

Know Your Rights!



A Community Handbook on Health-Care Rights and Other Laws



Kigali, Rwanda x January 2008

INTRODUCTION AND ACKNOWLEDGMENTS

All Rwandans have a right to privacy, freedom from discrimination, health care, and others that guarantee equal treatment under the law. All these legal rights belong to people with HIV/AIDS, too.

This Handbook focuses especially on how these rights apply to women with HIV/AIDS. We chose this focus for several reasons:

- 1) To respond to specific requests from the membership of WE-ACTx for Hope and of Women's Equity in Access to Care and Treatment, sister NGOs working in partnership with Rwandan community associations to bring health care to women with HIV/AIDS;
- 2) To support HIV/AIDS testing and treatment outreach campaigns; and
- 3) To address the crisis in the physical and social condition of females—from the woman to the child, the widow to the orphan—in Rwanda.

Women in Rwanda are most vulnerable to sexual, physical and emotional abuse, and to disease, including HIV and its complex health and social consequences. Today, many studies show that

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women and girls are more likely to contract the virus than men or boys solely because of their gender. So while the rights we describe in this Handbook are important for everyone, they are especially important to these most vulnerable groups.

This Handbook provides a brief overview of the main health care rights in Rwanda. **It is not meant to be a definitive text.** Instead, its purpose is to provide a tool for **educating** people affected by HIV/AIDS and others about their basic legal rights, and for empowering people to **take action** to resolve legal problems they may face.

In many cases, to resolve a legal problem, a person will have to seek assistance from a human rights organization or legal aid clinic.

But the first step to getting necessary legal help is *knowing* that a person does have legal rights. We hope this Handbook will serve this basic educational purpose.

This Handbook will be available in Kinyarwanda and English at www.we-actx.org. Printed copies of the Kinyarwanda version will be distributed throughout Rwanda. Resources permitting, peri-

odic updates will be posted at www.we-actx.org in between updates to the print copies.

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(AWAIS)

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I. FUNDAMENTAL HUMAN RIGHTS

All Rwandans, including people with HIV/AIDS, have fundamental human rights.

HIV/AIDS counseling, testing and treatment are especially important for a person's health and to prevent the spread of the HIV virus, as discussed in detail in Sections 2 and 3.

But many people fear that they will be discriminated against in a variety of ways if their HIV/AIDS status becomes known to family members, neighbors, employers or others.

All Rwandans, including people with HIV/AIDS, have the right to be free from discrimination.

At present, there are three main sources of law prohibiting discrimination in Rwanda. On the following pages, you will find a brief summary of the law and what you can do if you face discrimination.

▶ **THE CONSTITUTION OF THE REPUBLIC OF RWANDA** ◀

The constitution is the most important law in the country. All other laws and government policies and procedures must be consistent with the provisions set forth in the constitution (Article 93). This means that if there is a gap in the law, or if a government policy or practice clashes with something in the constitution, it is the constitution that must be followed.

Here are summaries (not always the exact words) of the Articles and other sections of Rwanda's constitution that apply to all Rwandans and that are especially important for people affected by HIV/AIDS:

I. Equal Protection for All

- Each person is sacred and inviolable, and the State of Rwanda and all of its agencies have the absolute obligation to respect, protect and defend the individual (Art. 10).
- All human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law (Art. 16).
- All Rwandans are born and remain free and equal in rights and duties (Art. 11).

II. No Discrimination

- Every citizen has the duty to relate to other persons without discrimination (Art. 46) and to safeguard equality (Art. 47).
- All forms of discrimination are prohibited and punishable by law. This includes discrimination based on physical or mental disability or social status (Art. 11) and includes HIV/AIDS status, as acknowledged in Rwanda's National Policy on HIV & AIDS (p. 7).
- Many other forms of discrimination, for example, discrimination based on sex, ethnic origin, tribe, clan, color, region, social origin, religion or faith, opinion, economic status, culture, or language, are also prohibited and punishable by law (Art. 11).
- Rwanda is committed to ensuring equal rights, including equal protection under the law and other fundamental rights, for all Rwandans, including women. Rwanda is further committed to *promoting and enforcing* these rights (Preamble, No. 6 and No. 10; Art. 9, No. 4).

III. Health and Health Care

- Every person has the right to life (Art. 12), physical and mental integrity, and to be free from cruel, inhuman or degrading treatment (Art. 15).

Testing and treatment for HIV/AIDS is necessary to implement these rights.

- All citizens have the right to health; they also have duties relating to health (Art. 41).
- The State must mobilize the population for and assist in the implementation of activities to promote good health (Art. 41).

IV. Privacy, Confidentiality, and Family Life

- The State must protect family life and help families flourish (Art. 27).
- No one may arbitrarily interfere with the private life, family, home or correspondence of any person (Art. 22); here, “arbitrarily” means “without a reason approved of by the law.” In particular:
 - A person’s home cannot be violated in any way; specifically, no one can enter or search a home without the owner’s consent, except as provided by law (Art. 22).
 - Similarly, a person’s correspondence and communications are confidential, except as provided by law (Art. 22).

V. Freedom of Opinion, Expression, Association and Participation in Public Affairs

- All Rwandans have a right to participate in government and have equal access to public services. These rights are very important to protecting people affected by HIV/AIDS, because it is through the political process that decisions about resource allocation are made and that the government can be held accountable (Art. 43, 45).

INTERNATIONAL HUMAN RIGHTS LAWS

Another important source of the rights of Rwandans, including those with HIV/AIDS, is international human rights law.

In fact, much of Rwanda’s constitution summarized above reflects international human rights law. The constitution itself (in the Preamble, No. 9) specifically reaffirms the nation’s commitment to follow the principles of human rights in the following (among others):

- *Universal Declaration of Human Rights* of 10 December 1948;

- *International Convention on the Elimination of All Forms of Racial Discrimination* of 21 December 1965;
- *International Convention on Civil and Political Rights* of 16 December 1966;
- *International Covenant on Economic, Social and Cultural Rights* of 18 December 1979;
- *Convention on the Elimination of all Forms of Discrimination against Women* of 1 May 1980;
- *African Charter of Human and Peoples' Rights* of 27 June 1981; and
- *Convention on the Rights of the Child* of 20 November 1989.

In addition, some of these **international laws** that have been expressly incorporated into Rwanda's law via its constitution **add or strengthen rights**.

- For example, the rights to the “**highest attainable standard of physical and mental health**” and to “**medical care and services when sick**” are specifically guaranteed by Article 12 of the *International Covenant on Economic, Social and Cultural Rights*. We discuss these rights further in Section 2 on HIV/AIDS

counseling and testing and in Section 3 on Treatment.

- Similarly, the rights to **an adequate standard of living and to social security and other support** are also found in the *International Covenant on Economic, Social and Cultural Rights*, Articles 9-11.

▶ **INTERNATIONAL GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS** ◀

One set of international laws that is especially important for people with HIV/AIDS is the *International Guidelines on HIV/AIDS and Human Rights*. These guidelines were first published in 1998, updated in July 2002, and consolidated in 2006 by UNAIDS and the UN High Commissioner for Human Rights.

The Guidelines were developed to help governments respond effectively to the pandemic. They do not set forth additional individual rights, but they do show what people can expect their governments to do to reduce the spread of and assist those affected by HIV/AIDS. The following is a summary (not always the exact words) of some of the twelve Guidelines.

According to the *UNAIDS Guidelines*, states should:

- Make HIV/AIDS information, prevention services and treatment, including safe and effective medication, widely available and affordable (No. 6);
- Have strong laws to protect people with HIV/AIDS or disabilities from discrimination, and to provide for speedy and effective enforcement of such protections (No. 5);
- Conduct education and training to end stigmatization and convert discriminatory attitudes about people with HIV/AIDS to understanding and acceptance (No. 9);
- Implement and support legal services to educate people affected by HIV/AIDS about their rights, provide free legal services to enforce those rights, and enforce those rights not only through the courts but also ministries of justice, ombudspersons, health complaint units, and human rights commissions (No. 7);
- Monitor the enforcement of such rights (No. 11); and
- Address prejudice against women, children and other vulnerable groups through the following approaches: community dialogue, developing social and health services, and supporting community groups (No. 8).

I. FUNDAMENTAL HUMAN RIGHTS

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**I. FUNDAMENTAL
HUMAN RIGHTS**

▶ AUTHORITIES ◀

Constitution of the Republic of Rwanda, Preamble, No. 6, 9, and 10; Articles 9-12, 15-16, 22, 27, 41, 43, 45-47, and 93.

International Guidelines on HIV/AIDS and Human Rights, UNAIDS and UN Office of the High Commissioner for Human Rights, 2006 Consolidated Version (HR/PUB/06/9).

Normes et Directives Nationales pour le Conseil et Depistage Volontaire et la Prévention de la Transmission du VIH de la Mère à l'Enfant, Ministère de la Santé du Rwanda, TRAC (December 2005).

▶ REFERENCES ◀

NGO Summary of the International Guidelines on HIV/AIDS and Human Rights, ICASO (September 1999).

An Advocate's Guide to the International Guidelines on HIV/AIDS, ICASO (September 1999).

2. VOLUNTARY AND CONFIDENTIAL HIV/ AIDS INFORMATION, COUNSELING, AND TESTING

Human Immunodeficiency Virus (HIV) is the virus that can lead to Acquired Immune Deficiency Syndrome (AIDS). Information, counseling and testing for HIV are **free, voluntary and confidential**.

These services are very important because they help people learn:

- Whether they have the virus;
- The many ways it is safe to interact with people who are HIV-positive and other facts about the disease;
- How to take precautions not to get or spread the virus and other diseases; and
- Where to go for treatment for HIV/AIDS and other diseases or conditions or, when needed, pregnancy-related care and family planning services.

For people with the virus or other diseases or conditions, including pregnancy, **counseling and treatment can save lives.**

Counseling and testing are especially important for pregnant women, not only for the woman's health but also to **prevent transmission of the virus to her baby, before, during, and after the birth.**

- **Everyone who wishes to have an HIV/AIDS test has a right to have one in Rwanda** under the government's free program, the Conseil et Dépistage Volontaire (**CDV**).
- Rwanda's special HIV/AIDS program for pregnant women and newborns is known as Preventing Mother to Child Transmission (**PMTCT**) or Prévention de la Transmission du VIH de la Mère à l'Enfant (**PTME**).
- Rwanda's Treatment and Research AIDS Centre (**TRAC**) has rules designed to ensure HIV/AIDS counseling, testing and treatment are both voluntary and confidential. Rwanda's constitution, some of its laws, and international human rights laws also address these issues.

