

KIGALI INDEPENDENT UNIVERSITY ULK

SCHOOL OF LAW

DEPARTMENT OF LAW

P.O BOX 2280 Kigali

**LEGAL ANALYSIS ON THE CHALLENGES TO ADULTERY AS CAUSE OF
DIVORCE UNDER RWANDAN LAW: CASE OF LESBIAN AND GAY COUPLES.**

**A dissertation is presented in partial fulfillment of the requirements for the award
of a bachelor's degree in law (LL. B).**

BY:

NSABAGASANI Jean Damascene

Supervisor: Lecturer Emmanuel NKUNDUKOZERA

Kigali, September, 2024

DECLARATION

I hereby affirm that this dissertation titled "Legal Analysis on the Challenges to Adultery as Grounds for Divorce under Rwandan Law: A Case Study of Lesbian and Gay Couples" represents my original work. I have diligently acknowledged all authors and sources from which information was obtained to the best of our knowledge. Additionally, I assert that this work has not been previously submitted to any university or institution for the purpose of obtaining a degree or any equivalent qualification.

Jean Damascene NSABAGASANI

Signature:

Date...../..... / 2024

APPROVAL

This document hereby attests that the research contained within this dissertation, titled "Legal Analysis on the Challenges to Adultery as Grounds for Divorce under Rwandan Law: A Case Study of Lesbian and Gay Couples," submitted to partially fulfill the requirements for the Bachelor of Laws (LLB) degree at Kigali Independent University (ULK), is being conducted by:

Jean Damascene NSABAGASANI

Lecturer: Emanuel NKUNDUKOZERA

Signature:

Date...../..... / 2024

DEDICATION

I dedicate this dissertation to the individuals whose steadfast support and encouragement have been pivotal in my academic accomplishments:

- To my parents, including my in-laws, whose boundless love, prayers, and sacrifices have enabled me to pursue my aspirations.
- To my beloved wife, Ruth MUREKATETE, for her unwavering love, care, patience, understanding, and steadfast support during the most trying moments.
- To my dear friends and classmates, particularly Jean de Dieu NIYOBUHUNGIRO, whose companionship and uplifting words have been a source of strength and inspiration. Your enduring support has been indispensable throughout my journey, and I profoundly appreciate your presence in my life.

Jean Damascene NSABAGASANI

ACKNOWLEDGEMENTS

Firstly, we extend our heartfelt gratitude to Prof. Dr. Rwigamba Balinda, the founder and president of Kigali Independent University, for initiating the Evening Program in the Faculty of Law, which has enabled me to complete my modules as part of this pioneering intake. I am profoundly grateful to our lecturers and the heads of the Department of Law for their unwavering support in our academic and research endeavors.

I owe special thanks to my supervisor, Lecturer Emanuel Nkundukozero, for his invaluable guidance during the preparation of this research. His timely and insightful instructions, dedication, and availability were instrumental in steering this research to completion. His mentorship and encouragement have been pivotal in shaping the direction of this research.

Furthermore, I sincerely thank my family and friends, whose advice and motivation were crucial. Their assistance in revising and correcting errors significantly contributed to this research. My heartfelt thanks also go to my beloved wife, whose moral support was indispensable throughout this journey. Her encouragement was vital in helping me achieve my ambitions.

Lastly, I sincerely thank all my classmates for their support and encouragement. To all the individuals above and others who may not be specifically mentioned, I am truly grateful for your support.

May God bless you all!

Jean Damascene NSABAGASANI

TABLE OF CONTENTS

DECLARATION	i
APPROVAL	ii
DEDICATION	iii
ACKNOWLEDGEMENTS	iv
TABLE OF CONTENTS	v
LIST OF ACRONYMS AND ABBREVIATIONS	x
I. GENERAL INTRODUCTION	1
I.1. Background of Study	2
I.2. PROBLEM STATEMENT	3
I.2. RESEARCH OBJECTIVES.....	3
I.2.1. General Objective	4
I.2.2. Specific Objectives	4
I.3. SCOPE OF THE STUDY.....	4
1.6. RESEARCH QUESTIONS	5
I.7. RESEARCH HYPOTHESIS.....	5
I.7.1. Hypothesis One.....	5
I.7.2. Hypothesis Two	5
I.8. RESEARCH TECHNIQUES AND METHODS	5
I.8.1. RESEARCH TECHNIQUE	5
I.8.2. RESEARCH METHODS.....	5
I.9. SUBDIVISION OF THE STUDY	7
CHAPTER I: CONCEPTUAL AND THEORETICAL FRAMEWORK	8
I.0. INTRODUCTION	8
I.1 Conceptual framework	8
I.1.1 Concept of Legal Recognition.....	8
I.1.2 Concept of Legal Protection	9
I.1.3 Concept of Gender Equality	9

I.1.4 Concept of Non-Discrimination	9
I.1.5 Concept of family Law dynamics.....	9
I.1.6 Concept of Socio-Legal Perspectives	10
I.1.7 Concept of Marriage.....	10
I.1.8 Concept of Divorce.....	10
I.1.9 Concept of Adultery.....	10
I.1.10 Concept of family	11
I.1.11 Concept of Lesbian, Gay, Bisexual, Transgender, Queer or Questioning	11
I.1.11.1 Lesbian.....	11
I.1.11.2 Gay.....	11
I.1.11.3 Bisexual	11
I.1.11.4 Transgender.....	12
I.1.11.4 Intersex	12
I.1.11.5 Queer.....	12
I.1.11.6 Questioning.....	12
I.1.11.7 THE +	12
I.1.12 Heterosexual	13
I.1.13 PACS “Pacte Civil de Solidarité- civil solidarity pact.....	13
I.1.14 Homosexuality.....	13
I.2 THEORETICAL FRAMEWORK.....	13
I.2.1 Legal positivism	13
I.2.2 Legal Realism.....	15
I.2.3 Feminist Legal Theory.....	16
I.2.4 Critical Legal Studies.....	17

I.2.5 Human Rights Basic Approach.....	17
I.2.5.1 Empowerment.....	18
I.2.5.2 Accountability.....	19
I.2.5.3 Participation and Inclusion	20
I.2.5.3.1 Structural Barriers and Discrimination.....	21
I.2.5.3.2 Human Rights and Legal Reform.....	21
I.2.5.3.3 Impact on Adultery as Grounds for Divorce	22
I.3 Partial Conclusion.....	22
CHAPTER II. ANALYZING OF ADULTERY AS GROUNDS FOR DIVORCE	
DISPROPORTIONATELY HINDERS EQUITABLE ACCESS TO DIVORCE FOR	
LESBIAN AND GAY COUPLES IN RWANDA.	
	23
II.0. INTRODUCTION.....	23
II.1 Overview of Adultery as grounds for divorces under Rwandan law	23
II.2 Interpretations of Adultery as grounds for divorce under Rwandan law	24
II.3 Interpretations of Adultery as grounds for divorce under Rwandan Law in a Case involving lesbian and gay.....	25
II.3.1 Legal Framework and Interpretation.....	25
II.3.2 Application of General Principles of Laws	25
II.3.2.1 Respect for Human Rights	26
II.3.2.1.1 Right to Equality and Non-Discrimination	26
II.3.2.1.2 Right to Privacy and Family Life.....	26
II.3.2.1.3 Right to Effective Remedy	27
II.3.2.1.4 Freedom from Discrimination.....	27
II.3.2.2 Equality Before the Law	27
II.4 Interpretation of Adultery as grounds for divorce vis a vis the doctrines of law	29
II.4.1 The doctrine of law in the context of family law	29

II.4.1.1 Doctrine of Fault-Based Divorce	30
II.4.1.1.1 Unequal Treatment	30
II.4.1.1.2 Access to Legal Remedies.....	31
II.4.1.1.3 Violation of Rights	31
II.4.1.1.4 Legal and Social Implications	31
II.4.2 Doctrine of Public Policy	31
II.4.2.1 Social Values and Morality	32
II.4.2.2 Promotion of Family Stability.....	32
II.4.2.3 Legal Consistency and Certainty.....	32
II.4.2.4 Protection of Individual Rights	32
II.4 Analysis of Homosexuality as Ground for Divorce under French Law vs Rwandan Law	32
II.4.1 Divorcing Gays	33
II.4.2 Legal Recognition of Same-sex relationship under French Law vs Rwandan law.....	35
II.5 Partial Conclusion	36
CHAPTER III. LEGAL AND INSTITUTIONAL MECHANISMS TO BE IN PLACE	
WHEN COUPLES SEEK DIVORCE ON GROUNDS OF ADULTERY UNDER	
ARTICLE 248 OF LAW NO. N° 71/2024 OF 26/06/2024 GOVERNING PERSONS	
AND FAMILY IN RWANDA.....	37
III. O Introduction	37
III.1 Overview of Article 248 of Law N° 71/2024 of 26/06/2024 governing persons and family	37
III.2 LEGAL MECHANISMS TO BE IN PLACE WHEN COUPLES SEEK DIVORCE	
ON GROUNDS OF ADULTERY	39
III.2.1 Judicial Interpretation and Discretion.....	39
III.2.2 Recognition of Same-Sex Relationships.....	39
III.2.2.1 Lessons from International Precedents	40
III.2.3 Human Rights and Equality.....	40

III.2.4 Customary and Judicial Precedents	41
III.2.5 Legal Reforms and Advocacy	41
III.2.6 The Yogyakarta principles and Yogyakarta principles plus 10 (to+10)	41
III.2.6.1 The Yogyakarta Principles	42
III.2.6.2 Yogyakarta Principles Plus 10 (Yogyakarta +10)	43
III.2.6.3 Broader impact of the Yogyakarta principles and Yogyakarta principles plus 10 (to+10)	43
III.2.6.4 Specific impact on the international community in addressing gaps in domestic laws in providing fair justice to all	44
III.3 INSTITUTIONAL MECHANISMS TO BE IN PLACE WHEN COUPLES SEEK DIVORCE ON GROUNDS OF ADULTERY UNDER RWANDA LAW	46
III.3.1 Specialized Family Courts	46
III.3.2 Legal Aid Services	47
III.3.2 Counselling and Mediation Services	47
III.3.4 Training and Capacity Building	47
III.3.5 Public Awareness Campaigns	47
III.3.6 Child Protection Services.....	47
III.3.7 Enforcement Mechanisms.....	47
III.3.8 Data Collection and Research	48
III.3.9 Collaboration with International Bodies	48
III.4 Partial Conclusion.....	48
GENERAL CONCLUSION AND RECOMMENDATIONS.....	49
GENERAL CONCLUSION.....	49
RECOMMENDATIONS.....	50
REFERENCES.....	59

LIST OF ACRONYMS AND ABBREVIATIONS

CLS	: Critical Legal Studies
ECOSOC	: Economic and Social Council
H.L.A. HART	: Herbert Lionel Adolphus Hart
IB	: Ibidem
ICCPR	: The International Covenant on Civil and Political Rights
ICESCR	: International Covenant on Economic, Social and Cultural Rights
ID	: Idem
LGBTQI+	: Lesbian, Gay, Bisexual, Transgender, Queer, and/or Questioning
NGOs	: Non-governmental Organizations
O.G	: Official Gazette
OL	: Organic Law
PACS	: Pacte Civil de Solidarité or Civil Solidarity Pact
UDHR	: Universal Declaration of Human Rights
ULK	: Université Libre de Kigali
UN	: United Nation

I. GENERAL INTRODUCTION

The legal landscape surrounding marriage and divorce has undergone significant evolution globally, particularly in the recognition and protection of the rights of lesbian, gay, bisexual, transgender, and queer individuals¹. Rwanda, like many other nations, has experienced shifts in societal attitudes towards non-heteronormative relationships, leading to a re-evaluation of legal frameworks governing marriage and divorce. Within this context, one of the key issues that arise is the treatment of adultery as a cause for divorce, particularly concerning a case involving lesbians and gays.

Adultery is traditionally defined as voluntary sexual intercourse between a married person and someone other than their lawful spouse², has historically been a prominent ground for divorce in many jurisdictions, including Rwanda. However, as societal perceptions of relationships and marriage continue to evolve, questions arise regarding the applicability and fairness of adultery laws, especially concerning lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals.

In the Rwandan legal system, which draws influences from civil law traditions, the interpretation and application of adultery laws in the context of same-sex relationships present unique challenges. The absence of explicit provisions addressing same-sex relationships in the country's legal framework complicates the assessment of adultery allegations involving lesbian, gay, bisexual, transgender, and queer individuals. This raises questions regarding the adequacy of existing legal frameworks in addressing the complexities of modern relationships and ensuring equitable treatment under the law.

This research seeks to undertake a comprehensive legal analysis of the challenges surrounding the application of adultery as a cause for divorce under Rwandan law, with a specific focus on its implications in a case involving lesbians and gays. By examining relevant statutes, judicial precedents, and scholarly commentary, this research aims to shed light on the legal complexities and potential injustices faced by aggrieved party in navigating the divorce process in Rwanda.

¹Marriage and Divorce: Changes and their Driving Forces available at https://www.nber.org/system/files/working_papers/w12944/w12944.pdf accessed on June 7, 2024

² <https://www.collinsdictionary.com/dictionary/english/adultery> accessed on June 7, 2024

Through this analysis, this research endeavors to contribute to the ongoing discourse on the reform of family law to better accommodate the rights and realities of diverse forms of relationships, including those of lesbian and gay couples. By identifying gaps and inconsistencies in the legal framework, it aims to provide insights that may inform future legislative reforms and judicial decisions aimed at promoting equality, fairness, and inclusivity within the Rwandan legal system.

I.1. Background of Study

The institution of marriage and the legal frameworks surrounding divorce are fundamental aspects of family law in Rwanda. Law n° 71/2024 of 26/06/2024, governs persons and family matters in the country, providing guidelines for marriage, divorce, and related issues³.

Article 248 of Law No. 71/2024 of 26/06/2024 stipulates adultery as one of the grounds for divorce, granting the aggrieved party the right to seek dissolution of the marital union⁴. However, the application of this provision becomes complex in cases involving sexual intercourse of one party with lesbians or gays, where one spouse discovers the other engaging in infidelity with a partner of the same sex.

The legal landscape surrounding same-sex relationships and divorce presents unique challenges in Rwanda. While the country has made significant progress in promoting equality and non-discrimination⁵, societal attitudes and cultural norms still influence legal interpretation and implementation.

Given this context, there is a need for a comprehensive legal analysis to examine the challenges and implications of adultery as a cause of divorce in cases involving same-sex relationships within the Rwandan legal framework. Such an analysis would shed light on the intersection of legal principles, human rights considerations, and societal perceptions regarding same-sex relationships and marital infidelity.

By exploring the legal precedents, interpretations, and practical implications of Article 248 in cases involving same-sex infidelity, this research aims to contribute to the understanding of family law dynamics in Rwanda and provide insights for legal practitioners, policymakers, and scholars.

³ Article 248, Law n° 71/2024 of 26/06/2024 governing persons and family, Official Gazette n° Special of 30/07/2024

⁴ Id page3

⁵ Article 16, Constitution of the republic of Rwanda, Official Gazette n° Special of 04/08/2023

I.2. PROBLEM STATEMENT

Despite legal provisions governing divorce proceedings in Rwanda, challenges arise when applying these laws to cases involving lesbian and gay individuals as a fact of infidelity in marital unions. Law n° 71/2024 of 26/06/2024 governing persons and family matters in Rwanda, identifies adultery as grounds for divorce, granting the aggrieved party the right to seek dissolution of the marital union⁶.

