in Rwanda are relevant to a discussion of children's land and property rights, and to the related issue of guardianship. Three such legislative acts are: the Law on Matrimonial Regimes, Liberalities and Successions (2000); the Law Relating to Rights and Protection of the Child against Violence (2001); and the Draft Land Law (2004).

Customary Land Law

In Rwanda, most land outside Kigali town is held under customary tenure.¹⁵ Customary land matters must proceed through each level of the administrative

15. In Kigali, land allocation is controlled by the City Council and land is held according to private tenure. Residents of Kigali apply for land plots and pay rent; they may also apply for and purchase a land title. If they have a land dispute, they may go to court. Outside Kigali, land is controlled by the Ministry of Lands, Human Resettlement, and Environmental Protection (MINITERE) and is allocated and held according to customary tenure.

hierarchy from the lowest level to the highest level: the extended family, the cell (or ten-cell), and the sector. Within each level of the administrative hierarchy, land matters including disputes are heard by traditional *gacaca*,¹⁶ which are customary legal forums in which community members meet to discuss local affairs (Reyntjens, 1990). Land disputes that are not settled within the administrative hierarchy sometimes proceed to the formal court system, which currently consists of lower-level Canton Courts within the 106 districts and higher-level Courts of First Instance within the twelve provinces.¹⁷

Before the 1920s, the central and southern regions of Rwanda were controlled by the Tutsi central court under a customary land tenure system known as *isambu*, in which land belonged to the divine Tutsi king and was distributed by his chiefs to clients, while the northern region remained outside the central court's influence under a customary land tenure system known as *ubukonde*, in which land was held by corporate lineages in a system of clientship. During the 1920s, Belgium administratively unified the various regions of Rwanda under its indirect colonial rule, bringing the 'outside' northern regions under the central court's rule (Burnet and RISD, 2003; Newbury, 1988). After Rwanda's independence from Belgium in 1962, customary land law was increasingly influenced by formal legal enactments at the national level; nonetheless, most Rwandans continued to acquire land through customary rules of occupation.

Until the 1994 war, orphans in most communities did not own or inherit land, and they exercised limited rights to control and dispose of property. Pre-war customary practice held that land should be inherited according to patrilineal rules of succession from father to son. Sons received land from their fathers when they reached maturity, usually at the time of marriage, whereas daughters received usufructuary rights to land from their father (or another male relative), if they were unmarried, or from their husband in his home area, if they were married. Customary practice sometimes allowed daughters to receive land as a gift from their father or when they had no brothers, although they still did not have an automatic right of inheritance. In the event that the father of a sibling group died before his children reached maturity, a paternal uncle would assume guardianship for the orphaned children, and would sometimes marry the children's mother (levirate marriage). Under favourable circumstances, the children's mother would hold the matrimonial home and land in trust for the sons.

Following the war, customary law was ill equipped to address the land access problems of the many newly-created orphans. One fundamental problem was that the land rights of orphans, particularly females, were

16. *Gacaca* refers in the Kinyarwanda language to community members meeting on grass. The *gacaca* primarily handle civil matters and aim for settlements, such as compensation, that restore social order.

17. Rwanda's new Constitution of 4 June 2003, specified the jurisdiction of 'Ordinary Courts' in Articles 144–151. The restructured court system is being operationalized at the time of writing.

limited under customary law. A second problem was that orphans needed guardians to represent their land rights, yet many of the close relatives (such as a surviving parent, uncles, aunts, grandparents) who would normally have become their guardians had died during the war and genocide. A third problem was that those relatives who did become orphans' guardians faced a potential conflict of interest: they sometimes felt compelled to compete for scarce land¹⁸ with those orphans whose rights they were supposed to be protecting.¹⁹ A fourth problem was that orphans' land rights were sometimes not respected by local authorities because many returning refugees needed land.

It might be argued that customary land law, as applied in local communities, should retain its flexible, adaptive character; however, it might also be argued that some standards should be established in national law and policy to reflect the changes in guardianship for orphans that were occurring before the war and that were accelerated and complicated by the war. These standards would grant orphans more significant participatory roles within family councils and in legal proceedings.