Exceptions to the rules on voluntariness and confidentiality must be rare and al-

lowed only in very limited, clearly described situations.

Here is a summary of the basic rules, with a more detailed discussion following:

- Counseling and testing are **free, voluntary and confidential.**
- For people considering having the test, **counseling** must be provided both **before the test**—to make sure the person understands what's involved—**and after the test**, to make sure the person understands the meaning of the test results.
 - Everyone has the right to get **basic information about HIV/AIDS without getting counseled, much less tested**, if all they want is basic information.
- People who do want the test of their own free will have a **right to get the test.**
- **Treatment:** Counseling and testing centers must **provide or refer the person to appropriate medical treatment**, whether the test is positive or negative for HIV. This will be discussed in the separate Section 3 on "Treatment."

Knowing these rights—and doing something about them—could help save lives.

▶ HIV TESTING IS VOLUNTARY ◀

HIV testing must be **voluntary**. An act is voluntary when it occurs as the result of a person's **own free will**.

I. Informed Consent

Under TRAC's rules, a person must give his or her "informed consent" before getting an HIV test; otherwise, the test is not considered voluntary.

- Informed consent means that the person **clearly understands** the information he or she is given about the testing procedure and that the person has **clearly signaled agreement** to be tested *before* taking the test.
- Anyone **aged 18 or older** is generally considered capable of giving informed consent for HIV testing, even though the legal age of majority is usually 21 in Rwanda.
- The HIV test cannot be given without **pre-test counseling** unless a special exception applies (discussed below). "Voluntariness" is missing if proper counseling does not occur before the test is given.
 - Sometimes it may require more than one counseling session for a person to really un-

derstand the information and be in a position to say "yes" with informed consent to the test.

- If a person does not have time for counseling or is not in the mood, the counselor must ask him or her to return another time, and the test cannot be given until after the counseling takes place.

II. Special Rules for Persons Not Able to Give Informed Consent

What if a person is not able to form or express informed consent, due to age or incapacity, such as a very sick or mentally disabled person or a young child? The special rules for these situations include the following:

Persons 18 or older who lack the capacity for informed consent:

If an adult lacks the capacity to give informed consent because of a physical or mental condition, the test still may be given based on:

- The decision of a **family member or legal guardian** that testing is in the person's best interests; or
- A **treating physician's decision alone**, if the patient is sick, the physician suspects the patient is HIV positive, and the physician believes the

patient may be abandoned or otherwise rejected by his or her family or legal guardian should the test results be HIV positive and become known.

In the above situations, test results will be given to the person authorized to give consent for the incapacitated individual.

Children under 18:

A parent or legal guardian can consent to testing for a child under 18 years-old, if testing is shown to be in the best interests of the child.

- The pre-test counseling and post-test counseling are usually provided to the child's parent or legal guardian.
- The counseling may also be provided to the child if the counselor determines that the child is able to understand, based on the child's age and maturity.

Requests for testing children by legal guardians or orphanages:

- For these children, the counselor must attempt to determine whether the child risks being neglected if his or her results are HIV positive and must make appropriate referrals for services when necessary.

Test results for sick children:

- If a child is sick, and the treating physician has reason to believe that the child may be rejected or abandoned by his or her family if the test results become known to the family, **only the physician will receive the results and he or she may withhold the results from the parents or legal guardian if it appears necessary to protect the child.**

Children under 18 requesting the HIV test on their own:

- The test may be given to a child under 18 without the knowledge or consent of a parent or legal guardian if the child requests the test and evaluation by the counselor indicates that the child is sufficiently mature.
 - Children in these situations may often need follow up psychological or social services or both, especially where it appears that sexual abuse of the child prompted his or her request for HIV testing.
 - Children have a legal right to services and protection in these situations.

III. Special Rules for Research

Research is very valuable in preventing and treating HIV/AIDS and other diseases and conditions, as well as for improving the lives of affected persons. But people who participate in research projects must do so of their **own free will, based on informed consent**. In addition, people who do agree to participate have **the right to privacy and confidentiality**. These protections are specifically set forth in the Rwandan constitution (Art. 15) and in the UNAIDS Guidelines (No. 5) and other international laws.

▶ TESTING IS CONFIDENTIAL ◀

HIV/AIDS testing, treatment, and the related counseling must be **confidential**, except in very limited situations (discussed below). TRAC's rules requires that counseling, testing, and discussion of the test results take place where the person can have **private conversations in a private office** with those providing the service.

This means that no one but the person being tested and counselor should be able to hear what is discussed or emotions expressed, not even a spouse, family member, or even other medical staff, unless the patient chooses to include them.

Pre-test group education on HIV/AIDS and the testing process is OK, but everyone has a right to an individual, confidential pre-test counseling session, too, where they can discuss their own personal intimate matters in private with the counselor.

Because one of the main ways that HIV is transmitted is through sexual activity, **joint counseling and testing** for engaged or married persons, pregnant women, or others in a relationship is strongly encouraged—but this can never be required. **Each member of the couple has the same rights to strict confidentiality as single people do.**

I. Protecting Confidentiality

To help ensure that confidentiality is maintained, a **code number is used** instead of the person's name to identify test results.

Public counseling and testing centers of the Ministry of Health do not give test results in writing; instead, **results are given verbally at the post-test counseling session.**

Testing for Employment, Insurance, or Travel Purposes:

- If a person needs written proof of his or her HIV-status for a reason such as employment, insurance, travel, etc., he or she must get the test administered through a private medical service.

Files for people who have been counseled or tested or who are being treated **must be stored in a secure place and kept strictly confidential.** This means the files must be maintained in such a way that only health personnel directly involved with the person's case can get access to the person's file. But a person has a right to **keep written information about his or her test results out of his or her file.**

II. Exceptions for When Disclosure Is Allowed

Information about a person's HIV status can be shared in some limited situations, when:

- Sharing the information is in the best interests of the person (for example, to refer the person to medical or other services);
- Sharing the information is necessary for saving someone else's life; or
- It is required by law.

III. Prior Notice of Disclosure

Before a person's test results can be disclosed to anyone else, **the counselor must first inform the tested person.** Prior notice provides an opportunity for the person to stop the disclosure, where appropriate, for example, when the disclosure is for referral purposes, or where the person can demonstrate why disclosure is not necessary to save someone else.

2. VOLUNTARY AND CONFIDENTIAL HIV/AIDS INFORMATION, COUNSELING, AND TESTING

▷ EXAMPLES ◁

Nyirasafari is pregnant and is worried that she may have HIV. She does not have any money to pay for testing and is concerned that if the test shows that she is HIV-positive, her husband or other family members could find out.

She goes to a Conseil et Dépistage Volontaire (CDV) testing center. The counselor asks her if she is taking the test voluntarily and if she is willing to go through counseling before and after the test. Nyirasafari answers “yes” to both questions. The counselor conducts a pre-test group information and education session in which she describes the testing process.

The counselor explains that the test results are private and that every person has the right to speak with a counselor privately. Nyirasafari wants to ask the counselor about how to encourage her husband to get tested but does not feel comfortable asking the counselor such questions in front of the group. At the end of the information session, Nyirasafari asks to speak to the counselor who then takes Nyirasafari into a private room and answers her questions. Nyirasafari asks if

she can have her test results given to her verbally, and the counselor agrees.

Nyirasafari is satisfied that all of her questions have been answered and agrees to get tested. The test is free and Nyirasafari is given a number which is used to identify her test results. The use of the number, rather than her name, helps keep the test results confidential.

Nyirasafari returns to the clinic at the designated time for her follow-up appointment to learn the test results. A counselor takes her into a private room and, after closing the door, discusses the test once more and answers any new questions Nyirasafari might have. The counselor then gives her the test results and refers her to a health clinic for follow-up treatment.

2. VOLUNTARY AND CONFIDENTIAL HIV/AIDS INFORMATION, COUNSELING, AND TESTING

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2. VOLUNTARY AND CONFIDENTIAL HIV/AIDS INFORMATION, COUNSELING, AND TESTING

▶ AUTHORITIES ◀

Constitution of the Republic of Rwanda,
Articles 15, 22.

International Guidelines on HIV/AIDS and Human Rights, UNAIDS and UN Office of the High Commissioner for Human Rights, 2006
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Normes et Directives Nationales pour le Conseil et Dépistage Volontaire et la Prévention de la Transmission du VIH de la Mère à l'Enfant, Ministère de la Santé, TRAC (December 2005).

Ministerial Instruction No. 20/20 of 25 September 2006, *Determining the Conditions and Modalities of Free Care of Voluntary HIV Testing in Rwanda*, Ministry of Health.

Ministerial Instruction No. 20/10 of 4 October 2005, *Regarding Modalities for Decentralisation and Integration of HIV/AIDS Medical Care Services Within the Health System*.

Ministerial Instruction No. 1/03 of 3 December 2003, *Determining the Conditions and Modalities for Therapeutic Care of Persons Living with HIV/AIDS*.

▶ REFERENCES ◀

NGO Summary of the International Guidelines on HIV/AIDS and Human Rights, ICASO (September 1999).

An Advocate's Guide to the International Guidelines on HIV/AIDS, ICASO (September 1999).

3. THE RIGHT TO MEDICAL TREATMENT AND OTHER SERVICES

In the section above on HIV/AIDS counseling and testing, we explain that people have the **right to follow-up treatment and services for health issues identified in the test**. This rights is included in the *National Policy on HIV & AIDS* (page 16) and is spelled out in more detail in various Ministerial Instructions and TRAC's rules.

TRAC's rules put into practice for people with HIV/AIDS **the basic legal right to health care** that is included in Rwanda's constitution and many international human rights laws and that applies to all Rwandans. (These laws were summarized in Section I.) While our focus in this Handbook is on people with HIV/AIDS, it is important to remember that the right to medical treatment and other services discussed in this section also applies to all other Rwandans.

Medical treatment for HIV/AIDS, including medications, and other necessary services can save lives.

