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**LEGAL ANALYSIS ON PROTECTION OF THE CHILD BORN OUT OF
WEDLOCK DURING SUCCESSION UNDER RWANDAN LEGAL
FRAMEWORK**

A Dissertation Submitted in partial fulfillment of the
academic requirements for the award of a Bachelor's
Degree with honors in Law

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Kigali, October 2024

DECLARATION

I, **Isaie KWIZERA**, hereby declare that, to the best of our knowledge, the work presented hereinafter “*Legal analysis on protection of the child born outside of marriage during succession under Rwandan legal framework*” is our original work. It has not been presented elsewhere as a dissertation or for any other academic purpose. For other sources that were consulted while carrying out this work, references were duly provided in footnotes and bibliography.

Date: September, 2024

Signature.....

Isaie KWIZERA

APPROVAL

This is to approve that the research entitled *Legal analysis on protection of the child born outside of marriage during succession under Rwandan legal framework* has been undertaken by **Isaie KWIZERA** under our supervision as a partial fulfilment of the academic requirement for the award of Bachelor’s Degree with Honors in Law in Kigali Independent University ULK. In our opinion, the work is worthy for public presentation.

Supervisor: **Ernest KABANDANA**

Signature:

Date:/...../2024

DEDICATION

Isaie KWIZERA

To my wife

To my Parents

To my Brothers and Sisters

To the rest of our family, friends and Colleagues,

ACKNOWLEDGEMENT

As John Locke argued, *“As people are walking all the time, in the same spot, a path appears”* we may assert even on our side, after a long walk, at least a path starts appearing. we would like to take this immense opportunity to all people who have contributed for this path to appear. Especially, our sincere tribute thanks go to our dearest supervisor who has been a keen advisor, more than just a supervisor, but a mentor; **Ernest KABANDANA** for her encouragements and professional guidance for the accomplishment of this dissertation and for our whole university studies in general. Without him, nothing would have been achieved.

Our sincere thanks go again straight to the whole staff of the faculty of law, in Kigali Independent University ULK for having made our dreams real. we recognize their compassionate education and support which has been just more than a duty, but a passion. we have to acknowledge more especially **Prof. Dr. RWIGAMBA BALINDA**, the founder and the President of ULK, from whom we learned a lot, and all the remaining administration staffs whose names cannot all be mentioned on this brief acknowledgment.

The realization of this accomplishment could not happen, if we had not met other amazing and lovely colleges in our LLB classes who have always been near us and made our studying career an enjoyable environment in all these three years of university studies. Their advices and good characters have contributed much in our socio-academic life in campus.

Our heartfelt gratitude goes to the beautiful Families we met at university they are one of the things which will always keep our heart remember our life in campus.

Last but not least, our sincere consideration goes to our family which was always behind our everyday life success. Your Love and Compassion towards our success made it real. May God bless you All.

Isaie KWIZERA

LIST OF ABBREVIATION AND ACCRONYMS

ACRWC	: African Charter on the Rights and Welfare of the Child
Art:	: Article
CA	: Court of Appeal
CBOs	: Community Based Organizations
CEDAW	: Convention on the Elimination of All forms Discrimination Against Women
CRC	: Convention on the Rights of the Child
CSOs	: Civil Society Organizations
DNA	: Deoxyribonucleic acid
GA	: General Assembly
GO	: Official Gazette
GoR	: Government
ICESCR	: International Covenant on Economic, Social and Cultural Rights
LLB	: Bachelors of Law
MIGEPROF	: Ministry of Gender and Family Promotion
NCDA	: National Child Development Agency
NGOs	: Non-Governmental Organizations
SDG	: Sustainable Development Goal
UDHR	: Universal Declaration of Human Rights
ULK	: Université Libre de Kigali
UN	: United Nations
UNCRC	: The United Nations Convention on the Rights of the Child
UNICEF	: United Nation International Children's Fund.
Vs	: Versus
WWW	: World Wide Web

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GENERAL INTRODUCTION

Children born out of legitimate marriage are still found. The birth of children out of marriage happened because their parents are not legally married. Another possibility is that the children are the results of a crime (rape), or even both their parents are not bound in a marriage at all.¹ A child born out of marriage is referred to as a child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.² Moreover, a child born out of marriage is also defined as a child whose parents were not married to each other at the time of his or her conception or birth, or at any other time thereafter.³

1. BACKGROUND TO THE WORK

Globally, the international human right charter supposes all human beings to be born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁴ Moreover, under the convention on the right of the child, in its article 3, it stipulates that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In fact, the term succession means the entitlement by one or more persons to the legal patrimonial relationships of a deceased person and the consequent restitution of the assets that used to belong to that person.⁵ Under Rwanda succession law, the term succession is defined as “*Succession is the transfer of rights and obligations on the assets and liabilities of the de*

¹ B. Resti Nurhayati, *Constitutional Basis for the Civil Rights of Illegitimate Children*, Faculty of Law and Communication, Soegijapranata Catholic University Jln. Pawiyatan Luhur IV/No. 1, Bendan Duwur, Semarang, 50247, Indonesia. P.118

² Law insider, *Child born out of marriage definition*, available at <https://www.lawinsider.com/dictionary/child-born-out-of-marriage> accessed on 23rd March 2024

³ *Idem*

⁴ See article 1 of Universal declaration of Humna rights.

⁵ Stanford Law school, *Meaning of succession*, accessed ,march 2024, available at: <https://law.stanford.edu/wp-content/uploads/2018/04/Timor-Leste-Inheritance-Law.pdf>

cujus.”⁶ Thus, this work contains the critical analysis on legal protection of the child born out of marriage during succession under Rwandan law.

Generally, it is the Government’s intention that, as the country progresses, there should be justice for all, including children. There are inequalities that may result in injustices or the search for justice for children.⁷ As Rwanda continues to make tremendous progress in human development, the Government places importance on justice for children because children are vulnerable and still in need of support for optimal survival, development, participation, and protection. All children should attain their fullest potential without injustice or any other child unfriendly attitude, rule, or process. Rwanda seeks to have its children enjoy fairness.

The government has responsibility of protecting children’s right.⁸ Considering the wording of the article 19 of the Rwandan constitution as revised to day stipulates that “*Every child has the right to specific mechanisms of protection by his or her family, other Rwandans and the State, depending on his or her age and living conditions, as provided for by national and international law*”. This legal provision shows that children are protected primarily by their parents but further by other person regardless their relationship. The state come as the last and most powerful organ to ensure the protection of a child and has obligation to provide all necessary conditions for the welfare of the children around the world.

Normally, under Rwandan laws, the only recognized marital union is civil monogamous marriage between a man and a woman.⁹ The State has the obligation to have respect for, protect and defend the human person and family.¹⁰ There should be justice for all, including child born out of marriage. Literature informs about the importance of both parents in raising up their children. Various institutions have consequently developed policy and strategies to promote this ideal. However, in Rwanda these promises apply almost exclusively for children whose parents

⁶ See article 51 of the law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, Official Gazette n°31 of 01/08/2016

⁷ Republic of Rwanda: Justice for children policy, October 2014

⁸ See article 4 of the United Nations Convention on the Rights of the Child

⁹ See article 17 of the Constitution of The Republic of Rwanda, Official Gazette n° Special of 04/08/2023

¹⁰ *Ibidem* 13 (2)

are legally married or stay together. Most of children born in illegitimate union live with their mothers, separately from their fathers.¹¹

With reference to Rwandan succession law, succession opens upon the death of a person, at his/her domicile or residence. A person alive or represented at the moment succession opens is eligible to succeed, including any unborn child provided that he/she is born alive.¹² Moreover, Rwanda's laws provide opportunities for gender equity by granting equal inheritance rights to sons and daughters and protection of a surviving spouses and children's rights to property.

The modalities for succession under Rwanda law suggests succession of the de cujus to be either wholly or partially intestate or testamentary, the same article also stipulates that any property of the de cujus not given by way of a will is devolved according to provisions of this Law applicable to intestate succession.¹³ In fact, a will is legally defined as a revocable unilateral deed intended to have legal effect which is drawn up in accordance with one of the procedures prescribed by law, by which a person determines the disposition of his/ her property after his/her death. The testator gratuitously transfers his/her property, the full ownership of which is acquired by the legatee after the testator's death.¹⁴

Thus, in this work, we are about make the critical analysis on the protection of the child born out of marriage during succession taking into consideration Rwandan succession law. More clarifications and comparative study will be discussed within this work.

2. 1.2. INTEREST OF THE STUDY

This part of the study, includes the interests of the study mainly by taking into consideration the reason why the research chooses this topic as far as person, academic scientific and social interests are concerned.

¹¹ IYAKAREMYE, Innocent. (2019). *The role of the fathers in parenting their children born in illegitimate unions: case of rwanda*.p.63

¹² See article 53 of the law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, *official gazette n°31 of 01/08/2016*.

¹³ *Ibidem* article 60

¹⁴ *Ibidem* article 61

1.2.1. Personal Interest

Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights.¹⁵ Thus, through studying law, being interested with a certain subject is inevitable, As the researcher was studying family law especially laws that protect child, the researcher got the interested in knowing deeply the extent to how children born out of marriage are protected with regard to succession. Thus, the researcher got interest in knowing more about the issues and was chosen as dissertation topic so as to make research on it.

1.2.2. Academic Interest

For the students from school of law who will be interested in reading this research, they will benefit more details related to how important protecting child is and different laws that protect them. Additionally, through conducting this study, the researcher will be fulfilling the academic requirement in order to obtain LLB.

1.2.3. Scientific Interest

Researcher and other legal practitioners who will go through this work, shall be acknowledged with how in Rwanda child born out of marriage are protected and away forward to ensure the full protection with regard to how other jurisdictions have advanced in matters of protecting children. Moreover, they will also benefit both legal and institutional mechanisms to be put forward so as to develop child protecting laws in relation to succession and other rights reserved for children.

1.2.3. Social interests

With regard to social interests, the researcher supposed that whoever read this study, will socially be acknowledged with the rights of the child especially when it comes to succession particularly for the children who are born out of marriage. People will understand the spirit of protecting children and was forward to enhance their protection.

3. 1.3. DELIMITATION OF THE STUDY

The scope of our work will be delimited in domain, time and space as follow:

¹⁵ UNICEF, child rights and why they matter, accessed on 5th April 2024, available at: <https://www.unicef.org/child-rights-convention/child-rights-why-they-matter>

1.3.1. Delimitation in domain

This work falls under the domain of private law especially in succession law, this is due to the fact that, the matters related to succession belongs to private law that deal with the relations between individuals or institutions, rather than relations between these and the state.

1.3.2. Delimitation in time

In time the researcher will be limited to the period from 2016 up to the year of 2023. This is because it is in 2016 by which the law on succession was enacted.

1.3.3. Delimitation in space

This study will be conducted on national territory; it means that it covers the whole country.