However, the interpretation and application of this provision shall become complex in situations where one spouse discovers the other engaging in infidelity with a partner of the same sex. The problem lies in the ambiguity and potential legal obstacles faced by the aggrieved party, particularly when one party is gay or lesbian and is seeking a divorce on grounds of adultery in Rwanda. While the law recognizes adultery as a valid reason for divorce, social attitudes, cultural norms, and legal interpretations shall hinder the equitable application of this provision to relationships involving a lesbian and gay. Additionally, there will be disparities in legal outcomes and access to justice for lesbians and gay individuals compared to heterosexual couples in similar circumstances situation which shall result in inequality of persons and against the Rwandan constitution on equality of persons before the law⁷ and international treaties on human rights as well⁸.

Addressing this problem requires a nuanced understanding of the legal challenges and implications surrounding adultery as grounds for divorce in cases involving lesbians and gays in Rwanda. By examining relevant legal provisions, case law, and scholarly literature, this research aims to identify obstacles, gaps, and potential solutions to ensure equitable access to divorce and legal remedies for a divorce case involving lesbian and gay individuals within the Rwandan legal system.

I.2.RESEARCH OBJECTIVES

In this research, the research objectives are crafted to provide a targeted investigation into the legal implications and challenges surrounding adultery as grounds for divorce in cases involving lesbians and gays in Rwanda.

⁶ Article 248, Law n° 71/2024 of 26/06/2024 governing persons and family, Official Gazette n° Special of 30/07/2024

⁷ Article 15, Constitution of the republic of Rwanda, Official Gazette n° Special of 04/08/2023

⁸ Article 13 and 14 of Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950

The research aims to tackle various legal challenges and practical issues within the Rwandan legal system, with both general and specific goals.

I.2.1. General Objective

To examine the legal implications and challenges of adultery as grounds for divorce in cases involving lesbians and gays in Rwanda.

I.2.2. Specific Objectives

To analyze the legal framework governing divorce proceedings and adultery as grounds for divorce under Article 248 of Law n° 71/2024 of 26/06/2024 governing persons and family in Rwanda.

To identify the legal mechanism to be in place when couples seek divorce on grounds of adultery under Article 248 of Law n° 71/2024 of 26/06/2024 governing persons and family in Rwanda.

These objectives provide a roadmap for the research, guiding the research process and facilitating the achievement of the desired outcomes. They encompass a range of areas, including legal analysis, social attitudes, stakeholder perspectives, and recommendations for legal reform, to comprehensively address the research topic.

I.3. SCOPE OF THE STUDY

This research is delimited in time, space, and domain to provide a focused examination of the legal framework and practices surrounding divorce proceedings in Rwanda, particularly concerning the utilization of adultery as grounds for divorce in cases involving lesbians and gays.

Scope in Time

The research has primarily focused on the legal framework and practices surrounding divorce proceedings in Rwanda after the enactment of Law n° 71/2024 of 26/06/2024 governing persons and family. It takes end in 2024 the year of completing my research.

Scope in Space

The geographical scope of the study is Rwanda, focusing on the legal landscape and practices within the Rwandan legal system. It will consider legal principles, court decisions, and legislative developments at the national level.

Scope in Domain

The present research falls under Rwandan family and person law.

1.6. RESEARCH QUESTIONS

1. How does analyzing adultery as grounds for divorce impact equitable access to divorce for individuals identifying as lesbian and gay in Rwanda?
2. What mechanisms should be in place when a couple seeks a divorce on the grounds of adultery?

1.7. RESEARCH HYPOTHESIS

The research provides two provisional and operational responses to the aforementioned inquiries, aiming to elucidate the complex dynamics surrounding interpretations of adultery as grounds for divorce and their impact on equitable access to divorce proceedings for individuals identifying as lesbian and gay in Rwanda.

1.7.1. Hypothesis One

Analyzing adultery as grounds for divorce disproportionately limits equitable access to divorce for lesbian and gay couples in Rwanda.

1.7.2. Hypothesis Two

Mechanisms should be established to guide the process when couples seek divorce on the grounds of adultery.

1.8. RESEARCH TECHNIQUES AND METHODS

In this section, a combination of research techniques and methods will be employed to comprehensively explore the legal challenges surrounding adultery as grounds for divorce in lesbian and gay relationships in Rwanda.

1.8.1. RESEARCH TECHNIQUE

For the present research, the following technique has been used: Documentary techniques.

1.8.2. RESEARCH METHODS

In the course of this research, I employed analytical, exegetic, and synthetic methodologies to comprehensively explore and analyze pertinent information about the subject matter at hand:

1. Analytical Method

This method involves systematically analyzing legal principles, statutes, and case law to identify patterns, interpret legal provisions, and conclude.

I applied the analytical method to examine the text of Law n° 71/2024 of 26/06/2024 governing persons and family, and relevant legal documents governing divorce and adultery in Rwanda. I analysed the language, structure, and interpretation of these legal provisions to understand their implications for same-sex couples seeking divorce on grounds of adultery.

2. Exegetic Method

The exegetic method focuses on interpreting and explaining legal texts, often through close reading and interpretation of statutory law and legal commentary. I used the exegetic method to interpret the language and intent of Article 248 of Law n° 71/2024 of 26/06/2024 governing persons and family, examining how legal scholars and commentators have interpreted this provision in the context of adultery and divorce in Rwanda. By analyzing legal commentary, scholarly literature, and judicial opinions to understand different interpretations and perspectives on the application of this law to same-sex couples.

3. Synthetic Method

The synthetic method involves synthesizing various sources of legal information, including statutes, case law, legal commentary, and empirical data, to develop a comprehensive understanding of legal issues. Apply the synthetic method to integrate findings from legal document analysis, policy analysis, and comparative research to develop nuanced insights into the legal challenges surrounding adultery as grounds for divorce in same-sex relationships in Rwanda. I synthesized findings from different research methods to formulate recommendations for legal reform and policy development.

I.9. SUBDIVISION OF THE STUDY

The present research begins with a general introduction, followed by Chapter one entitled " Conceptual And Theoretical Framework"

Chapter Two " Analyzing Of Adultery As Grounds For Divorce Disproportionately Hinders Equitable Access To Divorce For Lesbian And Gay Couples In Rwanda"

Chapter Three: " Legal And Institutional Mechanisms To Be In Place When Couples Seek Divorce On Grounds Of Adultery Under Article 248 Of Law No. N° 71/2024 Of 26/06/2024 Governing Persons And Family In Rwanda ". Finally, it is ended by the General conclusion as well as Recommendations.

CHAPTER I: CONCEPTUAL AND THEORETICAL FRAMEWORK

I.0. INTRODUCTION

The conceptual and theoretical framework of legal analysis on the challenges to adultery as a cause of divorce under Rwandan law, particularly in the context of cases involving lesbian and gay individuals, delves into the intricate intersection of legal principles, societal norms, and human rights considerations. In exploring this framework, it is essential to examine the foundational legal principles governing marriage and divorce in Rwanda, alongside the evolving understanding of human rights, equality, and non-discrimination within the legal landscape.

Additionally, this analysis must navigate the complex dynamics surrounding sexual orientation, societal attitudes, and the protection of individual liberties, particularly for marginalized groups such as the Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and others (LGBTIQ+) community. By scrutinizing the legal, social, and cultural dimensions of adultery as grounds for divorce within the Rwandan legal framework, this framework seeks to elucidate the challenges faced by individuals belonging to the lesbian and gay community in accessing legal remedies and protection within the realm of marriage and family law.

I.1 Conceptual framework

The conceptual framework of this research, focusing on the key concept of the challenges surrounding adultery as a cause of divorce under Rwandan law, particularly in cases involving lesbian and gay couples, revolves around several key concepts:

I.1.1 Concept of Legal Recognition

Legal recognition refers to the acknowledgment and acceptance of certain rights, statuses, or identities by the legal system or governing authorities⁹. It often involves granting legal rights, protections, and privileges to individuals, groups, or entities based on specific criteria, such as citizenship, marital status, gender identity, or sexual orientation¹⁰. Legal recognition can vary widely across different jurisdictions and may evolve through legislative changes, judicial rulings, or administrative decisions.

⁹ [International Covenant on Civil and Political Rights](#), Article 16

¹⁰ <https://www.unwomen.org/sites/default/files/2023-07/lgbtiq-equality-and-rights-internal-resource-guide-en.pdf>

I.1.2 Concept of Legal Protection

Legal protection encompasses the various measures and mechanisms put in place by the legal system to safeguard individuals, groups, or entities from harm, discrimination, infringement of rights, or any other forms of injustice. Legal protection can encompass a wide range of areas, including civil rights, human rights, property rights, contractual rights, and more¹¹. It often involves the establishment and enforcement of laws, regulations, and policies aimed at preventing and addressing violations of rights and ensuring access to justice for all¹².

I.1.3 Concept of Gender Equality

Gender equality means that everyone, regardless of their gender, should have equal rights, opportunities, and treatment in all aspects of life, including in the family, workplace, and society. It involves ensuring that women and men enjoy the same rights, responsibilities, and opportunities and that no one is discriminated against based on their gender¹³.

I.1.4 Concept of Non-Discrimination

Non-Discrimination entails the principle of treating individuals equally and fairly, regardless of their characteristics, such as race, ethnicity, nationality, gender, religion, sexual orientation, disability, age, or any other protected status. It involves ensuring that all individuals have the same opportunities, rights, and access to resources without facing unjust or prejudicial treatment¹⁴.

I.1.5 Concept of family Law dynamics

Family Law dynamics encompasses the legal principles, regulations, and practices governing familial relationships, including marriage, divorce, child custody, adoption, inheritance, and domestic violence. It involves understanding the evolving nature of family structures and addressing issues related to rights, responsibilities, and disputes within families¹⁵.

¹¹ Blackstone, W. (1765). Commentaries on the Laws of England. Oxford: Clarendon Press available at https://avalon.law.yale.edu/subject_menus/blackstone.asp accessed on May 29, 2024

¹² id

¹³ United Nations. (2015). Transforming our world: the 2030 Agenda for Sustainable Development available at <https://sdgs.un.org/2030agenda> accessed on May 29, 2024

¹⁴ Fredman, S. (2011). Discrimination Law. Oxford University Press available at <https://global.oup.com/academic/product/discrimination-law-9780198859277?cc=rw&lang=en&> accessed on May 29, 2024

¹⁵ Brinig, M. F. (2000). From Contract to Covenant: Beyond the Law and Economics of the Family. Harvard University Press. Available at https://books.google.rw/books?id=a0UgKXTd_VcC&printsec=frontcover&source=gbs_atb#v=onepage&q&f=false accessed on May 29, 2024

I.1.6 Concept of Socio-Legal Perspectives

Socio-legal perspectives examine the interaction between law and society, focusing on how legal rules, institutions, and processes shape, and are shaped by social, cultural, economic, and political factors. These perspectives consider the broader social context in which law operates, including its impact on individuals, communities, and social norms. Socio-legal research often employs interdisciplinary methods, drawing on insights from sociology, anthropology, political science, and other fields to understand the complexities of law in practice¹⁶.

I.1.7 Concept of Marriage

Marriage refers to the legally recognized union between a man and a woman, typically entered into to create a lifelong partnership, sharing responsibilities, and enjoying certain legal rights and benefits¹⁷. Marriage can take various forms across different cultures and legal systems, but it often involves mutual consent¹⁸, legal formalities, and obligations between spouses.

I.1.8 Concept of Divorce

Divorce refers to the legal dissolution or termination of a marriage, ending the marital relationship between spouses. Divorce may involve various legal proceedings, such as filing a petition, negotiating terms of separation, division of assets, child custody arrangements, and the issuance of a decree by a court or other authorized body. Divorce laws and procedures vary widely across different jurisdictions, reflecting cultural, religious, and societal norms¹⁹.

I.1.9 Concept of Adultery

Adultery refers to the act of engaging in sexual relations with someone other than one's spouse while legally married²⁰. It is often considered a breach of marital fidelity and can have legal, social, and emotional implications. The definition and consequences of adultery vary across different legal systems and cultures, with some jurisdictions treating it as a civil offense, grounds for divorce, or even a criminal offense punishable by law.

¹⁶ Silbey, S. S. (2001). "Legal Culture and Cultures of Legality." In *The Blackwell Companion to Law and Society*, edited by Austin Sarat, 30-54. Blackwell Publishing. Available at <https://file.hukum.uns.ac.id/data/PDIH%20File/e-book/Roger%20Cotterrell%2C%20Law%2C%20Culture%20and%20Society.%20Legal%20Ideas%20in%20the%20Mirror%20of%20Social%20Theory.pdf> accessed on May 29, 2024

¹⁷ Article 17, Constitution of the Republic of Rwanda, Official Gazette n° Special of 04/08/2023

¹⁸ International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 10

¹⁹ Emery, R. E. (2013). *Cultural Sociology of Divorce* available at <https://www.perlego.com/book/1005810/cultural-sociology-of-divorce-an-encyclopedia-pdf> accessed on May 29, 2024

²⁰ <https://www.britannica.com/topic/adultery> accessed on June 7, 2024

I.1.10 Concept of family

A family may generally be understood as a natural and important part of society. It should be protected and supported by both society and the government²¹.

Also refers to a social unit comprised of individuals who are related by blood, marriage, adoption, or other legal ties, and who share emotional, economic, and social bonds and are subjected to protection and assistance from the state²².

I.1.11 Concept of Lesbian, Gay, Bisexual, Transgender, Queer or Questioning

The concept of **LGBTQ**-Lesbian, Gay, Bisexual, Transgender, Queer, or Questioning-represents a diverse group of individuals whose sexual orientations and gender identities differ from traditional norms. These identities are important to acknowledge in legal discussions, especially as they raise specific challenges within legal frameworks that often cater to heterosexual relationships. In the context of Rwandan law, understanding these identities is crucial when addressing issues such as marriage, divorce, and equality before the law.

I.1.11.1 Lesbian

A Lesbian is a woman who is sexually and romantically attracted to other women²³.

I.1.11.2 Gay

A Gay is commonly used to describe men who have a sexual orientation towards other men, though it can also encompass individuals who identify as non-binary or transgender and are attracted to individuals of the same gender²⁴.

I.1.11.3 Bisexual

A Bisexual refers to individuals who are romantically and sexually attracted to persons of both the same and different genders. Bisexuality is a sexual orientation that encompasses attraction to more than one gender²⁵.

²¹ Universal Declaration of Human Rights (UDHR, Art. 16(3))

²² International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 10

²³ <https://www.vanderbilt.edu/lgbtqi/resources/definitions> accessed on May 19, 2024

²⁴ <https://www.aecf.org/blog/lgbtq-definitions> accessed on May 19, 2024

²⁵ Idem, page14

I.1.11.4 Transgender

A Transgender refers to individuals whose gender identity differs from the sex assigned to them at birth²⁶. A transgender person may identify as male, female, both, neither, or as another gender altogether. Transgender individuals may undergo medical procedures, such as hormone therapy or gender-affirming surgery, to align their physical appearance with their gender identity.

I.1.11.4 Intersex

Intersex refers to individuals born with physical sex characteristics that do not fit typical binary notions of male or female bodies²⁷.

I.1.11.5 Queer

A Queer is used broadly to describe individuals whose sexual orientation, gender identity, or gender expression does not conform to societal norms or expectations. Queer can encompass a diverse range of identities, including but not limited to lesbian, gay, bisexual, transgender, intersex, asexual, non-binary, genderqueer, and other non-conforming identities²⁸.