- Anti-retro viral medications (**ARVs**) are increasingly available free of charge for Rwandans who

cannot afford to pay. People who meet the medical test for ARVs have a right to receive them.

- **In the case of a pregnant woman, HIV/AIDS treatment is important for protecting the life of both the mother and newborn.**

HIV/AIDS are is not specialty care separate from other medical care. Instead, all health institutions in Rwanda—clinics, hospitals, pharmacies, etc.—are responsible to provide HIV/AIDS care within their areas of expertise. This is consistent with the idea that all Rwandans enjoy the right to health care free from discrimination.

▶ **WHAT TREATMENT CAN I GET IF MY TEST IS POSITIVE FOR HIV/AIDS?** ◀

If a person tests positive for the HIV virus, **counseling and testing centers must provide or refer the person to appropriate medical treatment, including ARVs.**

Treatment and Referrals:

Counseling and testing centers must offer the following services:

- **Treatment and referrals to people who have HIV/AIDS or any other illness, including sexually transmitted diseases, TB, or malaria.**
- **Treatment and referrals including care for pregnant women before, during and after the birth, to help the baby avoid getting the virus and protect the mother's and baby's health in other ways.** These services are provided through the Prevention of Mother to Child Transmission program (PMTCT), also known as the Prévention de la Transmission du VIH de la Mère à l'Enfant (PTME).
 - **Even if the newborn is not HIV positive, the mother will need special instructions on how to care for her newborn if the mother herself is HIV positive.**
- **Education about and help getting the right nutrition.** Eating the right kind and quantity of foods is especially important for people with HIV, pregnant women, and nursing mothers.
 - As of this writing, TRAC's rules do not yet address supplying nutrition, other than in the general information about social services. But supplying adequate nutrition should specifically be required, in particular for people who need to take ARVs and all pregnant women.
- **Family planning services** if desired.

- **Home care.**
- **Psychological and social services** when needed, including protection from domestic and other forms of violence.

The same referral and treatment rights apply to **people who test negative** for the HIV virus.

▶ **WHAT IF I CANNOT AFFORD TO PAY FOR HEALTH CARE?** ◀

The CDV and PTME centers should provide basic HIV and HIV-related care, including ARVs (the drugs for treating HIV), either on-site or through referral.

These services should be for free if you cannot afford to pay. As mentioned above, ARVs are becoming increasingly available free of charge to all Rwandans.

Hospitalization should also be arranged when needed.

This same basic right to health care free of charge for people who cannot afford to pay applies to all Rwandans, not just those with HIV or AIDS.

But the reality is that people are often asked for some payment when they seek health care in Rwanda. Until these legal issues are sorted out, “insurance” through the “mutuelles de santé” may help.

Insurance basically means that a group of people get together and contribute funds so that when an individual member of the group needs medical care, it’s more affordable; insurance is a way to spread the burden of risks and make use of collective resources.

I. Mutuelles de Santé

This is Rwanda’s public health insurance program for people who do not have health insurance through their jobs or military service (see below).

- To join the mutuelle, a person pays a “premium,” or fee; in addition, the person may be asked to make a “co-payment” at the time of medical visits and hospitalization.
- The fee to join the mutuelles is about 1,000 Rwandan francs a year at the time of this writing, and more and more Rwandans are signing up. Some NGOs help their members pay the fee to join the mutuelles.

- Mutuelles services may be accessed only at public hospitals and clinics, not private ones.
- To join the mutuelles de santé, contact your local public hospital, if you have one, your district office, or one of the organizations listed at the end of this section.

People with jobs or who have served in the military can get insurance in ways other than joining the mutuelles de santé.

II. Health Insurance Through Employment

Government and private sector employees may have health insurance through their jobs. For example, Rwanda Assurance Maladie (RAMA) is a health insurance program for certain government employees and their family members; fifteen percent of their salaries goes to pay for their participation in RAMA, which helps them pay for medical needs.

III. Health Insurance Through Military Service

Current and former members of the armed services are covered for health care through Mutual Military Insurance (MMI).

IV. Purchasing Health Insurance Privately

Some companies sell health insurance to individuals in Rwanda, but the cost can be very high.

V. Certificate of Indigency

People without RAMA, MMI, or private health insurance who cannot afford to participate in the mutuelles de santé but who need medical care should be covered by the **certificate of indigency**.

- **What is the certificate of indigency?** All low-income people, with or without HIV, should be included on the lists prepared each year by the local districts for the health care budget for indigents. If a low-income person without insurance needs health care but is not on the list, contact the district or get legal help from one of the organizations listed at the end of this section.
- **No hospital should hold a patient who is well enough to leave until the bill is paid.** This includes women who give birth at a hospital and their newborns.

VI. NGOs and Free Health Care

In addition, some NGOs, such as AVEGA, Family Health International, Partners In Health, Rwanda Women's Network, WE-ACTx and others have health clinics that provide HIV and other health care. **All work through these clinics is done under the umbrella of TRAC and the national AIDS plan.**

3. THE RIGHT TO MEDICAL TREATMENT AND OTHER SERVICES

▷ EXAMPLES ◁

In the previous example, Nyirasafari was tested for HIV at the CDV testing center. The test was free and Nyirasafari received counseling and was administered the test in a safe and confidential manner. Her test results, which are also kept strictly private, were conveyed to her verbally at a post-test counseling session, not in writing.

At her private post-test counseling session, Nyirasafari learns that she is HIV-positive. Nyirasafari is very upset, concerned for herself and her unborn child, but she starts to feel more hopeful as the counselor tells her about medical treatment that can save her life and help prevent the baby from contracting HIV from Nyirasafari. The counselor also tells Nyirasafari about social services that may be available if she ever needs them.

Because Nyirasafari tested positive, Rwandan law requires that the CDV provide, or refer her to a health-care institution that can provide, her with adequate medical care. Through a CDV clinic, Nyirasafari can get treatment for HIV/AIDS, including HIV/AIDS medications (called anti-retrovirals (ARVs)), and for any other

illnesses as well as pregnancy-related care before, during, and after the birth of her child to help prevent the baby from contracting HIV. She can also get counseling on topics ranging from condom use to domestic violence.

Nyirasafari expresses concern about the cost of treatment. The counselor explains that she can pay to join the *mutuelles de santé*, Rwanda's mutual health insurance programs.

But Nyirasafari is not sure she can afford the annual premium payment or co-payments for each medical visit with the *mutuelles*. The counselor explains that pregnancy-related care as well as HIV/AIDS and other medical treatment she may need should be free at a CDV-recommended clinic. The counselor also tells Nyirasafari that if she is asked for payment when she seeks care but cannot afford to pay, she should go to a local NGO for assistance.

Some NGOs can pay the premium for joining a *mutuelle* on Nyirasafari's behalf, or recommend an appropriate legal services organization to help access low-income assistance programs. The legal services organization can help Nyirasafari find out whether she is on her district's list for the health care budget for the indigent. If Nyirasafari is on this list, her medical care should be free of charge. If Nyirasafari is not on the list, the legal services organization may be able to help her get her name added.

3. THE RIGHT TO MEDICAL TREATMENT AND OTHER SERVICES

▷ CONTACT INFORMATION ◁

Clinique Juridique / Legal Clinic (UNR/NUR): HIV/AIDS Project

P.O. Box 117, Butare, Rwanda
Tel: 531110 • Fax: 530849

Appolinaire Kayitavu
Email: mpumurokay@yahoo.fr

Innocent Musonera
Email: mincent50@gmail.com

Clinique Juridique / Legal Clinic (ULK)—Gisenyi

P.O. Box 2280, Gisenyi, Rwanda
Tel: 540580 • Mobile: 08308793
Email: kmail24@yahoo.fr
Website: www.ulk.ca.rw

Clinique Juridique / Legal Clinic (ULK)—Kigali

René Munyamahoro
Kigali, Rwanda
Mobile: 08672404

**Dufatanye: Rwanda Community Law
Anti-Discrimination Network**

Joseph Mafurebo, President
P.O. Box 5141, Kigali, Rwanda
Mobile: 08618384
Email: mafurebo@yahoo.fr

**Réseau Rwandais des Personnes
Vivant avec le VIH (RRP+)**

P.O. Box 6130, Kigali, Rwanda
Stanis Ngarukiye, President
Tel: 588151 • Mobile: 08305155
Béatrice Kagoyire, Executive Secretary
Mobile: 08304030

**Society for Women and AIDS in Africa
(SWAA)—Rwanda Ihumure**

P.O. Box 5196, Kigali, Rwanda
Tel: 501303 • Mobile: 08507668 or 08505385
Website: www.swaa.org.rw

**Treatment and Research AIDS Center
(TRAC—RWANDA)**

P.O. Box 2717, Kigali, Rwanda
Tel: 578471 or 578472 • Fax: 578473
Website: www.tracrwanda.org.rw

**3. THE RIGHT TO
MEDICAL TREATMENT
AND OTHER SERVICES**

▷ **AUTHORITIES** ◁

Constitution of the Republic of Rwanda, Articles 12, 15, and 41.

Normes et Directives Nationales pour le Conseil et Dépistage Volontaire et la Prévention de la Transmission du VIH de la Mère à l'Enfant, Ministère de la Santé, TRAC (December 2005).

Ministerial Instruction No. 20/20 of 25 September 2006, *Determining the Conditions and Modalities of Free Care of Voluntary HIV Testing in Rwanda*, Ministry of Health.

Ministerial Instruction No. 20/10 of 4 October 2005, Regarding Modalities for Decentralisation and Integration of HIV/AIDS Medical Care Services Within the Health System.

Ministerial Instruction No. 1/03 of 3 December 2003, *Determining the Conditions and Modalities for Therapeutic Care of Persons Living with HIV/AIDS*.

International Covenant on Economic, Social and Cultural Rights of 19 December 1966, Article 12.

International Guidelines on HIV/AIDS and Human Rights, UNAIDS and UN Office of the High Commissioner for Human Rights, 2006 Consolidated Version (HR/PUB/06/9).

Declaration of Patients' Rights of the World Medical Association (1995).

▷ REFERENCES ◁

NGO Summary of the International Guidelines on HIV/AIDS and Human Rights, ICASO (September 1999).