4. 1.4. PROBLEM STATEMENT

Generally, in any case wherever and whenever the best interests of child should be looked at in regards in the international instrument as well as in national law. For instance, under the article 3 of the convention on the rights of a child, it stipulates that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare.¹⁶ Moreover, under article 5 of the same convention, it provides that *“States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”*¹⁷

In fact, under Rwandan law, child's right to protection is primarily guaranteed by the constitution, it provides that child has the right to specific mechanisms of protection by his or her family, other Rwandans and the State, depending on his or her age and living conditions, as provided for by national and international law.¹⁸

¹⁶ See article 3 of the convention on the right of a child.

¹⁷ *Ibidem* article 5

¹⁸ See article 19 of The Constitution of the Republic of Rwanda of 2003 revised in 2015, *Official Gazette n° Special of 24/12/2015*

Legal protection towards children born out of marriage is something that needs to be the attention of the family, the State and the community.¹⁹ The State is obliged to provide legal protection towards children born out of marriage even though the marital status of the parents is still disputed. The unrecognition of children born out of marriage has a negative impact on the child himself/herself, namely the child cannot obtain biological rights with his/her father hence he/she does not get his/her civil rights from the father and his/her father's family.²⁰

In registration and administration of the population, birth registration is the most important thing. However, it is still rarely noticed by the public because of the lack of public understanding of how important birth certificates are for children. In principle it does not matter if there is a comparison in the stage of making a valid birth certificate of a legal child or a children born out of marriage, because the child can administer his birth certificate by including some necessary requirement needed in the civil registry office.

An illegitimate child faces many legal and social disabilities. Such children are often referred to as ‘bastards’ and are placed in the category of “irreputable social types” alongside thieves, beggars and prostitutes. Illegitimacy is characterized as a major social “problem” associated with cultural and moral decay. As out-of-marriage births increase.

In fact, the opening of succession requires different legal elements such being on the list of heirs for the *cujus*, the question comes in where the child born out of marriage is not legitimized. In other words, the law requires legal affiliation between illegitimate child and *cujus*. Filiation is the relationship between a child and his/her father or mother. Under Rwandan law the proof for affiliation is Birth certificate, this legal provision is found under article 47 of the of the law governing person and family.²¹ With regard to succession unless a child born out of marriage is recognized by his/her parents, he or she cannot have capacity and full rights to his parents.

In people’s daily association, children born out of marriage experience social discrimination in the form of ridicule from the people because they were born out of a relationship deemed

¹⁹ Ahmad R, Laurent C, *Juridical Analysis Towards the Position of Children Born Out of Marriage Based on Case Decision Number 1/Pdt.P/2018/Pa.Jb And 0269/Pdt.P/2018/Pa.Sda Re-viewed from the Decision of The Constitutional Court Number 46/Puu-Viii/2010, Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia,P.538*

²⁰ *Idem*

²¹ See article 47 law n°32/2016 of 28/08/2016 governing persons and family, *Official Gazette n°37 of 12/09/2016*

illegitimate according to the value and capacity of the local community. The community gives the nicknames to several terms, such as “*Ikinyendaro*”, “bastard” and so forth. By law, illegitimate children also suffer discrimination. They only have a civil relationship with their mothers and mother's family. This means that illegitimate children do not necessarily have a civil relationship with their biological fathers and biological father's family. The mother or children concerned must apply the legal effort in an advance to get their rights. Therefore, this study seeks to analyze about the on legal protection of the child born out of marriage during succession under Rwandan legal system.

5. 1.5. RESEARCH QUESTIONS

In order to objectively assess the implementation of the laws that protects disabled persons in Rwanda and measure their impacts, the researcher formulated the following indicators based on the research questions.

1. How does the law protect child born out of marriage under Rwandan legal framework?
2. What are the mechanisms to be adopted for an effective enjoyment and exercise of rights for the child born out of marriage under Rwandan legal framework?

6. 1.6. HYPOTHESIS

Scientifically, the term hypothesis means the part of research that states researchers’ predictions about what his/her research will find. It is also a tentative answer to research question that has not yet been tested. Thus, the hypotheses to the research questions might probably be:

1. Under Rwandan succession law, a child born out of marriage is not well protected with regard to succession.
2. There are both legal and institutional mechanisms for which may be applied to enhance the protection of child born out of marriage under Rwanda succession law.

7.

8. 1.7. THE OBJECTIVES OF THE WORK

The current work has got the general objectives as well as specific objectives

1.7.1. General Objectives

The general objective of this work is to make critical analysis on legal protection of the child born out of marriage during succession under Rwandan law

1.7.2. Specific Objectives

1. To analyze the extent to which the law protects child born out of marriage during succession in Rwanda.
2. To suggest possible mechanisms relating to the better ways of promoting the protection and respect of rights reserved for child born out of marriage.

9. 1.8. RESEARCH METHODOLOGY

Research methods are the strategies, processes utilized in the collection of data or evidence for analysis in order to uncover new information or create better understanding of a topic.²² A technique is a manmade strategy or tactic, while the method is the approach or pathway.²³

The techniques and methods are crucial and useful to have sufficient information of this research. Through this research, we will rely on different techniques and methods which are very necessary in the full completion of this work just in complete way and no scientific work, whatever its nature can't be done without a certain methods and techniques are followed.

1.8.1. Research Techniques

Research techniques are different models that researchers use to test their hypotheses, uncover answers to problems, and provide evidence for theories and interventions. Experiments are well-devised scientific procedures researchers use to test their hypotheses.²⁴

Research technique refers to the strategies and methods used by researchers to conduct their studies and gather data.²⁵ It involves the systematic and rational approach to achieving research

²² University of Newcastle Library Guides, "Research Methods: What are research methods? accessed on 29th, March 2024, available at " <https://libguides.newcastle.edu.au/researchmethods>

²³ Englishforward, "The difference between technique and method", accessed on 29th, March 2024 available at <https://www.englishforums.com/English/WhatDifferenceBetweenMethodTechnique/xxvdz/post.htm>

²⁴ Study smater, *Research technique*, accessed on 29th March 2024. Available at: <https://www.studysmarter.co.uk/explanations/psychology/scientific-investigation/research-techniques/>

²⁵ SCISPSPACE, *What is research technique*, accessed on 29th March 2024, available at: <https://typeset.io/questions/what-is-research-technique-1hjl5ykwn>

goals, utilizing appropriate resources at each step of the research process. Research technique can vary depending on the field of study and the specific research methodology chosen.²⁶

1.8.1.1. Documentary technique

With regard to the documentary technique, it is all about collecting data through reading of documents containing information relating to the research topic. In addition, this technique is also defined as the analysis of documents which include any written material that contains the information about the document. Therefore, in regards to this technique we got enough information of reading and consulting official documents, booklets, dissertations, reports which we consider as relevant to our topic and that we will take into account in our work

1.8.2. Research Methods

Research methods are the strategies, processes utilized in the collection of data or evidence for analysis in order to uncover new information or create better understanding of a topic.²⁷ A technique is a manmade strategy or tactic, while the method is the approach or pathway.²⁸

The techniques and methods are crucial and useful to have sufficient information of this research. Through this research, we will rely on different techniques and methods which are very necessary in the full completion of this work just in complete way and no scientific work, whatever its nature can't be done without a certain methods and techniques are followed.

1.8.2.1. The Analytical Method

Analytical method is a generic process combining the power of the scientific Method with the use of formal process to solve any type of problem.²⁹ This method will help us to analyze data that we got from different documents and be able to relate them with the topic in a logical manner.

²⁶ *Idem*

²⁷ University of Newcastle Library Guides, "Research Methods: What are research methods?" accessed on 29th, March 2024, available at " <https://libguides.newcastle.edu.au/researchmethods>

²⁸ English forward, "The difference between technique and method", accessed on 29th, March 2024 available at <https://www.englishforums.com/English/WhatDifferenceBetweenMethodTechnique/xxvdz/post.htm>

²⁹X, the definition of analytical method, accessed on 29th, March 2024 available at ' <https://www.thwink.org/sustain/glossary/AnalyticalMethod.htm>

1.8.2.2. Exegetic method

It helps to dissect, analyze and interpret legal text either domestic or international. When dealing with analyzing legal texts, energetic methods help in the process of analyzing by linking the facts and laws on the matter.

1.8.2.3. Synthetic method

Synthetic method is the process of putting together known of information to reach the point where unknown information becomes obvious and true. With in this research, synthetic method will allow us to globalize the elements into a coherent whole. Moreover, this method will be used to synthesize the analyzed data so as to draw relevant conclusions.

10. 1.9. SUBDIVISION OF THE STUDY

This work includes the following three chapters: chapter one will be dealing with definition of the key concept and the theoretical framework of the entire dissertation. The second chapter shall include the challenges related to protection of child born out of marriage under Rwandan succession law. Third chapter will be the mechanisms to be put forward to enhance the protection of child born out of marriage in Rwanda. Finally, this work will be closed by the general conclusion including recommendations

CHAPTER I. CONCEPTUAL AND THE THEORETICAL FRAMEWORK

In the frame work of this chapter we would like to have a look on some conceptual and theoretical framework so as to facilitate the reader to better understand some key concepts and theories that are mainly concerned with legal protection of the child born out of marriage during succession under Rwandan law.

11. I.1. Conceptual framework

In accordance with the analyzed topic, it is obviously appearing that there is a need of providing some precisions on certain concepts namely: child, parent liability, child rights, offence, court, international convention and damages.

I.1.1. The concept of a child

Under article 3 of the provides that a child is any person under eighteen (18) years of age.³⁰ Every child has the right to be alive. Governments must make sure that children survive and develop in the best possible way.³¹ Governments should let families and communities guide their children so that, as they grow up, they learn to use their rights in the best way. The more children grow, the less guidance they will need. On the other side, the term child may be referred to as a minor, In law. the term minor (also infant or infancy) refers to a person who is under the "age of majority" the age at which a person is legally recognized as an adult.³²

When an individual reaches the age of majority, he or she is granted full legal rights and becomes liable for "any legal obligations created by his or her actions." Currently, most Rwandan laws define the age of majority to be 18; and a person having attained that age, is fully qualified for all acts involving civil life.³³ however, laws may still prohibit specific acts until a greater age is reached. For example, a person must be 21 or older to celebrate marriage.

³⁰ See article 3 of the law n°71/2018 of 31/08/2018 relating to the protection of the child, *Official Gazette no.37 bis of 10/09/2018*

³¹ See article 6 of the convention on the rights of the child: the children's version

³² Batten, D. (Ed.) "*Dictionary of Legal Terms: A-D.*" (2011). In, Gale Encyclopedia of American Law (3rd edition, Vol. 14). Detroit, MI: Gale. (Page 14)

³³ See article 2 (cc) of Law n° 71/2024 of 26/06/2024 governing persons and family, *Official Gazette n° Special of 30/07/2024*

Minors are considered to be under the care of a parent or guardian, unless they are emancipated. Moreover, minors are subject to different laws and legal procedures than adults. For instance, minors accused of criminal conduct might not be tried or charged as an adult. Parents play the most important role in the healthy development and growth of their children. They have control over their children both emotionally as well as socially. The power or the strictness that parents have towards their children is often considered to have a positive impact.