I.1.11.6 Questioning

Questioning refers to individuals who are uncertain or exploring their sexual orientation, gender identity, or gender expression²⁹. Questioning individuals may be in the process of self-discovery and may not yet have a clear understanding or label for their identity. It is important to recognize that questioning is a valid and common experience for many people as they navigate their identities.

I.1.11.7 THE +

The "+" represents inclusivity for other sexual orientations, gender identities, and expressions that are not explicitly listed but are part of the diverse LGBTQ+ community. These may include identities such as asexual, pansexual, non-binary, genderqueer, and more³⁰.

²⁶ Idem, page14

²⁷ Ibidem, page14

²⁸ <https://www.stonewall.org.uk/list-lgbtq-terms> accessed on May 19, 2024

²⁹ Idem, page15

³⁰ Idem, page15

I.1.12 Heterosexual

In the context of the Anti-Discrimination Act 1991, "heterosexual" refers to one's sexual orientation, characterized by romantic or sexual attraction to individuals of the opposite gender. It is commonly referred to as "straight" in everyday language³¹.

I.1.13 PACS “Pacte Civil de Solidarité- civil solidarity pact

A civil union (civil solidarity pact) is an agreement between two unmarried adults, regardless of whether they are of the same or opposite sex, enabling them to organize their lives together³².

In French law, its aim is to provide a legal framework for couples, whether of the same or opposite sex, to formalize their relationship and organize their life together without getting married.

I.1.14 Homosexuality

Homosexuality refers to the romantic, emotional, and sexual attraction between individuals of the same sex or gender. In other words, a person who identifies as homosexual typically experiences attraction to people who share their gender³³. This can manifest in a variety of ways, including through relationships, desire, and identity. Homosexuality is a natural variation of human sexuality and is recognized as such by major medical and psychological organizations worldwide. It is one aspect of the broader spectrum of sexual orientations, which also includes heterosexuality, bisexuality, and other identities³⁴.

I.2 THEORETICAL FRAMEWORK

This section deals with different views of international legal scholars and the image of international laws and national law.

I.2.1 Legal positivism

Legal positivism has a long history and has been influential in various fields. It originated from ancient political philosophy and was further developed in medieval legal and political thought. Modern legal positivism is largely based on the ideas of philosophers like Hobbes, Hume, and Bentham.

³¹ <https://www.qhrc.qld.gov.au/your-rights/for-lgbtq-people/lgbtq-terminology> accessed on May 19, 2024

³² <https://www.notaires.fr/en/couple-family/civil-union-solidarity-civil-pact-pacs> accessed on June 9, 2024

³³ <https://www.apa.org/topics/lgbtq/orientation>, accessed on June 9, 2024

³⁴ <https://www.who.int/publications/i/item/9789241507325>, accessed on June 9, 2024

Initially, it focused on law as the command of a sovereign backed by force. However, by the mid-twentieth century, this perspective had evolved. The emphasis shifted to law-applying institutions like courts, and there was a focus on the systematic and normative aspects of law. Contemporary legal positivism is associated with figures like Hans Kelsen, H.L.A. Hart, and Joseph Raz.

While there are disagreements among scholars, they generally agree that law is a social fact. Some confuse legal positivism with other doctrines like logical positivism or sociological positivism, but they are distinct. Legal positivism does not necessarily reject moral doctrines, but it emphasizes that the existence of law depends on social facts rather than moral considerations³⁵.

In emphasizing this, every society has ways to regulate behavior and resolve disputes, but legal systems have unique characteristics. Some argue that understanding the law requires knowing what sets it apart and what it shares with other social controls. Early legal thinkers like Bentham and Austin viewed law as commands from a sovereign authority, backed by force. However, modern legal philosophy has moved away from this view, emphasizing the social and normative aspects of law. Figures like Hans Kelsen and H.L.A. Hart have contributed to contemporary legal positivism, which sees law as rooted in social facts rather than moral considerations.

Kelsen proposed the idea of a basic norm underlying legal systems, while Hart emphasized the role of social rules and customs in determining the validity of law. Despite differing views, legal positivists generally agree that the existence of law does not necessarily imply its moral justification, and disobedience may be justified in certain circumstances³⁶. In consideration of legal positivism, their thoughts of legal positivism helped me to analyze the challenges that may be faced by individuals when seeking a divorce on the grounds of adultery under Rwandan law in cases involving lesbians and gays. Legal positivism, as discussed by scholars like Hans Kelsen and H.L.A. Hart, emphasizes that the validity and existence of law are determined by social facts rather than moral considerations³⁷.

³⁵ Legal Positivism - Stanford Encyclopedia of Philosophy retrieved at <https://plato.stanford.edu> › entries › legal-positivism accessed on May 12, 2024

³⁶ Idem, page33

³⁷ Idem, page33

In the context of Rwandan law, which recognizes marriage only between a man and a woman³⁸ and permits divorce on the grounds of adultery³⁹, legal positivism suggests that the law is based on social norms and practices. This means that the legal framework regarding divorce and adultery reflects the prevailing social attitudes and values. However, legal positivism also acknowledges that legal systems may evolve and cannot always align with societal norms⁴⁰.

In the case of Rwandan law, where same-sex marriages are not recognized and divorce laws are based on traditional heterosexual relationships, there is a discrepancy between the legal framework and the lived experiences of individuals where the case of adultery may involve lesbians and gays.

By applying the principles of legal positivism, I explore how the exclusion of same-sex relationships from divorce laws based on adultery reflects the prevailing social attitudes and norms in Rwanda, and it can examine the potential challenges faced by individuals who are seeking legal remedies for infidelity within their relationship, highlighting the disconnect between legal doctrine and social realities.

I.2.2 Legal Realism

Legal realism is a theory in law that says laws are shaped by what society currently values and the policies it adopts. Unlike legal formalism, which focuses solely on rules, legal realism believes that judges should also take into account societal interests and public policies when deciding cases⁴¹.

In the context of my dissertation on challenges to adultery as grounds for divorce under Rwandan law, legal realism suggests considering the broader social and international human rights perspectives.

While Rwandan law permits divorce based on adultery and recognizes marriages only between men and women, it remains silent on same-sex marriages. This omission poses challenges for individuals in recognized marriages under Rwandan law seeking divorce due to adultery involving a same-sex partner.

³⁸ Article 17, Constitution of the Republic of Rwanda, Official Gazette n° Special of 04/08/2023

³⁹ Article 248, Law n° 71/2024 of 26/06/2024 governing persons and family, Official Gazette n° Special of 30/07/2024

⁴⁰ *Ib.* page 17

⁴¹ <https://www.lsd.law/define/legal-realism> retrieved on May 12, 2024

Legal realism prompts an examination of how international human rights instruments, which Rwanda has ratified, may influence legal interpretations and practices. For instance, Rwanda's membership in the UN and its commitment to various human rights treaties mean that individuals can seek recourse through international mechanisms for violations of their rights, including those related to LGBTI (lesbian, gay, bisexual, transgender, and intersex) individuals.

By acknowledging the influence of international human rights norms and mechanisms on domestic legal systems, legal realism encourages a nuanced analysis of the challenges faced by individuals in same-sex marriages seeking divorce on the grounds of adultery in Rwanda. This approach highlights the importance of considering formal legal rules and broader social and international perspectives in addressing legal issues affecting LGBTI individuals.

I.2.3 Feminist Legal Theory

Fifty years after the second wave of feminism began, feminist legal scholars are still discussing topics like money, sex, reproduction, and jobs.

However, the way they discuss these topics has changed. They now understand power in a more detailed and complex way. Recent studies show how power works in society today, how it keeps sex inequality in place, and how the law can help reduce inequality and give people more control over their lives.

The feminist legal scholars in this collection reflect this new approach. They look closely at the connections between gender, equality, and power in areas like sex, reproduction, pleasure, work, and money. They also explore how different forces, political, economic, developmental, psychological, and physical power both inside and outside of us. Finally, they carefully consider how the law can make a difference given these complex ideas about power⁴².

Feminist legal theory critiques traditional legal frameworks from a gender perspective and seeks to address inequalities and injustices experienced by women and marginalized groups. Within this framework, the adultery laws may disproportionately affect women and LGBTQ+ individuals, perpetuating gender-based discrimination and reinforcing heteronormative norms within marriage and divorce proceedings.

⁴² <https://law.unc.edu/eichner-research/> accessed on June 7, 2024

1.2.4 Critical Legal Studies

Critical Legal Studies (CLS) is a way of looking at the law that says the legal system keeps the current conditions for money, race, and gender the same. This is because the law uses flexible ideas and creates a false idea that everything is fair. Some CLS scholars focus on money, others on gender, and others on race. They are known as CLS for short⁴³. Critical legal studies challenge the idea of law as neutral and objective, instead emphasizing its role in perpetuating power imbalances and social hierarchies.

In my research, Applying Critical Legal Studies (CLS) to adultery laws reveals how these laws reinforce traditional societal norms related to gender, sexuality, and marriage, often to the detriment of lesbian and gay individuals.

Adultery laws typically uphold gender inequalities and heteronormative assumptions, marginalizing non-heterosexual relationships. In divorce proceedings, these laws can lead to legal invisibility and biased outcomes for LGBTQ+ individuals.

Courts may exhibit discriminatory attitudes, and same-sex infidelity is often treated more harshly, affecting decisions on alimony, child custody, and property division, thereby exacerbating economic and social inequalities. CLS highlights the need for legal reforms that ensure fair treatment and protection for all individuals, regardless of their sexual orientation or gender.

1.2.5 Human Rights Basic Approach

A human rights-based approach aims to empower individuals to understand and assert their rights while enhancing the capacity and accountability of individuals and institutions tasked with upholding these rights. This involves providing individuals with more opportunities to engage in decision-making processes that affect their human rights.

It also entails strengthening the capacity of duty-bearers to recognize and honor human rights, as well as ensuring mechanisms for accountability are in place. A human rights-based approach seeks to embed both the standards and principles of human rights into policymaking and the everyday operations of organizations⁴⁴.

⁴³ <https://www.lsd.law/define/critical-legal-studies> accessed o June 7, 2024

⁴⁴ <https://careaboutrights.scottishhumanrights.com/whatisahumanrightsbasedapproach.html> retrieved on May 15, 2024

By Analysing the essence of a Human Rights Basic Approach within the theoretical framework of my dissertation involves considering how human rights principles can address the challenges faced by individuals in same-sex marriages under Rwandan law.

I.2.5.1 Empowerment

A human rights-based approach entails ensuring that individuals and communities are aware of their rights and are empowered to engage in the development of policies and practices that impact their lives. It also involves providing full support for them to assert their rights when needed⁴⁵. Empowerment holds fundamental importance in applying a human rights-based approach, especially in the context of my research on the challenges faced by individuals seeking divorce in cases involving a lesbian and gay under Rwandan law:

A) Informing Rights: Empowerment involves ensuring that individuals understand their rights under international human rights instruments and how they apply to their specific situation.

In the case of same-sex couples seeking divorce in Rwanda, empowerment would entail providing them with information about their rights to equality, non-discrimination, and access to legal remedies⁴⁶.

B) Advocacy Skills: Empowerment also includes equipping individuals with the skills and resources to advocate for themselves effectively.

This could involve providing legal education and training to same-sex couples and LGBTQ+ advocacy groups in Rwanda, enabling them to navigate the legal system and assert their rights in cases of divorce based on adultery⁴⁷.

C) Access to Justice: Empowerment extends to ensuring that individuals have meaningful access to justice and legal remedies. In the context of my research, this would involve advocating for reforms to Rwandan family law to ensure that it is inclusive of all couples, regardless of sexual orientation, and that individuals in same-sex marriages have equal access to divorce proceedings and remedies for adultery⁴⁸.

⁴⁵ Id, page21

⁴⁶ Id, page21

⁴⁷ Id, page21

⁴⁸ Id, page21

D) Community Support: Empowerment also involves fostering community support and solidarity among LGBTQ+ individuals and allies. This could include creating support networks, providing counseling services, and raising awareness about the rights and challenges faced by same-sex couples in Rwanda.

By prioritizing empowerment in my research, I can contribute to advancing the rights of any aggrieved party in a case of divorce involving a lesbian and gay individual in Rwanda and promoting a legal system that is inclusive, equitable, and respectful of human rights principles.

I.2.5.2 Accountability

In ensuring accountability, it's essential to actively monitor adherence to human rights standards and provide adequate remedies for violations of those rights. Effective accountability relies on having suitable laws, policies, institutions, administrative procedures, and redress mechanisms in place to safeguard human rights⁴⁹.

In applying a human rights-based approach to my research on legal analysis on the challenge of adultery as a cause for divorce under Rwandan law, particularly concerning lesbians and gays, accountability plays a fundamental role.

Firstly, accountability implies that there should be mechanisms in place to ensure that human rights standards are monitored effectively. This means that legal frameworks, institutions, and procedures should be in place to uphold these standards. In the case of Rwanda, while family law permits divorce on the grounds of adultery, the exclusion of same-sex marriages from legal recognition poses a challenge.

This lack of recognition may undermine the accountability of the legal system in addressing the rights of lesbians and gays as well as of aggrieved parties particularly when it comes to seeking divorce due to adultery involving a lesbian or gay.

Secondly, accountability necessitates the availability of effective remedies for human rights breaches. In the context of divorce law, this means that individuals should have access to legal recourse and remedies if their rights are violated. However, the absence of legal recognition for same-sex marriages in Rwanda may limit the ability of individuals in such situations to access appropriate legal remedies in cases of adultery.

⁴⁹ Idem, pagr21

This lack of accountability in addressing the rights of individuals in same-sex relationships under Rwandan law highlights the importance of reforming legal frameworks to ensure equal access to justice and protection of rights for all individuals, regardless of sexual orientation.

Accountability is essential for ensuring the effective application of a human rights-based approach to legal matters such as divorce law. In the case of Rwanda, addressing the challenges faced by individuals in same-sex marriages seeking divorce due to adultery requires accountability mechanisms that uphold the rights of all individuals, irrespective of sexual orientation, and provide effective remedies for rights violations.

I.2.5.3 Participation and Inclusion

refers to how every individual possesses the entitlement to engage in decisions that impact their human rights. Such participation should be lively, voluntary, substantial, and consider aspects of accessibility, including the availability of information presented in a comprehensible format and language⁵⁰.

Inclusion is closely linked to human rights. Inclusive societies create development policies that embrace the diversity of their populations, ensuring that everyone can fully participate regardless of their status. This approach focuses on removing structural or legal barriers that discriminate against specific individuals or groups. Therefore, inclusion involves not only integrating traditionally excluded groups but also eliminating various forms of discrimination that perpetuate marginalization based on arbitrary factors such as age, gender, or skin color⁵¹.

Participation is a core component of a human rights-based approach, emphasizing that every individual has the right to engage in decisions affecting their human rights⁵². This engagement should be active, voluntary, substantial, and accessible. For the lesbian and gay community in Rwanda, effective participation in legal and policy-making processes is crucial, particularly regarding the recognition and protection of their relationships and rights.