An Advocate's Guide to the International Guidelines on HIV/AIDS, ICASO (September 1999).

Mutual Health Insurance Policy In Rwanda, Ministry of Health (December 2004).

Les mutuelles de santé au Rwanda: un espoir de succès (February 2007), www.santetropicale.com/rwanda/marc0207.htm

4. THE RIGHT TO BE FREE FROM GENDER-BASED VIOLENCE

Many studies have now shown that **women as a group are more likely to get HIV than men**. For example, the most recent statistics from the government of Rwanda show that while **3% of the population as a whole has HIV** (this means 3 out of every 100 Rwandans), **the rate of HIV infection among women is much higher, 3.6%** (this means almost 4 out of every 100 Rwandan women throughout the country has HIV).

- Even higher is the rate for women living in urban areas—8.6%. This means **almost 9 out of every 100 urban women** has HIV.
- For urban women who are pregnant, the rate climbs to 11%—**11 out of every 100 pregnant urban women living in an urban area**. For pregnant women in rural areas, the HIV rate is 4%.

Women raped during the 1994 genocide have suffered the highest rates of HIV infection. While the precise numbers are not known, a widely accepted estimate is that 250,000 women were raped dur-

ing the genocide, and of these, 67% were infected with HIV. The link between rape and HIV has also been reported in other countries during times of war and for long “post-conflict” periods after wars end.

I. Women and girls are most vulnerable to HIV/AIDS

Women and girls in Rwanda are most at risk for HIV/AIDS for many, often complex, reasons:

- **Poverty;**
- **Lack of education or information** on HIV/AIDS and how to prevent it;
- **Poor access** to health care and protective measures, such as the female condom;
- The **female body** itself, which is in some ways more easily infected by sexually transmitted diseases; and
- Women often **lack the social, economic, and political power to avoid many of the other risk factors** that result in HIV. Women are often in a weaker negotiating position than their husbands or other male partners and may find it difficult to say “no” to sex or to insist on protected or “safer” sexual relations.

- **Married women** may feel cultural and other pressure to submit to unwanted or unprotected sex with their husbands. In Rwanda, as in many African countries, many married women report that they got HIV from their husbands through unprotected sex.
- **Girls and younger women** in Rwanda, as in many other countries, may be pushed by relatives to marry, get a dowry for the family, and start having children. The husband may be an older man. These men may or may not know they have HIV.
- **A dangerous myth about virginity.** There is a widespread but untrue belief that virginity cures or protects against HIV or AIDS. This has led some men to seek out young girls. Although Rwanda’s AIDS officials have spoken out against such myths, the practice continues through ignorance, lack of education about HIV, and the big inequality between young girls and adult men.

For women who become sick, the ability to earn an income is undermined, entrenching poverty in an ever more vicious cycle for them and their families.

All of these risk factors for HIV and persistent poverty especially affect women of childbearing age, from 15 to 49 years.

There is good news in that the HIV rate for Rwanda is falling, and as we discussed in Section 3 on Treatment, ARVs are becoming more available. Taking effective measures to end violence against women and children would go a long way to furthering these positive trends—and saving lives.

▶ **WHAT IS GENDER-BASED VIOLENCE?** ◀

What do we mean by gender-based violence, or GBV? GBV is physical or psychological violence directed at a person because of the person's gender. As mentioned above, GBV in the form of rape and other unwanted sex can and has resulted in the spread of HIV in Rwanda. **GBV is a problem all over the world, not just in Rwanda, and not just in poor or developing countries.**

GBV can come from a husband, a parent, or other family members, not just strangers. Just because a woman is married, a man has paid a dowry, a widow depends on relatives or an employer, or a child is under the control of an adult,

does not mean they must accept beatings, forced sexual relations, or psychological abuse.

Statistics from the National Police show that the survivors in **75% to 80% of the 6,440 GBV cases reported to the police from 2002 to 2004 were children under 18**. Sadly, GBV is clearly a major problem for Rwandan children as well as women.

What can people do to protect themselves from GBV? Knowing your legal rights may help.

The answers are not easy, especially at this point in Rwanda's post-conflict development. We try to provide some ideas in the Sections below.

Much more needs to be done so that these rights are truly respected in everyday life.

▶ **WHAT RIGHTS DO PEOPLE HAVE TO BE FREE FROM GBV?** ◀

The Rwandan **constitution and several international laws** prohibit all forms of GBV and require the state to protect people from it. Many of these laws were summarized in Section 1 on Fundamental Rights. Under these laws:

- Each person is sacred and may not be violated;
- It is against the law to discriminate on the basis of gender or social status. GBV is a type of discrimination;
- Everyone has the right to equal protection of the law, regardless of gender or social status;
- Children as well as adults have the right to be free from torture, inhuman, or other degrading treatment, such as GBV; and
- Marriage must be of a person's own free will.

I. Mistreatment of Children

Neglect or Abandonment:

If a child is neglected by parent or guardian, the guilty adult faces 1 to 15 years in prison, plus 20,000 to 200,000 francs in fines. If the abandoned child has an incurable disability, the punishment is life in prison. If a child dies as a result of abandonment, the crime is punishable by life in prison.

Corporal and Other Punishment of Children:

If the punishment inflicted by anyone on a child constitutes sadistic torture, ill-treatment, or inhuman or degrading punishment, the possible

criminal penalties are 4 months to 3 years, plus 50,000 to 200,000 francs in fines. If the child becomes disabled as a result of the punishment inflicted on him or her, 3 years to life. If the child dies as a result, the adult can be imprisoned for life.

In addition, rape and other kinds of sexual or other violent assault against adults and children are **serious crimes under Rwandan criminal law, with severe punishments.**

Rape and Other Dehumanization of Children:

Any sexual relations with a child younger than 18 years of age counts as child rape under the law.

Penalties for child rape are from 20 years to life imprisonment, plus 100,000 to 500,000 francs in fines, depending on the age of the child and whether the perpetrator was the parent, guardian, teacher, religious leader or other person of special trust.

If the rape causes the child's death or infects the child with an incurable disease, such as HIV/AIDS, the crime is punishable by life in prison and may include harsh conditions known as "special provi-

sions.” The death penalty was abolished in Rwanda in July 2007.

Child Prostitution:

Crimes related to child prostitution and other types of sexual exploitation of children are punishable by 3 months to 12 years in prison, plus 10,000 to 500,000 francs in fines.

Other Exploitation of Children:

- **Child slavery** crimes may result in 5 years to life in prison and fines of 200,000 to 500,000 francs;
- Crimes involving children and **illicit drugs or arms trafficking** may result in 5 to 25 years, plus 100,000 to 500,000 francs in fines.

With respect to **women**, the **existing Penal Code** addresses crimes of sexual and other violence against them and imposes severe penalties. **It is against the law to beat or otherwise assault a woman, even in marriage or other family situations or employment, and perpetrators face prison time and fines under the existing criminal laws. Enforcement of these laws is key.**

In August of 2006, a new **Draft Law on gender-based violence** was considered by Rwanda’s Parliament. If this Draft becomes a final law, it **will strengthen the existing laws** that already make GBV against women and children crimes (Art. 56, 58 of *Draft Law on gender-based violence* passed by the Parliament on 3 August 2006).

▶ HOW CAN I PROTECT MY RIGHT TO BE FREE FROM GBV? ◀

Get educated about your existing rights to be free from GBV—by reading this handbook, you have started to take this first step.

Next, consider doing the following, using the contact information listed at the end of this Section:

If you feel you or your children are **at risk of GBV**:

- Seek emotional support. Tell somebody you trust.
- Get counseling.
- Ask for legal help. A list of ministries and organizations is at the end of this Section. Act as soon as you can, do not wait for the risk of violence to become violence.

If you or your children **have already experienced GBV**, take these additional steps:

- Get **medical care right away** if needed.
 - If you or someone you know has been raped, getting medical care is especially important to lower the risk of contracting HIV/AIDS.
 - * **There is medication available to prevent HIV infection, but it must be taken within 48 hours of the possible exposure.**
 - A medical exam is also necessary to help collect evidence of the rape or other assault.
 - The medical exam, medications, and other treatment **should be free to you**. If it is not, get legal help to contest any bills.
- Call the **Gender Hotline** at the Gender Desk of the National Police Office at **3512**. **The police are required to respond, take you seriously, and treat you with respect.**
- **Contact the other enforcement agencies listed at the end of this Section.**
- **Consult with a legal advocate or NGO** (contact information at the end of this Section) providing legal help, **especially if you or your child have been raped or assaulted in oth-**

er ways. The legal advocate or NGO may be able to help with:

- Reporting the case to the police and dealing with the court system as your case goes forward; and
- Filing complaints with the Gender Hotline and MIGEPROF.

In cases of **genocide rape** (rape that occurred between 1 October 1990 through 31 December 1994), contact AVEGA and other legal advocates. These groups may be able to help you:

- Participate in Gacaca or report the rape directly to the public prosecutor;
- Testify against perpetrators tried by the International Criminal Tribunal for Rwanda; and
- Participate in efforts that may develop to collect reparations in the form of medical and trauma counseling services and income.

Many women's and legal associations are working with the government and Parliament to **improve the national laws and the police and court systems that involve GBV**. You can be part of those efforts, too.

4. THE RIGHT TO BE FREE FROM GENDER-BASED VIOLENCE

▶ EXAMPLES ◀

Nyirasafari believes she got HIV from her husband. She decides to tell him she is HIV-positive to encourage him to get tested and use condoms during sex with the other women she knows he sleeps with. Instead, when she tells him he gets furious, calls her terrible names, and beats her. He tells his family that Nyirasafari is HIV-positive and they show hostility towards Nyirasafari. His parents hit and slap her and tell her that she is worthless. When Nyirasafari begs them to stop, they tell her that they can do what they like to her because they paid a dowry for her.

Nyirasafari manages to run from the house. She remembers that the counselor at the CDV testing center said other services might be available for her. She runs to the center. A counselor helps Nyirasafari call 3512, the number for the Gender Hotline at the Gender Desk of the National Police Office. Nyirasafari makes a report to the police at the Gender Hotline about the beating. Instead of returning home, she goes to her sister's house, at least until she can figure out what to do next.