I.1.2. The concept of Child's rights

Legally, the term *right* means the power or privilege held by the general public as the result of a constitution, statute, regulation, judicial precedent, or other type of law.³⁴ Children's rights or the rights of children are a subset of human rights with particular attention to the rights of special protection and care afforded to minors.³⁵ The 1989 Convention on the Rights of the Child (CRC) defines a child as "any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier."³⁶ Children's rights includes their right to association with both parents, human identity as well as the basic needs for physical protection, food, universal state-paid education, health care, and criminal laws appropriate for the age and development of the child, equal protection of the child's civil rights, and freedom from discrimination on the basis of the child's race, gender, sexual orientation, gender identity, national origin, religion, disability, color, ethnicity, or other characteristics.³⁷

Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from abuse, though what constitutes "abuse" is a matter of debate. Other definitions include the rights to care and nurturing.³⁸ There are no definitions of other terms used to describe young people such as "adolescents", "teenagers", or "youth" in international law,³⁹ but the children's rights

³⁴ Legal information institute, "*right*" accessed on 17th June 2024, available at:

<https://www.law.cornell.edu/wex/right>

³⁵ "[Children's Rights](#)" Archived 2008-09-21 at the [Wayback Machine](#), Amnesty International. accessed on 17th June 2024

³⁶ [Convention on the Rights of the Child](#), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990.

³⁷ *idem*

³⁸ Bandman, B. (1999) *Children's Right to Freedom, Care, and Enlightenment*. Routledge. p 67.

³⁹ "[Children and youth](#)", Human Rights Education, accessed on 17th June 2024

movement is considered distinct from the youth rights movement. The field of children's rights spans the fields of law, politics, religion, and morality.

Besides, every child without distinction by gender or any other characteristic has the right to grow up free from violence, exploitation, abuse, neglect and harmful practices. In Rwanda, this right is embedded in the Convention on the Rights of the Child (CRC) and multiple Sustainable Development Goal (SDG) targets. For example, SDG target 16.2 commits the international community to “end abuse, exploitation, trafficking and all forms of violence against children”; target 5.2 to “eliminate all forms of violence against women and girls”; and SDG targets 16.9 and 17.19 are intended to ensure that all children have their births registered. Rwanda’s child protection system is currently developing and strengthening. Considerable efforts have been made to strengthen key pillars of the child protection system. However, more needs to be done as the system solidifies and progresses, to provide an ecosystem of support, care and protection for all children in Rwanda.

In summary, children are nation's most precious resource, but as children, they often lack the skills to protect themselves. It is parents and citizens’ responsibility, to safeguard children and to teach them the skills to be safe. Every home and school should teach children about safety and protection measures. As a parent, you should take an active interest in your children and listen to them. Teach your children that they can be assertive in order to protect themselves against abduction and exploitation. And most importantly, make your home a place of trust and support that fulfills your child's needs. Together we can protect our future generation by teaching them to be smart, strong, and safe

I.1.3. The concept of a Family

A family is a group of people that are connected by either genetics or legal systems. This might include biological parents, children, siblings, or any extended blood relatives. Those not connected by consanguinity might become family through legal methods such as marriage, adoption, or fostering. Rwandan constitution provides that *“The family, being the natural foundation of the Rwandan society, is protected by the State. Both parents have the right and responsibility to raise their children. The State puts in place appropriate legislation and organs for the protection of the family, particularly the child and mother, in order to ensure that the family*

*flourishes.*⁴⁰ Moreover, under its article 17 it stipulates that “*The right to marry and found a family is guaranteed by law and a civil monogamous marriage between a man and a woman is the only recognized marital union.*”⁴¹ So this is a legal fact that show how Rwanda Laws protect family.

Additionally, status as a family grants individuals in that unit special rights and duties.⁴² For example, parents of minor children have affirmative duties to protect and care for those children. Family members are also often granted certain rights under the law of Estates and Trusts, especially if a deceased member dies without a will. Individuals not connected by blood or the law might also consider and call themselves a family. However, this designation would not carry legal force or the same legal rights granted to other families.⁴³ Under article 2 of the Law n° 71/2024 of 26/06/2024 governing persons and family, defines the term family as a group of persons related by kinship, law or marriage.⁴⁴

The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.⁴⁵ In some cases, poverty separates parents and children. This is true around the world. The separation of families is one of the greatest sources of suffering for families living in poverty, as well as one of the greatest obstacles preventing children from escaping poverty.

I.1.4. The concept of Succession

Succession denotes the transmission of rights and obligations of the deceased to the heirs. It not only includes the rights and obligations left by the deceased at the time of his or her death, but it also includes new charges, rights, and obligations that accrue to the existing ones after opening of the succession.⁴⁶ Pursuant to article 353 of the current Rwandan family law defines the term

⁴⁰ See article 18 of the Constitution of The Republic Of Rwanda, Official Gazette n° Special of 04/08/2023.

⁴¹ *Ibidem* Article 17

⁴² Cornell law school “Family” accessed on 13th August 2024, available at: <https://www.law.cornell.edu/wex/family>

⁴³ Cornell law school “Family” accessed on 13th August 2024, available at: <https://www.law.cornell.edu/wex/family>

⁴⁴ See article 2 (y) of the law n° 71/2024 of 26/06/2024 governing persons and family Official Gazette n° Special of 30/07/2024.

⁴⁵ See Article 10 of the United Nations [CESCR International Covenant](#) states

⁴⁶ Cornell law school “*succession*” accessed on 13th August 2024, available at: <https://www.law.cornell.edu/wex/succession>

succession as “*Succession is the transfer of rights and obligations on the assets and liabilities of the deceased based on the kinship*”⁴⁷

On the other hand, succession is the transmission of the rights and obligations of the deceased to the heirs. Succession signifies also the estates, rights, and charges which a person leaves after his death, whether the property exceeds the charges or the charges exceed the property, or whether he has only left charges without any property. The succession not only includes the rights and obligations of the deceased as they exist at the time of his death, but all that has accrued thereto since the opening of the succession, as also the new charges to which it becomes subject. Finally, succession signifies also that right by which the heir can take possession of the estate of the deceased, such as it may be.⁴⁸

Thus, the law of successions creates a legal framework for deciding who owns an individual's possession, rights, and obligations in the unfortunate event that the person becomes seriously incapacitated or dies. This paper will provide a very basic introduction to these important laws. Currently, legal provisions that concerns succession are found under the law he law n° 71/2024 of 26/06/2024 governing persons and family Official Gazette n° Special of 30/07/2024.

I.1.5. The concept of a Court

Court, also called court of law is a judicial tribunal established to administer justice. An entity the government to which the administration of justice is delegated⁴⁹, court is also defined as a place where legal questions are decided by a judge and jury or by a magistrate⁵⁰. The court in other jurisdictions is designated as a person or group of persons with judicial authority to hear and resolve disputes in civil, criminal or military matters. The word court, which originally meant simply an enclosed space, also refers to the room, hall, building or any other place where legal proceedings take place.⁵¹

⁴⁷ See article 353 of the law n° 71/2024 of 26/06/2024 governing persons and family Official Gazette n° Special of 30/07/2024.

⁴⁸ The law dictionary, “Succession” accessed on 13th August 2024, available at: <https://thelawdictionary.org/succession/>

⁴⁹ A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

⁵⁰ Collins COBUILD “*Definition of law court*”, available at <https://www.collinsdictionary.com/> accessed on 11th July 2024.

⁵¹ Karlen, Delmar , Smentkowski, Brian P. and Gibson, James L.. "Court". Encyclopedia Britannica, 30 Aug. 2019, <https://www.britannica.com/topic/court-law>

Judicial courts are created by the government through the enactment of statutes or by constitutional provisions for the purpose of enforcing the law for the public good. They are impartial forums for the resolution of controversies between parties who seek redress from a violation of a legal right. Both civil and criminal matters may be heard in the same court, with different court rules and procedures for each.

The primary function of any court system to help keep domestic peace is so obvious that it is rarely considered or mentioned. If there was no institution accepted by the citizens of a society as an impartial and authoritative judge to determine whether a person has committed a crime and, if so, what type of punishment should be imposed, the vigilantes offended by the conduct of the person could well take justice themselves and proceed to the punishment of the alleged disbeliever according to their uncontrolled discretion⁵². If no agency were empowered to decide private disputes impartially and authoritatively, people would have to settle their disputes by themselves, with power rather than legitimate authority likely being the basis of such decisions. Such a system could easily degenerate into anarchy. Even a primitive society could not survive under such conditions. Thus, in this most basic sense, the courts are an essential part of the machinery of society for maintaining peace.⁵³.

Under Rwandan law, cases involving children are heard under special chambers in intermediate court for the first instance.⁵⁴ These chambers were established to separate minor's cases with those of adults for the best interests of the children. This goes with special laws for children that were put in place to ensure the respect of their rights.

Additionally, because parental authority includes legal authority over a child, a young child's, parents would typically bring a case on the child's behalf. If a child's mother and father disagree, the father's preferences will take precedence, but the mother will be free to appeal to the Court of First Instance. Similarly, a child's father is empowered to represent the child with respect to personal property and civil acts. In the event that a child's parents prove unfit, at the request of any interested person or a public prosecutor the court can deny the parental authority. If a child

⁵²American Heritage® Dictionary of the English Language, Fifth Edition. Copyright © 2016 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company.

⁵³ *Ibidem*

⁵⁴ See article 33 of the law N°30/2018 of 02/06/2018 Law determining the jurisdiction of courts, *official Gazette n° Special of 02/06/2018*

has no parents or no guardian has been appointed by the child's parents, the court will appoint a guardian.⁵⁵

I.1.6. The concept of international convention

An international convention or treaty is an agreement between different countries that is legally binding to the contracting States. Existing international conventions cover different areas, including trade, science, crime, disarmament, transport, and human rights. With regard to children, we have Convention on the Rights of the Child.⁵⁶ The United Nations Convention on the Rights of the Child (UNCRC) is a legally-binding international agreement setting out the civil, political, economic, social and cultural rights of every child without discrimination. The Convention applies to every child without discrimination, whatever their ethnicity, sex, religion, language, abilities or any other status, whatever they think or say, whatever their family background. The best interests of the child must be a top priority in all decisions and actions that affect children.⁵⁷ Thus, under the terms of the convention, governments are required to meet children's basic needs and help them reach their full potential. Central to this is the acknowledgment that every child has basic fundamental rights.

Moreover, The Convention on the Rights of the Child (CRC) is the most universally accepted human rights instrument, ratified by every country in the world except two. The Convention incorporates the full range of human rights - civil, political, economic, social and cultural rights - of children into one single document. The Convention was adopted by the UN General Assembly on 20 November 1989 and entered into force in September 1990. The Convention outlines in 41 articles the human rights to be respected and protected for every child under the age of eighteen years.⁵⁸

⁵⁵ White & Case LLP in January 2014, "Access to justice in Rwanda" January 2014, Edited by Child Rights International Network (CRIN).