The Matrimonial Regimes, Liberalities and Successions Law of March (2000)

The Rwandan Civil Law on Property, No 2/99 (the 'Matrimonial Regimes, Liberties and Succession Law' of 2000), extended the inheritance rights of both women and girls to property within their families of birth (Articles 43 and 50). Article 50 of the law stipulated that the children of a deceased parent would, in accordance with the civil laws, inherit in equal parts without any discrimination between male and female children. Unfortunately for the huge number of children born of non-legal unions, it also stipulated that the children of legal marriages would inherit more significant rights.²⁰ In

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18. This land had usually been used by the orphans' parents but held by the extended family.
19. Human Rights Watch (2003: 47) discusses the case of a young woman who was taken in by a maternal uncle and supported in a 'husband-wife' relationship. She bore him two children before he threw her out. Thereafter, she brought a paternity suit against him. Although she was over eighteen at the time, she had to request an 'emancipation' from the Ministry of Justice since the legal age for civic responsibility is twenty-one. Otherwise, the uncle whom she was suing might have been appointed her guardian.
20. According to pre-war legislation, the Organic Law No 21/130, 'Monogamous Marriage of Local Populations — Protection — Repression of Adultery and Bigamy' (5 September 1949), a man could marry only one wife; in practice, many men married one 'legal' wife and took on other 'non-legal' wives. This informal practice has had a negative effect on the inheritance rights of the children of the non-legal wives, both sons and daughters. The children have no right to their father's land or property unless he formally acknowledged them in his personal documents. Nonetheless, the 'Matrimonial Regimes, Liberties and Succession Law' provides in Article 70, part 9, that all the children of a widow who did not remarry should inherit equally without discrimination regarding legitimacy their mother's one-half of the patrimony.

terms of orphaned children's property rights in general, the various articles are often interpreted to mean that a boy or girl who is the sole surviving descendant of a patrilineal group can inherit the property rights of the group and that a boy or girl without parents can inherit the property rights of the parents (previously only boys could inherit such rights).

The law provides several guidelines regarding the responsibilities of a guardian for minor children. Article 70 specifies that a surviving spouse must care for the minor children of a deceased parent. Articles 51, 52, 75, and 81 deal specifically with the Council of Succession (that is, the extended family council), specifying its membership (minor children are excluded) and granting it discretionary powers to regulate the guardianship of minor children (the distribution and use of the inheritance). Essentially, the law provides that the interests of minor children must be represented through an adult guardian, and moreover, that the Council of Succession holds considerable powers to decide who this guardian will be and how he or she will exercise the guardianship role. Unfortunately, the law does not provide for alternatives in the event that the Council of Succession and appointed guardian do not protect the interests of the orphans under their supervision. It might be argued that alternatives to family and community supervision of orphans should be further specified in law and policy.

The law also does not adequately cover orphans' rights to land — particularly orphans from non-legal unions. In fact, the 'Matrimonial Regimes, Liberties and Succession Law' specifically mentions land in only two articles: Article 90, which specifies that land within an estate is subject to land regulations, and Article 91, which specifies that land within an estate comprising less than 1 hectare must not be subdivided among the heirs. (Since many landholders have less than 1 hectare, the law effectively limits the land inheritance rights of some potential heirs, mostly orphans.) It might be argued that orphans' land rights should be further specified in law and policy.

Law Relating to Rights and Protection of the Child against Violence (2001)

Law No 27/2001 'Relating to Rights and Protection of the Child Against Violence' specifies children's rights, children's responsibilities, and the nature of and penalties for crimes against children. Article 1 of the law defines a child as anybody below the age of eighteen,²¹ while Article 3 allocates guardianship responsibilities to organizations or families.

21. The Rwandan Civil Code of 1988 (Volume I, Second Part, Chapter V, Article 360) defines a minor as '... an individual of one or the other sex who has not attained the age of 21 years' (my translation from French). It would seem that Rwandan laws are not uniform regarding the standards for defining a 'child'. Moreover, Human Rights Watch (2003: 47) points out that researchers in Rwanda seldom define 'childhood'.