Nyirasafari is afraid that her husband might try to find her and beat her again or worse, and wonders whether the police will protect her. Nyirasafari, like every other Rwandan, has the right to be free from gender-based violence. Nyirasafari's husband could face prison time and fines for his treatment of Nyirasafari. If Nyirasafari's husband was violent towards their children, he could also face imprisonment and fines.

4. THE RIGHT TO BE FREE FROM GENDER-BASED VIOLENCE

▶ CONTACT INFORMATION ◀

Gender Desk Hotline:

3512 (for GBV emergencies and reporting GBV crimes to police)

112 (for emergencies of all kinds)

Judicial Police:

587532 (for the investigation of a crime)

Prosecutor General

P.O. Box 1328, Kigali, Rwanda

Tel: 589503 • Fax: 589501

Website: www.parquetgeneral.gov.rw

Butare: 530319

Kibungo: 566667

Byumba: 564157

Kibuye: 568165

Cyangugu: 537242

Kigali: 589503

Gikongoro: 535029

Nyagatare: 565106

Gisenyi: 540401

Ruhengeri: 546295

Prosecutor in Charge of Sexual Violence of National Competence

P.O. Box 1328, Kigali, Rwanda

Free Hotline: 3935

Other Contacts in Kigali on Sexual Violence Prosecution

Marie Claire Umwali, Head of Victim
and Witness Protection

Mobile: 08414005

Agnes Kangabe, Secretary to National
Prosecutor on Sexual Violence

Mobile: 08439443

Prosecutors in Charge of Sexual Violence at District Level

Vestine Dusenge

Mobile: 08830256

Musanze/Ruhengeri

Speciose Kabibi

Mobile: 08842446

Email: specikbb@yahoo.fr

Nyarugenge/Kigali

Mary Mugabe

Mobile: 08625029

Email: mugbm@yahoo.com

Muhanga/Gitarama

Stella Matutina Muhisoni

Mobile: 08745742

Email: msmatutina@yahoo.fr

Gasabo/Kigali Ville

Agnes Muhongerwa

Mobile: 08834481

Email: muhagnes@yahoo.fr

Karongi/Kibuye

Diane Murekatete

Mobile: 08537127

Ngoma/Kibungo

Gahunga Nadia

Mobile: 08689824

Nyamagabe/Gikongoro

Emeline Nyembo

Mobile: 08847615

Email: enyembo@yahoo.fr

Rubavu/Gisenyi

Fidèle Safari
 Mobile: 08467038
 Email: safarijooe@yahoo.fr
 Rusizi/Cyangugu
 Victoire Umurungi
 Mobile: 08677231
 Email: umvicky2005@yahoo.fr
 Nyagatare/Umutara

Lydia Uwanziga
 Mobile: 08671804
 Gicumbi/Byumba
 Grace Uwineza
 Mobile: 08355070
 Huye/Butare

Ministry of Gender and Family Promotion (MIGEPROF)

P.O. Box 969, Kigali, Rwanda
 Tel: 501784, 577626, 501783, or 570697
 Fax: 577543
 Email: gender@rwanda.l.com or
 migepro@rwanda.l.com

Ministry of Local Administration, Good Governance, Community Development, and Social Affairs (MINALOC)

P.O. Box 3445, Kigali, Rwanda
 Tel: 585406 or 583170 • Fax: 582228
 Email: webmaster@minaloc.gov.rw

NGO CONTACTS

Association Rwandaise des Droit de l'Homme (ARDHO)

P.O. Box 1864, Kigali, Rwanda
 Tel: 571039 • Mobile: 08840607
 Email: ardho@rwanda.l.com

Clinique Juridique / Legal Clinic (UNR/NUR)

P.O. Box 117, Butare, Rwanda
 Tel: 531110 • Fax: 530849

Appolinaire Kayitavu
 Email: mpumurokay@yahoo.fr

Innocent Musonera
 Email: mincent50@gmail.com

Dufatanye—Rwanda Community Law Anti-Discrimination Network

Joseph Mafurebo, President
 P.O. Box 5141, Kigali, Rwanda
 Mobile: 08618384
 Email: mafurebo@yahoo.fr

Duhozanye (Save)

P.O. Box 477, Butare, Rwanda
 Mobile: 08486420

Forum des Activistes Contre la Torture et la Violence (FACT—RWANDA)

P.O. Box 4580, Kigali, Rwanda

Free Hotline: 3232

Tel: 511830 • Mobile: 08305780 or 08305707

Email: fact@rwanda.l.com or

factrwanda@yahoo.com

Haguruka

P.O. Box 3030, Kigali, Rwanda

Tel: 514669 or 85709

Fax: 585709 • Mobile: 08300834

Butare • Tel: 530362

Gitarama • Tel: 562864

Ligue des Droits de la Personne dans la Region Grands Lacs (LDGL)

P.O. Box 3042, Kigali, Rwanda

Tel: 583686 • Fax: 588071

Website: www.ldgl.org

National Women's Council

P.O. Box 837, Kigali, Rwanda

Tel: 501781 • Fax: 501736

P.O. Box 429, Butare, Rwanda

Tel: 530769

Mobile: 08536724 (Annonciata Kambayire)

Réseau des Femmes

P.O. Box 2368, Kigali, Rwanda

Mobile: 08527215 (Patricia Kantamage)

Rwanda Women's Network

P.O. Box 3157, Kigali, Rwanda

Tel: 583662

Mobile: 08322368 (Petero Turyahikayo)

Umushumba Mwiza

P.O. Box 888, Kigali, Rwanda

Tel: 585778 • Mobile: 08877834

4. THE RIGHT TO BE FREE FROM GENDER-BASED VIOLENCE

▶ AUTHORITIES ◀

Constitution of the Republic of Rwanda, Articles 9-11, 26-28, and Preamble, No.9 and No.10.

Convention on the Elimination of all Forms of Discrimination against Women of 1 May 1980.

The Universal Declaration of Human Rights of 10 December 1948 (Article 2, 7, and 16).

Law No. 27/ 2001 of 28 2001: *Law Relating To Rights And Protection Of The Child Against Violence*, especially Articles 20, 22, 24, 32-50.

Law No. 31/2007 of 25 July 2007 *Relating to the Abolition of the Death Penalty*.

Draft Law No. _/2006 of 3 August 2006: *Draft Law on the Prevention, Protection and Punishment of Any Gender Based Violence*.

▶ REFERENCES ◀

Rwanda Demographic Health Survey 2005, Preliminary Results on HIV Seroprevalence, CNLS (September 2006), page 10.

Etude sur la violence communautaire basée sur le genre et sur l'impact du VIH/SIDA dans les zones de conflit ou en période de post conflit en Afrique: Cas du Rwanda, Fortunée Twiyubahe, Society For Women And AIDS In Africa (SWAA) (August 2006).

GBV Programming In Rwanda: Actors, Activities, Collaboration, Coordination, Final Report, Women's Legal Rights Initiative (8 May 2006).

The Right to Survive: Sexual Violence, Women and HIV/ AIDS, Françoise Nduwimana, International Centre for Human Rights and Development (December 2004).

The Impact of HIV on the Rape Crisis in the African Great Lakes Region, Jennifer M. Hentz, Human Rights Brief, Center for Human Rights and Humanitarian Law, American University Washington College of Law, Volume 12, Issue 2 (Winter 2005).

"Gender-Based Violence Bill Passes in Rwandan Parliament," UNIFEM News (7 August 2006).

5. RIGHTS IN MARRIAGE, CONSENSUAL UNIONS, AND POLYGAMY

Rwandan law favors civil marriage. **Women with registered civil marriages have many more rights** under Rwandan statutes than women without a civil marriage.

Under Rwanda's constitution, no one can be made to marry without his or her voluntary consent.

Without a civil marriage, Rwandan law does not recognize a couple as being legally married, regardless of whether the couple has had a wedding ceremony under traditional or customary law, lived together many years, or had children.

Polygamous marriages cannot qualify because Rwanda's constitution (Art. 26) defines a "civil marriage" as being between one woman and one man.

Civil marriages are favored under Rwandan law, but women in other kinds of unions still have enforceable rights. For example, the constitution says:

- Both parents have the right (and the duty) to bring up their children, whether the parents are married or not (Art. 27);
- The state must protect families, regardless of whether the mother and father are married (Art. 27);
- Mothers and children qualify for special protection (Art. 27, 28);
- Everyone, including unmarried people, has a right to private property, whether personal or owned in association with others (Art. 29);
- Everyone is guaranteed equal protection under the law, even unmarried people (Art. 11, 16);
- Discrimination on the basis of gender or social status is both prohibited and punishable by law (Art. 11, 46, 47, and Preamble, No. 6, specifically incorporating by reference the *Convention on the Elimination of all Forms of Discrimination against Women* of 1 May 1980). Being unmarried under the civil marriage law is a “social status,” which means discrimination on that basis is not allowed.

So even a woman in a couple who does not enjoy the specific benefits of civil marriage must be given some protection. **While it may be more diffi-**

cult for a woman without a civil marriage to enforce her rights, especially with respect to property and financial support, a legal advocate may still be able to help unmarried women with certain family problems get justice.

▶ **HOW CAN A COUPLE GET A CIVIL MARRIAGE?** ◀

To get a civil marriage, the couple must go to the Office of Civil Marriage at the Sector Office for the ceremony and registration.

There is usually a fee to have a civil marriage and register it. But sometimes, group civil marriage ceremonies with registration are offered for a reduced fee.

▶ **HOW DOES CIVIL MARRIAGE AFFECT WOMEN’S RIGHTS?** ◀

Here are some examples:

- Parties to a civil marriage have equal rights and duties, both during the marriage and at divorce (Constitution, Art. 26).

- Under the civil marriage law, a couple in a civil marriage has the legal duty to support each other as well as the children of the marriage.
 - Without civil marriage, Rwanda's constitution obligates the couple to support only their children, not each other (Art. 27).
- The husband and wife in a civil marriage must use the money, land or other property of the household only for the benefit of the family. If one spouse fails to do so, the other spouse can sue in court for the right to control of the property.
- The civil marriage law also says that each spouse has a say in how the land they live on and other household possessions are used. For more information, please see Section 8 on Property Rights.
- Separated, divorced or widowed women of civil marriages have certain protections that they would not have if their marriages are under traditional law or if they are not married at all.