⁵⁰ Idem, page21

⁵¹ Empowerment, Inclusion, Equality: Accelerating sustainable development with human rights accessed at <https://www.ohchr.org/sites/default/files/Documents/Issues/MDGs/Post2015/EIEPamphlet.pdf> retrieved on May 17, 2024

⁵² Ibidem, page21

In the context of Rwandan family law, the participation of LGBTQ+ individuals is fundamentally hindered by the law's silence on same-sex relationships. This exclusion creates a significant barrier to their ability to influence decisions and policies that affect their lives, particularly those related to marriage and divorce. If the law explicitly recognized same-sex marriages, LGBTQ+ individuals would have a platform to voice their concerns, seek legal protections, and influence reforms that reflect their lived experiences.

Inclusion in human rights terms means ensuring that development policies and societal structures embrace the diversity of all people, allowing everyone to fully participate, irrespective of their status. This includes dismantling structural and legal barriers that perpetuate discrimination and marginalization. Rwandan law's recognition of only heterosexual marriages effectively excludes same-sex couples from the legal framework governing marriage and divorce. This exclusion not only denies same-sex couples the legal protections and rights afforded to heterosexual couples but also perpetuates their marginalization and invisibility in society.

I.2.5.3.1 Structural Barriers and Discrimination

The exclusion of same-sex couples from the legal definition of marriage and the associated rights, such as the grounds for divorce, is a clear example of structural discrimination⁵³. This legal framework fails to account for the reality of same-sex relationships, leaving individuals in these relationships without recourse in instances of infidelity or other marital issues.

I.2.5.3.2 Human Rights and Legal Reform

Incorporating a human rights-based approach to legal reform in Rwanda would involve recognizing and addressing these structural barriers.

This would mean amending family laws to include and protect same-sex relationships, thus ensuring that all individuals, regardless of their sexual orientation, have equal access to legal remedies and protections⁵⁴.

⁵³ Id, page24

⁵⁴ Id, page24

I.2.5.3.3 Impact on Adultery as Grounds for Divorce

Under the current legal framework, a heterosexual individual in a recognized marriage can seek a divorce on the grounds of adultery if their spouse engages in infidelity. However, for same-sex couples as well as one party is lesbian or gay, where the law does not recognize their relationship, there is no legal basis to seek divorce on similar grounds⁵⁵. This disparity creates an inequitable situation where same-sex couples are denied the same legal recourse available to heterosexual couples, reinforcing their marginalization.

I.3 Partial Conclusion

This provisional conclusion highlights the significant challenges associated with adultery as grounds for divorce under Rwandan law, particularly for cases involving lesbian and gay individuals. The analysis explores the intersection of legal recognition, protection, gender equality, and non-discrimination, emphasizing how current Rwandan law fails to recognize same-sex marriages, thereby excluding such relationships from legal protections.

Legal theories such as positivism, realism, critical legal studies, feminist legal theory, and a human rights-based approach underscore the need for broader social and cultural considerations in legal interpretations.

These perspectives advocate for legal reforms to align Rwandan law with international human rights standards, ensuring equality and non-discrimination.

Empowerment, accountability, and participation are identified as key principles for fostering an inclusive legal system. The conclusion calls for urgent legal reforms to recognize and protect same-sex relationships, ensuring equal access to justice and legal remedies for all individuals, regardless of sexual orientation. This would help Rwanda achieve a more equitable legal framework that upholds the rights of all its citizens.

⁵⁵ Id, page24

CHAPTER II. ANALYZING OF ADULTERY AS GROUNDS FOR DIVORCE DISPROPORTIONATELY HINDERS EQUITABLE ACCESS TO DIVORCE FOR LESBIAN AND GAY COUPLES IN RWANDA.

II.0. INTRODUCTION

The interpretation of adultery as grounds for divorce is a pivotal aspect of family law systems worldwide, shaping the dissolution of marriages and the rights of individuals within them. In the Rwandan legal context, where adherence to legal principles is paramount, the application of adultery laws significantly impacts access to divorce, particularly for lesbian and gay couples. This chapter delves into the interpretations of adultery within Rwandan law and their implications for equitable access to divorce, with a specific focus on the experiences of lesbian and gay couples.

Rwanda, a nation known for its progressive legal reforms and commitment to equality, faces complexities in reconciling legal principles with social attitudes toward gender and sexuality. The Rwandan Family Code outlines adultery as one of the grounds for divorce, reflecting legal positivism's emphasis on formal legal rules. However, the application and interpretation of adultery laws by Rwandan courts may not always align with principles of equality and non-discrimination, particularly concerning lesbian and gay individuals seeking divorce.

This chapter seeks to explore how interpretations of adultery as grounds for divorce hinder equitable access to divorce for lesbian and gay couples in Rwanda. It examines legal precedents, judicial discretion, and social attitudes toward gender and sexuality within the Rwandan legal system. By critically analyzing these interpretations, this chapter aims to shed light on the challenges faced by lesbian and gay couples in accessing divorce and advocate for reforms to promote equality and justice within Rwandan family law.

II.1 Overview of Adultery as grounds for divorces under Rwandan law

In Rwandan law, adultery serves as one of the recognized grounds for divorce, highlighting its significance in marital dissolution proceedings. The legal framework surrounding adultery in Rwanda is guided by statutory provisions outlined in Law n° 71/2024 of 26/06/2024 governing persons and family, and the law n° 69/2019 of 08/11/2019 amending law n° 68/2018 of 30/08/2018 determining offenses and penalties in general, which define and regulate the conditions under which adultery may be invoked as a basis for divorce.

According to the laws, adultery is broadly defined as the act of sexual intercourse between a legally married person and someone other than their spouse⁵⁶. This definition establishes a clear criterion for identifying instances of adultery within the context of marriage, emphasizing the importance of marital fidelity and commitment under Rwandan law.

The recognition of adultery as grounds for divorce underscores the seriousness with which marital infidelity is regarded within Rwandan society. By providing legal recourse for spouses who have been subjected to adultery, the law seeks to uphold the sanctity of marriage and protect the interests of individuals who have been wronged by their partners' extramarital affairs, and this should be done to protect a Rwandan family⁵⁷.

II.2 Interpretations of Adultery as grounds for divorce under Rwandan law

In Rwanda, adultery is recognized as one of the grounds for divorce under the law of persons and Family⁵⁸. This legal provision reflects the formal legal rule that adultery, as defined by the law, can serve as a basis for the dissolution of marriage. However, the interpretation and application of adultery as a ground for divorce by Rwandan courts play a crucial role in determining the accessibility of divorce and is in the peremptory category requires the judge to grant a divorce without having to assess the severity of the misconduct⁵⁹, particularly for heterosexual couples and excluding lesbian and gay relationships.

The interpretation of adultery within Rwandan law is primarily guided by statutory provisions outlined in law n° 69/2019 of 08/11/2019 amending law n° 68/2018 of 30/08/2018 determining offenses and penalties in general, in its article5 defines adultery as the act of sexual intercourse between a person who is legally married and someone other than their spouse⁶⁰, providing a legal framework for determining when adultery has occurred. This statutory definition serves as the foundation for judicial interpretation in divorce cases involving allegations of adultery.

⁵⁶ Article5, Law n° 69/2019 of 08/11/2019 amending law n° 68/2018 of 30/08/2018 determining offences and penalties in general, *Official Gazette n° Special of 29/11/2019*

⁵⁷ Article18, Constitution of the Republic of Rwanda, Official Gazette n° Special of 04/08/2023

⁵⁸ Article248, Law n° 71/2024 of 26/06/2024 governing persons and family,

⁵⁹ Idem, page30

⁶⁰ Article5, law n° 69/2019 of 08/11/2019 amending law n° 68/2018 of 30/08/2018 determining offences and penalties in general, *Official Gazette n° Special of 29/11/2019*

Rwandan courts play a central role in interpreting and applying adultery laws in divorce proceedings. Judicial decisions provide valuable insights into how courts interpret the statutory definition of adultery and apply it to specific cases.

Case law from Rwandan courts offers examples of how adultery has been defined, proven, and adjudicated in divorce cases, shaping the legal landscape surrounding divorce proceedings.

II.3 Interpretations of Adultery as grounds for divorce under Rwandan Law in a Case involving lesbian and gay.

The Rwanda laws are silent on homosexuality, interpreting adultery as grounds for divorce in a case involving a lesbian or gay couple will present significant challenges, and the Rwandan courts will face many challenges in approaching this situation on access to legal remedies for an aggrieved party, and the challenges of interpreting adultery in cases involving same-sex actions

II.3.1 Legal Framework and Interpretation

In respect of existing legal provisions related to marriage, Rwandan laws recognize only marriage. Being a solemn legal act, civil marriage is the voluntary union of a man and a woman⁶¹ by mandatory rules established by the law. The Rwandan Constitution and family law recognize monogamous marriage and prohibit then polygamy bigamy or any form of marriage⁶².

A divorce is legally defined as the dissolution of a marriage announced by a court⁶³, which do not explicitly address same-sex relationships. This may create ambiguity in interpreting adultery laws in the context of same-sex couples.

II.3.2 Application of General Principles of Laws

In exploring the legal challenges associated with adultery as a cause for divorce under Rwandan law, particularly in the context of a case involving lesbians and gays, it is essential to ground the analysis within broader legal principles. This section aims to examine how general principles of law apply to the issue at hand, providing a framework for understanding the broader implications of these principles on the specific challenges faced by non-heteronormative couples in the Rwandan legal system.

⁶¹ Article 17, Constitution of the Republic of Rwanda, Official Gazette n° Special of 04/08/2023

⁶² Id, page 31

⁶³ Dictionary of Legal Terms Kinyarwanda-English-French, 1st edition 2021

General principles of law serve as foundational concepts that guide the interpretation and application of legal norms. They reflect fundamental values such as fairness, equality, and justice, which are crucial when assessing how laws are applied to diverse groups within society.

By analyzing how these principles intersect with the legal treatment of adultery in divorce proceedings, this section will highlight the gaps and inconsistencies that may arise, particularly for lesbian and gay couples who face unique legal and social challenges.

II.3.2.1 Respect for Human Rights

This principle emphasizes the protection and promotion of fundamental human rights and freedoms, such as the right to life, liberty, and security of person, as well as economic, social, and cultural rights⁶⁴. Applying the principle of Respect for Human Rights to the case where adultery is accepted as a valid ground for divorce for heterosexual couples in Rwanda, while the law is silent on same-sex relationships, raises important considerations regarding equality and non-discrimination based on sexual orientation.

Let's analyze this situation in light of the principle of Respect for Human Rights:

II.3.2.1.1 Right to Equality and Non-Discrimination

Under the principle of Respect for Human Rights, individuals are entitled to equal treatment and protection under the law⁶⁵, without discrimination based on factors such as race, gender, or sexual orientation⁶⁶. Allowing divorce on the grounds of adultery for heterosexual couples while denying the same recourse to individuals in same-sex relationships may violate the right to equality and non-discrimination.

II.3.2.1.2 Right to Privacy and Family Life

Human rights principles recognize the right to privacy and family life, which encompasses the freedom to form and maintain relationships without unjustified interference from the state or others⁶⁷. Denying legal remedies to individuals in cases involving lesbian and gay relationships alleging adultery may infringe upon their right to privacy and family life by denying them access to legal protections available to heterosexual couples.

⁶⁴ Article 3, universal Declaration of Human Rights,

⁶⁵ Article 16, Constitution of the Republic of Rwanda, Official Gazette n° Special of 04/08/2023

⁶⁶ Article 7, universal Declaration of Human Rights

⁶⁷ Article 12, universal Declaration of Human Rights

II.3.2.1.3 Right to Effective Remedy

The right to an effective remedy is a fundamental human right that ensures individuals have access to legal mechanisms to seek redress for violations of their rights⁶⁸. Denying legal remedies to individuals in cases involving lesbian and gay relationships alleging adultery may undermine their ability to seek effective remedies for harm suffered in their relationships, thereby infringing upon their right to access justice.

II.3.2.1.4 Freedom from Discrimination

Human rights principles prohibit discrimination based on sexual orientation and require states to take measures to eliminate discrimination in all areas of life, including access to legal remedies⁶⁹. Failing to provide legal recourse for individuals in cases involving lesbian and gay relationships alleging adultery may perpetuate discrimination based on sexual orientation and deny them equal protection under the law.

Applying the principle of Respect for Human Rights highlights the need for legal systems to ensure equality, non-discrimination, and access to justice for all individuals, regardless of their sexual orientation. Denying legal remedies to individuals in cases involving lesbian and gay relationships alleging adultery may raise concerns regarding violations of human rights principles, including the right to equality, privacy, access to justice, and freedom from discrimination. It underscores the importance of addressing gaps in legal protections to ensure the full realization of human rights for all individuals, irrespective of sexual orientation.

II.3.2.2 Equality Before the Law

"Equality before the law" is a concept frequently associated with the rule of law and signifies that all individuals should be subject to the law impartially, irrespective of their social standing whether affluent or impoverished, youthful or elderly, regardless of their gender, race, ethnicity, religion, or any other characteristic⁷⁰.

⁶⁸ Article 8, Universal Declaration of Human Rights

⁶⁹ The African Commission on Human and Peoples' Rights adopted a resolution condemning violence based on sexual orientation and gender identity of May 2014.

⁷⁰ Article 7, Universal Declaration of Human Rights

In analysing this situation through the principle of Equality Before the Law underscores the importance of ensuring equal protection and treatment under the law for all individuals, regardless of their sexual orientation. Here's how this principle applies to the scenario where adultery is accepted as a valid ground for divorce for heterosexual couples in Rwanda while the law is silent on same-sex relationships:

1. Equal Protection: The principle of Equality Before the Law mandates that all individuals have the right to equal protection of the law without discrimination⁷¹. Allowing divorce based on adultery for heterosexual couples while denying the same recourse to individuals in same-sex relationships violates this principle by subjecting individuals to differential treatment solely based on their sexual orientation.

2. Non-Discrimination: Equality Before the Law prohibits discrimination based on factors such as race, gender, or sexual orientation⁷². Denying legal remedies to individuals in same-sex relationships alleging adultery, while granting such remedies to heterosexual couples, constitutes discrimination based on sexual orientation. It denies equal protection of the law to individuals in same-sex relationships solely because of their sexual orientation.

3. Access to Justice: Equality Before the Law ensures that all individuals have equal access to justice and legal remedies⁷³. Denying legal recourse to individuals in same-sex relationships alleging adultery deprives them of equal access to justice and legal protections available to heterosexual couples. This inequality undermines the principle of Equality Before the Law by denying equal protection of the law to individuals based on their sexual orientation.

4. Fair and Impartial Treatment: The principle of Equality Before the Law requires fair and impartial treatment of all individuals by the legal system⁷⁴. Allowing divorce based on adultery for heterosexual couples while denying the same recourse to individuals in same-sex relationships is inherently unfair and discriminatory. It perpetuates inequality before the law and undermines public confidence in the fairness and impartiality of the legal system.

⁷¹Article 26, the International Covenant on Civil and Political Rights

⁷² chapter 13 the right to equality and non-discrimination in the administration of justice accessed at <https://www.ohchr.org/sites/default/files/Documents/Publications/training9chapter13en.pdf> retrieved on May 12, 2024

⁷³ Article 12, the International Covenant on Civil and Political Rights (ICCPR)

⁷⁴ Article 3, the African charter on human and people's rights

By applying the principle of Equality Before the Law highlights the importance of ensuring equal protection and treatment under the law for all individuals, irrespective of their sexual orientation. Denying legal remedies to individuals in same-sex relationships alleging adultery violates this principle by subjecting them to differential treatment and discrimination based solely on their sexual orientation. Rectifying this disparity is essential to upholding principles of equality, fairness, and justice in legal proceedings.