Article 9 stipulates that a child's interests must be taken into account before any decision concerning him or her is made, and moreover, that a child should express his or her opinion on any administrative or judicial matter regarding him or her, whether directly or indirectly through his or her representative. In practice, some guardians neglect their supervisory roles, some orphans are not asked for their opinions, and most orphans are denied independent access before the local authorities and courts. It might be argued that the responsibilities for guardianship, the provisions for orphans' participation in matters that concern them, and the standards according to which orphans might be granted active legal capacity for independent representation should be specified in law and policy.

In the event that a child without a guardian is involved in a court case, Article 21 provides that the State, where necessary, will provide legal assistance. Although the law indicates that a child might be represented by his or her guardian in court, or in the event that a child lacks a guardian, that the State will provide legal assistance for that child, it does not oblige officials to intervene in the majority of cases of exploitation that never make it to court. In effect, the law specifies that a child's rights must be protected, but it does not create the remedies for most violations of children's rights, including to land and property. It might be argued that a legal framework should be developed to enable and require State officials to intervene on behalf of orphans, mostly by imposing and enforcing remedies for violations of their rights.

Draft Land Law (2004)²²

At present, Rwandan law recognizes two types of land access rights: private individual ownership, regulated by statutory law, and customary access, regulated by indigenous law. As indicated, most Rwandans hold land according to localized customary access, although the statutory order No 09 of 1976 specifies that the Rwandan State is the sole owner of all land and grants land access on a usufructuary basis.

Rwanda's Draft Land Law offers a number of provisions which have implications for children's land interests: the prohibition of ineffective traditional land use practices; the reorganization and redistribution of land for optimal production; and the unification of the two systems of land law under one governing system of written land law. These provisions have implications for children's land interests because they promote modern landholding systems and land use techniques that many children may not have the resources or knowledge to take advantage of. Various observers have noted that the draft law says little about women's land rights (see, for

22. The Land Law was in draft form at the time of the research (2002–4) and was circulating among government officials.

example, Rose, 2004), but few have commented that the law is silent about children's land rights.

It might be argued that Rwanda's land law should protect children's, particularly orphans', land rights. There are a number of possible options for achieving this. First, the law could differentiate children's rights (and the methods to protect these rights) under different tenure categories, including customary land, leasehold land, and private tenure land. Orphans who experience problems with customary land will require assistance from the local authorities, whereas orphans who experience problems with private tenure land may require legal counsel and the assistance of a special advocate or trustee. Second, the law could guarantee various methods (such as oral testimony) that orphans can rely upon to prove their land rights when new land programmes are introduced. Many orphans do not have any documents regarding their parents' land rights because their parents died suddenly and were unable to transfer documents to their children. Third, the law could deal with the impact that some land policies will have on orphans. It is worth noting that various articles of the Draft Land Law, which specify policies regarding compulsory consolidation of fragmented landholdings, confiscation of unexploited land, compensation for confiscated land, and reclamation of lost land rights, may work against orphans who lack the resources and legal know-how to assert their land rights and demand fair land transactions. The law might extend leniency to orphans regarding time frames for land confiscations, and it might provide at least some legal assistance to orphans who are pursuing grievances about land confiscations, unpaid compensations, and lost land rights.

Clearly, Rwanda's orphans need to be informed of their land rights, to have the practical 'tools' for asserting their land rights, and to be assisted with pursuing their land claims. Toward these ends, lawmakers should ensure that orphans' land rights are protected in theory and enforced in practice. These guarantees for orphans will not eliminate land competitions but they may level the legal playing field, thus giving orphans a better chance of asserting their land inheritance rights and thereby securing their futures.

The next section uses an analysis of land dispute cases to demonstrate how orphans are currently attempting to assert and defend their land rights. The cases indicate that many orphans are unable to use current laws and policies to their advantage.