WHAT HAPPENS AT SEPARATION OR DIVORCE IF A WOMAN HAD A CIVIL MARRIAGE?

Land and other property:

The answer here depends on what type of property rules the couple has chosen for their civil marriage. For more information, please see Section 8 on Property Rights.

Children:

At separation or divorce, both parents continue to have the duty to support their children and a right to continue to have a relationship with their children, unless such a relationship is not good for the child, as in cases of abuse by a parent. Similar rules apply for parents who separate without ever having had a civil marriage.

WHAT CAN WOMEN WITHOUT A CIVIL MARRIAGE DO TO PROTECT THEIR INTERESTS?

As mentioned above, Rwandan Statutes unfortunately presently provide less protection for women in consensual unions than those who have entered into a civil marriage, especially with re-

gard to property rights. Women's associations are working to improve protections, and hopefully one day unmarried women in a relationship will have the same rights as married women. If the Draft Law on gender-based violence becomes law, women will have stronger protections of their rights.

In the meantime, **mediation and certain court strategies** can sometimes help get justice for women who are not in civil marriages.

5. RIGHTS IN MARRIAGE, CONSENSUAL UNIONS, AND POLYGAMY

▷ EXAMPLES ◁

Mukamusoni was married to Mugwaneza in a traditional ceremony and registered a civil marriage at the Office of Civil Marriage at the Sector Office. They have a small house, which they bought together, and a young child.

One day Mugwaneza announces he is taking a second wife. Mukamusoni is upset and feels betrayed. She wants to leave Mugwaneza, but is worried about how to support herself and their child and where she and their child will live.

Mukamusoni talks with a paralegal at a local NGO and learns that, because they are married under the civil marriage law, Mugwaneza cannot take a second wife. Even if they did not have a civil marriage, Mukamusoni still would have important legal rights that the paralegal could help her enforce.

Mukamusoni also tells the paralegal that Mugwaneza is selling alcohol out of their house. Mukamusoni has told Mugwaneza that selling alcohol in their house has created an unsafe environment for their family and has asked him to stop. Mugwaneza

will not listen to Mukamusoni and repeatedly ignores her when she tries to persuade him to stop using their home for this purpose. Mugwaneza has also taken control of the couple's money and refuses to give any of it to Mukamusoni. She cannot even buy adequate clothes and food for herself and their child.

Mukamusoni is not sure that she wants to divorce Mugwaneza, but is afraid that the environment in the family home is not safe for their child. The paralegal tells Mukamusoni that because she and Mugwaneza have a civil marriage, they have equal rights and duties, both during the marriage and in the event of a divorce. Under the civil marriage law, the husband and wife must use the money, land and other property of the household for the benefit of the family, and each spouse has a say in how the land is used. Both Mukamusoni and Mugwaneza have the right and responsibility to raise and provide for their child. Even without a civil marriage, the constitution requires that Mugwaneza support their child. Mukamusoni can use the court system to try to stop Mugwaneza from using the family home to sell alcohol. The paralegal tells Mukamusoni that she can petition the court for the right to control the family home.

5. RIGHTS IN MARRIAGE, CONSENSUAL UNIONS, AND POLYGAMY

▷ CONTACT INFORMATION ◁

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For referrals to local districts outside Kigali:

Joe Rutayisire
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**Tribunaux des Provinces et des Districts /
Provincial and District Courts**

5. RIGHTS IN MARRIAGE, CONSENSUAL UNIONS, AND POLYGAMY

▶ AUTHORITIES ◀

Constitution of the Republic of Rwanda, Articles 11, 16, 26, 27, 46 and 47, Preamble, No. 9 (specifically incorporating by reference the *Convention on the Elimination of all Forms of Discrimination against Women* of 1 May 1980);

Universal Declaration of Human Rights of 10 December 1948;

International Convention on Civil and Political Rights of 19 December 1966;

International Covenant on Economic, Social and Cultural Rights of 19 December 1966;

African Charter of Human and Peoples' Rights of 27 June 1981;

Law No. 22/99 (12 November 1999) "Law to Supplement Book One of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions."

Draft Law No. _/2006 of 3 August 2006: *Draft Law on the Prevention, Protection and Punishment of Any Gender Based Violence*, Article 2, No. 8, 6, 7, 13, 39-41, 52, and 57.

▶ REFERENCES ◀

Umuntu Ku Giti Cy'e N'umuryango, Haguruka (undated).

Women's Land Rights In Rwanda: How Can They Be Protected and Strengthened as the Land Law Is Implemented?, Jennifer Brown and Justine Uvuza, RDI (Discussion Draft June 2006).

"Gender-Based Violence Bill Passes in Rwandan Parliament," UNIFEM News (7 August 2006).

6. SUCCESSION

If a person dies without a will, his or her land and other property will be distributed according to the laws of “succession.”

Under Rwanda’s succession laws, **at a person’s death, most of his or her property is automatically “reserved” to be “inherited” by, or passed on to, his or her children and other family members.**

The portion of the inheritance reserved for the decedent’s children (adult children as well as minors) is $\frac{4}{5}$, or 80%. If the decedent had no children, then the inheritance reserve is $\frac{2}{3}$, or about 66%, to be given to the decedent’s family members.

Everyone can specify in a will how he or she wants the remaining portion ($\frac{1}{4}$ for a person with children, or $\frac{1}{3}$ for a person without children) of his or her property to be distributed at death. Please see Section 7 on Wills.

Is a person with HIV/AIDS still covered by the laws of succession?

Yes. The following rules apply to everyone, including persons with HIV/AIDS. Discrimination against

people with HIV/AIDS is against the law. In the context of succession, this means that:

- If a child or adult with HIV/AIDS is in line to inherit, he or she has the same rights to the inheritance as family members who do not have the virus.
- Similarly, the belongings of a person with HIV/AIDS will go to his or her family members according to the laws of succession in the same manner as if the person did not have the virus.

▶ **DOES EVERYONE HAVE EQUAL RIGHTS IN SUCCESSION?** ◀

Yes, they do now. In the past, under traditional law, women and girls did not have any rights to succession. But Rwanda's 2003 constitution and the laws that followed it guarantee women and girls the same rights as men and boys to succeed to property when a parent or other family member dies without a will.

- **Discrimination against females in succession is now illegal.** The law says, **daughters and other female family members have equal rights to succession.** This means that the practice of many families in which the son or other male relatives get most or even all of the

land, or the most fertile or commercial land, and the rest of the family's property when someone dies without a will is illegal.

- **Equal rights to property means that females have the same legal rights** to use, live on, cultivate, manage, sell, lease, or mortgage the land or other property in question that males have.

I. Do children born outside of a civil marriage have succession rights?

Yes, Rwandan law also provides for equal rights in succession for children born outside of a civil marriage (sometimes referred to as "illegitimate" children). For more information about those rules, please see Section 8 on Property Rights.

- **Example:** In a civil marriage where the couple has chosen to be governed by the community property rules:
 - If either spouse has children out of wedlock and dies without a will, his or her half of the community property goes equally to all of the children he or she had with the civil marriage spouse and to all of the children he or she had with any partner outside the marriage.

II. Special Rules for Land Less Than One Hectare

Rwandan law prohibits partitioning land to less than one hectare. For this reason, some special inheritance and succession rules apply when there are so many heirs (people who are to inherit or succeed to the land) that equal partition would result in parcels of less than one hectare.

- In such situations, the Council of Succession (in the case of a deceased spouse, the Council is made up of relatives of both members of the couple) decides what should be done.
- **Example:** Two deceased parents with no will leave a single parcel of land that is less than one hectare; they had three children. The Council can take either of two approaches:
 - Give the land to one child and specify how much that child must pay to his or her two siblings, who do not get any land at all; or
 - Sell the land and divide the money equally among the three children.

III. What about gifts of land made during a parent's lifetime? Can boys and men get more than girls and women?

No. Rwanda's laws on equal property rights also apply to gifts of property that a parent makes while still living. Such gifts are known as "partition" or "pre-mortem inheritance." The law says parents may not discriminate on the basis of gender in making such gifts during their lifetime.

6. SUCCESSION

▶ EXAMPLES ◀

Uwamariya and Petero were married in a traditional ceremony; they never had a civil marriage. Petero has two other wives. Uwamariya and her two children by Petero live in a house that Uwamariya's parents left her when they died.

Tragically, one day as Uwamariya is walking along the side of the main road, a truck hits and kills her. Petero takes his two children by Uwamariya, a girl and a boy, to Uwamariya's sister to raise. Petero claims that Uwamariya's house and everything in it are now his. He says that under traditional law, the daughter has no legal right at all to her mother's property; he also claims that because the son has HIV he owns the boy's share as well.

As Uwamariya died without a valid will, her property will be distributed according to the laws of succession. Under the constitution, whether Uwamariya and Petero had a civil marriage has no effect on the succession rights of their children. Succession laws provide that 4/5 (80%) of Uwamariya's property is divided equally amongst her children. Therefore, the daughter and the son are each entitled to 2/5 (40%) of Uwamariya's inheritance. The remaining 1/5 (20%) of Uwamariya's property is divided equally amongst her relatives.

Petero's claim that the daughter has no legal right to her mother's property is incorrect. The constitution states that females have the same rights to succession as males do and cannot be discriminated against based on their gender.

Likewise, Petero's claim that the son is not entitled to an inheritance because the son is HIV-positive is also wrong. The constitution prohibits discrimination based on someone being HIV-positive.

What can Uwamariya's sister do to get Uwamariya's property from Petero for her niece and nephew's benefit? Uwamariya's sister can speak to one of the NGO's or the anti-discrimination agencies, listed below, to determine how to use the legal system to reclaim the children's inheritance from Petero.

If Uwamariya had any children by another man, those children would also be entitled to an equal share of the 4/5 of her property.

In both of these scenarios, the succession laws provide that the remaining 1/5 (20%) of the deceased parent's property is divided amongst family members other than the children if the parent dies without a will. An individual may designate her children (or others) to inherit this 1/5 (20%) of her property by creating a will. Wills are discussed in the following Section.

6. SUCCESSION

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6. SUCCESSION

▶ AUTHORITIES ◀

Law No. 42/88 (27 October 1988) “Instituant le Titre Préliminaire et le Livre Premier du Code Civil,” *J.O.*, 1989.