II.4 Interpretation of Adultery as grounds for divorce vis a vis the doctrines of law

This section delves into the interpretation of adultery as a ground for divorce within the framework of Rwandan law, analyzed through the lens of established legal doctrines. Given the evolving legal landscape concerning marital dissolution, particularly in the context of a case involving lesbians and gays, understanding how the doctrine of adultery is interpreted and applied is crucial.

Legal doctrines provide the foundational principles upon which laws are interpreted and enforced. These doctrines, including those related to the sanctity of marriage, grounds for divorce, and the equitable treatment of all parties involved, shape how adultery is addressed within the legal system. By examining these doctrines, this section aims to elucidate how Rwandan law may navigate the complexities of adultery in divorce cases, especially when applied to same-sex relationships.

II.4.1 The doctrine of law in the context of family law

Christopher Columbus Langdell, who is considered the founder of American law schools, believed that law is like a science⁷⁵. He thought that legal doctrines were like scientific truths that judges would gradually uncover over time. However, the Legal Realists disagreed with Langdell. They said that the law isn't just about following formal rules⁷⁶. Instead, they believed that real-life issues, like politics, influence how doctrines are applied and changed. They argued that judges aren't neutral scientists but are more like political actors who can use legal doctrines to get the outcomes they want⁷⁷.

⁷⁵ Christopher Columbus Langdell, *Harvard Celebration Speeches*, 3 L.Q. REV. 118, 124 (1887) (declaring that “law is a science”). As early as 1871, Langdell had taken a similar position. See CHRISTOPHER COLUMBUS LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS*, at vi (Boston, Little, Brown & Co. 1871) (“Law, considered as a science, consists of certain principles or doctrines. . . . Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries.”).

⁷⁶ For a discussion of Legal Realism, see generally LAURA KALMAN, *LEGAL REALISM AT YALE, 1927–1960* (1986).

⁷⁷ *Id.*, page 37

Today, this Symposium is questioning whether legal doctrines still matter or if they've become less important in today's world as the Legal Realists said. They're looking at this question through the lens of family law, which deals with unique and specific family situations.

Even though families can be very different from each other, most people in the field of family law agree that there are still a lot of important legal rules. We can see this in the decisions made by courts and in the efforts to make laws about families. While laws and court decisions are really important for settling family disputes, they're not the only things that shape how family law works⁷⁸.

Interpreting adultery as grounds for divorce involves analyzing legal doctrines and principles within the framework of family law. Here's an overview of how the interpretation of adultery intersects with key legal doctrines:

II.4.1.1 Doctrine of Fault-Based Divorce

is referred to as a divorce one of the spouses requests the court that divorce be granted based on some fault of the other spouse⁷⁹. In jurisdictions where fault-based divorce is recognized, adultery is often considered one of the grounds for dissolution of marriage. The doctrine of fault-based divorce allows a spouse to seek divorce based on the other spouse's marital misconduct, such as adultery. Analyzing the Doctrine of Fault-Based Divorce in the context of adultery being accepted as a valid ground for divorce for heterosexual couples in Rwanda, while the law remains silent on same-sex relationships, raises significant legal and ethical considerations:

II.4.1.1.1 Unequal Treatment

Allowing adultery as grounds for divorce for heterosexual couples while denying the same recourse to individuals in same-sex relationships constitutes unequal treatment under the law. This disparity may violate principles of equality and non-discrimination⁸⁰.

⁷⁸ LEO TOLSTOY, ANNA KARENINA 3 (Leonard J. Kent & Nina Berberova eds., Constance Garnett trans., Modern Library 2000) (1877).

⁷⁹ <https://www.nolo.com/legal-encyclopedia/no-fault-divorce-vs-fault-divorce-faq.html> accessed on May 12, 2024

⁸⁰ <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-equality-and-non-discrimination#:~:text=The%20principle%20of%20equality%20and,treatment%20will%20amount%20to%20discrimination>. Accessed on June,09 2024

II.4.1.1.2 Access to Legal Remedies

The absence of legal recognition for adultery in a case involving same-sex relationships means that individuals aggrieved by their partner's infidelity may not have access to legal remedies for divorce. This raises questions about the fairness and effectiveness of the legal system in addressing marital disputes for LGBTQ+ individuals.

II.4.1.1.3 Violation of Rights

Denying legal recourse to individuals who have a case of being cheated with her/his partner by someone of the same sex as adultery may violate their fundamental rights to equality before the law and equal protection of the law. It may also infringe upon their right to privacy and family life.

II.4.1.1.4 Legal and Social Implications

The discrepancy in treatment based on sexual orientation not only has legal implications but also perpetuates social stigmatization and marginalization of LGBTQ+ individuals. It undermines efforts to promote equality and inclusivity within the legal system and society at large.

The application of the Doctrine of Fault-Based Divorce in the face of legal silence on adultery in same-sex relationships highlights the need for legal reforms to uphold principles of equality, non-discrimination, and access to justice for all individuals, irrespective of sexual orientation. Recognizing and addressing this disparity is essential for promoting fairness and equity within the legal system and ensuring the protection of all individuals as well as LGBTQ+ rights in marital matters.

II.4.2 Doctrine of Public Policy

In general, public policy refers to the concepts that underlie social rules, which are frequently unwritten and implemented through programs as a course of action established and/or legislated, generally by a government or non-profit organization, in response to social challenges⁸¹.

In law, public policy means the principle that harm to the public benefit is a ground for denying the legitimacy of a contract or other transaction⁸².

⁸¹ https://www.law.cornell.edu/wex/public_policy retrieved on May 12th 2024

⁸² Idem, page40

Analyzing the Doctrine of Public Policy in the context of adultery being accepted as a valid ground for divorce for heterosexual couples in Rwanda, while the law remains silent on a case involving same-sex relationships, raises significant legal and ethical considerations as:

II.4.2.1 Social Values and Morality

Public policy reflects the prevailing social values and moral standards of a society. Allowing adultery as grounds for divorce for heterosexual couples while denying the same recourse to individuals in same-sex relationships may reflect societal biases and discrimination against LGBTQ+ individuals.

II.4.2.2 Promotion of Family Stability

Public policy aims to promote family stability and well-being. However, denying legal remedies for divorce to individuals in same-sex relationships alleging adultery may undermine this objective by forcing them to remain in unhealthy or untenable marital situations.

II.4.2.3 Legal Consistency and Certainty

Public policy seeks to maintain consistency and certainty in the law. The absence of clear legal provisions regarding adultery in same-sex relationships creates uncertainty and inconsistency in the application of divorce laws, potentially leading to arbitrary or unjust outcomes.

II.4.2.4 Protection of Individual Rights

Public policy also emphasizes the protection of individual rights and freedoms. Denying legal recourse to individuals in same-sex relationships alleging adultery may infringe upon their right to equality before the law and equal protection of their marital rights.

The application of the Doctrine of Public Policy highlights the need for legal reforms to ensure consistency, fairness, and respect for individual rights in the treatment of adultery and divorce for LGBTQ+ individuals. Recognizing and addressing these disparities is essential for promoting equality, justice, and social inclusivity within the legal system and society as a whole.

II.4 Analysis of Homosexuality as Ground for Divorce under French Law vs Rwandan Law

In French law, homosexuality has historically been treated as a significant and independent factor that can justify the dissolution of a marriage. This perspective is rooted in a series of judicial decisions that have consistently recognized the sexual orientation of a spouse as a basis for divorce.

In a published paper prepared for the "Gay Divorce" Symposium held at King's College London on May 20, 2006, the symposium highlights two key reflections, the impact of homosexuality on marriage dissolution and the public nature of divorce proceedings.

In France, homosexuals face a paradox as they are compelled to divorce if married to an opposite-sex partner when the heterosexual spouse decides to end the marriage. However, if in a same-sex civil union (PACS), a simple notice is sufficient to terminate the relationship⁸³.

II.4.1 Divorcing Gays

In some jurisdictions, Case law regarding divorce indicates that the homosexuality of one spouse serves as substantial grounds for the dissolution of the marital bond. Unlike case law on (heterosexual) adultery, the homosexuality of the spouse is not linked to sexual infidelity but pertains to a different issue⁸⁴. There are so many case laws which provide homosexuality as grounds for divorce:

1. **Homosexuality as Grounds for Divorce:** French case law consistently recognizes homosexuality as a serious ground for divorce, citing it as an insult and wrong to the heterosexual spouse, regardless of sexual acts. This principle was upheld in rulings between 1942 and 1975⁸⁵.
2. **Aix-en-Provence Tribunal (1972):** Confirmed adultery and homosexuality as valid grounds for divorce. The court stated that ‘since adultery is a definitive ground for divorce, the established intimate relationship between the husband and a young man provides enough evidence to justify the merits of the case, thereby leading to the granting of the divorce against the husband’⁸⁶.
3. **Bordeaux Appeals Court (1996):** Ruled those emotional relationships with another man breach marital loyalty. The court declared that ‘a spouse's homosexuality provides adequate grounds for a divorce decree against him, whether it involves behavior, an attribute, or a recognized identity. Legally, a transgression is defined as a "serious or repeated breach of marital duties and obligations, making it unbearable to continue cohabiting." The offending (homosexual) spouse may also be required to pay damages⁸⁷.

⁸³ Divorcing Gays and Gay Divorce, Daniel Borrillo retrieved at <https://hal.science/hal-01232605/document> accessed on May 22, 2024

⁸⁴ Idem, page42

⁸⁵ Idem, page42

⁸⁶ Idem, page42

⁸⁷ Idem, page42

4. **Rennes Appeals Court (1998):** Attributed fault to a husband for leaving his family for a homosexual affair⁸⁸.

It was seen that in cases involving homosexuality, without a specific legal basis, the offense is judged on moral grounds. An analysis of French case law reveals that homosexuality alone can be enough to justify divorce. Even if a homosexual spouse fully adheres to all marital duties, their sexual orientation alone can lead to the dissolution of the marriage and the requirement to pay damages to the other spouse. Consequently, gays and lesbians can be forcibly divorced and financially penalized without any actual wrongdoing⁸⁹.

Although sodomy has not been a crime since the French Revolution, contemporary divorce case law equates a spouse's homosexuality with issues such as alcoholism, violence, abandonment, betrayal, and disrespect towards the spouse. Judges view homosexuality as inherently damaging to the honor, reputation, and esteem of the heterosexual spouse. Therefore, a wife can be entitled to damages for the moral harm caused by the known homosexuality of her husband⁹⁰.

Under Rwandan law, homosexuality as grounds for divorce presents a complex legal issue.

The Constitution of the Republic of Rwanda does not explicitly address homosexuality, but it emphasizes equality and non-discrimination⁹¹, potentially conflicting with treating homosexuality as a specific ground for divorce.

The Law Governing Persons and Family outlines the grounds for divorce⁹², including adultery, but does not explicitly reference same-sex relationships. Since Rwandan law does not recognize same-sex marriages or civil unions, applying adultery in the context of homosexual acts is ambiguous. Internationally, Rwanda is a party to various human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), which advocate for non-discrimination. These international obligations may challenge the use of homosexuality as a ground for divorce if it leads to discrimination.

⁸⁸ Idem, page42

⁸⁹ Id, page42

⁹⁰ Id, page42

⁹¹ Article16, Article16, Constitution of the Republic of Rwanda, Official Gazette n° Special of 04/08/2023

⁹² Article248, Law n° 71/2024 of 26/06/2024 governing persons and family, Official Gazette n° Special of 30/07/2024

In summary, while Rwandan law lacks explicit provisions on homosexuality in the context of divorce, constitutional principles, and international obligations may limit its application as a specific ground for divorce. The issue requires careful legal interpretation and potential legislative clarification to align with broader human rights standards.

II.4.2 Legal Recognition of Same-sex relationship under French Law vs Rwandan law

France's national report of 2012 delves into the legal recognition and implications of same-sex marriages and registered partnerships in France, highlighting the evolving legal landscape and the influence of private international law. Historically, French law has defined marriage strictly as a union between a man and a woman.

The introduction of the Civil Solidarity Pact (PACS) provided a legal framework for both same-sex and heterosexual couples, offering similar rights to marriage but stopping short of full marital status⁹³.

The Court of Cassation and other judicial bodies have reaffirmed the heterosexual nature of marriage under French law.

Despite this, numerous legislative proposals have been made to recognize same-sex marriages, reflecting a shift in societal attitudes⁹⁴ such as:

1. International Implications: The report examines how other countries' recognition of same-sex marriages impacts French law, especially in cases where French citizens marry abroad in jurisdictions that allow same-sex marriage.

It discusses the legal challenges and potential for recategorizing foreign same-sex marriages as registered partnerships in France⁹⁵.

2. Private International Law: Private international law plays a significant role in shaping the recognition and rights of same-sex couples married abroad. The report outlines how marriages performed outside France could either be recognized as partnerships or potentially influence the definition of marriage within French law⁹⁶.

⁹³ Fulchiron, Hugues. "National Report: France." American University Journal of Gender Social Policy and Law 19, no.1(2011):123-149.retrievedat <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1467&context=jgspl> accessed on May 25, 2024

⁹⁴ Id, page44

⁹⁵ Id, page44

⁹⁶ Id, page44

3. Societal and Legal Developments: The ongoing debate in France about same-sex marriage reflects broader societal changes and the growing acceptance of diverse family structures. The PACS system and the various judicial and legislative efforts indicate a gradual shift towards more inclusive legal recognition for same-sex couples.

The National Report on France presents a comprehensive overview of the legal status of same-sex marriages and partnerships. It underscores the complexities of reconciling domestic law with international influences and societal shifts toward greater acceptance of diverse marital and partnership arrangements. Under Rwandan law, same-sex relationships are not legally recognized. The Constitution of the Republic of Rwanda emphasizes equality and non-discrimination⁹⁷, but it does not explicitly address sexual orientation or same-sex relationships. The Law Governing Persons and Family also does not recognize or provide for same-sex marriages or civil unions, focusing exclusively on heterosexual unions⁹⁸.

Internationally, Rwanda is a signatory to various human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), which promote non-discrimination. However, the recognition of same-sex relationships remains limited under domestic law, and there is no legal framework that supports or protects these relationships within Rwanda.

In summary, despite Rwanda's commitment to non-discrimination in its Constitution and international treaties, same-sex relationships are not legally acknowledged under current Rwandan law.

II.5 Partial Conclusion

Chapter II highlights the urgent need for legal reforms in Rwanda to address the inequities faced by one party in cases that involve lesbian and gay individuals in accessing divorce.

By aligning legal definitions and judicial interpretations with principles of human rights and equality, Rwanda can move towards a more inclusive and just legal system. This includes recognizing same-sex relationships and ensuring that all individuals have equitable access to legal remedies in marital disputes.

⁹⁷ Article 16, Constitution of the Republic of Rwanda, *Official Gazette n° Special of 04/08/2023*

⁹⁸ Article 195, Law n° 71/2024 of 26/06/2024 governing persons and family, *Official Gazette n° Special of 30/07/2024*

CHAPTER III. LEGAL AND INSTITUTIONAL MECHANISMS TO BE IN PLACE WHEN COUPLES SEEK DIVORCE ON GROUNDS OF ADULTERY UNDER ARTICLE 248 OF LAW NO. N° 71/2024 OF 26/06/2024 GOVERNING PERSONS AND FAMILY IN RWANDA

III. O Introduction

The legal landscape surrounding divorce in Rwanda is complex, particularly when examining the grounds of adultery as stipulated in Article 248 of Law N° 71/2024 of 26/06/2024 governing persons and family. This chapter aims to critically analyze the legal and institutional mechanisms that come into play when couples seek divorce on these grounds, with a specific focus on the unique challenges faced by the aggrieved party when a case involves lesbians and gays in this context.