⁵⁶ UN "International convention" accessed on 17th June 2024, available at: <https://www.un.org/esa/socdev/enable/convinfaq.htm>

⁵⁷ UNICEF "a summary of the un convention on the rights of the child", accessed on 17th June 2024, available at: https://www.unicef.org.uk/wp-content/uploads/2019/10/UNCRC_summary-1_1.pdf

⁵⁸ Britannica, The Editors of Encyclopaedia. "damages". Encyclopedia Britannica, 3 Feb. 2024, <https://www.britannica.com/topic/damages-law>. Accessed 17 June 2024.

12. I.2. Theoretical framework.

With in this part, a researcher is going to go through different theories concerning the topic by highlighting different international and regional legal framework and some theories which are mainly related to the protection of the child.

I.2.1. The principle of best interest of the child

The notion of the best interest of the child is the key to many judicial systems where the child protection services intervene. “In all actions concerning children, whether undertaken by public or private Social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.⁵⁹ By this provision, the CRC is the unit of measure by which all decisions must be weighed relative to the child-whether he/she participates or not- it is the criteria for the primary interest of the child.⁶⁰

The most important legal basis for the child’s best interests is the Convention on the Rights of the Child (CRC). Art. 3.1 CRC expresses the right of children to have their best interests assessed and taken into account as a primary consideration in all actions or decisions that affect them. Public and private social welfare institutions, courts of law, administrative authorities and legislative bodies on both the national and local level are required to apply the best interest principle by systematically considering how children’s rights and interests are or will be affected, for example in present or future policies, laws, court decisions or administrative actions, even if such actions or decisions only indirectly affect children. Art. 18 CRC extends the principle to parents and legal guardians, stating that “[the] best interests of the child will be their basic concern” in their responsibility for the upbringing and development of the child.⁶¹

In addition, the Convention explicitly refers to the terminology of ‘*best interests*’ in specific family matters (Art. 9 on the right not to be separated from the parents; Art. 20 on the rights of children deprived of a family environment; and Art. 21 on adoption) and regarding children in conflict with the law (Art 37(c) on separation from adults in detention and Art. 40 §2 (b) (iii) on procedural guarantees for minors, including presence of parents at court hearings for criminal

⁵⁹ See article 3 of the Convention on the right of child

⁶⁰ J.Zermatten, “*The CRC and the best interest of the child*” working report 4, 2001, P.18

⁶¹ See article 18 of the Convention on the right of child

matters involving children in conflict with the law). As well, references to the child's best interests are made in the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (preamble and Art. 8) and in the Optional Protocol to the Convention on a communications procedure (preamble and Art. 2 and 3).

Moreover, alongside Art. 2 (non-discrimination), Art. 6 (right to life and development) and Art. 12 CRC (respect for the views of the child), the Committee on the Rights of the Child (2003, §12) defined Art. 3.1 as one of the CRC's four general principles. This means that the best interest principle supports and clarifies how to interpret and implement other rights of the Convention. Other international instruments in which the best interests principle occurs include the 1985 Convention on the Elimination of All forms Discrimination Against Women (CEDAW) (Art. 5b and Art. 16d), the 1993 Hague Convention on Intercountry Adoption (Art. 4b), the 2006 Convention on the Rights of Persons with Disabilities (CRPD) (Art. 23§2), the African Charter (Art. 4), the 2009 European Union's Charter of Fundamental Rights (Art. 24) and several European Directives on specific issues such as migration⁶².

1.2.2. Attribution of parental authority

Parental authority is a set of rights and obligations having the only end the interests of the child. It belongs to mother and father until the majority or the emancipation of the child. This is to protect him in his security, health, and morality so as to ensure his education and sustain his development in the respect owed to his person; parents associate their children to the decisions taken for them according to their age and their degree of maturity.⁶³ It is exercised by both parents. In case of dissent, the fathers will prevail; the mother can however appeal to the court of first instance, nowadays primary court, of the residence or domicile of the parents. The judge can confirm or quench the decision of the father.

This disposition can be detrimental to the best interest of the child since the father is not good always to determine what the best interests of the child are. He is not better than the mother in taking good decision for the child, the father can take a bad decision.⁶⁴

⁶² KEKI. "*Children's best interests between theory & practice*" Flanders publisher, August 2014, P.1

⁶³ Ch. Ntampaka, *supra*, note 39, P. 165

⁶⁴ *idem*

I.2.3. Child Protection

Child protection is the safeguarding of children from violence, exploitation, abuse, and neglect. Article 19 of the UN Convention on the Rights of the Child provides for the protection of children in and out of the home.⁶⁵ A special protection is provided for children because of their age and development; this protection is afforded by States, institutions, individuals and children without consideration of sex, nationality and culture.⁶⁶

Bound by specific provisions of the CRC, States have to: protect children from economic exploitation, sexual and physical abuse, effects of war, neglect and abandonment, maltreatment and discrimination provide proper care and/or rehabilitation where necessary. Violence against children knows no boundaries. It happens in every country, and in the places, children should be most protected – their homes, schools and online. It can be physical, emotional or sexual. And in most cases, children experience violence at the hands of the people they trust.

Children in humanitarian settings are especially vulnerable. During armed conflict, natural disasters and other emergencies, children may be forced to flee their homes, some torn from their families and exposed to exploitation and abuse along the way. They may be injured or killed by explosive weapons in conflict, or recruited by armed forces. Especially for girls and women, the threat of gender-based violence soars.⁶⁷

Harmful cultural practices pose another grave risk to girls and boys worldwide. Hundreds of millions of girls have been subjected to child marriage and female genital mutilation – even though both are internationally recognized human rights violations.

No matter their story or circumstance, all children have the right to be protected from violence, exploitation and abuse. Child protection systems help children access vital social services and fair justice systems – starting at birth. They reach out to the most vulnerable children, including those with disabilities; girls and boys who have been placed in alternative care; children uprooted by conflict, poverty and disaster; or those who may become victims of child labor or trafficking,

⁶⁵ UNICEF, “*Child protection*” accessed on 17th, June 2024, available at <https://www.unicef.org/protection>

⁶⁶ J. Zermatten P. Riva Gapany (Eds.), “*Children’s Rights from Theory to Practice*” Yangon Seminar 2001. P.34

⁶⁷ *Ibidem*

or recruited into armed groups. Child protection systems prioritize children's physical, mental, and psychosocial needs to safeguard their lives and futures.

Following the ratification of the UN Convention on the Rights of the Child (UN CRC), the Government of Rwanda (GoR) has initiated several steps in the direction of addressing the rights and needs of children in the country.⁶⁸ Various social policies have been enacted, plans developed and programs implemented. Children's rights and programming for them cut across various thematic areas and ministerial mandates (health, education, labor, local governance, Justice), thus a number of government institutions and non-governmental organizations at different administrative levels are involved in their implementation. Additionally, numerous laws addressing children's rights have been promulgated.

Recognizing the need for coordination and consistency in Government interventions for children, the Government of Rwanda, through the Ministry of Gender and Family Promotion (MIGEPROF) initiated the development of the Integrated Child Rights Policy, a comprehensive national document, detailing Rwanda's vision and commitment to all children. The Integrated Child Rights Policy is conceived with the objectives of strengthening the thinking and analysis around policies related to children and the coordination and implementation of Government activities for realization of children's rights.⁶⁹

In United States of America USA, Child protective services (CPS) is a government department that works to serve the public by protecting children. Although the name is often different, each state has a similar system. In a perfect world, families would be safe and nurturing places for children to grow and thrive. But the world is not perfect, and children often need the support and protection from someone outside the family. The philosophy and purpose of CPS is shaped by this reality. It is to protect and support families to ensure the safety and well-being of children.⁷⁰

⁶⁸ Ministry of Gender and Family Promotion, "*National Integrated Child Rights Policy*" Published in August 2011. P.4

⁶⁹ *Ibidem*

⁷⁰ Study.com, "*Child Protective Services System: Philosophy & Purpose Child Protective Services System: Philosophy & Purpose*" accessed on 17th June 2024. Available at <https://study.com/academour/lesson/child-protective-services-system-philosophy-purpose.html>

CPS's primary purpose is to respond to the needs of at-risk children to ensure their physical and emotional safety and well-being. The Child Welfare Information Gateway, which is part of the U.S. Department of Health and Human Services, provides support and resources for the various state child welfare agencies including CPS, and provides a proposed guide for the training of state caseworkers. Many states have adopted this in full or in part for the education and training of their caseworkers.⁷¹

regulations, juvenile justice and child protection, though specific approaches vary according to countries' traditions and definitions of the issue.⁷²

13. II.5. International instruments related to the protection of child

International treaties ratified by Rwanda are ranked at number 4 in the hierarchy of Rwandan laws. An international convention or treaty is an agreement between different countries that is legally binding to the contracting States. Existing international conventions cover different areas, including trade, science, crime, disarmament, transport, and human rights. A convention becomes legally binding to a particular State when that State ratifies it. Signing does not make a convention binding, but it indicates support for the principles of the convention and the country's intention to ratify it. As contracting States are legally bound to adhere to the principles included in the convention, a monitoring body is often set up to assess State parties' progress in implementing the convention by considering reports periodically submitted by States. Human rights conventions do not contain any enforcement mechanism to compel States to comply with the principles of the convention or with the recommendations of the monitoring body, and the implementation of these conventions depends on the commitment of each country.⁷³

With reference to article e 95 of the Constitution of the republic of Rwanda it stipulates that "The hierarchy of laws is as follows: (a) Constitution; (b) organic law; (c) international treaties and agreements ratified by Rwanda; (d) ordinary law; (e) orders and regulations provided for by a law. below is going to be the discussion about different international and regional legal instruments that were signed for the protection of a child.

⁷¹ *Ibidem*

⁷² Library "What is child vulnerability and how can it be overcome?" accessed on 9th August 2024, available at: <https://www.oecd-ilibrary.org/docserver/23101e74-en.pdf?expires=1723188005&id=id&accname=guest&checksum=033C936DAAF455B35583C2E86C0C7914>

⁷³ UN "International treaties" accessed on 8th August 2024, available at: <https://www.un.org/esa/socdev/enable/convinfaq.htm>

II.5.1. Universal Declaration of Human Rights

The first international legal instrument is the Universal Declaration of Human Rights (UDHR) which is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages.

The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).⁷⁴

Under its article 1, the Universal Declaration of Human Rights, stipulates that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁷⁵ This article shows how all human beings including children are free, being free means being independent, sovereign, autonomous and also not subject to the rule or control of another. free stresses the complete absence of external rule and the full right to make all of one's own decisions. you're free to do as you like.⁷⁶ Moreover, under article 25 of UDHR provides much more about the protection of children and their mothers where it stipulates that *“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”*⁷⁷ With regard to this article, it enumerates about how children have to be protected by all means as they are a part of social family of the community. Thus, every child has the right

⁷⁴ UN, “Universal Declaration of Human Rights” <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁷⁵ See article 1 of UDHR

⁷⁶ Merriam webster “Free” accessed on 7th August 2024, available at: <https://www.merriam-webster.com/dictionary/free>

⁷⁷ See article 25 of UDHR

to live free from violence, exploitation and abuse. Children experience insidious forms of violence, exploitation and abuse. It happens in every country, and in the places, children should be most protected – their homes, schools and communities.⁷⁸ Thus, it is the same to those children who are born out of marriage to be protected and enjoy all rights reserved in accordance with the legal provisions.