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“Determining the Use and Management of Land in Rwanda.”

▶ REFERENCES ◀

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Les Successions Légales au Rwanda, Clinique Juridique, Université Nationale du Rwanda, Faculté de Droit (Décembre 2003).

Les Successions Testamentaires au Rwanda, Clinique Juridique, Université Nationale du Rwanda, Faculté de Droit (Décembre 2004).

Women’s Land Rights In Rwanda: How Can They Be Protected and Strengthened as the Land Law Is Implemented?, Jennifer Brown and Justine Uvuza, RDI (Discussion Draft June 2006).

7. WILLS

As we explained above in Section 6 on Succession, at a person's death $\frac{4}{5}$ (80%) of his or her property is automatically reserved by law to be inherited by the children; if the person has no children, then $\frac{2}{3}$ (66%) of his or her property is in the inheritance reserve for other family members.

But what about the remainder? The person can usually specify in **a will** how he or she wants the remaining portion of his or her property to be distributed at death.

The discussion below about wills concerns only the $\frac{1}{5}$ (20%) (for people with children) or $\frac{1}{3}$ (34%) (for those who do not have children) of a person's property that is not controlled by the laws of succession and thus can be transferred according to his or her free wishes. The person expresses his or her wishes in a will.

▶ **HOW CAN I MAKE A WILL?** ◀

There are three types of wills, described below. The first is the least secure and least formal, while the second and third are more secure and more formal.

- **Less formal wills are easier and less expensive** to make, but they **may not guarantee as well** as the most formal kind of will would that your exact wishes will be carried out.
- You will have to **decide which type of will is best for you**, given your own personal situation and resources.

The most important considerations about any will are whether:

- It truly reflects the **intent and final wish** of the person making it;
- The way the person wishes to dispose of his or her property is **permitted by law**; and

The rules as to **form** have been closely followed.

- The person who makes the will is called the “**testator**.”
- The people who get things under the will are called the “**heirs**” (male) or “**heiresses**” (female). “Heirs” in legal documents can be shorthand for both heirs and heiresses.
- The land, money and possessions being transferred by the will are called the “**estate**.”

What are the three types of wills?

The following are the three types of wills, starting with the least formal and least secure, and ending with the most formal and most secure.

I. Oral Will

As the name indicates, this will is made **verbally**, without a writing. Without something in writing documenting the testator’s wishes, it can be difficult to prove what the testator really meant.

To be valid, an oral will must:

- Describe the testator’s wishes; and
- **Be expressed in the presence of the heirs** who are entitled by the laws of succession to 4/5 (80%) of the estate and at least **two adult witnesses**; or if the heirs are not available, then at least **four adult witnesses**.

II. Holographic Will

To be valid, a holographic will must:

- Describe the testator’s wishes;
- **Be entirely handwritten by the testator**;
- Include the **date** it was written; and

- Include the testator's **signature**.

The testator can write her holographic will on **any kind of surface**, such as paper, wood, a box, or anything else that is available, and **in any of Rwanda's three languages**.

A holographic will **cannot be dictated** by the testator and written by someone else, and the testator cannot use a typewriter or computer. To be valid, a holographic will must be in the testator's own hand.

- There is an **exception for people who cannot write**, either because of incapacity or illiteracy. Under this exception, someone else may prepare the holographic will for the testator, but the will must also be legalized by a government official or a notary where the testator resides and in the presence of the testator.

III. Authentic Will

This is the most formal and the strongest type of will. This is the type of will that is hardest to contest or challenge.

To be valid, an authentic will must:

- Describe the testator's wishes;

- **Be filed with a notary public or government official;**

- Include the testator's **name, signature, address, and date** it was written.

Other people can help the testator write this will (unlike the holographic will, which must be written in the testator's own hand).

The testator must go to a notary or a government official in the area where she lives. The testator makes the will and the notary or government official receives it. The government official or notary keeps the will in a confidential registry maintained specifically for wills. No one else can see your authentic will during your lifetime if you, the testator, do not want them to. **The testator gets a copy.**

WHEN DOES A WILL TAKE EFFECT?

A will **does not take effect until the death** of the person who made it.

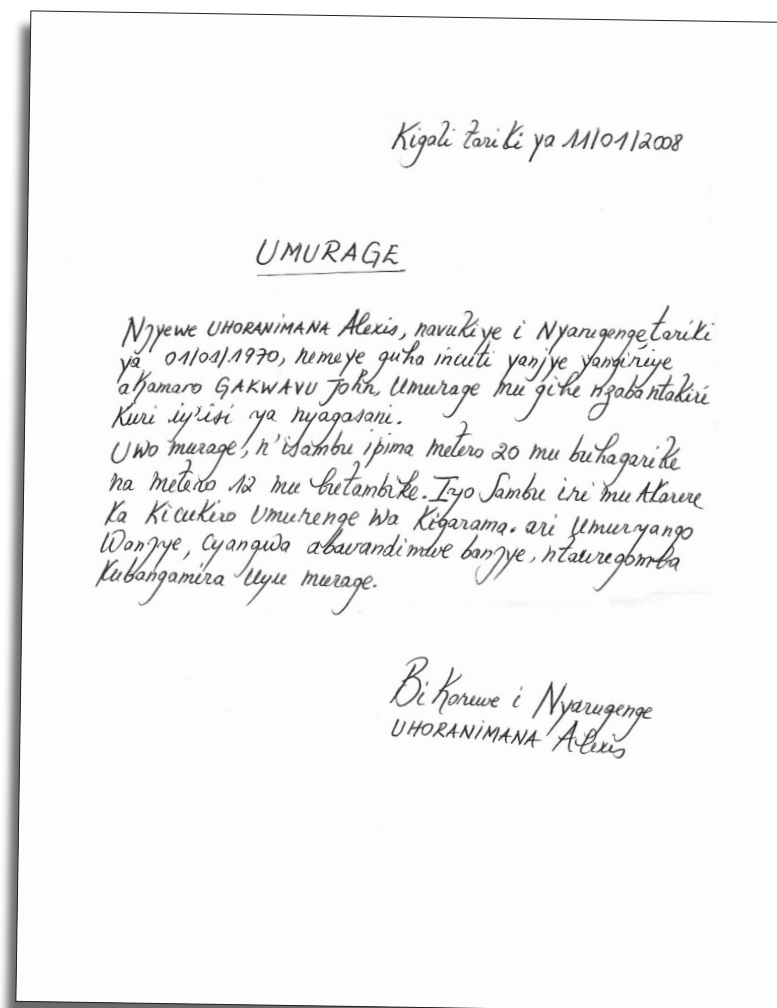
To transfer any of your possessions during your lifetime, you make a "gift." The rules on equality of daughters with respect to gifts by parents and certain limits on gifts of land are discussed in Section 8 on Property Rights.

▶ CAN I CHANGE OR CANCEL MY WILL? ◀

Yes, all wills can be changed or canceled. But you will have to follow closely the rules described all over again when you change or cancel your will.

▶ SAMPLE HOLOGRAPHIC AND AUTHENTIC WILLS ◀

The following are samples of a holographic will and an authentic will in Kinyarwanda (The authentic will is copied with permission from the Appendix of *Booklet on Wills* by the Clinique Juridique du Butare).



{ sample of a **Holographic Will** }

URUGERO RW'UKO WAKORA IRAGE

Umwaka W'2008 tariki ya.....(umunsi,ukwezi, mu magambo arambuye)

Ndemeza.....(Amazina),yavutse.....(itariki,ukwezi,n'umwaka)

(Aho yavukiye), mwene.....na.....(ingaragu,yatandukanye n'uwo bashakanye

, umupfakazi , uwo bashakanye(Amazina y'uwo bashakanye), tariki ya

.....imbere y'umwanditsi w'irangamimerere

w'i.....(Akarere,Umujiyi).....mw'(ivangamutungo rusange,ivangamutungo

w'umuhahano,ivanguramutungo risesuye

risesuye).....utuye (umudugudu,umurenge,Akarere,umujiyi) ufite indangamuntu

nomero.....yatanze i.....tariki.....

Ndemeza ko iyi nyandiko yanjye ikubiyemo ibi bikurikira:

Ingingo ya mbere: umutungo wanjye ugizwe n'ibi bikurikira:

I. Umutungo utimukanwa: amazu,amasambu, umubare, ibipimo

1).....

a).....

b).....

II. Umutungo wimukanwa:ibikoresho, imodoka, Amafaranga ari kuri konti mu Mabanki, amatungo mato n'amanini (umubare wabyo)

1).....

2).....

3).....

{ sample of an **Authentic Will**, p.1 }

III Bibaye ngombwa n'imyenda ufite n'uyo ufiteye (umubare w'amafaranga,amazina y'abo ufiteye imyenda)

1) imyenda ufite (dettes)

a).....

b).....

c).....

2) Imyenda ufiteye (créances)

a).....

b).....

c).....

Ingingo ya kabiri: Nyuma y'urupfu rwanjye, umutungo wanjye uzagabanywa mu buryo bukurikira:

1) Abana

Amazina	Imyaka	umugabane we
a).....		
b).....		
c).....		

2) Abandi

Amazina	Isano	umugabane we
a).....		
b).....		
c).....		

Ingingo ya gatatu

Abantu bakurikira, niba bemejwe kurera abana banjye bato nyuma y'urupfu rwanjye ndetse no kubahagarira mu Izunguramutungo.

{ sample of an **Authentic Will**, p.2 }

7. WILLS

▷ EXAMPLES ◁

Section 6 explained how 4/5 (80%) of one's property is divided, by law, amongst one's children, regardless of whether a person dies with or without a will. The remaining 1/5 (20%) is divided amongst other family members unless one has a will which specifies who inherits this portion of one's property. Here is an example:

Mukamana has just been diagnosed with HIV and is taking ARVs. She has a young son. Mukamana has never married. She owns the house she lives in, a cow and some household items and personal belongings. She wants all of her property to go to her child at her death.

Mukamana talks to a paralegal at a local NGO. She learns that 4/5 (80%) of her property would automatically go by law to her son at her death. Still, for her peace of mind, she wants a will for the other 1/5 (20%) to make sure that her intent that all of her property go to her child, not to other family members, is clear.