III.1 Overview of Article 248 of Law N° 71/2024 of 26/06/2024 governing persons and family

Article 248 of Law N° 71/2024 of 26/06/2024 governing persons and family provides the legal grounds for a spouse to apply for divorce in Rwanda. The article specifies eight distinct grounds for divorce:

1. **Adultery:** Infidelity by either spouse is a valid ground for divorce.
2. **Desertion:** If one spouse abandons the marital home for at least twelve consecutive months, the other spouse can seek a divorce.
3. **Conviction for an Offense Severely Tainting Honour:** A spouse's conviction for a crime that severely damages their honor provides grounds for divorce.
4. **Refusal to Provide for Household Needs:** If a spouse refuses to fulfill their duty to support the household, the other spouse can file for divorce.
5. **Excess, Abuse, or Serious Insults:** Any form of excessive behavior, abuse, or serious insults by one spouse towards the other is grounds for divorce.
6. **Gender-Based Violence:** Acts of gender-based violence committed by one spouse against the other are recognized as legitimate grounds for divorce.
7. **De Facto Separation:** A de facto separation for at least two years can justify a divorce.
8. **Non-Cohabitation:** If the spouses do not cohabit for more than twelve consecutive months following the celebration of their marriage without justifiable reasons, divorce can be sought.⁹⁹

⁹⁹ Article 248, Law N° 71/2024 of 26/06/2024 governing persons and family, *Official Gazette n° Special of 30/07/2024*

While Article 248 provides clear grounds for divorce, including adultery, the application of these grounds poses significant challenges for aggrieved parties when a case involves lesbians and gays. The primary issue stems from the fact that Rwandan laws are silent on the recognition of same-sex relationships and the specific legal remedies available to individuals in such relationships.

Legal Ambiguity: Rwandan law does not explicitly address same-sex relationships, which creates ambiguity in interpreting adultery when it involves same-sex infidelity. This silence in the law means there is no clear legal framework for judges to follow in cases where one partner in a same-sex relationship commits infidelity.

Lack of Recognition: Since same-sex marriages or civil unions are not legally recognized in Rwanda, lesbian and gay couples do not have the same legal standing as heterosexual couples. This lack of recognition means that the protections and remedies available under Article 248 are not accessible to same-sex partners.

Judicial Discretion: In the absence of specific legal provisions, much depends on judicial discretion. Judges may be reluctant to grant a divorce on the grounds of same-sex infidelity due to societal norms and the lack of clear legal guidance, leaving individuals in same-sex relationships without legal remedies. However, it is stated that a judge decides a case based on applicable legal rules. If such rules are absent, the judge decides according to the rules they would create if they acted as a legislator, relying on precedents, customs, general principles of law, and legal doctrine. A judge cannot decline to rule on a case due to the silence, ambiguity, or inadequacy of the law¹⁰⁰.

Human Rights Concerns: The failure to provide legal recourse for same-sex infidelity may violate fundamental human rights principles, including the right to equality before the law and non-discrimination¹⁰¹. Lesbian and gay individuals with another party who can seek a divorce on grounds of adultery with his/her partner engaged gay or lesbian may find themselves without access to justice and legal protections available to heterosexual individuals.

¹⁰⁰ Article 9, law no 22/2018 of 29/04/2018 relating to the civil, commercial, labor, and administrative procedure, Official Gazette n° Special of 29/04/2018

¹⁰¹ Article 7, Universal Declaration of Human Rights

III.2 LEGAL MECHANISMS TO BE IN PLACE WHEN COUPLES SEEK DIVORCE ON GROUNDS OF ADULTERY

The legal landscape in Rwanda concerning divorce is structured by Law N°71/2024 of 26/06/2024, which governs persons and family matters. Article 248 specifically addresses adultery as a legitimate ground for divorce, providing a legal avenue for spouses to dissolve their marriage when marital fidelity is breached. However, the current legal provisions do not explicitly account for the dynamics within same-sex relationships, leading to significant challenges for the case shall involve lesbians and gays when seeking divorce on grounds of adultery. This part examines the legal mechanisms that should be established to ensure that all couples, regardless of sexual orientation, can access equitable legal remedies under Article 248. It explores the need for judicial interpretation, recognition of same-sex relationships, and the implementation of comprehensive legal reforms to address these gaps, ensuring that the principles of equality and justice are upheld within the Rwandan legal system.

III.2.1 Judicial Interpretation and Discretion

Judges in Rwanda adjudicate cases based on relevant legal rules. In the absence of specific rules, judges rely on precedents, customs, general principles of law, and legal doctrine to make their decisions¹⁰². This principle ensures that judges cannot refuse to decide a case due to silence, obscurity, or insufficiency of the law. This approach allows for flexibility and adaptability in interpreting laws to meet contemporary needs and social changes, including issues related to same-sex relationships.

III.2.2 Recognition of Same-Sex Relationships

For lesbian and gay couples, the lack of explicit legal recognition poses a challenge. Legal reforms are necessary to acknowledge same-sex relationships and provide them with the same legal protections and remedies as heterosexual couples. This includes recognizing adultery as a valid ground for divorce in same-sex relationships. Without explicit recognition, same-sex spouses or one party in heterosexual spouses may find it difficult to seek justice and equitable treatment under the current legal framework.

¹⁰² Id,page48

III.2.2.1 Lessons from International Precedents

1. France

France has been at the forefront of legal reforms concerning same-sex relationships. In 2013, the country legalized same-sex marriage, granting same-sex couples the same rights as heterosexual couples¹⁰³. This included provisions for divorce on grounds of adultery. The positive outcomes in France include increased social acceptance and legal protections for same-sex couples, which have led to a more inclusive society where all individuals, regardless of sexual orientation, can seek legal redress and protection.

2. Canada

Canada legalized same-sex marriage in 2005 and has since provided comprehensive legal protections for same-sex couples. The Canadian legal framework ensures that same-sex spouses have the same rights and responsibilities as heterosexual spouses, including the grounds for divorce¹⁰⁴. Legal recognition of same-sex relationships in Canada has led to greater social equality and reduced discrimination, providing a model for Rwanda to follow. The inclusive legal system in Canada ensures that all couples can access justice and fair treatment.

3. South Africa

South Africa became the first African country to legalize same-sex marriage in 2006, following a Constitutional Court ruling that found the previous marriage laws discriminatory. The country's legal framework now includes protections for same-sex couples, ensuring they have the same rights to divorce as heterosexual couples¹⁰⁵. South Africa's experience demonstrates the feasibility and benefits of legal reforms in a diverse and culturally rich society. The recognition of same-sex relationships has promoted social cohesion and reduced stigma, offering valuable lessons for Rwanda.

III.2.3 Human Rights and Equality

The principles of equality and non-discrimination are fundamental, and denying same-sex couples legal remedies based on their sexual orientation infringes upon their human rights.

¹⁰³ LOI n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe, art. 143 available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000027414540> accessed on May 26, 2024

¹⁰⁴ Civil Marriage Act S.C. 2005, c. 33 available at <https://laws-lois.justice.gc.ca/eng/acts/c-31.5/page-1.html> accessed on May 26, 2024

¹⁰⁵ Law No. 17 of 2006: Civil Union Act, 200 available at https://www.gov.za/sites/default/files/gcis_document/201409/a17-061.pdf accessed on May 26, 2024

Legal systems must provide equal access to justice and protection for all individuals, regardless of sexual orientation. This requires revising current laws to remove discriminatory clauses and ensuring equal treatment for all citizens. As a UN member, Rwanda has committed to upholding the rights outlined in various international human rights treaties.

Rwandans can seek recourse through the UN Human Rights Committee via procedure 1503¹⁰⁶, Special Rapporteurs for specific rights violations¹⁰⁷, ECOSOC for women's rights issues¹⁰⁸. Furthermore, as a member of the African Union, Rwandan citizens and NGOs can submit complaints to the African Commission on Human and Peoples' Rights¹⁰⁹. These mechanisms can be leveraged to hold Rwanda accountable and enhance the protection of LGBTI rights.

III.2.4 Customary and Judicial Precedents

In the absence of specific laws, customary practices, and judicial precedents can guide judges in making equitable decisions. This involves interpreting existing laws in a manner that promotes equality and justice for all individuals. Judges can draw on a wealth of legal precedents and customary practices to make informed decisions that uphold the principles of fairness and justice.

III.2.5 Legal Reforms and Advocacy

Continuous legal reforms and advocacy are crucial to address gaps in the current legal framework. This includes amending laws to explicitly recognize and protect the rights of same-sex couples, ensuring that they have access to legal remedies in cases of infidelity. Advocacy efforts should focus on raising awareness about the legal challenges faced by same-sex couples and promoting reforms that ensure their rights are protected.

III.2.6 The Yogyakarta principles and Yogyakarta principles plus 10 (to+10)

The Yogyakarta Principles, established in 2007, is a crucial framework designed to protect the human rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals by addressing issues related to sexual orientation and gender identity.

¹⁰⁶<https://www.ohchr.org/en/treaty-bodies/human-rights-bodies-complaints-procedures/complaints-procedures-under-human-rights-treaties> accessed on May 26, 2024

¹⁰⁷ <https://guide-humanitarian-law.org/content/article/3/special-rapporteurs/> accessed on May 26, 2024

¹⁰⁸ <https://www.unwomen.org/en/how-we-work/commission-on-the-status-of-women/about-the-commission-on-the-status-of-women> accessed on May 26, 2024

¹⁰⁹ <https://achpr.au.int/en> accessed on May 26, 2024

Developed by a group of international human rights experts in Yogyakarta, Indonesia, these principles assert that LGBTI people should enjoy the same fundamental rights as anyone else, free from discrimination and violence. In 2017, the Yogyakarta Principles were updated through the Yogyakarta Principles Plus 10 (Yogyakarta +10), reflecting new developments and emerging issues in LGBTI human rights. This update introduced additional principles to address gaps and evolving challenges, including intersectional discrimination and the rights of intersex individuals. Both frameworks have been instrumental in guiding advocacy efforts, influencing legal reforms, and promoting greater inclusivity and protection for LGBTI communities worldwide. They represent a commitment to advancing human rights by ensuring that all individuals, regardless of their sexual orientation or gender identity, are afforded equal respect and protection.

III.2.6.1 The Yogyakarta Principles

The Yogyakarta Principles were adopted in March 2007 in Yogyakarta, Indonesia, and represent a significant milestone in the protection of LGBTI human rights. They were developed by a group of human rights experts to address issues specifically related to sexual orientation and gender identity. The principles assert that LGBTI individuals are entitled to the same human rights as everyone else, without discrimination. Principle 1 emphasizes the right to equality, declaring that all individuals should have their human rights respected regardless of their sexual orientation or gender identity. Principle 2 addresses non-discrimination, stating that discriminatory practices based on sexual orientation or gender identity are violations of human rights. Principle 3 ensures the right to privacy, protecting individuals from being exposed or outed without their consent. Principle 4 upholds the right to freedom from torture and ill-treatment, safeguarding LGBTI individuals from violence and abuse¹¹⁰.

Principles 5 through 10 deal with additional specific rights, including the right to freedom of expression and protection from persecution. These principles also address the right to health, the right to education, and the right to participate in public life. They call for the repeal of laws that criminalize same-sex relations and gender non-conformity. The principles emphasize the need for states to create legal and social frameworks that support and protect LGBTI individuals. They also highlight the importance of addressing hate speech and violence against LGBTI people¹¹¹.

¹¹⁰ The Yogyakarta principles, 2007

¹¹¹ Id, page 41

III.2.6.2 Yogyakarta Principles Plus 10 (Yogyakarta +10)

In November 2017, the Yogyakarta Principles were updated through the Yogyakarta Principles Plus 10 (Yogyakarta +10) to address emerging issues and gaps in the original framework. This update reflects the evolving nature of human rights challenges faced by LGBTI individuals. Yogyakarta +10 introduces new principles to address these gaps and respond to contemporary issues. Principle 16, for example, addresses the need for protection against intersecting forms of discrimination, such as those based on race, ethnicity, disability, and socioeconomic status. This principle recognizes that LGBTI individuals may face compounded discrimination due to multiple aspects of their identity¹¹².

Principle 17 focuses on ensuring the rights of LGBTI individuals within legal and criminal justice systems. It emphasizes the need to end violence and discrimination in these contexts and to provide effective remedies for violations. Yogyakarta +10 also highlights the importance of inclusive and intersectional approaches to human rights. It calls for greater attention to the needs of intersex individuals and those experiencing intersecting forms of discrimination. The update aims to provide a more comprehensive framework for advocating LGBTI rights globally¹¹³.

Yogyakarta +10 underscores the need for effective accountability mechanisms to ensure that governments and institutions uphold human rights standards. It calls for increased international cooperation and solidarity in advancing LGBTI rights. The principles also stress the importance of education and awareness-raising to foster inclusive environments. They guide activists, policymakers, and organizations that protect and promote LGBTI rights. By addressing new and emerging issues, Yogyakarta +10 ensures that the principles remain relevant and effective in the current global context¹¹⁴.

III.2.6.3 Broader impact of the Yogyakarta principles and Yogyakarta principles plus 10 (to+10)

Both the Yogyakarta Principles and Yogyakarta +10 have had a significant impact on the global human rights landscape. They serve as crucial advocacy tools for organizations working to improve the lives of LGBTI individuals.

¹¹² The Yogyakarta Principles Plus 10 (Yogyakarta +10), 2017

¹¹³ Id, page42

¹¹⁴ Id, page42

The principles have influenced legal and policy reforms in various countries, leading to greater protection and acceptance of LGBTI people. Their emphasis on non-discrimination, privacy, and freedom from torture has contributed to significant changes in how LGBTI rights are viewed and protected. The principles also play a vital role in raising awareness about the specific challenges faced by LGBTI individuals.

These frameworks help drive progress in the protection and promotion of LGBTI human rights by providing clear guidelines and standards. They support efforts to combat violence, discrimination, and stigma against LGBTI people. Through their advocacy and educational impact, the principles contribute to creating more inclusive and respectful societies. The principles also highlight the need for ongoing vigilance and action to address human rights violations. Their continued relevance underscores the importance of adapting human rights frameworks to meet evolving challenges and needs.

Overall, the Yogyakarta Principles and Yogyakarta +10 represent important advancements in the fight for LGBTI rights. They provide a comprehensive approach to addressing discrimination and promoting equality. The principles emphasize the need for legal reforms, protection from violence, and the importance of inclusive practices. Their impact is seen in the growing acceptance and legal protections for LGBTI individuals worldwide. Through these frameworks, there is a continued push towards ensuring that LGBTI people can fully enjoy their human rights without fear or discrimination.

III.2.6.4 Specific impact on the international community in addressing gaps in domestic laws in providing fair justice to all

The Yogyakarta Principles and Yogyakarta Principles Plus 10 (Yogyakarta +10) have had a profound impact on the international community by highlighting and addressing gaps in domestic laws regarding LGBTI rights. These frameworks provide a comprehensive set of guidelines that have influenced legal and policy reforms in various countries. By articulating clear standards for the protection of LGBTI individuals, they have served as benchmarks for evaluating and improving national legal systems. The principles have inspired legislative changes aimed at eliminating discriminatory laws and practices that adversely affect LGBTI people. This influence is particularly evident in countries where laws previously criminalized same-sex relationships or discriminated against gender non-conformity.