II.5.2. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 through GA. Resolution 2200A (XXI), and came into force on 3 January 1976. Under its article 10 it stipulates that “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law”⁷⁹ This legal provision gives state parties an obligation of insuring protection of family most especially children via establishment of domestic laws which are in harmony with this international covenant so as to avoid defaulting of the signed convention.

Pursuant to article 12 of the above said covenant, the state parties agreed on protection children from epidemic diseases and other harmful situations. The said article stipulates that “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

⁷⁸ UNICEF, ‘Child protection’ accessed on 7th August 2024, available at: <https://www.unicef.org/child-protection>

⁷⁹ See article 10 of International Covenant on Economic, Social and Cultural Rights

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness”⁸⁰

II.5.3. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights is a multilateral treaty that commits nations to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.⁸¹

The ICCPR is considered a seminal document in the history of international law and human rights, forming part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR).⁸²

Compliance with the ICCPR is monitored by the United Nations Human Rights Committee, which reviews regular reports of states parties on how the rights are being implemented. States must report one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee normally meets at the UN Office at Geneva, Switzerland and typically holds three sessions per year.

The ICCPR (International Covenant on Civil and Political Rights) has its roots in the same process that led to the Universal Declaration of Human Rights. A "Declaration on the Essential Rights of Man" had been proposed at the 1945 San Francisco Conference which led to the founding of the United Nations, and the Economic and Social Council was given the task of drafting it. Early on in the process, the document was split into a declaration setting forth general principles of human rights, and a convention or covenant containing binding commitments. The former evolved into the UDHR and was adopted on 10 December 1948.

⁸⁰ *Ibidem* article 12

⁸¹ International Covenant on Civil and Political Rights Office of the United Nations High Commissioner of Human Rights

⁸² "Fact Sheet No.2 (Rev.1), The International Bill of Human Rights". UN OHCHR. June 1996. Archived from the original on 13 March 2008. Accessed on 7th August 2024.

With regard to the child protection legal provision that are embodied in this international covenant, we find article 14 gives clear rights of an accused during criminal proceedings where it stipulates that *“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”*⁸³

The above ICCPR article 14 protects the right of everyone to equality before the courts and tribunals and to a fair trial, especially in criminal proceedings. One of the main principle which was driven from this article is that of presumption of innocent. A presumption of innocence means that any defendant in a criminal trial is assumed to be innocent until they have been proven guilty. As such, a prosecutor is required to prove beyond a reasonable doubt that the person committed the crime if that person is to be convicted. To do so, proof must be shown for every single element of a crime. That being said, a presumption of innocence does not guarantee that a person will remain free until their trial has concluded. In some circumstances, a person can be held in custody.⁸⁴

A child who is under criminal proceedings is protected under the above principles including that of being presumed innocent and also their privacy should be protected. The presumption of innocence, is sometimes referred to by the Latin expression *Ei incumbit probatio qui dicit, non qui negat* (the burden of proof is on the one who declares, not on one who denies). It is the principle that one is considered innocent unless proven guilty.

⁸³ See article 14 of the International Covenant on Civil and Political Rights,

⁸⁴ Cornell Law school “Presumption of innocent” accessed on 7th August 2024, available at: https://www.law.cornell.edu/wex/presumption_of_innocence

II.5.4. Convention on the Rights of the Child

With reference to the convention on the rights of the child, there are number of legal provisions that protects much children

The United Nations Convention on the Rights of the Child (commonly abbreviated as the CRC or UNCRC) is an international human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children.⁸⁵ The convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation.⁸⁶

Nations that have ratified this convention or have acceded to it are bound by international law. When a state has signed the treaty but not ratified it, it is not yet bound by the treaty's provisions but is already obliged to not act contrary to its purpose.

The UN Committee on the Rights of the Child, composed of 18 independent experts, is responsible for supervising the implementation of the convention by the states that have ratified it. Their governments are required to report to and appear before the UN Committee on the Rights of the Child periodically to be examined on their progress regarding the advancement of the implementation of the convention and the status of child rights in their country. Their reports and the committee's written views and concerns are available on the committee's website.

Generally, Convention on the Rights of the Child, protects every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.⁸⁷ It also sets obligations to member state for respecting international rules which are set forth in this convention. For instance, under article 4, of the conventions stipulate that “*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.*” This

⁸⁵ *The Campaign for U.S. Ratification of the Convention on the Rights of the Child (CRC)*, ed. (2018). "[What is the CRC?](#)". Archived from [the original](#) on 9 May 2020. Accessed on 7th August 2024.

⁸⁶ *The Campaign for U.S. Ratification of the Convention on the Rights of the Child (CRC)*, ed. (2018). "[What is the CRC?](#)". Archived from [the original](#) on 9 May 2020, Accessed on 7th August 2024.

⁸⁷ See article 1 of the CRC

provision gives member state to enact domestic child protection laws which are harmonized with it such that they don't contradict with an international take.

Besides, under the convention on the rights of a child, its where the principle of the best interest of child was driven from. Taking the reference from article 3, it provides that *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision”*⁸⁸

The concept of a “child’s best interest” was born out of the evolution of the Western World’s perception of children.

In the Middle Ages, adults were, for the most part, indifferent toward children. Children did not receive any real attention before the 16th century, when educational places started to be reserved for them. Progressively, society became more interested in children’s future, and protective laws and scholarly obligations appeared in industrialized countries. In 1902, the Hague Conference placed “the child’s best interest” in the foreground. In 1924, the Geneva Declaration highlighted the idea that the role of adults is to protect children. This declaration gives children a protection status. With the 1959 Declaration of the Rights of the Child, children are recognized as having rights although they are unable to exercise them. However, the notion of “best interest” is clearly evoked in Principle 2 of this declaration. The use of this concept expanded in 1989 during the creation of the Convention on the Rights of the Child whose vision of children is less reductive than the preceding declarations.⁸⁹

⁸⁸ *Ibidem* article 3

⁸⁹ Humanium, ‘Best interest of a child’ accessed on 7th August 2024, available at: <https://www.humanium.org/en/the-childs-best-interest/>

Although the Convention on the Rights of the Child does not give a strict definition of this idea, it tends to emphasize the idea of a child's protection. Therefore, during the decision making concerning a minor, it allows the preservation of a child's well-being and his right to grow in an environment which is favorable to his mental and physical health.

This concept emphasizes the idea of a child as having rights, but it doesn't give a single case of decisional power to the child.⁹⁰ The Convention on the Rights of the Child is considered to be a collected work. Article 3, which mentions "the child's best interest", is one of four imperative principles in the application of the rights of the convention as a whole. But the Committee on the Rights of the Child has not proposed criteria for judging what is in the best interests of the child.

However, the four fundamental articles are equally tied to them. Consequently, Article 2 on the right to nondiscrimination and Article 6 relating to the right to survival and growth must be taken into consideration to determine what constitutes as the child's interest in a given situation. In addition, taking into account the child's opinion (as mentioned in Article 12) allows for support to the decider in establishing the child's best interest.⁹¹

14. II.6. Regional legal instruments on child protection

II.6.1. African charter on the rights and welfare of the child

One of the most commonly known regional legal instrument is African charter on the rights and welfare of the child. This charter recognizes the child's unique and privileged place in African society and that African children need protection and special care. It also acknowledges that children are entitled to the enjoyment of freedom of expression, association, peaceful assembly, thought, religion, and conscience.

The African Charter on the Rights and Welfare of the Child requires states to ensure that children are protected from all forms of torture and inhuman or degrading treatment by parents and others

⁹⁰ *Idem*

⁹¹ See article 3,6 and 12 of the CRC

caring for the child (article 16) and that parents and other persons responsible for childrearing must ensure discipline is respects the child's dignity.⁹²

The ACRWC defines a "*child*" as a human being below the age of 18 years. It recognizes the child's unique and privileged place in African society and that African children need protection and special care. It also acknowledges that children are entitled to the enjoyment of freedom of expression, association, peaceful assembly, thought, religion, and conscience. It aims to protect the private life of the child and safeguard the child against all forms of economic exploitation and against work that is hazardous, interferes with the child's education, or compromises his or her health or physical, social, mental, spiritual, and moral development. It calls for protection against abuse and bad treatment, negative social and cultural practices, all forms of exploitation or sexual abuse, including commercial sexual exploitation, and illegal drug use. It aims to prevent the sale and trafficking of children, kidnapping, and begging of children.

Under article 7 of the said charter, it gives a child freedom of expression where it states that "*Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws*"⁹³

With regard to parent care obligation, the charter provides more about parental protection over their children. for instance, under article 19, it stipulates that "Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents."⁹⁴ No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.

⁹² End corporal punishment, "*African Charter on the Rights and Welfare of the Child (ACRWC)*" accessed on 7th August 2024, available at: <https://endcorporalpunishment.org/human-rights-law/regional-human-rights-instruments/acrwc/>

⁹³ See article 7 of African charter on the rights and welfare of the child

⁹⁴ *Ibidem* article 19

II.6.2. African charter on human and peoples' rights

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent.

With regard to child protection which are found in this legal instrument, under its article 18, it stipulates that “*The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions*”⁹⁵ This provision comes in to ensure protection for family most especially women and children which are considered to be very vulnerable. Moreover, the charter provide that every individual has a duty to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need⁹⁶

All in all, in order to ensure the child’s well-being and superior interest the states must establish a protection system for the child. An effective system includes laws, politics, procedures and practices intended to prevent and fight against various problems of mistreatment, violence and discrimination that can damage a child’s wellbeing. In order to set up an effective protection system, the states must first ratify the main principal international standards of protection of children’s rights and then implement it in their legislation. They must also ensure care to certain child profiles (disabled, refugees...) and provide them satisfactory and lasting solutions. In addition, the States must fight against the customary practices which lead and encourage discrimination and mistreatment towards children. According to Rwandan legislation, it is very clear that a lot of international treaties have been signed, however, there is a need to harmonize child protecting law since it is not exhaustive with regard to civil liability of children which become a challenge in terms of dealing with cases which involves damages caused by children.

⁹⁵ *Ibidem* article 18

⁹⁶ *Ibidem* article 19

CHAPTER II: CHALLENGES RELATED TO PROTECTION OF CHILD BORN OUT OF MARRIAGE UNDER RWANDAN SUCCESSION LAW

15. II.1. Introduction

In the frame work of this chapter, a particular attention is going to be made on the analysis of the challenges related to protection of child born out of marriage under Rwandan succession law. Thus, a deepest analysis is going to be made on different challenges that are seen with relation to protection of children who are born out of wed lock. Protecting children ensures their safety, dignity and prevents them from the abuse, neglect, violence and.

In additional, this chapter shall oversee different legal instruments that were enacted to safe guard children and a particular attention shall be given to the law protecting child born-out of marriage in Rwanda.