ORPHANS' EFFORTS TO ASSERT LAND RIGHTS: LAND DISPUTE CASES

For the purposes of this research, I assembled information about land dispute cases involving orphans from interviews with informants, from observation of administrative and legal proceedings, and from written case studies. The informants were government officials, judges, lawyers, local authority

employees, and land disputants who resided in the research communities or who participated in proceedings. The local authorities and land disputants discussed the land tenure rules and practices within their communities, and when relevant, the nature and disposition of any known land dispute cases (the parties involved, the issues under debate, and the outcomes reached).

My land dispute case sample consists of more than 100 detailed case studies involving orphaned boys and girls of various ages from all provinces. Although I collected cases involving both Hutu and Tutsi orphans, I do not differentiate the orphans by ethnicity in the discussion below.²³

Orphans and their Opponents in Land Disputes

The cases reveal that different categories of orphans (single/double, paternal/maternal, male/female, young/old) experienced land problems. Double orphans and paternal orphans experienced more difficulties in making land claims than did single orphans and maternal orphans; female orphans initiated land disputes on behalf of households more often than did male orphans (more females head households); and older orphans were more effective than younger orphans in processing land disputes through administrative and legal forums. Despite these tendencies, orphans who were assisted by adult advocates generally experienced better outcomes to their land problems. In one case, a twelve-year-old, double, female, AIDS orphan was able to secure rights to her deceased parents' land and houses (including rental houses), partly due to the intervention of a social worker from an NGO.

The orphans' opponents in these disputes included family members (paternal and maternal aunts and uncles, stepmothers, half-siblings,

23. Ethnic distinctions continue to play a role in Rwandan society, but I do not differentiate by ethnicity the orphans discussed in my case studies for two reasons. First, my Rwandan research assistants insisted upon adhering to a government directive to avoid ethnic distinctions and therefore did not usually indicate to me our informants' ethnicity. Second, my goal in this article is to focus on a problem shared by Rwandan (and other African) orphans — that of land rights and guardianship. In my view, a discussion of ethnicity does not contribute to that goal. Despite my decision to avoid ethnic distinctions in this article, I recognize that such distinctions do play a role in some Rwandan orphans' lives, and I encourage other researchers to be aware of this fact. For example, Human Rights Watch (2003: 52, 53) reports that some Rwandans believe that special 'survivor' funds are more available to Tutsi 'genocide orphans' than to Hutu 'war orphans'. Moreover, while conducting my research, I observed that some Hutu orphans were deprived of their land by returning Tutsi refugees. I also observed that some orphans experienced problems at the hands of guardians (or other members of their extended families) who belonged to other ethnic groups. For example, in one land case, a sibling group of Tutsi 'survivor' orphans were deprived of their deceased mother's land by their Hutu stepmother. Still, in assessing this case and similar cases, I cannot state with certainty whether the intra-family land competitions were more the result of common kinship rivalries (for example, between stepparents and stepchildren) or particular ethnic rivalries (for example, between Hutus and Tutsis).

siblings, and to a lesser extent, stepfathers and mothers) and non-family members (neighbours, strangers, and local authorities). Many of the family members who took control of the orphans' land were their guardians — a situation that put the orphans in an awkward position in that their opponents in the land disputes were the same people who were supposed to represent them before the local authorities and courts. (Interestingly, when orphans' guardians sold their land, the orphans usually brought their complaints against the purchasers rather than their guardians, presumably to preserve family cohesion and to avoid alienating themselves from their extended families.)

The majority of orphans' opponents in land disputes were family members. In one interesting case, a paternal war orphan brought a complaint before the local authorities against his own mother who had remarried, moved away, and rented out his deceased father's land while he (the orphan) was in exile in Congo. The local authorities overlooked the mother's dealings with the land and arranged a compromise between the renters, who continued to cultivate the land, and the orphan, who built a house on a corner of the land. In a second case, a sibling group of orphans brought a complaint against their stepmother who had taken over the house of her murdered co-wife, the orphans' mother. The orphans' father, who was in prison on genocide charges, instructed the stepmother to turn over the house to the orphans.²⁴ In a third case, the three aunts of a group of sibling, pre-war AIDS orphans ignored them until after the war, when special funds for fostering orphans were established. At that time, the three aunts assumed official guardianship for the children: they then continued to ignore the children, used the fostering funds for themselves, and sold their land without their knowledge.