In response to these principles, many countries have undertaken significant legal reforms to align their domestic laws with international human rights standards. The principles have prompted the repeal of punitive laws and the implementation of protective measures, such as anti-discrimination laws and hate crime legislation. For instance, several nations have revised their criminal codes to decriminalize consensual same-sex relations and protect against violence based on sexual orientation and gender identity. These changes are crucial for ensuring that LGBTI individuals can live without fear of legal repercussions or state-sanctioned discrimination.

The impact of the Yogyakarta Principles extends beyond legal reforms to include improvements in judicial and enforcement mechanisms. They have influenced the creation of specialized bodies and procedures for addressing LGBTI-related complaints and human rights abuses. The principles advocate for the establishment of effective remedies and accountability measures to address violations and ensure justice for LGBTI individuals. This has led to the development of more inclusive and sensitive judicial practices, aimed at better serving and protecting LGBTI communities.

Additionally, the principles have played a key role in raising awareness and educating both the public and policymakers about LGBTI rights. They have been instrumental in fostering a broader understanding of the challenges faced by LGBTI individuals and the need for systemic change. This educational impact has helped to shift societal attitudes and support more equitable legal frameworks. By highlighting the importance of human dignity and equality, the principles have contributed to building a more inclusive international human rights agenda.

Rwanda's Law of Persons and Family and its Constitution primarily reflect a focus on heterosexual relationships, leaving gaps in the recognition and protection of homosexual relationships. The Law of Persons and Family, which governs issues such as marriage, family rights, and inheritance, does not explicitly address or recognize same-sex relationships, resulting in a lack of legal status and protection for homosexual couples. Similarly, the Rwandan Constitution emphasizes equality and non-discrimination but does not specifically include sexual orientation as a protected category, which limits its effectiveness in safeguarding LGBTI individuals. This absence is at odds with international human rights standards, such as those outlined in the Yogyakarta Principles, which advocate for the recognition and protection of all individuals regardless of their sexual orientation.

To address these gaps, Rwanda would need to amend its legal and constitutional frameworks to explicitly include sexual orientation as a basis for protection against discrimination and to recognize same-sex relationships. Incorporating such changes would ensure that homosexual individuals have access to the same legal rights and protections as heterosexual couples, such as those related to inheritance, spousal benefits, and family matters. By aligning domestic laws with international human rights norms, Rwanda could promote greater inclusivity and equality. This would also reflect a commitment to upholding the fundamental rights of all individuals, regardless of their sexual orientation. Such amendments would contribute to a more comprehensive legal framework that supports and protects the rights of LGBTI individuals in Rwanda. Overall, revising both the Law of Persons and Family and the Constitution to address these gaps would significantly enhance legal recognition and protection for homosexual relationships in Rwanda.

III.3 INSTITUTIONAL MECHANISMS TO BE IN PLACE WHEN COUPLES SEEK DIVORCE ON GROUNDS OF ADULTERY UNDER RWANDA LAW

The process of seeking a divorce on the grounds of adultery is a sensitive and complex matter that requires a well-defined institutional framework to ensure fairness and justice for all parties involved. In Rwanda, Article 248 of Law No. 71/2024 governs divorce on the grounds of adultery, highlighting the need for specialized mechanisms to address the unique challenges posed by such cases.

This part delves into the institutional mechanisms necessary to support couples navigating the legal process of divorce due to adultery. It outlines the creation of specialized family courts, provision of legal aid services, and establishment of counseling and mediation centers as pivotal elements. Moreover, it emphasizes the importance of judicial training, public awareness campaigns, and child protection services in creating a holistic support system.

Effective enforcement of court orders, data collection, research, and collaboration with international human rights bodies are also essential components of the proposed institutional framework. By implementing these mechanisms, Rwanda can ensure a comprehensive and just approach to handling adultery-related divorce cases, aligning with both national legal standards and international human rights obligations.

III.3.1 Specialized Family Courts

Creation of Specialized Family Courts, establishing dedicated family courts with trained judges and legal professionals is essential. These courts should be equipped to handle the sensitive nature of adultery cases with confidentiality and impartiality.

III.3.2 Legal Aid Services

The provision of legal aid focuses on ensuring access to legal representation for everyone involved in divorce proceedings. Legal aid services should be accessible to ensure that individuals, regardless of their financial situation, can receive appropriate legal advice and representation.

III.3.2 Counselling and Mediation Services

Counseling and Mediation Centers where Couples should have access to counseling and mediation services before turning to legal proceedings. These centers can assist couples in resolving conflicts amicably and potentially reconciling, thus minimizing the emotional and financial strain of divorce.

III.3.4 Training and Capacity Building

Judicial Training Programs: Continuous training for judges and legal professionals on the nuances of adultery cases and the psychological impact on those involved is necessary. This will ensure informed and empathetic handling of such cases.

III.3.5 Public Awareness Campaigns

Educational Campaigns: Public awareness initiatives should be conducted to inform citizens about their legal rights and the procedures involved in filing for divorce on the grounds of adultery. This includes understanding the provisions of Article 248 and the support systems available.

III.3.6 Child Protection Services

Support for Affected Children: Divorce cases, especially those involving adultery, can have significant impacts on children. Institutional mechanisms must include child protection services to provide psychological and emotional support to children affected by their parent's divorce.

III.3.7 Enforcement Mechanisms

Effective Enforcement of Court Orders: It is crucial to have robust enforcement mechanisms in place to ensure compliance with court orders regarding alimony, child support, and custody arrangements. This includes monitoring and penalizing non-compliance.

III.3.8 Data Collection and Research

Establishment of a Centralized Database: Creating a centralized database to collect data on divorce cases, including those based on adultery,

will help in understanding trends and developing policies to address the underlying issues. Regular research and analysis should be conducted to improve the legal framework continuously.

III.3.9 Collaboration with International Bodies

Engagement with International Human Rights Bodies: Rwanda, being a member of various international human rights organizations, should actively engage with these bodies to align its divorce laws with global best practices and ensure compliance with international human rights standards.

By implementing these institutional mechanisms, Rwanda can create a comprehensive and supportive legal environment for individuals seeking divorce on grounds of adultery, ensuring justice, protection, and dignity for all parties involved.

III.4 Partial Conclusion

In Conclusion, this chapter explored the legal and institutional mechanisms required when couples seek divorce on grounds of adultery under Article 248 of Law No. 71/2024 in Rwanda, emphasizing challenges faced by same-sex couples. The lack of explicit recognition for same-sex relationships in Rwandan law creates legal ambiguities and difficulties for these couples. Judicial discretion alone is insufficient, highlighting the need for comprehensive legal reforms to ensure equal access to justice and protection for all couples. International examples from France, Canada, and South Africa demonstrate the benefits of legal reforms that recognize and protect same-sex relationships, leading to greater social acceptance and equality.

As a member of the UN and African Union, Rwanda is obligated to uphold principles of equality and non-discrimination, with international human rights mechanisms holding it accountable. Effective institutional mechanisms, such as specialized family courts, legal aid services, counseling and mediation centers, and robust enforcement, are essential.

Additionally, judicial training, public awareness campaigns, and child protection services will support those navigating adultery-related divorces. Implementing these measures will help Rwanda address the challenges faced by both heterosexual and same-sex couples, fulfilling its national and international human rights obligations.

GENERAL CONCLUSION AND RECOMMENDATIONS

GENERAL CONCLUSION

In conclusion, the legal analysis of the challenges to adultery as a cause of divorce under Rwandan law, with a focus on the case of lesbians and gay individuals, highlights significant disparities and obstacles within the legal framework. Throughout this dissertation, it has become evident that the current legal system in Rwanda inadequately addresses the unique circumstances and needs of LGBTQ+ individuals in marital relationships.

The examination of Rwandan law regarding divorce and adultery reveals a lack of explicit recognition and protection for cases involving lesbians and gays. Existing legal provisions fail to accommodate the complexities of relationships outside the traditional heterosexual paradigm, leaving LGBTQ+ individuals vulnerable to discrimination, stigma, and legal uncertainties.

Moreover, societal attitudes and cultural norms further exacerbate the challenges faced by LGBTQ+ individuals seeking legal recourse for marital issues such as adultery. Prejudices and biases within the legal system and broader society contribute to the marginalization and invisibility of LGBTQ+ experiences, hindering access to justice and equal treatment under the law.

In light of these findings, Rwanda must undertake comprehensive legal reforms aimed at fostering inclusivity, equality, and respect for the rights of all individuals, regardless of sexual orientation or gender identity. Such reforms should encompass amendments to marriage and divorce laws to recognize and protect the rights of LGBTQ+ couples, as well as initiatives to promote awareness, tolerance, and acceptance within society.

Additionally, efforts to train and educate legal professionals, including judges, attorneys, and court administrators, on LGBTQ+ issues are essential to ensure fair and impartial administration of justice. By addressing the systemic barriers and biases that hinder access to legal remedies for LGBTQ+ individuals, Rwanda can uphold its commitment to human rights, dignity, and equality for all its citizens. Ultimately, the legal analysis presented in this dissertation underscores the urgent need for proactive measures to address the challenges faced by LGBTQ+ individuals within the Rwandan legal system.

Through legislative reforms, educational initiatives, and cultural shifts, Rwanda can strive towards a more inclusive and equitable society where all individuals, regardless of sexual orientation or gender identity, can exercise their rights and access justice without discrimination or prejudice.

RECOMMENDATIONS

Following the comprehensive legal analysis of the challenges to adultery as a cause of divorce under Rwandan law, with a focus on the case of lesbians and gay individuals, several recommendations emerge to address the systemic deficiencies and promote inclusivity within the legal system. These recommendations are tailored to various stakeholders, including the government of Rwanda, judges, attorneys, litigants, court administrators, and the general public.

1. Government of Rwanda:

- ❖ Review and amend existing laws related to marriage and divorce to ensure they are inclusive and do not discriminate against individuals based on sexual orientation.
- ❖ Conduct awareness campaigns to educate the public about the rights of LGBTQ+ individuals and promote tolerance and acceptance within society.
- ❖ Provide training to law enforcement agencies and government officials on LGBTQ+ rights and issues to ensure fair and unbiased treatment.
- ❖ Advocate for the creation of a legal framework that recognizes and protects same-sex relationships. This could include civil unions or partnerships that grant similar rights and responsibilities as heterosexual marriages, ensuring equality before the law.
- ❖ Propose constitutional amendments that explicitly include sexual orientation as a protected characteristic under the non-discrimination clauses. This would reinforce the commitment to equality and provide a legal basis for challenging discriminatory practices.
- ❖ Recommend the development of specific training programs for judges and legal professionals to better understand the nuances of LGBTQ+ issues, ensuring that their rulings are informed, fair, and in line with international human rights standards.
- ❖ Encourage the government to enact or strengthen laws that prohibit discrimination based on sexual orientation in various sectors, including employment, housing, and public services, to create a more inclusive society.
- ❖ While Rwanda is a secular state, religious and cultural beliefs still significantly influence public opinion. Recommend the promotion of dialogue between LGBTQ+ advocacy groups and religious leaders to foster understanding and reduce stigmatization.
- ❖ Advocate for the creation of support services, such as counseling, legal aid, and social services, specifically designed to assist LGBTQ+ individuals, particularly those facing discrimination or domestic issues, including divorce.

- ❖ Recommend the ratification of international conventions specifically addressing LGBTQ+ rights, such as the Yogyakarta Principles, and ensure their full implementation within the domestic legal framework.
- ❖ Suggest the establishment of an independent body or mechanism to monitor, document, and report on human rights violations against LGBTQ+ individuals in Rwanda, ensuring accountability and transparency.

These recommendations aim to create a more inclusive and fair legal environment in Rwanda, ensuring that all individuals, regardless of sexual orientation, are afforded equal protection and rights under the law.

2. Judges:

- ❖ Receive training on LGBTQ+ issues, including understanding the challenges faced by individuals in same-sex relationships.
- ❖ Approach cases involving adultery in same-sex relationships with sensitivity and without prejudice, ensuring fair treatment and adherence to the principles of equality before the law.
- ❖ Consider the unique circumstances of LGBTQ+ individuals when interpreting and applying relevant laws, taking into account the societal context and evolving standards of human rights.
- ❖ Encourage judges to participate in ongoing legal education programs that focus on international human rights standards, particularly those relating to LGBTQ+ rights. This will help them align their judgments with global best practices.
- ❖ Recommend the creation of judicial guidelines specifically for cases involving LGBTQ+ individuals. These guidelines should emphasize the importance of impartiality, confidentiality, and the protection of individuals from discrimination and bias in the courtroom.
- ❖ Suggest that judges collaborate with experts in psychology, sociology, and human rights when dealing with cases involving same-sex relationships. This interdisciplinary approach can provide a more comprehensive understanding of the issues at hand.
- ❖ Advise judges to be particularly vigilant about the privacy rights of LGBTQ+ individuals in legal proceedings. This includes ensuring that personal information is protected and that cases are handled with the utmost discretion to prevent unnecessary exposure or stigmatization.

- ❖ Encourage judges to consider the broader impact of their rulings on the LGBTQ+ community. Decisions should not only resolve individual disputes but also contribute to the advancement of equality and justice within society.
- ❖ Recommend that judges explore restorative justice practices in cases involving LGBTQ+ individuals, particularly in family law disputes. This approach focuses on reconciliation and repairing relationships, which may be more appropriate in certain contexts than punitive measures.
- ❖ Advise judges to ensure that LGBTQ+ individuals have equal access to legal representation and support services. This includes being aware of potential barriers that may prevent LGBTQ+ individuals from fully participating in the legal process and taking steps to mitigate these challenges.
- ❖ Encourage judges to set a tone of respect and dignity in the courtroom, making it clear that discriminatory language or behavior will not be tolerated. This helps create a safe and inclusive environment for all parties involved.

These recommendations aim to equip judges with the tools and knowledge necessary to handle cases involving LGBTQ+ individuals with fairness, sensitivity, and a commitment to upholding the principles of justice and equality.

3. Attorneys:

- ❖ Advocate for the rights of LGBTQ+ individuals within the legal system, including challenging discriminatory laws and practices.
- ❖ Provide legal assistance and representation to LGBTQ+ individuals seeking divorce or facing legal challenges related to adultery.
- ❖ Stay informed about developments in LGBTQ+ rights and use this knowledge to effectively advocate for their clients.
- ❖ Attorneys should consider gaining specialized knowledge in LGBTQ+ law, particularly as it relates to family law and human rights. This expertise will enable them to provide more informed and effective representation for their clients.
- ❖ Attorneys should actively participate in initiatives aimed at legal reform, advocating for changes that promote equality and protect the rights of LGBTQ+ individuals.

This includes lobbying for amendments to existing laws and supporting the development of new legislation that is inclusive and non-discriminatory.