16. II.2. The cause of illegitimate children in Rwandan society

In societies, the children born out of legitimate marriage are still found.⁹⁷ The birth of children out of marriage happened because their parents got married only by religion or never. Another possibility is that the children are the results of a crime (rape), or even both their parents are not bound in a marriage at all. Freedom of association easily makes people do things which are not deservedly performed by people who are not bound in matrimony.⁹⁸

It is not in accordance with the Rwanda's cultural values and morality recognized in Rwandan society. In people's daily association, children born out of marriage experience social discrimination in the form of ridicule from the people because they were born out of a relationship deemed illegitimate according to the value and capacity of the local community. The community gives the nicknames to several terms, such as "*ikinyendaro*", "*umushugurikano*", and so forth. The nickname is the stigma that would be a bad experience for the children during their lives.

⁹⁷ Bernadeta Resti Nurhayati, "Constitutional Basis for the Civil Rights of Illegitimate Children" aculty of Law and Communication, Soegijapranata Catholic University Jln. Pawiyatan Luhur IV/No. 1, Bendan Duwur, Semarang, 50247, Indonesia. P.118

⁹⁸ *idem*

The children become the object of contempt from friends who believe that the children born out of marriage can bring a destruction to the surrounding environment. Besides, the psychological impact of the laughing a child will be left in the memory of the children until they grow up. By law, illegitimate children also suffer discrimination. They only have a civil relationship with their mothers and mother's family.

Moreover, Pregnancy is a natural event. It occurs because there is a meeting between ovum and spermatozoa. The meeting could take place naturally with the onset of sexual intercourse between a man and a woman. This is irrespective of whether the pregnancy is desired by both parties or unwanted pregnancy. Pregnancy may also occur intentionally/ artificial. Naturally, it is unlikely a woman can be pregnant without fertilization. In the legal and society system in Rwanda, children born out of marriage were resulted from an indecent relationship by those who are not tied up in a legal marriage. Under article 344 of Rwandan current family law provides more about the parental authority over children born out of marriage where it stipulates that *“Parental authority on child born out of marriage is exercised by both parents. If one of them is unknown or does not recognize the child, it is exercised by the parent in charge of the child’s custody.”*⁹⁹ Thus The parent and custodian has the duty to cater for and educate his or her child.

17. II.3. Rwandan legal framework on protection for children in general under Rwanda laws

The Government of Rwanda has demonstrated, through various policies, legislative and program initiatives, strong commitment towards meeting the rights of the children of Rwanda. Rwanda is signatory to numerous international conventions, declarations or treaties on human rights, education, labor, disabilities and refugees that oblige the government to commit itself to ensuring the rights of children in the country.¹⁰⁰ These include, the United Nations Convention of the Rights of the Child (UN CRC, 1989), its two Optional Protocols on children in armed conflict and on sale of children, child prostitution and child pornography.¹⁰¹

⁹⁹ See 344 of the law

¹⁰⁰ National Integrated Child Rights Policy, 2011, p.5

¹⁰¹ These include: The UNESCO World Declaration on Education for All, The UN Convention on the Elimination of All Forms of Discrimination Against Women, The International Labor Organization Convention 182 on the Worst Forms of Child Labor, UN Resolution 48/96 on Standard Rules on the Equalization of Opportunities for Persons with Disabilities, The 1990 African Charter on the Rights and the Welfare of the Child.

As part of its commitment to the UN CRC, the Government is obliged to undertake appropriate measures in pursuance of children's rights. The Constitution of the Republic of Rwanda of 2023, reaffirming the adherence to the principles and commitments of the various international instruments and specifically invoking the UN CRC, entitles every child for special measures of protection by the family, society and Government.

The Rwandan government has put into place a number of laws aiming at improving the justice of Children. In this vein, the Rwandan legislative organ has put into place in 2018 the law n°71/2018 of 31/08/2018 relating to the protection of the child. This law in its chapter seven provides for principles relating to rights of children in conflict with law. This section analyses principles set forth by this law. Moreover, under new family law n° 71/2024 of 26/06/2024 governing persons and family includes provision that concerns about succession.

18. II.4. The child protection system in Rwanda

Rwanda has progressively developed legal and policy provisions related to child protection. Law 71/2018 on the Protection of the Child and the Integrated Child Rights Policy (ICRP) – along with several other legal and policy instruments provide for both prevention and response systems, including addressing cultural norms to prevent violence and abuse, and the criminalization of sexual violence.

National legislation also includes specific provisions for, children in contact with the law, those placed in alternative family care, children affected by divorce and family law-related matters, children in institutions, orphaned and other vulnerable children, and children of parents accused of crimes and finally children born out of marriage.¹⁰²

The ICRP developed in 2011 includes the right to protection and children's rights to be free from violence, abuse, exploitation and neglect. The ICRP also establishes a national system for reporting of, referral of and response to child protection cases. Further, it outlines conditions for children to gain Rwandan nationality for non-Rwandans and provisions for age-appropriate sexual and reproductive health education.¹⁰³

¹⁰² National Child Development Agency (NCDA) (2023) Assessment of the Child Protection System in Rwanda

¹⁰³ *Ibidem*

The National Child Development Agency (NCDA) is charged with coordinating the continuum of child protection services through relevant policies and guidelines, and promoting stakeholders' synergic engagement in the wider child protection system. The NCDA is guided by the ICRP Strategic Plan 2019- 2024 in the coordination and implementation of child protection priority actions.

Normally, under Rwandan law, a child is defined as any person under eighteen (18) years of age.¹⁰⁴ Children are born innocent; however, due to multiple factors, many children adopt behaviors which are defined as delinquent and sometimes being “*in conflict with law*”. These behaviors range from emotional outburst, petty thefts, substance abuse, violent or aggressive behavior to more serious types of crimes.

With regard to children born out of marriage during succession, under article 46 of the law n° 71/2024 of 26/06/2024 governing persons and family paternal or maternal filiation of a person is proven by birth record.¹⁰⁵ However, in the absence of birth record, uninterrupted possession of status is sufficient to prove filiation. This provision shows legal proof for filiation and whoever want to claim for filiation must bring birth record or go through other ways provided for by the law, including that a person may claim for filiation different from the one registered in the birth record and matching uninterrupted possession of status whenever he or she may prove it, in conditions provided by the law.¹⁰⁶

In addition, In the absence of birth record or of uninterrupted possession of status, evidence of filiation is proven by all means recognized by law.¹⁰⁷

Besides, facts establishing possession of status are provided for by family law, where it stipulates that Possession of status is established by an adequate combination of facts which indicate the relationship of filiation between a person and those, he or she considers to be his or her parents. For instance: where the presumed father or mother of the child has always treated the child as his or hers, and has in that capacity catered for his or her education, maintenance and providing him

¹⁰⁴ See article 2 of the law n°71/2018 of 31/08/2018 relating to the protection of the child, official Gazette no.37 bis of 10/09/2018

¹⁰⁵ See article 46 of the law n° 71/2024 of 26/06/2024 governing persons and family.

¹⁰⁶ *Ibidem article 46 (3)*

¹⁰⁷ *Ibidem article 46 (4)*

or her with personal assets; (b) where the child has been treated as such by the family; (c) where the child has permanently been.

With regard to the above-mentioned legal provision, it is clear that an unrecognized child born out of marriage has no filiation with his father, it would be a big challenge when it comes to succession of his father's property yet he died without making legal recognition. Moreover, under Article 48 of the current family law suggest possible Proofs of filiation of a child born out of marriage namely:

- (a) oral or written recognition of the child done before the civil registrar;
- (b) agreement between presumed parents to take a DNA test;
- (c) a court-ordered DNA test;
- (d) judgment declaring paternal or maternal filiation or copy of civil status register in which the judgment was recorded.¹⁰⁸

19. II.5. Succession and challenges with regard to the child born out of marriage

Generally, succession is the transfer of rights and obligations on the assets and liabilities of the deceased based on the kinship.¹⁰⁹ On other hand, succession denotes the transmission of rights and obligations of the deceased to the heirs. It not only includes the rights and obligations left by the deceased at the time of his or her death, but it also includes new charges, rights, and obligations that accrue to the existing ones after opening of the succession. Succession opens upon the death of a person, at his or her domicile or residence. Starting from the day of the opening of succession, a person entitled to succeed by way of a will or under law is called an heir as long as he or she accepts it.¹¹⁰ Heirs are also referred to as one who receives property from an ancestor or one who is entitled to inherit property.

In principle, it is not a must to be an heir, only those who are willing to succeed are the ones who enter into succession. They inherit assets and liabilities of the dead. This provision gives chances for those who wants no succession to never be liable for liabilities left by the *cujus* in which they share filiation or if they don't want to participate in succession willingly. Thus, when a child

¹⁰⁸ See article 48 the law n° 71/2024 of 26/06/2024 governing persons and family

¹⁰⁹ Ibidem article 353

¹¹⁰ Ibidem article 354

born out of marriage is not registered, he/she has no rights of being called for inheriting his father

Pursuant to article 355 of the above-mentioned family law, stipulates about persons who are called to succeed, the following persons are called for succession.

(1) One still alive or represented at the time succession opens, including an unborn child provided that he or she is born alive.

(2) The absentee or the disappeared may be entitled to succeed if he or she is presumed to be alive.

(3) Government and public or private entities or other entities with legal personality may be entitled to succeed.

In fact, as it is provided in the above article, the first called persons are those who are still alive, being a live means being recognized by the law at the moment and that you belong to legal list of heirs, when illegitimate child is willing to succeed his father, the only possible way is to go for registration or by means provided for by the law in order to be recognized before laws a legitimate heir.

In principle, Legitimate children of the deceased succeed in equal portions without any discrimination between male and female children. this is to mean that when a child born out of marriage is not legitimized can never succeed his father as the laws doesn't considers him/her as a recognized child. It requires procedure for illegitimate child to be legitimized such that he/she get right on his/her father's property during succession.

II.5.1. Types of succession

With regard to Rwanda family law, the succession of the deceased may be intestate or testamentary, in whole or in part.¹¹¹With regard to article 247 which provides about the effects of death of one of the spouses on children and property. It stipulates that *“If one of the spouses dies, children continue to be looked after by their surviving parent even if he or she would enter into a new marriage. If he or she also dies, the children are looked after in accordance with the law.* (2) *If one of the spouses dies, his or her share on the property is managed by the surviving*

¹¹¹ See article 361 of the law n° 71/2024 of 26/06/2024 governing persons and family

spouse until the opening of succession.”¹¹² Thus, the death of one of the spouses could lead to succession. For it to happen for illegitimate child there is a need for a prior recognition of the deceased such that he/she be called for succession. When a child’s father is dead before civil recognition it is very complicated to be a part of heirs since the law considers the remained child as not a part of heirs.

II.5.1.1. Intestate succession

Legally speaking, with regard to the wording of article 373 of the current family law of 2024 stipulates that “*Intestate succession is a succession opened if the deceased person has not made a will. The Intestate succession is conducted in accordance with provisions of this law.*”¹¹³

Intestate succession is on the other hand defined as a legal process that comes into play when someone passes away without leaving behind a valid will or other legally binding document dictating how their assets and property should be distributed. Instead, the distribution of assets is determined by the laws of intestacy in the state where the person passed away.