The family members of some orphans who possessed land and property fought with one another over guardianship. Some family members fought with one another specifically over land, arguing that the right to disputed land should be granted to them because they were acting (or had acted) as guardians for orphans, or alternatively, that their opponents had failed to perform guardianship duties and therefore had forfeited their right to disputed land. In one case, a man argued that he should be permitted to sell stones on the land of neighbouring orphans because he would use the money to care for them; and in another case, a woman argued that a plot of family land should be given to her because her paternal cousin had failed to care for the orphans under his guardianship.

Some orphans' opponents in land disputes were non-family members. In most of these cases, neighbours and strangers (often refugees) encroached upon the orphans' land. In such cases, the orphans usually complained about the interlopers to the local authorities. In a few cases, the local authorities themselves confiscated the orphans' land. In one case, a sibling

24. This is the land case referred to in footnote 23.

group of orphans protested to the Ministry of Local Government that the local authorities had confiscated their land to create a resettlement village.

Orphans' Land Disputes: The Subject Matter

The orphans' land dispute cases covered a range of subject matters. Most cases involved orphans' family members taking over their agricultural land and occupying, or transacting with others over, their houses. In most such cases, the orphans wanted to repossess their land and houses for personal use, but in some cases, the orphans wanted fair compensation. In a number of cases, the orphans' family members sold their land and houses secretly or with deception (for instance, pretending to need the land or houses for personal use). In several cases, the orphans' family members rented out their land or houses and refused to give any money to them; in other cases, the orphans' family members removed the roofing and other materials from their houses. Many of the family members justified their property-grabbing with arguments that the orphans' mothers had not been legally married to their fathers.

Several cases involved neighbours or strangers taking control of orphans' land and houses. Some neighbours wanted to use part of the orphans' land and therefore simply ignored the boundaries. Other neighbours wanted to use personally or to sell the resources (such as stones or wood) on the orphans' land. One neighbour seized an orphan's land as repayment for her parents' debt. In cases involving strangers, the stranger might take over an orphan's land, stating that his parents had sold him the land before the war, or the stranger might accuse the orphans of genocide and thereafter occupy the orphans' houses.

Orphans' Access to and Use of Administrative and Legal Forums

The orphans resorted to several types of forums for processing their land and property disputes. Most orphans first tried to resolve their cases with the assistance of the local authorities. When the local authorities failed to find solutions to their land problems, many orphans turned to NGOs for assistance in navigating the legal process, such as obtaining documentation (for instance, regarding their parentage or their parent's land occupation) and representing their cases before the authorities. Some international NGOs even helped orphans to purchase land. But very few orphans received adequate legal assistance. Only a few cases involving orphans entered the formal legal system,²⁵ and usually only when the local authorities had been

25. Human Rights Watch (2003: 60) observed that property disputes involving children rarely make it to court; informants told their researchers about only two property cases involving children in Ruhengeri Province in 2000, and about two other cases involving children, who were over eighteen by the time they brought their cases, in Gisenyi Province.

involved and when NGOs had provided logistical and financial support. On occasion, orphans were not able to get satisfaction through ordinary administrative and legal forums and thus devised more resourceful strategies to acquire land. For example, one girl orphan asked Rwanda's President during a public meeting to help her acquire land, and he did so.

When reaching decisions in orphans' land disputes, the local authorities and judges considered a number of factors relevant to each case: the orphan's legitimacy (whether his or her father had been legally married to the mother or had at least officially acknowledged his paternity); the validity of the orphan's land claim; the existence of competing claims to the land; and the history of transactions involving the land. Many orphans received favourable decisions but were unable to implement them due to a lack of financial resources and support from their local authorities. In effect, even when orphans were able to gain access to administrative and legal forums and to use them to their advantage, they still could not easily repossess their land.