Mukamana does not know how to read or write and she does not have money to hire a lawyer to make her will. Her uncle had an oral will but after he died the family fought over which property outside his

Amazina Isano ishingiyeye ku babyeyi, inshuti

a).....
b).....
c).....

Ingingo ya kane

Iyi nyandiko nshobora kuyihindura mbere y'urupfu rwanjye (cyangwa igasesa inyandiko zose zakozwe mbere zirebana n'Ibyirage).

Bikorewe I/tariki

Mbere ya noteri cyangwa umwanditsi w'irangamimerere (irage rishingiyeye ku nyandiko mpamo)

Cyangwa rigahabwa agaciro na Noteri, umwanditsi w'irangamimerere (irage rishingiyeye ku nyandiko Bwite).

{ sample of an **Authentic Will**, p.3 }

inheritance reserve the uncle meant to leave for each relative. Mukamana wants to avoid that.

Mukamana can make a holographic will to make sure that at her death the 1/5 (20%) of her property also goes to her child. Holographic wills must usually be written in the testator's own handwriting but, because Mukamana cannot write, someone else may write the will on Mukamana's behalf. Mukamana asks her cousin, who can read and write, to write the will on her behalf. Her cousin writes that 100% of Mukamana's property should go to Mukamana's son upon her death, and she writes out the child's name so it is clear who Mukamana is willing all of her property to. As required by law, the cousin also includes the date the will was prepared and has Mukamana sign the will in the presence of the notary in Mukamana's village. The notary legalizes and files the will.

Two years later, Mukamana has another child, this time, a girl. Mukamana is still unmarried. Mukamana realizes that her holographic will still leaves all of her property to her son. Mukamana wants to include her daughter in her will as well and has the option to change or cancel her existing will to include the girl.

Mukamana's cousin helps her write a new holographic will, which clearly states that Mukamana's earlier will is now cancelled. In her new will, Mukamana leaves half of her property to her son and half to her daughter upon her death.

7. WILLS

▶ CONTACT INFORMATION ◀

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7. WILLS

▶ AUTHORITIES ◀

Law No. 22/99 (12 November 1999) “Law to Supplement Book One of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions.”

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8. PROPERTY RIGHTS

What legal rights to make decisions about land, a house, income, and other household property do women have when they are in a relationship with a man? What happens to the property if one of the spouses dies?

The answer depends on whether the woman has had a registered civil marriage, on the one hand, or only a traditional wedding ceremony or no marriage at all, on the other.

WHAT PROPERTY RIGHTS DOES A WOMAN HAVE IF SHE IS IN A RELATIONSHIP WITHOUT CIVIL MARRIAGE?

If a woman is living with a man and has not entered into a civil marriage, she may not be able to make decisions about the land or other household property if the man does not want her participation or if she gets separated or divorced.

If she becomes a widow, it may be more difficult to challenge decisions by family members about her land or other property, especially if she and the man did not have any children together.

The law, however, still protects women who are not in a civil marriage. Rwanda's constitution protects people's right to property regardless of gender or "social status," which includes whether a person is married or not:

- Everyone, including unmarried people, has a right to private property, whether personal or owned in association with others (Art. 29);
- Everyone is guaranteed equal protection under the law, even unmarried people (Art. 11, 16);
- Discrimination on the basis of gender or social status is both prohibited and punishable by law (Art. 11, 46, 47, and Preamble, No. 6, specifically incorporating by reference the *Convention on the Elimination of all Forms of Discrimination against Women* of 1 May 1980).

So, as mentioned in Section 5 on Marriage, while it may be more difficult for women without a civil marriage, **a legal advocate may still be able to help women in marriages under traditional law, polygamous marriages, or consensual unions enforce their property rights.**

In addition, many women's associations are working to get property protections for women in consensual unions or polygamous marriages, and

hopefully one day such protections will become part of Rwanda's Land Law.

▶ **WHAT PROPERTY RIGHTS DOES A WOMAN HAVE IS SHE IS IN A CIVIL MARRIAGE?** ◀

The exact kind of rights to land and other property a woman has depends on what type of property rules the couple chooses to govern their civil marriage. The three choices under the law adopted in 1999 are as follows:

• **Community Property**

- The wife owns property equally with her husband during their lifetimes, even if land or other property is registered only in the husband's name. Any property that either person had before the marriage also becomes part of the couple's community property. This is the property rule that is automatically applied if a couple does not make a choice.

• **Limited Community of Acquests**

- The couple makes a list and decides which property to own together and which to own separately.

• Separate Property

- The wife and husband own the property they had from before the marriage separately, and any property that either of them may get during the marriage is also held separately.

A married couple can **change its choice** about the property rules that will govern its marriage by making a joint declaration to the Court of First Instance.

No matter which set of rules the couple chooses, the 1999 law requires both the husband and wife to **use the property only for the benefit of the family**. If one spouse fails to do so, the other spouse can sue in court for the right to get control of the property.

What if a couple had a civil marriage before 1999?

Couples had until 2001 to make their choice. If a couple did not make a choice, the community property rules will automatically apply.

I. Consent is required from both husband and wife to sell land.

There are special protections for land rights during the life of each member of the couple. Under

all three sets of civil marriage property rules **neither spouse can sell, lease, give away, or mortgage the couple's land without the other's written consent**, and that consent must be registered with the district; without such consent, the land transaction is not final for five years.

This is so even if the land itself is registered only in the husband's name.

As a practical matter, however, it can be hard to stop a husband from selling off the land or making other important decisions about it if the woman's name is not also on the registration form.

Women's advocates are working so that land registrations under the new Land Law will involve forms that require the name of *both* spouses and to make it a crime for a spouse to dispose of household property without the consent of the other.

II. What happens with community property if a civil marriage ends in separation or divorce?

Even though there are protections for women's property rights under all civil marriages, the community property or the limited community of

aquests choices will usually give the woman the most legal protection.

- In the case of separation or divorce, community property must be split equally between the two people.
- In contrast, if the couple chose the separate property rules to govern the civil marriage, each person will have only his or her own separate property if the couple parts ways for any reason.

III. What happens with community property at the death of a spouse?

The situation is more complicated if the husband (or wife) dies. In community property marriages, a widow's right to the community property generally depends on whether she had children and whether she remarries, as follows:

- A widow (or widower) has rights to the community property, but must use it for the benefit of the couple's children and any needy parents.
- If the couple did not have any children, the widow has the right to only half of the community property. The other half goes to the heirs of her deceased husband.

- If the widow has young children and she remarries, she has full ownership of only 1/4 of the community property; the other 3/4 are for the benefit of the children.
- If, instead, all of the children are adults when the widow remarries, she gets full ownership of half of the community property; the other half goes to her deceased husband's heirs.
- If the widow does not remarry, but has additional children out of wedlock, half of the community property from the marriage with her deceased husband goes to the children she had with him, and the other half is shared among those children and the children of the subsequent relationship.

What happens at the death of a spouse if the couple chose the separate property rules for their civil marriage?

A widow will have very few rights to her deceased husband's property in this situation.

- In separate property marriages, the husband's separate property will go first to his children, and then to his parents and other relatives.
- The widow gets nothing unless all of her husband's relatives are dead.

Who gets the marital home when the husband in a civil marriage dies?

No matter if a woman's civil marriage is under the community or separate property rules, **she has the right to remain in the house** at her husband's death, and to keep the things in it.

She has this right under the Inheritance and Marital Property Law regardless of whether the couple bought the house together, the house was the husband's before the marriage, he inherited it before or during the marriage, or the couple had children together.

Unfortunately, not all courts agree that this special rule applies **when the husband acquired the house through inheritance**, so there is some confusion and extra difficulty in enforcing widows' rights to the marital house when it was inherited by the deceased husband.

Enforcement difficulties may also arise for **widows who had no children with the deceased**, even though the law says that even these widows are entitled to remain in the marital house.

Widows are often improperly evicted from the marital house when:

- **The widow remarries** and the Council of Succession (made up of relatives of both the deceased and the widow) decides that she can no longer remain in the house. The decision to evict is based on the best interests of the children (if the widow had any with her deceased husband).
- **The widow tries to sell, mortgage, or exchange the marital house or the Council believes she is damaging it.** In part because of confusion in the courts, in-laws have been successful in stopping widows from selling or mortgaging the marital house even when it came to the husband through inheritance.

Eviction on any of these grounds is **inconsistent with the general rule that community property is to be split equally between husband and wife**. Widows should be able to own and control the marital house even if they remarry, had no children with the deceased husband, or want to transfer the house for any reason.

- The **Rwandan constitution** may provide some protection here, especially the Articles about property ownership and equality of rights between men and women mentioned above.

- Women's advocates are working to **clarify and improve the law with respect to widows' rights to the marital house.**
- A Draft Law on gender based violence, adopted by the Parliament on 3 August 2006, would strengthen women's property rights (among others) if it becomes final. For example, it would re-affirm the right of every woman to her property and prohibit intimidation to interfere with property rights (Art. 11).

8. PROPERTY RIGHTS

▷ EXAMPLES ◁

Ingabire and Ngarambe have a registered civil marriage; they did not chose a property rule so the community property rule automatically applies. Ngarambe registers their land and house in his name.

Ngarambe leases one hectare of their land to a neighbor so that the family will have more income. The couple goes to the local district office and Ingabire gives her written consent to the lease. The couple shares the rental income equally. Had Ngarambe failed to get Ingabire's written consent, Ingabire could have contested the lease within the first five years.

Ingabire gives birth to their first child, a girl. Sadly, Ngarambe dies in a car accident a week later. Ngarambe did not have a will. Ngarambe's family evicts Ingabire and the couple's newborn baby. Shortly after, Ngarambe's parents, who are needy, sell the house and keep all the money from the sale.

Even though the marital home was in Ngarambe's name, his family had no legal right to kick Ingabire out of it, much less to sell it without her consent. Ingabire can challenge the sale. But courts have inconsistently applied the Inheritance and Marital Property Law, and Ingabire will likely need legal help to try recover the

money from the sale of the house. Ingabire may still need to use the other community property she inherited from Ngarambe to support herself and her child.

8. PROPERTY RIGHTS

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8. PROPERTY RIGHTS

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Convention on the Elimination of all Forms of Discrimination against Women of 1 May 1980.

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