The laws of intestacy establish a specific order of priority for the distribution of assets. Typically, a surviving spouse and children are given priority, followed by other close relatives, such as parents and siblings. If there are no surviving relatives, the assets may escheat to the state.

The rules of intestate succession can vary widely from state to state and may be subject to change over time based on legislative and judicial decisions. For instance, in the case of *Mukangoboka and Mugiramana Rosine v. MUTETERI Germaine a legal representative of the succession Ngoboka jean*, RCAA 00029/2018/CA, Show how the court adjudicated the succession case where there were no testament for succession.¹¹⁴ This case also includes women who were not legally married to the Man whose properties are under succession.¹¹⁵ In short under this case a father legally married to a woman and latter married to other two wives to

¹¹² *Ibidem* Article 247

¹¹³ See article 373 of the law n° 71/2024 of 26/06/2024 governing persons and family

¹¹⁴ Case of *Mukangoboka and Mugiramana Rosine v. MUTETERI Germaine a legal representative of the succession Ngoboka jean*, RCAA 00029/2018/CA

¹¹⁵ Cornell law school, “intestate succession” accessed on 15th August 2024, available at: https://www.law.cornell.edu/wex/intestate_succession

which he had 11 children, after his death there was complication of succeeding the properties left by the man since there was no testament of succession left by the man.

On the other hand, Intestate succession applies to estates of persons who die intestate or leave no valid wills disposing of their property, thereby requiring the descent and distribution of their property in accordance with the laws providing therefor.' It denotes the devolution of property under the statutes of descent and distribution.¹¹⁶ "Succession by law is the title by which a man, on the death of his ancestor, dying intestate, acquires his estate, whether real or personal, by the right of representation as. his next heir." 8 "Succession" is, therefore, a broader term than "descent," as it applies to personal as well as real property. Yet the two terms are often used synonymously. "The word 'inheritance,' in its legal acceptation, applies to lands descended. In its popular acceptation, however, the word 'inheritance' includes the devolution of both real and personal property, and is coextensive in meaning with the word 'succession.'¹¹⁷

II.5.1.2. Testamentary succession

Pursuant to article 361 suggests that one of the modalities of succession is testamentary, that occurs when someone designates an heir in a legally executed testament or will. This means that the person who has passed away has chosen who will inherit their property and assets. For example, if John creates a will and designates his daughter as his heir, then she will inherit his property and assets after he passes away. This is an example of testamentary succession. Testamentary succession is different from intestate succession, which occurs when someone dies without a valid will. In this case, the state's laws determine who will inherit the person's property and assets. Overall, testamentary succession is an important legal concept that allows individuals to choose who will inherit their property and assets after they pass away.¹¹⁸ Under the case BIHIBINDI Francoise, NYIRAMA JYAMBERE Beatrice and Vs MUKANOHELI ALINE and others, RCAA 00014/2022/CA it shows the will made by one the *cujus*. With regard to this case, the subject matter was about appealing against the will made by the *cujus* of the family.

¹¹⁶ W. D. Rollison, "Principles of the Law of Succession to Intestate Property" Notre dame law review, vol.11. issue 1. Article 2.

¹¹⁷ *idem*

¹¹⁸ LSD "Testamentary succession" accessed on 19th August 2024, available at: <https://www.lsd.law/define/testamentary-succession>

Under Rwandan law, a will is a revocable unilateral deed intended to have legal effect which is drawn up in accordance with one of the procedures prescribed by law, by which a person determines the disposition of his or her property after his or her death.¹¹⁹ Moreover, A will is made by any person willing to do so, prior to his or her death. The testator disposes of his or her property with no cost, and the legatee only enjoys its full ownership upon the testator's death.¹²⁰

The basic testamentary document for testamentary succession is a Will. Jarman in his treatise on Wills defines a Will as '*an instrument by which a person makes disposition of his property to take effect after his demise and which is in its own nature ambulatory and revocable during his life*'. A declaration by a testator that his Will is irrevocable is inoperative. A covenant not to revoke a Will cannot be specifically enforced.¹²¹

While the Act does not cover testamentary disposition, the same is governed under the provisions of the Indian Succession Act, 1925 and u/s. 57 thereof many of its provisions apply to Wills made by any Hindu, Buddhist, Sikh or Jain. The term 'Will' has been defined in section 2(h) of the Indian Succession Act to mean 'the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death'. It is not necessary that any technical words or particular form is used in a Will, but only that the wording be such that the intentions of the testator can be known therefrom.

20. II.6. Challenges child born out of marriage face with regard to succession

Generally, a child born during marriage is presumed to be the child of his or her mother's husband.¹²² However, there exist some situation where child is born out of marriage. The rights of children born out of marriage (illegitimate children) is an issue that has not been addressed adequately in law. this part addresses challenges illegitimate children can face in relation to succession.

¹¹⁹ See article 362 of the law n° 71/2024 of 26/06/2024 governing persons and family

¹²⁰ *Ibidem* article 362

¹²¹ M. L. BHAKTA "*Testamentary succession*" accessed on 19th August 2024, available at: <https://www.bcasonline.org/BCAJ%20Golden%20Content%202018-19/Articles/Dec%202018/16%20-%2018%20Testamentary%20Succession%20M%20L%20Bhakta.pdf>

¹²² See article 281 of the Law n° 71/2024 of 26/06/2024 governing persons and family, *Official Gazette n° Special of 30/07/2024*

The first challenge concerns about the fact that, when child born out of marriage are not acknowledged by their fathers or mothers it is not possible for them to be on the list of heirs, unwillingness of fathers causes child born out of marriage to not enjoy their right to be acknowledged. the child cannot obtain biological rights with his/her father hence he/she does not get his/her civil rights from the father and his/her father's family. Under article ... stipulates that *“If the child is born out of marriage, the child is registered under his or her mother”*

Another challenge comes with social discrimination that is applied to the illegitimate child, the child’s siblings and the family in general considers him/her unworthy of succession. In most cases child born out of marriage only have a civil relationship with their mothers and mother's family. This means that illegitimate children do not necessarily have a civil relationship with their biological fathers and biological father's family.

The next challenge concerns the expensiveness of the DNA test which cause some of the mother to stop claiming their child’s right to acknowledgment. When a child has no affiliation to his father hinders a child from enjoying his/her rights such as succession. The laws allow only legitimate child to be on the list of the called heirs. When it happens that the succession starts before recognition of a child, it will be a great challenge when the father dies, recovering properties that have been already sold or that have been already divided to other would not be an easy task for a child born out of marriage.

21. II.7. The rights of children born out-of-marriage under Rwandan law the law

The general principle of non-discrimination in Article 2 of the 1989 Convention on the Rights of the Child (CRC): *“States Parties shall respect and ensure the rights outlined in the present Convention to each child within their jurisdiction without discrimination of any kind”* is specified as follows. From general principles to specific regulations in Rwanda, equal rights and obligations between child subjects (whether children born in or out of marriage) are maintained.

According to article 5 of the law n°71/2018 of 31/08/2018 relating to the protection of the child, it stipulates that *“All children are provided with equal protection without any discrimination. However, the adoption of special measures and strategies for children with specific problems is not considered to be a form of discrimination.”*¹²³. From the above regulations, we can

¹²³ See article 5 of the law n°71/2018 of 31/08/2018 relating to the protection of the child, official gazette no.37 bis of 10/09/2018.

understand that children born when parents have a legal marriage relationship and children born when parents do not have a legal marriage relationship are entitled to the same rights and obligations. Next, “Rights are legal science concepts used to refer to the things that the law recognizes and ensures the implementation by each individual”¹²⁴. Therefore, the concept can be stated as the rights of the out-of-marriage children are also legitimate rights and interests that the out-of-marriage children are recognized by law. specifically, If the child is born out of marriage, the child is registered under his or her mother. The father of the child first recognizes the child before the civil registrar in charge of child recognition for the child to be registered under him.¹²⁵ This legal provision also shows how fathers of child born out of marriage have a duty to first recognize the child otherwise it can’t happen automatically.

Besides, the right to determine parents and children is one of the most sacred rights under natural laws and social ethics, and it is recognized by law. This recognition ensures that the legitimate rights and interests of the father, mother, and child are safeguarded and resolves disputes over upbringing, support, and inheritance. In addition, after completing the legal recognition of father, mother, and child, illegitimate children naturally have their legal rights, typically the right to inheritance.

Moreover, when a child’s father fails or denied to recognize him/her, the law suggests that a child might file a case to the competent court claiming to establish paternity or maternity. Under article 304, of the Rwandan family law, stipulates that “*A claim to establish paternity or maternity is the one filed by a child born out of marriage to have his or her filiation established by the court*” A person eligible to file a claim to establish paternity or maternity is the child himself or herself having attained the age of majority. Thus, If the child has not yet reached the age of majority, the action shall be brought on the child's behalf by his or her mother or father, by organizations for the defense of the rights of the child or by any other legally recognized representative. The above legal provision shows how a child might claim for his rights to parents, where even if his/her father denies him/her, there possible way provided for by laws to which a child can get his rights. The court might decide to go for DNA test such that the biological affiliation

¹²⁴ Journal of Population Therapeutics & Clinical Pharmacology,” *Analyzing “Child Born Out Of Marriage” (“Illegitimate Child”) In The Law On Marriage And Family*” Published: 11 April 2023

¹²⁵ See article 91 of the law n° 71/2024 of 26/06/2024 governing persons and family

CHAPTER III. THE MECHANISMS TO BE PUT FORWARD TO ENHANCE THE PROTECTION OF CHILD BORN OUT OF MARRIAGE IN RWANDA

This chapter is aimed at providing and suggesting the possible mechanisms and measures with the respect to the protection of child born out of marriage in Rwanda. Indeed, we will be providing mechanisms which can be put forward to enhance the protection of illegitimate child under Rwanda laws by taking into consideration law of succession. The mechanisms will mainly be the legal and institutional that could be enforced in order to protect child born out of marriage.

What is more to this, this chapter will mainly focus on the legal mechanisms which can be used in our local legal system to foster the protection of child born out of marriage. Moreover, as it has cleared shown in previous chapters, the protection of child born out of marriage, requires different stakeholders of the whole process to respect legal provisions related to protection of children who are born out of marriage as far as succession is concerned.

In all actions concerning children in the most especially in civil matters, the best interests of the child shall be a primary consideration. In assessing the best interests of a child, States should make every effort to balance, and wherever possible, reconcile a child's right to protection with other rights, in particular the right to freedom of expression and information as well as participation rights.

The capacities of a child develop gradually from birth to the age of 18. Moreover, individual children reach different levels of maturity at different ages. States and other relevant stakeholders should recognize the evolving capacities of children, including those of children with disabilities or in vulnerable situations, and ensure that policies and practices are adopted to respond to their respective needs in relation to the protection of child born out of marriage. This also means, for example, that policies adopted to fulfil the rights of children may differ significantly from those adopted for child born out of marriage.