Orphans' Barriers to Land Access and Land Dispute Resolution

The land dispute cases indicate that the orphans commonly faced barriers of information, time, status, experience, and cost when they attempted to assert or defend a land claim. These barriers were related both to case circumstances (for example, the presence of adults who desired the land, the willingness of administrative or legal authorities to intervene, the availability of information, the time which had elapsed since the land was alienated, and the costs involved in pursuing a land claim) and to the orphans' personal characteristics (including age, experience, and socioeconomic status).

Barrier of information: some orphans did not know the extent of their deceased parents' landholdings, or if their parents had transacted a particular landholding. In several cases, the orphans discovered after the deaths of their parents that their parents had sold or rented out the family land without informing them.

Barrier of time: when their parents died, some orphans were too young to claim their family land or were absent from the area. If the orphans waited for extended periods of time before making claims, and their family members used their land in the meantime, they had little chance of reclaiming it. If the orphans' family members sold the land and non-family members bought and invested in it, they had even less chance of reclaiming it. Moreover, the more time that elapsed before orphans made claims, the greater the chance was that any documents which verified land occupancies or transactions would be lost or altered. In the case of one orphan, a post-war land occupant had already built a new house and sold both it and the

original house by the time the orphan was able to bring a complaint before the local authorities.

Barrier of personal status within their family or of social status relative to other land claimants: orphans who could not claim their family land because of their personal status within their families were usually children of 'non-legal' wives who had not married their fathers in civil ceremonies, or they were children of mothers with second husbands who rejected them. Orphans who could not claim their family land because of their social status relative to non-family members were opposed by higher status persons. In several cases, the family land and houses of orphans were taken over and occupied by wealthy or powerful persons, such as military or local defence officers, whom the orphans could not easily challenge.

Barrier of youth: some orphans were either too meek and naïve to counter their opponents or they were too inexperienced to effectively navigate the administrative and legal systems (such as deadlines for filing applications or making land claims).

Barrier of cost: most orphans were unable to pay the high costs of pursuing their land claims along administrative or legal routes. They were likely to encounter several types of legitimate costs, including lawyer fees, transport costs, court costs (for documents and judgements), or compensation to occupants who invested in their family land. They were also likely to encounter several types of illegitimate costs, including 'under-the-table' fees to local authorities or judges for processing their cases and reaching favourable decisions. In one case, a family of orphans pursued their land claim with various local authorities and even brought a case before the Canton Court and the Court of First Instance. They won their case at all these levels, but when their opponent appealed to the Supreme Court, they were forced to abandon their land claim because they did not have sufficient funds to pay for transportation to the distant court, let alone to cover the court costs.

DISCUSSION: RETHINKING CAREGIVING FOR ORPHANS

Within the current context of Africa's orphan crisis, the concept of guardianship for orphans should be reexamined and new models of caregiving developed. In the particular case of Rwanda, guardianship for orphans has taken on new dimensions, as the war and spread of AIDS have resulted in large numbers of orphans, have shifted much of the burden for guardianship to distant relatives of orphans, and have placed enormous pressures on these relatives — many of whom are struggling to survive under post-war conditions of extreme poverty. Rwanda, as much as if not more than many African countries, requires the development of innovative models of caregiving for orphans.

The land dispute cases discussed above illustrate the crisis in caregiving for orphans in Rwanda. The cases point to the fact that guardians do not always respect, or indeed recognize, orphans' land rights, that orphans often find little support for their land claims within the laws — despite provisions regarding children's inheritance rights and guardians' responsibilities — and that orphans experience practical barriers (information, time, status, experience, and cost) in gaining access to the administrative and legal forums within which they might defend their land rights against guardians and others. Ultimately, many orphans experience considerable frustrations as land disputants in pursuit of the rights that would enable them to care for themselves.