- ❖ Attorneys should ensure that their LGBTQ+ clients are fully aware of their legal rights, including the potential implications of their sexual orientation on divorce proceedings. Providing clear and accessible legal advice is crucial for empowering clients to make informed decisions.
- ❖ Attorneys should work closely with LGBTQ+ advocacy organizations to provide comprehensive support for their clients. This collaboration can help in addressing broader social issues and in offering resources beyond legal assistance, such as counseling or community support.
- ❖ Attorneys should leverage international legal precedents and human rights treaties ratified by Rwanda when advocating for LGBTQ+ clients. Citing global standards can strengthen their arguments and push for more progressive interpretations of Rwandan law.
- ❖ Attorneys must handle cases involving LGBTQ+ clients with the highest level of confidentiality and sensitivity. This includes protecting clients from potential stigmatization and ensuring their personal information is secure.
- ❖ Attorneys should consider offering pro bono legal services to LGBTQ+ individuals who may not have the financial means to afford representation. This can help ensure that all individuals, regardless of economic status, have access to justice.
- ❖ Encourage attorneys to explore alternative dispute resolution methods, such as mediation or negotiation, that can resolve conflicts without the adversarial nature of courtroom battles. This approach may be particularly beneficial in sensitive cases involving LGBTQ+ individuals.
- ❖ Attorneys should be aware of the cultural and societal challenges faced by LGBTQ+ individuals in Rwanda. Understanding these nuances will allow them to tailor their legal strategies in a way that respects the client's context while still advocating for their rights.

- ❖ Attorneys should take an active role in educating the public and other legal professionals about the rights of LGBTQ+ individuals. This can be done through seminars, workshops, and publications, helping to foster a more inclusive and informed legal community.

These recommendations aim to empower attorneys to provide robust, informed, and empathetic legal representation for LGBTQ+ individuals, contributing to a more just and equitable legal system in Rwanda.

4. Litigants:

- ❖ Seek legal advice from attorneys who are knowledgeable about LGBTQ+ rights and issues.
- ❖ Be prepared to assert your rights and challenge discriminatory practices within the legal system.
- ❖ Consider alternative dispute resolution mechanisms, such as mediation, to resolve issues related to divorce or adultery in a less adversarial manner.
- ❖ Litigants should keep detailed records of any relevant communications, incidents, or evidence that may support their case. This includes documenting any instances of discrimination or bias encountered during legal proceedings.
- ❖ Litigants should educate themselves about their legal rights and obligations under Rwandan law, as well as international human rights treaties that Rwanda has ratified. This knowledge will empower them to make informed decisions throughout the legal process.
- ❖ Litigants should be prepared for possible social and cultural challenges they may face in pursuing their case. Understanding these challenges will help them develop strategies to navigate them effectively, with the support of their legal counsel.
- ❖ Going through a legal process can be stressful, especially in cases involving LGBTQ+ issues. Litigants should prioritize their emotional and mental health by seeking counseling or therapy if needed, and by staying connected with supportive friends, family, and community members.
- ❖ Litigants should be mindful of how they discuss their case in public forums, including social media. Public statements can sometimes impact the perception of their case and may be used in legal proceedings. It's advisable to consult with their attorney before making any public comments.

- ❖ For litigants with children or other family members, it's important to consider how the legal process may affect them. This includes discussing with legal counsel how to best protect the interests of the children involved, especially in custody or visitation disputes.
- ❖ When possible, litigants should try to maintain open and constructive communication with the other party in the dispute. This can facilitate a more amicable resolution and reduce the emotional toll of the legal process.
- ❖ Litigants should be aware that legal outcomes can have long-term consequences, particularly in matters of divorce and family law. It's important to consider these potential impacts when making decisions during the legal process.
- ❖ Litigants should keep themselves updated on any changes or developments in laws related to LGBTQ+ rights in Rwanda. Staying informed will help them adjust their legal strategies as necessary and ensure they are aware of new protections or rights that may become available.

These recommendations aim to support litigants in navigating the legal system effectively, ensuring they are well-prepared and supported throughout their legal journey.

5. Court Administrators:

- ❖ Ensure that court procedures are inclusive and respectful of LGBTQ+ individuals, including providing appropriate accommodations and support services.
- ❖ Train court staff on LGBTQ+ sensitivity and cultural competency to ensure equitable treatment for all individuals accessing the legal system.
- ❖ Establish mechanisms for addressing complaints of discrimination or mistreatment based on sexual orientation or gender identity within the court system.
- ❖ Court administrators should ensure that all information related to cases involving LGBTQ+ individuals is handled with the utmost confidentiality. This includes safeguarding personal details that could expose individuals to discrimination or harm outside of the court.
- ❖ Provide easy access to legal resources, guides, and support services tailored to LGBTQ+ individuals. This could include information on legal rights, court procedures, and available legal aid specific to LGBTQ+ issues.
- ❖ Ensure that court facilities are welcoming and safe for LGBTQ+ individuals. This could include displaying signs of inclusivity, such as LGBTQ+ affirming posters, and ensuring that court staff are trained to address all individuals with respect and dignity.

- ❖ Court administrators can collaborate with LGBTQ+ advocacy groups to develop best practices, training programs, and support networks that can be integrated into the court system. These partnerships can also help in identifying areas of improvement and ensuring that the needs of LGBTQ+ individuals are met.
- ❖ Establish a system for monitoring the effectiveness of LGBTQ+ inclusivity initiatives within the court system. Regularly evaluate court procedures, staff training, and the experiences of LGBTQ+ individuals to identify areas for further improvement and to ensure that policies are being implemented effectively.
- ❖ Ensure that court services are accessible to all, including LGBTQ+ individuals who may speak different languages or have disabilities. This includes offering interpretation services, providing legal documents in multiple languages, and ensuring physical accessibility within court buildings.
- ❖ Encourage the recruitment and retention of diverse court staff, including those who are part of or have experience with the LGBTQ+ community. A diverse workforce can bring a broader perspective and enhance the cultural competency of the court system.
- ❖ Develop and enforce clear anti-discrimination policies within the court system. These policies should outline the consequences of discriminatory behavior and provide a clear process for individuals to report and resolve complaints.
- ❖ Encourage continuous learning and development on LGBTQ+ issues for all court staff. This could involve regular workshops, seminars, and updates on legal developments related to LGBTQ+ rights, ensuring that court personnel remain informed and sensitive to evolving standards.
- ❖ Ensure that the process for filing and resolving complaints related to discrimination or mistreatment is straightforward, transparent, and efficient. Individuals should feel confident that their concerns will be taken seriously and addressed promptly.

These recommendations aim to create a court system that is not only inclusive but also actively supportive of the rights and dignity of LGBTQ+ individuals.

6. General Public:

- ❖ Foster a culture of acceptance and inclusion by challenging stereotypes and prejudices against LGBTQ+ individuals.
- ❖ Support efforts to reform laws and policies that discriminate against LGBTQ+ individuals and advocate for equal rights under the law.
- ❖ Educate yourself and others about the experiences and challenges faced by LGBTQ+ individuals in Rwanda and around the world.
- ❖ Encourage conversations about LGBTQ+ issues within families, communities, and workplaces. Open dialogue can help break down misconceptions and build understanding and empathy for the challenges faced by LGBTQ+ individuals.
- ❖ Support and participate in events, campaigns, and initiatives organized by LGBTQ+ advocacy groups. This could include attending pride events, workshops, or public discussions that aim to raise awareness and promote equality.
- ❖ Actively oppose and speak out against discriminatory behavior or language in any setting. Whether in the workplace, in social circles, or online, challenging homophobia and transphobia can help create a more inclusive society.
- ❖ Consume and promote media that accurately represents LGBTQ+ individuals and their experiences. This includes reading books, watching films, and following content creators who highlight LGBTQ+ perspectives and stories.
- ❖ Advocate for inclusive education that covers LGBTQ+ issues and rights in schools. This ensures that younger generations are educated about diversity and equality from an early age.
- ❖ Offer your time and skills to local or national LGBTQ+ organizations. Volunteering can provide much-needed support to advocacy efforts and help these organizations achieve their goals.
- ❖ Be an active ally to the LGBTQ+ community by supporting their rights, defending their dignity, and standing in solidarity against discrimination. Allyship involves not only understanding LGBTQ+ issues but also using your voice to advocate for positive change.

- ❖ Support and advocate for the representation of LGBTQ+ individuals in all areas of public life, including politics, media, business, and education. Representation can help challenge stereotypes and normalize LGBTQ+ identities in society.
- ❖ Make an effort to learn about LGBTQ+ issues from credible sources. Educating yourself on these topics can help you engage in informed discussions and counter misinformation.
- ❖ Recognize the mental health challenges that LGBTQ+ individuals may face due to discrimination and social stigma. Offer support by encouraging access to mental health services and creating safe spaces where LGBTQ+ individuals can share their experiences without fear of judgment.
- ❖ Respect the privacy and identity of LGBTQ+ individuals. This includes using correct pronouns, avoiding intrusive questions, and being mindful of the impact of "outing" someone without their consent.
- ❖ Advocate for and participate in making community spaces, such as places of worship, social clubs, and public venues, welcoming and inclusive for LGBTQ+ individuals.

These recommendations aim to empower the general public to be active participants in creating a more inclusive and equitable society for LGBTQ+ individuals.

Implementing these recommendations will contribute to a more inclusive legal system in Rwanda that respects the rights and dignity of all its citizens, regardless of sexual orientation or gender identity.

REFERENCES

BIBLIOGRAPHY

I. Legal Instruments

I. 1 National Legal Texts

- 1, Constitution of the Republic of Rwanda, *Official Gazette n° Special of 04/08/2023*
- 2, Law n° 71/2024 of 26/06/2024 governing persons and family, *Official Gazette n° Special of 30/07/2024*
- 3, Law n° 69/2019 of 08/11/2019 amending law n° 68/2018 of 30/08/2018 determining offenses and penalties in general, *Official Gazette n° Special of 29/11/2019*
- 4, Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labor, and administrative procedure, *Official Gazette n° Special of 29/04/2018*

I.2 International Legal Instruments

- 1, Convention for the Protection of Human Rights and Fundamental Freedoms, *Rome, 4.XI.1950*
- 2, International Convention on Civil and Political Rights, *United Nations, 1966*
- 3, International Covenant on Economic, Social, and Cultural Rights, *United Nations, 1976*
- 4, Universal Declaration of Human Rights, *United Nations General Assembly, 1948.*
- 5, The African Charter on Human and People's Rights, *O.A.U, June 27, 1981*

II. Books

- 1, Blackstone, W. (1765). Commentaries on the Laws of England. Oxford: Clarendon Press
- 2, Fredman, S. (2011). Discrimination Law. Oxford University Press
- 3, Brinig, M. F. (2000). From Contract to Covenant: Beyond the Law and Economics of the Family. Harvard University Press.
- 4, Silbey, S. S. (2001). "Legal Culture and Cultures of Legality." In *The Blackwell Companion to Law and Society*, Austin Sarat edited 30-54. Blackwell Publishing.
- 5, Emery, R. E. (2013). Cultural Sociology of Divorce
- 7, Dictionary of Legal Terms Kinyarwanda-English-French, 1st edition 2021
- 8, christopher columbus langdell, harvard celebration Speeches, 3 L.Q. REV. 118, 124 (1887) (declaring that "law is a science"). As early as 1871, Langdell had taken a similar position. See CHRISTOPHER COLUMBUS LANGDELL, A SELECTION OF CASES ON THE LAW OF

CONTRACTS, at vi (Boston, Little, Brown & Co. 1871) (“Law, considered as a science, consists of certain principles or doctrines. . . . Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries.

9, For a discussion of Legal Realism, see generally LAURA KALMAN, *LEGAL REALISM AT YALE, 1927–1960* (1986).

10, Leo Tolstoy, *Anna Karenina* 3 (Leonard J. Kent & Nina Berberova eds., Constance Garnett trans., Modern Library 2000) (1877).

11, Fulchiron, Hugues. "National Report: France." *American University Journal of Gender Social Policy and Law* 19, no. 1 (2011): 123-149.

III. Case Laws

1, LOI n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe

2, Civil Marriage Act S.C. 2005, c. 33

3, Law No. 17 of 2006: Civil Union Act

IV. General principle of laws

1, Respect for Human Rights, *10 December 1948*

2, Equality Before the Law, *Thomas Hobbes and John Locke, 17th century*

3, The Yogyakarta principles, *2007*

V. Doctrine

1, Doctrine of Fault-Based Divorce, *the Divorce Reform Act 1960s*

2, Doctrine of Public Policy, *le droit international privé 1913*

VI. Reports and Publications

1. United Nations. (2015). *Transforming our world: the 2030 Agenda for Sustainable Development*

2. Legal Positivism - Stanford Encyclopedia of Philosophy, *Hans Kelsen (1881–1973)*

3. The African Commission on Human and Peoples’ Rights adopted a resolution condemning violence based on sexual orientation and gender identity of May 2014.

4. chapter 13 the right to equality and non-discrimination in the administration of justice

5. Divorcing Gays and Gay Divorce, Daniel Borrillo, *The Bordeaux Appeals court ruled on April 10th 1996*

VII. Journals

1. Empowerment, Inclusion, Equality, 2019

VIII. Electronic sources

1. Adultery definition and meaning | Collins english dictionary. (n.d.). Retrieved June 10, 2024, from <https://www.collinsdictionary.com/dictionary/english/adultery>
2. Civil Union (Solidarity civil pact - PACS). (2022, October 3). Notaires de France. <https://www.notaires.fr/en/couple-family/civil-union-solidarity-civil-pact-pacs>
3. Empowerment, inclusion, equality: - OHCHR. (n.d.). Retrieved June 10, 2024, from <https://www.ohchr.org/sites/default/files/Documents/Issues/MDGs/Post2015/EIEPamphlet.pdf>
4. legal realism definition · LSData. (n.d.). <https://www.lsd.law/define/legal-realism>
5. LGBTIQ+ equality and rights: Internal Resource Guid. (n.d.). (n.d.). Retrieved June 10, 2024, from <https://www.unwomen.org/sites/default/files/2023-07/lgbtiq-equality-and-rights-internal-resource-guide-en.pdf>
6. LGBTIQ terminology. (n.d.). <https://www.qhrc.qld.gov.au/your-rights/for-lgbtiq-people/lgbtiq-terminology>
7. LGBTQ Definitions, Terms & Concepts. (2023, October 23). The Annie E. Casey Foundation. <https://www.aecf.org/blog/lgbtq-definitions>
8. List of LGBTQ+ terms. (2024, March 4). Stonewall. <https://www.stonewall.org.uk/list-lgbtq-terms>
9. Marriage and divorce: Changes and their driving forces. (n.d.). Retrieved June 10, 2024, from https://www.nber.org/system/files/working_papers/w12944/w12944.pdf
10. Public policy. (n.d.). LII / Legal Information Institute. https://www.law.cornell.edu/wex/public_policy
11. School, M. H. a. C. L. (2023, April 21). No-Fault Divorce vs. Fault Divorce FAQ. www.nolo.com. <https://www.nolo.com/legal-encyclopedia/no-fault-divorce-vs-fault-divorce-faq.html>
12. The Right to Equality and Non-discrimination | Icelandic Human Rights Centre. (n.d.). Icelandic Human Rights Centre. <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-equality-and-non-discrimination#:~:text=The%20principle%20of%20equality%20and,treatment%20will%20amount%20to%20discrimination>

13. Tuttlec. (2011, April 15). Definitions. Vanderbilt University.
<https://www.vanderbilt.edu/lgbtqi/resources/definitions>
14. What is a human rights-based approach? - SHRC - Care about Rights. (n.d.).
<https://careaboutright.scottishhumanrights.com/whatisahumanrightsbasedapproach.html>
15. <https://www.apa.org/topics/lgbtq/orientation>,
16. <https://www.who.int/publications/i/item/9789241507325>