22. III.1. The legal mechanisms for the protection of the child born out of marriage with regard to succession in Rwanda

Following the ratification of the UN Convention on the Rights of the Child (UN CRC), the Government of Rwanda (GoR) has initiated several steps in the direction of addressing the rights and needs of children in the country. Various social policies have been enacted, plans developed and programs implemented. Children's rights and programming for them cut across various thematic areas and ministerial mandates (health, education, labor, local governance, Justice), thus a number of government institutions and non-governmental organizations at different administrative levels are involved in their implementation. Additionally, numerous laws addressing children's rights have been promulgated.¹²⁶

Generally, one of the most essential elements of any civil justice system is the rights it guarantees to those who are in class of being protected.¹²⁷ Among these rights, there is the right for a child to be protected by his family including his/her parents.¹²⁸ A child born out of marriage should also have right to his father by enjoying civil recognition, and being called for succession when his/her father's death, parents have a duty to safe guard their children.¹²⁹

III.1.1. Ensuring the respect of laws that protect child born out of marriage.

Firstly, the legal mechanisms that needed to be put forward is mostly concerned with introducing policy on justice for children that will provide guidelines and scope in which the legislators will follow to make the favorable law protecting child born out of marriage with regard to succession. Secondly, it is much important to enact legislations that regulate children's right which clearly provide the procedures and substantive ways of allocating properties left by a father who did not recognize a child born out of marriage.

The necessity of a policy on justice for children is most justifiable because of Article 6 of the Child Rights and Protection Law, which stipulates as follows: *"In all judicial and administrative*

¹²⁶ National Integrated Child Rights Policy 20211.p.4

¹²⁷ See article 5 of the CRC

¹²⁸ *idem*

¹²⁹ Madeleine Colvin and Jonathan Cooper, "Human rights in the investigation and prosecution of crime" (2009) P. 270.

proceedings related to the child, the primary consideration shall be in the best interests of the child.” In terms of outcomes and processes, Article 6 means that judicial and administrative proceedings should advance the best interests of the child through a child-friendly justice system and outcomes.

The implication of Article 6 of the Child Rights and Protection Law is that the justice system should be child friendly, facilitate and respect the voice of the child, and generally advance the best interests of current and future children. The justice system shall reflect these attributes in all the types of justice it seeks to deliver, including the following: Penal law justice, judicial justice, family law justice, justice in care and protection, administrative justice, procedural justice, distributive justice, and retributive justice.

With regard to the legal mechanism of passing laws that enhance justice for children, it all start by constitution which is considered as our supreme law here in Rwanda. under article 19 of the constitution of the republic of Rwanda of 2023 it stipulates that “Every child has the right to measures of special protection by his or her family, other Rwandans and the State, depending on his or her age and living conditions, as provided for by national and international law;”¹³⁰ this comes to emphasize that the right to legal counsel for all should be respected in all instances.

Domestic laws especially family law and law on the protection of child should be in line of promoting the protection of child born out of marriage by easing ways of acknowledging a child and also through providing possible procedures in which a child seeking for paternity or maternity rights would be easier.

23. III.2. The institutional mechanisms for the protection of the child born out of marriage in relation to succession

Institutional mechanisms are the process by which things are invested with an institutional function or stimulus.¹³¹ Within this part, lots about institutional mechanisms are going to be

¹³⁰ See article 19 of the Constitution of the Republic of Rwanda of 2023, Official Gazette n° Special of 04/08/2023

¹³¹ Jacob Robert Kantor. *"The Institutional Development Mechanism."* Chapter 11 in *An Overview of Social Psychology*. Chicago: Follett Publishing (1929): P.1

discussed with regard to the protection of child born out of marriage under Rwanda laws as far as succession is concerned. A number of institutional mechanisms have been put in place so as to ensure the respect of the protection of the children born out of marriage. Institutions like ministries, courts and sectors are ones that need proper mechanism that will enhance the better applicability of the protection of the children born out of we lock.

III.2.1. Respecting guiding principles of the work within the institution.

To mention, the first mechanism is about selection and appointing of workers within the institutions who merits the job. Employing people with much skills about family matters and human right will be much important in implementing the protection of the children born out of we lock when it comes to cases related to succession. This is because the respect of the law will be their priority together with their guiding principle of integrity and impartiality. Additionally, these institutions should provide enough materials that will help in smooth going of their work so as to serve well as it is desired.

Moreover, it is much better for institutions to organize regular trainings for the staff members as well as to the community to ensure that people are aware of their rights and share them with skills related to the prevention of unlawful practices that put children in danger. Building the sense of self evaluation within the institution should also be another tool to be used in order to enhance the principle of accountability

As standard-setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focused on the ways in which these bodies could assist in the effective implementation of international standards on human right. In 1978, the Commission on Human Rights decided to organize a seminar on national and local institutions to draft guidelines for the structure and functioning of such bodies. Accordingly, the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva from 18 to 29 September 1978 during which a series of guidelines was approved. These guidelines suggested that the functions of national institutions should be:¹³²

¹³² National Institutions for the Promotion and Protection of Human Rights, Fact Sheet No.19. P.3

- (a) To act as a source of human rights information for the Government and people of the country;
- (b) To assist in educating public opinion and promoting awareness and respect for human rights;
- (c) To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the Government may wish to refer to them;
- (d) To advise on any questions regarding human rights matters referred to them by the Government;
- (e) To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;
- (f) To perform any other function which the Government may wish to assign to them in connection with the duties of that State under those international agreements in the field of human rights to which it is party.

In regard to the structure of such institutions, the guidelines recommended that they should:

- (a) Be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;
- (b) Function regularly, and that immediate access to them should be available to any member of the public or any public authority;
- (c) In appropriate cases, have local or regional advisory organs to assist them in discharging their function.

In Rwandan courts Judges and lawyers have a particularly important role to play in ensuring that all persons, including children, are treated as equal before the law and receive equal protection of the law without discrimination.

III.2.2. The role of civil society in implementation of the right to fair trial for minors

A civil society is comprised of groups or organizations working in the interest of the citizens but operating outside of the governmental and for-profit sectors. Organizations and institutions that make up civil society include labour unions, non-profit organizations, churches, and other service agencies that provide an important service to society but generally ask for very little in return.¹³³

Civil society organizations (CSOs) and community-based organizations (CBOs) in particular know the needs and challenges of the citizens they represent and work in their best interest. As such, they have an important role to play in building child-friendly cities.¹³⁴ Civil society can:

- Advocate with local government for improvements for children and make sure their voices are heard.
- Monitor the well-being of children and public performance on child rights as independent observers.
- Support the delivery of essential services to communities that would otherwise be excluded from public sector services.
- Raise public awareness on issues related to children.
- Make changes for children through civil society organizations.
- Help implement child rights through its daily interactions with children in the city.

In fact, civil society help in conducting research on the wellbeing of children taking into consideration the children born out of wedlock under legal proceedings and how their rights are being respected within a country. Civil society may also contribute to the legal reforms. The importance of CSOs in development has been recognized in the 2030 Agenda for Sustainable Development which has included them in the consultation and implementation processes.

¹³³ Stucy.com, “*What is civil society*” Available at <https://study.com/academour/lesson/what-is-a-civil-society-definition-examples.html> accessed on 29th September 2021

¹³⁴ UNICEF, “Civil Society” Available at <https://childfriendlycities.org/civil-society/> accessed on 29th September 2021

GENERAL CONCLUSION

Conclusively, in many countries of the world, Rwanda in Particular, the protection of child born out of marriage plays a big role in social life of the country and this is why lots of legislation about child's rights have been put in place for better allocation of the issues that may come in relation to the children.

The child's right to protection in Rwanda compares exceptionally well in relation to its international obligations. Children in Rwanda are provided with the opportunity to be protected from all forms of discrimination, and their rights are enumerated in different domestic laws such as right to a family, right to be protected and also the right to possess things. Moreover, children have general right to legal representation not only in criminal matters but also in civil matters. With all these right, there exist protection but the challenge is that some fathers fail to acknowledge their sons and daughters born out of marriage which hinders them from being called for succession.

The basis of the protection of the child born out of marriage is that their best interests be served. in terms of the current family law f 2024, there is an improvement in the terms of protecting children who are born out of marriage, however there is a need to enact strong law that easy the way children who are born out of marriage are recognized. For instance, if the cost for DNA test is lowered and these cases be brough to the competence of civil registrars it could easy the process of acknowledging children for fathers who failed to do so.

This work started with the general introduction under which the historical background, the scope, the problem statement and hypotheses and other many things have been dealt with. The work contains three chapters and at the end, it has got the general conclusion together with the recommendations.

In the first chapter on the conceptual framework two sections have been provided one on the definition of the key concepts where by the key terms such as A child, Family Succession, Child's rights, Fair Trial, International convention, legal counsel, Judgment. Secondary, the theoretical framework of the work has been dealt where by the principle of best interest of the child, Attribution of parental authority, child protection and the lastly Vulnerability of a child.

The second chapter on the challenges to which child born out of marriage face as far as succession is concern. As it has been analyzed, there exist a challenge of fathers who denies their children born out of marriage willingly and on the other side it is hard for mothers to get ability to initiate a case for the sake of his/her child since the DNA test is still expensive and at some moments courts fees and procedural fees are hard to get. The chapter finally analyzed different legal instruments that protects children for both international regional levels taking into consideration the protection of the illegitimate child under succession.

The third chapter focused on both legal and institutional mechanisms for the effectiveness of the protection of the child born out of marriage under Rwandan laws with regard to succession. The author deemed necessary that there is area where more efforts is most required in the protection of the child born out of marriage either in form of legal or institution. In legal matters, it is recommended to establish to make amendments so as the requirements for an illegitimate child be soften where fathers will not be afraid of going into more procedure to acknowledge a child. Some responsibilities also might be brought to the sector level from courts so as to make it easy for child born out of marriage to be registered

A gain public institution such as MIGEPROF, Courts, Civil registry in sectors, have been recommended to respect the principle of the rule of law where they have to base on law every time while doing their duties so as to serve the desired justice to the children especially those who were born out of marriage and to the community as well.

Recommendations

In light of all the shortfalls identified in promoting the protection of the child born out of marriage, the study has formulated the following recommendations in order to ensure an effective and efficient protection. However, there is a hope that the mechanisms suggested in the third chapter the existing situation of child born out of marriage who still challenged by un recognition be improved where the recognition will be eased.

On the top of the mechanism, the authors have suggested the recommendations and are the following:

- For better protection, the Rwandan legislator should enact family law that ease the procedure of recognition for children who were born out of marriage such that fathers who still have this unwillingness spirit be encouraged of recognizing their children.
- To support minor's ability to participate by building relationships of trust within the Rwandan family.
- To ensure that child's interests, views and feelings are communicated as clearly as possible to relevant bodies, such as courts and social services.
- To ensure that when children are being heard during formal proceedings, they are able to express themselves freely and that the proceedings are conducted in a child-friendly manner.
- To inform the child of how the court or tribunal took into account her or his views in reaching a decision. This feedback is often overlooked but is an important part of the process and emphasizes the fact that the views of the child are not only heard as a tick-box exercise, but are in fact taken seriously.

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