One might argue that a first step in rethinking caregiving for orphans in Rwanda (and elsewhere in Africa) would be for lawmakers to reconsider the concept of active legal capacity, particularly as concerns minor orphans. Instead of inflexibly restricting the active legal capacity of minors on the basis of age,²⁶ lawmakers should empower courts to grant full active legal capacity to minors on the basis of their mental maturity, their expressed need to be independent, and their immediate interest in asserting land rights. At the same time, lawmakers should reconsider the requirement that minor orphans' guardians must grant consent before they can attain full active legal capacity (or extended active legal capacity) to pursue a land claim in court. The consent requirement is particularly problematic in cases in which minor orphans' guardians or legal representatives deny consent due to their competing land interests. In such cases, the courts (or a special guardianship court) could grant consent on the basis of recognized professional criteria. The criteria for dealing with minor orphans' land claims should lay out procedural standards since some minors' land rights might be compromised or their obligations increased if, after attaining full active legal capacity, the minors were able to enter into unwise land transactions or take inappropriate actions in land dispute forums. In essence, the criteria should specify the following: the nature of land transactions (or land claims) that minors can perform independently; the circumstances under which minors can make land claims; the procedures that minors should follow in making land claims; the approaches that officials should take in handling minors' land claims; and the special interventions that officials might resort to in protecting minors' interests (for example, assigning special advocates to them). Despite the potential risks of empowering some minor orphans with full active legal capacity, the benefit to be gained is that orphans would be enabled on a case-by-case basis to assert their land claims more effectively.

26. A Rwandan law student who is writing his thesis on the legal rights of children who head households told me that orphans who have attained the age of 21 can represent themselves at court. He added that orphans between the ages of 18 and 21 can go to court to request legal emancipation but orphans below the age of 18 cannot request legal emancipation.

Ultimately, land dispute cases involving minor orphans might result in greater equity and justice.

A second step in rethinking caregiving for orphans would be for law makers to enforce existing laws and thereafter to develop new laws that more completely recognize and protect orphans' rights, as separate from adults' rights and within an orphans' rights framework. Existing laws should be applied (that is, enforced) in the following ways: they should be used to create national standards that protect and enhance orphans' ability to defend their land rights (for instance, by requiring orphans' participation in family councils and land commissions); they should be used to enable external parties to monitor orphans' guardians in order to ensure that the guardians are not violating orphans' land rights; and they should be used to implement remedies for violations of orphans' land rights. New laws or bylaws should be developed in the following ways: they should specify orphans' land rights and the methods for defending these rights; they should enable orphans to attain full active legal capacity upon their request and under specified conditions (such as demonstrated maturity and proven interest); they should extend access to legal counsel (for example, paralegals) to orphans with complex land claims; and they should provide financial assistance to indigent orphans. If orphans were to be granted full active legal capacity and access to legal counsel to defend their land rights, they would be able to counter the barriers of information, time, status, and experience; and if orphans were to be granted more significant financial assistance, they would be able to counter the barrier of cost.

A third step in rethinking caregiving for orphans would be for lawmakers to better regulate and support traditional guardianship for orphans. This might be accomplished, in part, by developing guidelines for guardianship, by monitoring guardians, and by imposing stiffer penalties for abuses of guardianship (see Himonga, 2001: 470). In addition, lawmakers should create alternatives to traditional guardianship, by reconsidering the long-standing idea that extended families are inevitably the most appropriate caregivers for orphans.

Caregiving paradigms might be expanded either by assisting traditional caregivers (families) in new ways or by seeking new types of caregivers. Traditional caregivers might be assisted through community awareness programmes that encourage community action and responsibility (such as the community childcare committees discussed by Guest, 2001: 57–70). These caregivers should be supported psychologically and economically, through home visits, skill training programmes, and business grant programmes, in order to ensure that they have sufficient means to assist orphans and reduced incentives to deny them their land rights.

A new type of caregiver might be found in independent advocates who are assigned to orphans — particularly minor orphans who have been granted full active legal capacity to pursue land claims — in order to protect the orphans' interests and enhance their benefits. As discussed above, many

land disputes in Rwanda involve land-grabbing by orphans' relatives; in some cases even the local authorities, which might be expected to protect orphans' interests, are grabbing their land. These orphans need independent advocates who do not have a personal interest in their land — unlike traditional guardians or community members. Such advocates might be private individuals, private or public institutions (NGO representatives or government trustees), or trained professionals. The advantages of trustees are that they would have an ongoing (rather than an ad hoc) mandate to protect orphans' interests, they would offer cumulative professional training and experience, and they would be external to and presumably less biased regarding community land competitions. Most advocates would provide orphans with information, help them obtain required documentation, accompany them to administrative and legal hearings, or assist them with organizing and lobbying efforts.

At present, the ongoing orphan crisis in Africa is being addressed for the most part in standard ways, primarily by care provided through extended families, orphanages, and foster homes. Nonetheless, in several African countries, a number of innovative orphan-intervention programmes have been developed by government and private groups. These programmes raise difficult questions and imply choices. Who should be targeted for assistance — the orphan, the fostering household, or communities/schools/NGOs? How should the recipient of assistance be targeted — through direct cash transfer programmes, in-kind programmes, school subsidy programmes, or income generation schemes for families? What is the best type of intervention — broad, sector-specific interventions that benefit all children, such as abolishing school fees and establishing school feeding programmes, or orphan-specific interventions, such as providing school vouchers for orphans or support to schools admitting disproportionate numbers of orphans? The answers to these questions have resulted in a variety of intervention strategies in different countries — in Mozambique, a programme of improving orphan maintenance and inheritance; in Burundi, school fee waivers for double orphans; in South Africa and Namibia, social pensions for the elderly (many of whom care for orphans); in Eritrea, fostering grants to communities; and in Uganda, innovation grants to communities (see Subbarao, 2002: 18, 36, 39).

Some innovative orphan-intervention programmes in Africa have focused on finding solutions to orphans' land problems. For example, in Zimbabwe, the Uzumba Orphan Trust, supported by the United Methodist Church, enables 1,500 AIDS orphans to remain in their homes because forty-five community caregivers regularly visit and attend to them. A major component of the Trust involves 'orphans' fields' — farmland plots that are worked by community volunteers. The produce from the plots is sold, and the proceeds are poured into the Trust to provide housing materials and school fees for the member orphans (Butler, 2000). In Swaziland, the government has urged chiefs to allow orphans to remain on land that

would customarily be redistributed upon their parents' death. The government has also encouraged chiefs to turn over to emergency stores for orphans' use the produce from traditional 'chiefs' fields' that are communally farmed by members of a chiefdom. Moreover, some chiefs are, on their own initiative, setting aside additional land areas to feed orphans (Zavis, 2003). In Rwanda, CARE International has implemented a *Nkundabana* mentoring/advocacy programme, in which CARE staff train community volunteers to assist child-headed households in meeting their own material requirements and in dealing with ongoing problems, such as land or property problems. The project has occasionally had the effect of raising community awareness of orphans' land rights and enabled the *Nkundabana*, who are usually not related to the orphans, to advocate for their land rights from a neutral, disinterested perspective.

These and other noteworthy programmes should be examined, compared, and evaluated for strengths and weaknesses. While policymakers in Africa are likely to continue to advocate supporting birth families or placing orphans in substitute families (see Rwezaura, 2001: 431–4), other innovative ways of broadening definitions of 'family,' such as children's villages, should be pursued. In Rwanda, where extended families were decimated during the war and genocide, new types of families, such as groups of unrelated orphans living together, have spontaneously sprung up in the post-war period: these families want recognition and support.

At the same time that orphan-intervention programmes are developed in Africa, national land development programmes should be designed and implemented with orphans' full participation. Several steps should be taken to enhance orphans' participation. First, orphans should be included in national land research efforts. Second, mature orphans should be asked to contribute to discussions at the national and community levels about proposed laws or policies that would likely effect their general land interests, such as those dealing with expropriation, registration, or titling. Third, self-sufficient orphans should be granted the right to represent their specific land interests at family council or land commission meetings.

During this difficult period of post-war transition in Rwanda, government officials are debating solutions to the country's growing orphan crisis. With some foresight, they will develop from the devastation of war, genocide, and AIDS, an innovative, participatory system of guardianship that recognizes and protects orphans' land rights in both law and practice.

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